

SOUTH AFRICAN MINING COMPANIES IN SOUTHERN AFRICA



**Corporate governance
and social responsibilities**



This report is published by the Southern Africa Resource Watch. Southern Africa Resource Watch (SARW) is a project of the Open Society Initiative for Southern Africa (OSISA).

ISSN: 1994-5604

First Published 2010

Southern Africa Resource Watch
President Place
1 Hood Avenue / 148 Jan Smuts Avenue (corner Bolton Road)
Rosebank
PO Box 678, Wits 2050
Johannesburg
South Africa

www.sarwatch.org

Editorial Team: Claude Kabemba and Roger Southall

Design and Layout: Paul Wade
Cover Photography: Chamber of Mines of Namibia and Trevor Davies
Production: DS Print Media

The opinions expressed in this report do not necessarily reflect those of SARW / OSISA or its Board. Authors contributed to the report in their personal capacities.

We appreciate feedback on this publication. Write to sarw@osisa.org or info@osisa.org.
To order copies, contact publications@osisa.org

Contents

Acknowledgement	4
Contributors	5
Abbreviations	7
Introductory Overview	12
Corporate Governance Practices of South African Mining Companies with Operations in South Africa	19
South African Mining Companies Corporate Governance Practice in Zambia: Chibuluma Mine	47
Review of South African Mining and Oil Companies in Mozambique: Mozal and Sasol	98
South African Mining Companies Corporate Governance Practice in the DRC: Ruashi Mine	151
South African Mining Companies Corporate Governance in Zimbabwe: Zimplats and Mimosa	194
Corporate Governance Practices of South African Mining Companies in Namibia: Namdeb and Navachab	248
South African Banks and the Corporate Governance of South African Mining Companies in Southern Africa	287
Conclusion Corporate Governance and Social Responsibility in the African Context: Contemporary Reflections	315

Acknowledgements

This compendium is based on the findings of a research project managed by Claude Kabemba, Director of the Southern Africa Resources Watch and funded by the Heinrich Böll Stiftung (Southern Africa Office) and the Open Society Foundation of South Africa (OSF). Grateful appreciation is expressed to the funders and the researchers and also to the Open Society Initiative for Southern Africa (OSISA).

Contributors

Andile Mngxitama is an independent researcher specialised on the land question in Southern Africa

Camilo Nhancale is researcher and Chairman of the Board of Mozambican-based Youth Development and Environmental Advocacy group.

Herculano Luciano Vilanculo is Research Assistant and project officer at the Mozambican based Youth Development and Environmental Advocacy group.

Hilma Shindondola-Mote is the Director of the Labour Resource and Research Institute. Her latest research and publication work include: *The Plight of Namibia's domestic workers and the Mystery behind low-level radiation in Namibia*.

Jean Didier Losango Nzinga is an independent consultant on corporate social responsibilities of mining companies in the Democratic Republic of Congo (DRC).

John Lungu is Associate Professor at the Copperbelt University, Zambia. He co-authored with Alistair Fraser the book entitled *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*. Recently he published a monograph entitled *The Politics of Reforming Zambia's Mining Tax Regime*.

Lipumbu Sakaria is a researcher at the Namibian-based Labour Resource and Research Institute.

Manasa Hwenga is an educator in Bindura, Zimbabwe.

Roger Southall is Professor of Sociology, University of the Witwatersrand, South Africa. He was formerly a Distinguished Research Fellow and Executive Director of the Democracy and Governance Research Programme at the Human Sciences Research Council.

Sumbye Kapena is Senior Lecturer in the School of Business, Copperbelt University Zambia. Among recent publications is the article entitled *Norms of the Private Sector in Peace Building: Zambia's experience with the mining companies*.

Wole Olaleye is an independent researcher. Previously he worked for Action Aid as research coordinator for Africa.

Theresa Moyo is Senior Lecturer at the University of Limpopo.

Zandi Radebe is an independent researcher. She has just completed her Masters Degree with Rhodes University.

Kabemba Claude is the Director of the Southern Africa Resource Watch.

Abbreviations

AAC	Anglo-American Corporation
ABET	Adult Basic Education and Training
ABSA	Amalgamated Banks of South Africa
ACIDH	Action Contre l'Impunité pour les Droits Humains
ADR	American Depository Receipts
AIM	Alternative Investment Market
ANC	African National Congress
APRM	African Peer Review Mechanism
ARV's	Anti retro-viral
BEE	Black Economic Empowerment
BFS	Banker Feasibility Study
BPC	Botswana Power Corporation
BSCA	British South African Company
CBE	Citizens for a Better Environment
CBO	Community Based Organization
CCS	Chambeshi Copper Smelter
CDM	Consolidated Diamond Mines
CHM	Companhia de Hidrocarbonetos de Moçambique (Mozambican Hydrocarbonets Company)
CIP	Centro de Integridade Pública (Public Integrity Center)
CMG	Companhia Moçambicana de Gaseduto (Mozambican Pipeline Company)
CMSL	Central Management Services Limited
CPF	Central Processing Facility
CPI	Centro de Promoção de Investimentos (Investment Promotiionn Center)
CRC	Copper Resources Corporation

CSI	Corporate Social Investment
CSO	Central Statistical Office
CSR	Corporate Social Responsibility
CSTNZ	Civil Society Trade Network Zambia
CTCPM	Cellule Technique de Coordination et Planification Minière
DFID	UK Department for International Development
DRC	Democratic Republic of Congo
DTC	Diamond Trading Company
DTI	Department of Trade and Industry
EC	European Commission
EI	Extractive Industries
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
EITI	Extractive Industry Transparency Initiative
EMP	Environment Management Plan
ENE	Empresa Nacional de Electricidade
ENH	Empresa Nacional de Hidrocarbonetos (National Hydrocarbonets Enterprise)
EPZ	Export Processing Zones
EQ	Equator Principles
ESAF	Enhanced Structural Adjustment Facility
ESKOM	South African Electricity Company
FDI	Foreign Direct Investment
FIAS	Foreign Investment Advisory Services
FIZ	Free Investment Zone
GAAP	General Acceptable Accounting Principles
GDP	Gross Domestic Product
GECAMINES	General des Carrières et des Mines
GNU	Government of National Unity
GRI	Global Reporting Initiative
GRZ	Government of the Republic of Zambia
HDSA	Historically Disadvantaged South Africans
HIPC	Highly Indebted Poor Country
HIV	Human immunodeficiency Virus

HIV and AIDS	Human Immunodeficiency/Acquired Immune Deficiency Syndrome
ICDT	Impala Community Development Trust
IDA	International Development Association
IDC	Industrial Development Corporation
IFC	International Finance Corporation (member of the World Bank)
IFC	International Financial Institutions
ILO	International Labour Organisation
IMF	International Monetary Fund
IPA	Investment Project Authorization
IPA	Inclusive Peace Agreement
IRPC	Imposto sobre o Rendimento das Pessoas Colectivas (Corporate Income Tax)
ISO	International Standard Organization.
IT	Information Technology
JSE	Johannesburg Securities Exchange
KMC	Kababankola Mining Company
KMCC	Karibib Mining and Construction Company (Pty) Ltd
LTIR	Lost Time Injury Frequency Rate
LUSE	Lusaka Stock Exchange
MCDT	Mozal Community Development Trust
MDC	Matola Gas Company
MDGs	Millennium Development Goals
MEC	Mineral-Energy Complex
MICOA	Ministério para a Coordenação da Acção Ambiental
MIGA	Multilateral Investment Guarantee Agency
MIREME	Ministério dos Recursos Minerais (Ministry of Mineral Affairs)
MISP	Maputo Iron and Steel Project
MMD	Movement for Multiparty Democracy
MMK	Miniere de Musoshi et Kisanda Sarl
MPRDA	Mineral and Petroleum Resources Development Act
MSZ	Main Sulphide Zone
MUN	Mine Workers of Namibia
MUZ	Mineworkers Union of Zambia
MW	Megawatt

NAMDEB	Namibia De Beers
NamPower	Namibia Power
NAPSA	National Pension Scheme Authority
NDTC	Namibia Diamond Trading Company
NEAC	National Economic Advisory Council
NEPAD	New Partnership for Africa's Development
NFCA	Non Ferrous Company Africa
NGO	Non-Governmental Organisation
NOSCAR	National Occupational Safety accreditation reward
OCPT	Office Congolais de Postes et Télécommunications
OECD	Organisation of Economic Cooperation and Development
OHSAS	Occupational Health safety assessment series
OKIMO	Office des Mines d'Or de Kilo-Moto
ONATRA	Office National de Transport
ONG	Non- Governmental Organization
PE	Permis d'Exploitation
PGM	Platinum Group Metals
PPA	Petroleum Production Agreement
RAP	Resettlement Action Plan
RDA	Roads Development Agency
RECO	Rustenburg Environmental Coalition (RECO)
RSA	Republic of South Africa
RST	Roan Selection Trust
SA	South Africa
SADC	Southern African Development Community
SAF	Structural Adjustment Fund
SAHRC	South African Human Rights Commission
SAP	Structural Adjustment Programme
SARB	South African Reserve Bank
SARW	Southern Africa Resource Watch
SCT	Specific Consumption Tax
SED	Socio-Economic Development
SISA	Imposto Sobre Transferência de Propriedade Imobiliária (Real Propriety Transfer Tax)
SMC	The Selous Metallurgical Complex

SNEL	Société Nationale d'Electricité
SOE	State Owned Enterprise
SWAPO	South West Africa Peoples Organisation
TCE	Total Control Epidemia (Total Epidemic Control)
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNEP- FI	United Nations Environmental Programme: Financial Institutions
UNEP	United Nations Environmental Programmes
UNGC	United Nations Global Compact
UNIP	United National Independence Party
US	United States
USAID	United States Agency for International Development
VAT	Value Added Tax
WB	World Bank
ZANAN	Zambia National Aids Network
ZAR	South Africa Rand
ZCCM	Zambia Consolidated Copper Mines
ZCCM-IH	Zambia Consolidated Copper Mines –Investment Holdings
ZCTU	Zimbabwe Congress of Trade Unions
ZIC	Zambia Investment Centre
ZMDC	Zimbabwe Mining development Corporation
ZRA	The Zimbabwe Revenue Authority

Introductory Overview

Claude Kabemba

Africa is a poor continent, rich in resources. Over centuries African resources have supported industrial development elsewhere in the world, while industrial development on the continent itself has languished. African people have not benefited in any significant way from the resources which have been extracted from their land. Today, the people of Southern Africa have little to show for the exploitation of their mineral resources. Poverty in the region is as bad as it ever was, if not worse, and is increasing tensions and conflicts within communities. This is symptomatic of a general crisis in resource access, exploitation, distribution and utilisation. However, the situation is changing. People in Southern Africa want to see the extraction of their minerals translating into improved conditions of life. There is a new vitality, with an increasing number of civil society organisations and organised communities focussing on economic justice, and demanding equal distribution of revenues, better work conditions, protection of the environment, and respect for human rights by mining companies.

The world appears on the edge of an economic recovery following the 2009 financial crisis. The demand for African mineral resources is expected to rise again to support the current wave of industrialisation in emerging countries, especially in Asia. In turn, the scramble for resources in Africa has seen the arrival of emerging powers such as Brazil, India and China as buyers and investors. There is a clear recognition across the continent (and within individual African countries) that the mining industry has tremendous potential to contribute to sustainable development and to the transformation of mineral producing countries in terms of economic growth and development. The subject of this research project, the corporate governance and social responsibility of South African mining companies and their financiers, is likely to become a major issue of public debate as the former increase their presence in the SADC region and elsewhere in search of new resource opportunities.

The South African mining sector has been in decline over the past two decades. Consequently South African companies are increasingly looking for investment opportunities in the wider SADC region in a bid to benefit from favourable interna-

tional markets for minerals, in competition with western and Asian companies. These investments have social and environmental impacts on people working in, and living around, mines. In recent times, attention and pressure has been mostly put on Chinese companies to adhere to best standard business investment in the extractive industries; very little pressure has been put on other players (including South Africa). Chinese companies have been criticised for their poor environmental standard and human rights record. However, studies by South African civil society organisations show that South African companies do not have a good record of corporate social responsibility and environmental protection. Accordingly, the objective of this research was to explore the corporate governance record of South African companies outside the borders of South Africa. South African companies which are under obligation to fulfil the objectives of sustainable development in South Africa should not underestimate the potential long-term impact of environmental, labour and community relations problems on the performance of existing outside operations, and on access to future resources.

The reason for focussing on South African companies is twofold. First, the expectation is high on the continent that companies from a country such as South Africa that has a strong rights-based constitution will adhere to globally accepted environmental and human rights standards when investing outside their home country borders, even in fragile states where regulation is difficult to implement and monitor. South African companies must expect to be held to higher standards than western and Chinese companies. Second, considering the South African government policy of African Renaissance, it is expected that all South African companies investing outside South Africa will carry with them government's vision, and will not take advantage of host countries' weak capacity to enforce legislation and limited ability for monitoring corporate governance. Considering South Africa's ambition to play a leading role on the continent, there should be consistency between the country's high morals when it comes to respect for human rights and democracy as indicated by its constitution and proclaimed policies, and the practices of its businesses outside its borders (not least because today many South African businessmen were themselves members of the liberation movement). Thus it is that people in Southern Africa expect South African companies to contribute to governments' tax revenues without compromising on safety, health, the environment and work conditions

The research included four countries: The Democratic Republic of Congo (DRC), where the focus was on Metorex (Rushi mining); Namibia, where the study looked at NAMDEB and NAVACHA; Zambia, where the focus was on Metorex (the Chibuluma mine); and Zimbabwe, where the interest was on Zimplat and Mimosa. These countries were selected because of the firm presence of South African mining and gas companies. They also represent a mixed set of internal state structural and organisational capacity that gives different environments within which South African companies operate in the region. For comparative purposes a case study on South Africa is also included. Given the role that South African commercial banks play in providing funds to mining companies, the research also covers their adherence to international best practices when lending money to mining companies – banks around the world are under fierce criticism for providing funding to many environmentally damaging projects. The role of the South African government is also discussed. The study assesses whether the South African government has policies of compliance for companies working outside South Africa.

The different chapters in this book attempt to answer questions such as: to what extent South African mining companies respect host countries' legislation and regulations as they relate to corporate governance? To what extent are South African companies contributing to economic development and the improvement of social conditions in countries where they invest in SADC. Are South African companies falling short of good governance when doing business in SADC? Do South African companies use the same standards of corporate social responsibility to protect African communities and their environment where they invest in the region? Do South African companies respect and apply the host country's legislation?

A qualitative research methodology was adopted for all the chapters. However, we need to recognise two major problems which confronted the research. First, the research capacity and skills in this sector are still weak in the region; second, mining companies and governments were reluctant to engage with the researchers and answer questions; they also refused to make available documents such as development agreements. They argued that these documents contained commercial secrets, and that disclosure would not only impair economic credibility, but would also amount to a breach by states of their sovereign commitments under the said agreements.

The behaviour of South African companies in the extractive industries in the five countries shows the same characteristics. In all five case studies, companies have not respected their development agreements fully. Although the evidence indicates that the companies are profitable in their operations and that they have made an economic impact in terms of job creation, payment of taxes and royalties, there is a debate about whether these companies are meeting their tax obligations in full. A major finding of the study was the contested status of the official figures presented in companies' annual reports. Many of the claims made regarding the companies' contribution to community development were refuted by community representatives. Allegations made by the latter appeared to be confirmed by evidence presented to the research team when they made visits to the mines. These include indications of poor management of the environment, which has negatively impacted on the livelihoods of villagers, as well as the opening up of marked differentiation in income between mine employees (notably those permanently employed) and ordinary members of impoverished communities, and between South African employees and national employees. It is clear that South African companies are not behaving any differently than western and Asian companies, making a mockery of the African Renaissance. South African mining companies are taking advantage of regional governments' weak legislation framework and lack of capacity to monitor the development agreements to disregard some of the most basic human rights. Equally, South African banks (which contribute to the investment capital of these companies, and which have incorporated some the best international principles and standards into their risk assessment procedures used in loan approval) have not been concerned with how South African companies behave outside.

Maybe the onus rests with the South African government, despite the view that it cannot direct how South African mining companies behave outside the country, the South African government, as with other mining countries which have strict environmental and human rights guidelines for their companies investing abroad, has the responsibility to guide and regulate the behavior of its mining companies outside its borders. After 1994, South Africa's capital and expertise were expected to bring economic revival to the continent in general, and to Southern Africa in particular. Indeed South Africa has increased its trade and investment on the continent since 1994, and South African companies (especially in the extractive industries) are competing fiercely with western multinationals. Our research reveals, however that the

perception on the continent is that South African companies' actions in the economic rim are not that different from those of western powers. These perceptions need to be fought with concrete strategies, policies and training of South African companies investing on the continent. Failure to deal with these perceptions could undermine both foreign policy and the country's economic interests as discontent on the continent increases.

The exclusion of local communities from the benefits of the extraction of vital mineral resources appears to make a case for increased monitoring and regulation by governments and civil society organisations. However, governments themselves form part of a wider problem, as they lack the necessary capacities to undertake such a role. Civil society in general also lacks the necessary skill, both material and technical, to monitor the behavior of these companies. Without pressure, it is unlikely that South African investment will benefit poor communities situated close to the mines.

Some of key recommendations emerging from this study include:

- South African banks must make public their lending practices, partners, and the agreed process of monitoring mining projects they fund in the SADC region.
- The South African government must design guidelines for its companies investing outside its borders, especially in the area of environmental protection and human rights. Alternatively, it could simply embrace the OECD guidelines.
- South African mining companies must respect and implement in full their development agreements when operating in the SADC region.
- To ensure transparency and accountability in revenue collection and sharing, regional governments and South African mining companies must sign-up and implement the Extractive Industries Transparency Initiative (EITI).
- The procurement policies of South African mining companies in the region must privilege local businesses where they operate instead of South African businesses. Where capacity does not exist, they must create it through education and training.

- Host SADC governments must review their mining laws and contracts to raise revenues. This should not only target South African companies, but all companies, including their own national companies.
- Corporate social responsibility must cease to be a Public Relation exercise (as it is for most South African companies) and become an integrated policy for social and economic and sustainable development of communities in the SADC region.
- South African companies must engage and provide the necessary information to civil society organisations in these countries to allow them to do their job of monitoring extractive activities. For this to be effective, governments in SADC must have in place access to information acts which compel every institution to provide information to citizens when they need it.

Corporate Governance Practices of South African Mining Companies with Operations in South Africa

Wole Olaleye

The end of the apartheid regime signalled a new way of doing business within the mining sector in South Africa. It meant overhauling a system which had largely benefited from unfair labour practices, wage differentiation along racial lines, human rights abuses, land expropriation from the indigenous population (often without compensation) and lack of ownership and participation of host communities and the majority of the citizens in the profits generated by companies.

These conditions were predicated upon the importance of the mining sector to the development of the economy, and guided the policy choices adopted by the South African government under apartheid. A noted policy during this period was the introduction of a system of tax exclusively targeted at the African population, which forced black males into wage employment to meet the global and domestic demand for gold and diamonds. As a result, black males were forced by law to seek wage employment in mining towns, leaving behind their families and other social networks, and living in single-sex hostels with between eight and 24 miners in one room.

Developments on the global stage with regards to how businesses carry out their activities both at home and abroad influenced the then government in 1992 to establish a committee under the leadership of Judge Mervyn King, with a mandate to assess the corporate governance of companies operating in South Africa, with particular focus on: financial reporting and accounting, the responsibilities of directors, and codes of ethical conduct.

The King committee emerged with a report of its assessment of corporate governance in 1994 (King I).² The life of the report was quickly cut short with the release of the King II report.³ The King report is premised on the understanding that corporate governance in any society, especially that of South Africa emerging from a history of racial inequalities, must reflect the values and aspirations of the society.

The report signifies an important milestone in the effort to transform corporate governance in South Africa, with the introduction of concepts such as “triple bottom line” and black economic empowerment (BEE). The triple bottom line requires companies to report on their financial performance and ethical practices, with inclusion of BEE, health and transformation issues, and environmental practices. The weakness, though, is that this code was not compulsory and consequently companies voluntarily adopted their own codes of good corporate governance.

This study assesses the corporate governance practices of South Africa mining companies with operations in Democratic Republic of Congo (DRC), Namibia, Zambia and Zimbabwe within the broader context of the how their activities in those countries are affecting the host communities where the operations are located. The companies under assessment are Metorex (DRC and Zambia), De Beers (trading as Namdeb in Namibia) and Implat (trading as Zimplat in Zimbabwe). In conducting the assessment, this paper firstly provides conceptual clarity on the notion of corporate governance, then through a thorough literature review presents the debate with regards to corporate governance in South Africa. This is followed by a presentation of company case studies in order to provide insight into how companies are taking boardroom decisions to influence the activities of their company. Finally, the assessment would not be complete without a section on how mining companies’ corporate practices are perceived by other stakeholders – especially civil society organisations and affected communities.

Corporate governance: a definition

The question, therefore, is no longer about corporate social responsibility...instead, it is a question of how far the modern CEO is willing to take a stand on the pivotal issues of the day by contributing thought leadership to supplement the setting of new standards in ethical, corporate citizenry (Richard Calland, 2009).

The concept of corporate governance is very broad and is often confused and used interchangeably with the notion of corporate social responsibility. This is partly due to lack of a universally acceptable definition and overlaps in the understanding and application of the two concepts. King defined corporate governance as “simply the system by which companies are directed and controlled” (King I, 1994: 1). It is relat-

ed more specifically to the structures and processes associated with management, decision-making and control in organisations.

Corporate social responsibility is described as the decision-making and implementation process that guides all company activities in protecting and promoting international human rights, labour and environmental standards and compliance with legal requirements within its operations and in its relations to the societies and communities in which it operates. Tricker (1984), in trying to distil the distinction between the two concepts, identified two distinctive elements in corporate governance. These are the supervision or monitoring of management performance, and ensuring accountability of management to shareholders and other stakeholders. It is important to note the mention of accountability to other stakeholders in this categorisation. This goes to demonstrate the evolution of the role of companies beyond the narrowly conceived idea of stakeholders as those with share certificates, to include other stakeholders like the host communities where the operation is taking place, to employees, suppliers, and society at large. It is here that the role and the responsibility of mining companies become absolutely essential and a valid subject of any social enquiry.

Tricker (1984:7) further describes corporate governance processes in terms of four principal activities: direction – formulation of strategic direction for the future of the company; executive action – involvement in crucial executive decisions; supervision – monitoring and overseeing of management performance; and accountability – recognising responsibilities to those making a legitimate demand for accountability.

The first two activities described above are managerial in nature, while the last two relate directly to corporate governance. The Organisation for Economic Corporation and Development (OECD), a multilateral governmental agency responsible for ensuring corporate governance compliance in member countries, described corporate governance as involving “a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and how the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring” (OECD, 2004:11). The

agency further enumerated six principles that should guide corporate governance. According to OECD, corporate governance should:

- Promote transparent and efficient markets, be consistent with the rule of law, and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.
- Protect and facilitate the exercise of shareholders' rights.
- Ensure the equitable treatment of all stakeholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of rights.
- Recognise the rights of stakeholders established by law or through mutual agreements, and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and sustainability of financially sound enterprises.
- Ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
- Ensure that strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

King II (2002) provided seven characteristics of good corporate governance principles and practices:

- Discipline – the commitment by senior management to adhere to correct and proper behaviour that is universally recognised and accepted.
- Transparency – the measure to which management makes necessary information available in a candid, accurate and timely manner.
- Interdependence – to put in place mechanisms that avoid potential conflicts of interests.
- Accountability – mechanisms for investors to query and assess the actions of the board and its committees.
- Responsibility – while the board is accountable to the company, the board must behave in a manner that is responsive to all stakeholders.
- Fairness – a system that operates on the basis of treating all stakeholders equitably, especially ensuring that minority shareholders' interests are considered.
- Social responsibility – policies that are non-discriminatory, non-exploitative and responsible with regard to environmental and human rights issues.

It is evident from the principles above that, through their activities, companies have to consider and take into cognisance the values and principles ascribed to in the society where they work. It is no longer a luxury (or option) for selected companies to behave in an ethically and environmentally acceptable way in the course of doing business. According to Jenkins and Obara (2006), the mining industry has historically taken a “devil may care” attitude to the impact of its operations, operating in areas without social legitimacy, causing major devastation and then leaving when an area has been exhausted of all economically valuable resources. Cost-benefit language has often been used to excuse the damage caused in one place because it is outweighed by the overall financial benefits. It is no longer acceptable for companies to operate as if profit is all that matters. Companies have to act and contribute to a healthy, well functioning, and developing society.

Corporate governance: the big issues

Historical factors: A fuller understanding of corporate governance in South Africa must be located in a history and context that are informed by an examination of a combination of factors, including political processes of colonisation, technological advances and economic changes, and how these have worked together to translate the mining of natural resources into the impoverishment of South Africa and its people.

The apartheid regime was a system based on the exercise of control over people by race, space and resources. The politically powerful (who also happened to be in charge of sophisticated machinery, and who consequently influenced economic policies) developed the system to a highly advanced level, rendering South Africa a major source of wealth extraction for the benefit of multinational corporations, with financial backing from individuals and financial institutions in the north. When the new democratic dispensation was ushered in 1994, the hope was that it would bring about a new way of doing business, as well as a redistribution of mineral wealth in a way that benefits communities and individuals whose land was taken away for mining purposes (Action Aid 2008). However, the structure of domination and control of South Africa’s mineral resources created through the apartheid regime have remained largely unchanged; the incoming African National Congress (ANC) government replaced the apartheid system with (neo)liberalisation. In short, the South African government now operates as the

regulator of terms and conditions of trade and investment that prioritise the interests of multinational capital and external markets above those of the country and its people.

The distortions reproduced by the transformation and integration of South Africa's economy into the wider processes of globalisation have generated constant changes and contradictions, even among a selected few (BEE) black mining magnates. The distortions have resulted in a situation whereby communities sitting on mineral resources have failed to benefit from the abundant mineral resources in the country. These resources should serve as catalysts, and contribute significantly to the social and economic development of the nation and communities in mining areas, without undue damage to the diversity of the environment and social relationships of the people.

As a company, our commitment to being a responsible citizen translates into addressing issues such as: providing jobs that are fairly-paid and that provide opportunities for individual growth within a work environment that respects human dignity; contributing responsibly to the national tax base through the creation of sustainable profits; ensuring a safe and healthy working environment; supporting communities through our procurement and enterprise development activities; and maintaining the natural resources base on which all of this development depends (Hixonia Nyasulu, Chairperson of Sasol 2009).⁴

Unfortunately, the corporate culture of mining in South Africa points to the contrary. Throughout the history of South Africa's economic development, the model for mineral resource extraction has been inconsistent with the developmental role of mining. The South African model of mineral extraction has, over time, sought to prioritise the interests of multinational corporations and capital, their local agents and political elites, above integrated national development, citizens' interests and the environment. Essential elements of the prioritisation include policies which offer protection and increased tax incentives for multinational corporations while providing arbitrary powers for governments (Christian Aid 2009). While South Africa's economy has benefited from mining activities, it has occurred with great human and ecological exploitation by the few who have held capital and political power.

The combined effect of these factors has meant that damage to the earth and human rights violations committed by mining companies are some of the issues which the corporate governance regime seeks to address.

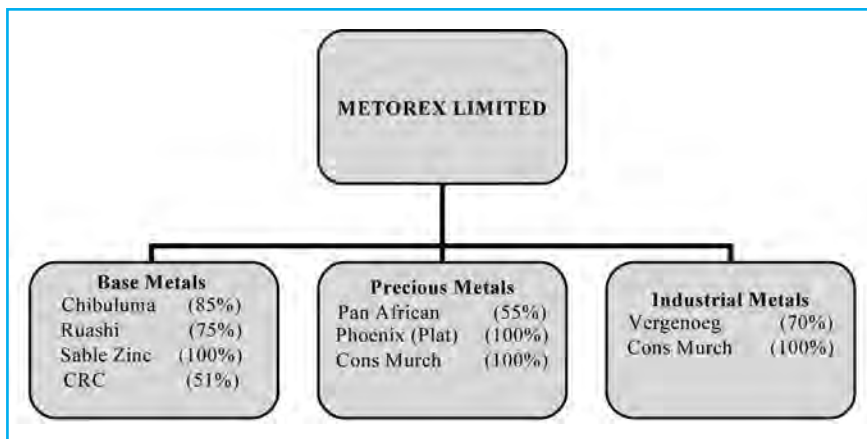
Corporate governance case studies

Metorex

Metorex, a South African company, was established in 1975 with the specific objective of participating in the small mining sector. Metorex is a public liability company listed on both the Johannesburg Securities Exchange (JSE) and the London Stock Exchange. Crew Development Corporation, a public, internationally listed company with operations globally, owns 41 percent of Metorex share capital,⁵ and Industrial Development Corporation (IDC) have 15.18 percent shares. Minerals Y Products Derivados SA owns 9.02 percent, CIB Strategic No 2 Standard Bank of South Africa Limited owns 8.21 percent, and Usat Nominees (Pty) Limited owns 7.49 percent stock shares.⁶

Metorex is a mid-cap, multi-commodity mining group, with quality assets and extensive operating experience in sub-Saharan Africa. Metorex corporate headquarters is located in Johannesburg, South Africa, where it owns and manages eight mining companies and operations in DRC (Ruashi, Musonoi), Zambia (Chibuluma, and Sable) and Mozambique (Kinsenda). Metorex specialises in identifying and managing

Fig 1: Metorex Operational Structure (Needham 2009)



mineral deposits that are unsuitable for the larger mining companies. Metorex mining activities are in zinc, copper, antimony, gold, coal, fluorspar, and manganese dioxide. Metorex owns and manages mining projects using a decentralised profit-centre approach, at the same time providing technical, administrative and financial support to operational management. Metorex has a diverse interest in a range of mining-related operations, from prospect selection to ground acquisition, to exploration and feasibility studies, to financing and management of mining operations and mine closures. Gold mining is a major source of income for Metorex, followed by copper and coal mining.

In the Metorex 2009 annual report, the group recorded a profit of R 1 921 229 billion (before taxation).

The total number of people employed as at June 2009 was 4 593 compared to 5 150 in 2008. This amounts to a 10.82 percent (557 bodies) reduction in number of people employed by the company. However, the salaries and wages paid to staff during this period amount to R176 254 million compared to R144 389 million in 2008, an 18.08 percent increase in salary and wages for 2009.

The group endorses the code of corporate governance as set out in the King II Report, as well as in the Listing Requirements of the JSE. The board of directors, which is responsible for setting the company's group policy and makes decisions on issues of strategic importance to the company is an all male affair. Of the ten board members, eight are white males, one is a black male, and one a black female. The two black representatives of the board were non-executive directors, appointed on 11 August 2009. The board of directors meets quarterly and is responsible for preparing group financial statements, monitoring executive management and exercising control over Metorex group activities.

The board includes executive directors and non-executive directors. The executive directors are involved in the day-to-day running of the group's business and are in full-time salary employment by the company. The non-executive directors are not involved in the day-to-day management of the business and are not full-time salaried employees of the company or any of its subsidiaries. Non-executive directors do not receive any remuneration from the company for their services; but are only given remuneration in the

form of share allocations. As at June 2009, non-executive directors were paid R1 465 000 million as fees for services, while the executive directors were paid R14 414 000 million (an average of R 2 158 167 million) inclusive of share options exercised and sold, basic salary, bonuses, vehicle allowances, and company contributions.

The total amount paid to executive directors' emoluments amount to R 176 254 000 million or 8.18 percent of the total cost of salaries paid to employees (Metorex 2009).

Metorex environmental policy commits the organisation to responsible stewardship of natural resources and the ecological environment, and to fulfilling its obligation under the Minerals Act and regulations of South Africa. The group has established a rehabilitation trust fund, and has a provision of R 25 million in this fund to cover environmental liabilities due to mining operations with Lombard Insurance Company. The group also has a share-based payments incentive scheme for eligible employees.

As part of the Metorex sustainable development strategy and its corporate social responsibility (CSR), the company has development projects in communities where it operates. The focus of the projects is varied and diverse, including education, social development, enterprise development, job creation, road construction in Chibuluma mines (Zambia), empowerment, sports and recreation, security, materials and monetary donations to schools, churches, traditional leaders and national events, health, and lifeskills training. It is not clear from the available information how much the company spent on these activities. While the annual report (2009) provides detailed information on project focus, locality and beneficiaries, the financial statement is silent on the financial value of these projects to the company. It is also noted that there is no mention of the community engagement strategies used by the company in dealing with potential conflicts in the course of doing business in host communities, nor any mention of how the company is engaging with human rights and climate change in its operations.

Implats

Impala Platinum Holdings Limited (Implats) is a mining company with interests in refining and marketing platinum group metals (PGMs). These are primarily platinum,

palladium, rhodium and associated metals (Implats 2009a). Implats has operations in South Africa and Zimbabwe. The South Africa operations are located mainly in the Bushveld, where the most significant PGM deposit in the world is located (accounting for 75 percent of global platinum output). The Zimbabwe operation (Zimplats) is located to the southwest of Harare on the Great Dyke. Implats has a 100 percent controlling stake in Impala, 73 percent share holding in Marula, 87 percent ownership in Zimplats and 50 percent share holding in Mimosa. Impala Platinum accounts for 56 percent of the group's total production. The operation is located on Impala lease land area on the western limb of the Bushveld Complex, near Rustenburg in the North West Province (South Africa). The refineries are located in Springs, east of Johannesburg, and concentrate on base and precious metals. Marula Platinum is located on the eastern limb of the Bushveld Complex and is 27 percent owned by a black empowerment partner. Two Rivers, a joint venture with African Rainbow Minerals (acting as the project managers), in which Implats controls 45 percent shares, is located on the eastern limb of the Bushveld Complex. Zimplats is listed on the Australian Stock Exchange, with the operation comprising of three underground mines, two concentrators, and a smelter. Mimosa Platinum is a 50:50 joint venture with Aquarius Platinum Limited, and is located on the southern tip of the Great Dyke.

Implats is listed on the JSE, with a secondary listing on the London Stock Exchange. The share is traded in the United States through a sponsored Level 1 American Depository Receipts (ADR) programme. At the end of the 2009 financial year, 54 percent of the shareholding was held in South Africa, with the 21 percent in the United States, 10 percent in the United Kingdom, 5 percent in Luxemburg, 1 percent in Singapore, and 9 percent in other countries.

In contrast to other mining houses, Implats did not use the excuse of the global financial crisis to carry out a major restructuring and retrenchment exercise. As at June 2009, Implats group employed 53 261 people, comprising of 36 000 (68 percent) employees and 17 261 (32 percent) contractors (including contractors on both working costs and capital projects). Of these, 2 098 (7 percent) are women employees working in the South African operations.

A total of R4.4 billion was paid to group employees in salaries, wages and fringe benefits, compared to R5.1 billion paid in 2008. In addition, the group employees pay-

ment policy also includes non-financial incentives and benefits which include, a share incentive scheme and a group employees share option programme. In 2009, the group recorded 11 deaths due to work-related incidents.

The group has lost in revenue as a result of the global financial crisis. The revenue in Rand terms fell to R26.1 billion from R37.6 billion in 2008, while the headline profit of R6 billion in 2008 dropped to approximately half. This is against the backdrop of an increase in unit costs per platinum ounce by 31.7 percent (to R9 129 per ounce). The group, in trying to reason itself out of this negative performance, attributed its loss in revenue to the inability of the group to contain costs and to remain the preeminent low-cost producer of platinum. Two-thirds of the cost increase, according to Implats, was due to inflation, and only one-third was the result of lower production. The group argued that cost increases due to inflation and an upward swing in the price of inputs (such as steel, explosives, fuel, coal and power) were beyond the group's power to control.

Implats produced 1.704 million ounces of platinum (3.428 million ounces of PGMs) in 2008 and has set itself a production target of 2.1 million ounces by 2014. The hope is that it will use its extensive reserves and resources both in South Africa and Zimbabwe to achieve this goal (Implats 2009b). According to the company's own information, the group has total attributable resources of 230 million ounces of platinum. Implats produces an estimated 25 percent of the world's supply of PGMs. At the end of June 2009, the board had 13 directors. Seven were independent non-executive directors, two were non-executive directors, and four were executive directors. Implats senior management and executive directors' compensation is linked to performance measured against agreed key performance indicators, which go through a two-year evaluation process.

With the scale of Implats operations in South Africa and Zimbabwe, the group cannot afford to be oblivious to the socio-economic and environmental challenges in these countries. The nature and extent of Implats' socio-economic development (SED) initiatives differs across countries. To this effect, the group has socio-economic programmes targeting the communities around Implats' operations and the labour sending localities. The group spent a total of R61 million on SED projects in 2009 (in communities) compared to R42 million spent in 2008 financial year, and an additional R900

million on improving both training and housing conditions for company employees. The programme includes empowerment of community structures, health, safety and environment, education, government and municipal support infrastructure, sport development, enterprise development, and community welfare, art and culture.

In Zimbabwe, Zimplats spent approximately R311 million in 2009 on SED projects compared to R400 million in 2008. The programme focuses mainly on education and health (both primary and secondary health care) and the management of HIV/AIDS. The group also provided support for income-generating activities through the establishment of agricultural projects for small-scale farmers, as well as safety and security (road awareness campaigns and infrastructure development for the Zimbabwe Republic Policy).

Implats has an environmental policy built on the vision of zero harm to the environment throughout the life cycle of mining operations. This is enforced through operational control and application of sound environmental principles and practice, such as: legal compliance, pollution prevention, implementation of the precautionary approach and duty of care; continual improvement in environmental performance; and ongoing rehabilitation (Implats 2009b). Community complaints are addressed through a management system as well as through the community liaison structures. Implats is a signatory to the UN Global Compact (UNGC) on Human Rights and Security.

De Beers

The De Beers Group operates as a diamond mining company worldwide. The company was founded in 1888 and is headquartered in Southdale, South Africa. De Beers was formally incorporated in Luxembourg in November 2000. It is the holding company of the De Beers group. It comprises of three shareholdings: Anglo American plc with 45 percent shareholding, Central Holdings (the Oppenheimer family) with 40 percent shareholding, and the government of the Republic of Botswana owns 15 percent directly. From its operations in Botswana, Namibia, South Africa and Canada, De Beers produces and markets almost 40 percent of the world's supply of rough diamonds.

The group is managed and controlled from its head office in Luxembourg, where the board meets to deliberate on the group business. Its commercial activities are carried

out by a number of subsidiaries, investments and joint ventures which the group finances from different parts of the world. The company has properties in Canada, South America, Southern Africa, Central Africa, Eastern Europe, and Australasia. De Beers has equal shares (50:50) with the government of the Republic of Namibia in Namdeb. It has a joint venture agreement with AngloGold Ashanti Limited to explore for and mine gold and other minerals and metals. Together these subsidiaries and investments in joint ventures constitute the family of companies.

The De Beers Group reported earnings results for the year ended December 31, 2009 (www.debeersgroup.com), including profit before finance charges and taxation of US\$318 million. The company reported an underlying loss of US\$220 million, after the adjustment for a difference of accounting policy, and after including interest arising from the 10 percent preference shares. Anglo American reported an underlying loss of \$90 million. Taxes and royalties to governments are paid by each of the different subsidiaries and investments in a manner consistent with the requirements of the jurisdiction in which they operate. The group paid US\$1.2 billion in taxes and royalties to governments in Southern Africa (www.debeersgroup.com).

The appointment of De Beers directors is governed by three legally binding documents: the Shareholders Agreement, the Management Contract and the Company's Articles of Incorporation. The Shareholders Agreement was entered into on 30 January 2002, and defines the objectives and relationship between the shareholders. It also sets out the specific provisions relating to the nomination, election and appointment of board members with reference to the role of Central Management Services Limited (CMSL) (the management company) in terms of the Management Contract.

The Management Contract was also concluded on 30 January 2002: CMSL has been appointed to assist in the appointment of directors, senior executives and management, and also assists in the strategic development of the De Beers family of companies. CMSL is a company within the Central Holdings group (representing the Oppenheimer family).

The Articles of Incorporation relate to the legal establishment and registration of De Beers as a joint stock corporation in Luxembourg. As the legal constitutional instru-

ment, it allows for a minimum of three and a maximum of 20 board directors. The shareholders and CMSL are directly responsible for the appointment and removal of directors in accordance with the provisions of the Shareholders Agreement and the Management Contract. This ensures that the shareholders have a clear voice in board meetings and decisions.

The De Beers board consisted of 17 directors. Six serve in an executive capacity and are members of the Executive Committee. Each shareholder group is entitled to nominate two persons for appointment to the board. Accordingly, six directors, five non-executives and one executive (the Chairman, Nicky Oppenheimer) are currently appointed under the appropriate clauses of the Shareholders' Agreement. The role of the Chairman is quite distinct from that of the Managing Director. As defined in the Shareholders' Agreement, up to 10 independent directors may be appointed by CMSL under the Management Contract in consultation with the shareholders. Independent directors are those appointed independently of the shareholders direct entitlement.

A majority of these independent directors must be employed or hold executive office with De Beers. Seven directors, two of which are non-executive, are currently appointed to the board under the appropriate provisions of the Management Contract.

Additional independent directors may be appointed by shareholders by majority consent or majority vote at the Annual General Meeting of shareholders. Four non-executive directors are currently appointed to the board in this manner under the appropriate provisions of the Shareholders' Agreement. Accordingly, of the 17 directors in office on 31 December 2008, 11 are independent directors (as defined in the Shareholders' Agreement) and 11 are non-executive directors. A number of directors have both independent and non-executive status.

The term of office for each director is limited by law and the constitutional documents of the company to six years, but directors are eligible for re-election by the shareholders. The terms of office of those directors appointed by the majority consent of shareholders has been limited to periods of three years, with the opportunity for re-election by shareholders. Shareholders also have the ability to terminate appointments, if necessary, prior to the completion of the appointed term of office.

Board continuity is fundamental to the sustained success of the De Beers group. This requires an ongoing resource and skills identification to be performed by the board in consultation with shareholders.

The Articles of Incorporation of De Beers provide that shareholders may determine the fees of board directors. These have been set at US\$50 000 per annum with the chairperson receiving an additional US\$25 000 per annum. Non-executive directors who serve on board sub-committees receive an additional US\$10 000 per annum and chairpersons of the respective committees receive an additional US\$10 000 per annum. This remuneration is fixed and is not linked to the performance of the company.

The board is responsible for the group's system of governance, and is ultimately accountable for the strategic direction of the business and all activities across the Family of Companies. This includes setting risk management policy, reviewing the effectiveness of risk management processes, recommending enhancements, and ensuring effective succession planning.

The group of companies employs about 15 000 people around the world with women amounting to 22 percent of permanent workforce. According to Gareth Penny (Managing Director, De Beers Group), "gaining and maintaining a social licence to operate is critical to successful mine development and management". De Beers spent \$19 million on socio-economic development projects (750 projects), equating to 2 percent of pre-tax profits in 2008.

Sasol

The South African Coal, Oil and Gas Corporation (Sasol) was established in 1950 as part of the process of industrialisation that the apartheid government considered essential for its economic development and autonomy. Sasol Limited was formed in 1979 to hold the assets of the South African Coal, Oil and Gas Corporation (Sasol) and its subsidiaries. Sasol is listed on the JSE in South Africa and the New York Stock Exchange. These listings bind the corporation to observe the US Securities and Exchange Commission (SEC), the Sarbanes-Oxley Act, and the South African Code of Corporate Practices and Conduct as recommended in the second King Report (King II).

The transition to democracy in 1994 forced Sasol into a new way of doing business. Part of this new way of doing business is expansion into sub-Saharan Africa. At the end of 2009 financial year, Sasol had business and joint ventures in 38 countries. In Africa, Sasol has operations in South Africa (corporate headquarters) Botswana, Egypt, Gabon, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Zambia and Swaziland. In South Africa, Sasol mine coal with chemical manufacturing and marketing operations, and produce gas and condensate in Mozambique and oil in Gabon. It also refines imported crude oil and retail liquid fuels through a network of Sasol convenience centres and supply fuels to other distributors in the region and gas to industrial customers in South Africa. In 2009, Sasol continued to retain its economic interest in Escravos, Nigeria, despite disruption of its activities. The corporation also advanced its upstream oil and gas activities in Mozambique, Nigeria, Gabon, and South Africa during 2009.

Sasol employs 34 000 staff throughout its operations. The number of staff from historical disadvantaged populations (black South Africans) in management levels increased to 56.4 percent. The Sasol board comprises 15 directors, and 13 are South Africans. Of these, seven (54 percent) are black and eight (62 percent) are from “designated” groups (including white women).

In 2009, Sasol recorded an operating profit of R 24 billion and contributed approximately 4.7 percent to the national annual Gross Domestic Product in South Africa, making it, the largest direct tax payer. During the same year, Sasol committed R 109,4 million (excluding R45 million in bursaries) to socio-economic development projects (mostly in South African communities) and an additional R 45 million in bursaries (education constitutes 35 percent of social investment commitment), this being its largest contribution to social development. The bursaries went to students in 761 universities, mainly in science, engineering, technology and accounting, with 9 785 employees received leadership training (Sasol 2009). These bursaries are mostly dedicated to South African historically disadvantaged students (black South Africans). The corporation further provided learnership programmes in other technical areas. In total, Sasol’s training and development expenditure during the 2009 financial year was R 386 million (2 percent of payroll). Other areas where Sasol committed its social investment include: health and welfare (25 percent); job creation (25 percent); arts, culture and sports

development (5 percent); natural environment (5 percent); and disaster relief and other community challenges (5 percent).

By the company's own account, other countries African countries feature marginally in social investment. The only country outside of SA where Sasol has committed investment in social development is Mozambique. As part of the Mozambique natural gas pipeline project, Sasol invested R 22 9 million in community development projects along the Mozambique to Secunda pipeline route in 2009.

Sasol's activities in all countries are subject to regulations for exploration and mining rights and protecting safety, health and the environment. According to the company, all its new projects and joint ventures are required to comply, as a minimum, with its safety, health and environment minimum requirements, which is based on the World Bank and International Finance Corporation requirements (Sasol 2009). Its investment guideline, includes observance of human rights principles, to ensure that all its business activities are aligned to corporate values, standards and strategic goals and with corporation's policies and objectives.

Civil society organisation: beyond legal compliance?

While the mining corporations in South Africa rightly argue that they are contributing to socio-economic development in South Africa (and especially in host communities where they operate) through millions of dollars spent on various corporate social investment projects, civil society organisations and affected communities are sceptical about this contribution and the effect of the companies' corporate governance practices in their communities and life (South African Human Rights Commission, 2008; Action Aid 2008).

In the Bushveld region, where the most significant PGM deposit in the world is located and which is home to Implats and other mining houses, civil society organisations, including members of mining host communities, have consistently made allegations of poor corporate governance and human rights abuses by mining companies. According to the Rustenburg Environmental Coalition (RECO), a coalition of forums in the greater Rustenburg area, the areas where communities are living are unhealthily and dangerously surrounded by shafts and open casts. In an effort to defend and protect communities' right to a safe and clean environment, community members in those areas have organised themselves into groups to fight for justice. The communities argue that they have seen no improvements to their lives, and that corporate social investment is not happening. They report that certain sections of the community had to be removed from where they were originally located to other further places in order to make way for the mine (RECO 2008).

The following section presents a plethora of issues that civil society and affected communities have been raising against the corporate governance practices of mining companies:

Consultation without consent

The consultative process which precedes communities' relocations is often insufficient and therefore deficient. The practice is such that almost all the government officials, legal advisors and mine managers who facilitate relocation processes were secretive in disclosing information to affected people. Not all the terms, conditions and implications of the relocation process were thoroughly explained to the affected communities. For example, proposed joint management fora, comprising of section 21 companies and other people from outside the affected communities, often act as a replacement for legitimate traditional structures of consultation and decision-making. The communities allege that replacement of agricultural lands, which formed the basis for subsistence livelihoods, even though promised by the mining companies, took longer than expected (in some cases, longer than five years). When it comes to compensation for households dependent on agriculture for their livelihoods, the payments do not necessarily take into account the delay period in the determining the amount of compensation.⁷

Community representative structures

Affected mining communities tend to have a multiplicity of structures claiming to be the legitimate voice of the communities. Notable structures include:

- the section 21 company, which mining companies regard as legitimate representatives for community consultations; most community members regard section 21 companies as simply proxies of the mines.
- Tribal authorities and prominent individual community members, through which the company conducts its consultations with the "community.
- Other community and development organisations, most importantly the development committees in villages.

Community members have generally developed a sense of despondency. Simply put; people have lost hope.

Mining companies' attitudes

Companies are consistently in denial about the root cause of the problems despite glaring evidences presented by representatives of the communities.⁸ The behaviour of company' representatives when engaging with mining communities is often reflected in arrogance. Because they do not live within the affected mining commu-

nities, their attitude is usually that of open dismissal, discounting the views of community members.

Section 21 companies

The section 21 companies and other structures financially dependent on mining companies for their existence are at the centre of conflicts within the affected communities.⁹ The paternalistic relationships of these entities with mining companies compromise their standing within the communities; hence the persistent calls for them to be disbanded (Action Aid 2008). These structures always work collaboratively with mining companies, even to the disadvantage of themselves and their families. These structures have allegedly signed a special power of attorney, which empowers company lawyers to negotiate, enter into legally binding contracts and execute such contracts on behalf of communities. Some members of the communities believe that the section 21 companies have sanctioned a prejudicial lease contract, which seeks to re-introduce an apartheid-style forced removal system in terms of the following clauses which appear in some of the Master Agreement:¹⁰

Occupation and possession

The company shall be entitled to, and to procure for itself, vacant occupation and possession of the lease area commencing on the date of fulfilment of the suspensive conditions in clause 14 and on the availability of the compensatory land, houses and infrastructure referred to in , and by no later than twenty four months after commencement of construction in accordance with the Relocation Agreement referred to in the Master Agreement, the Company however accepting that the Minister is not able to and does not guarantee such vacant occupation or possession.

The company shall for the purposes referred to in clause 4.2 be entitled to exclusive use, occupation and possession of the lease area during the currency of this lease and shall for those purposes be entitled to exercise all rights in respect thereof as if it were the owner thereof. Without detracting from the afore-going and without in any way limiting the rights which the company may have at law or which it may require for the proper execution of those purposes referred to in clause 4.2 in connection with prospecting mining and processing work, it shall be entitled:

- to use the lease area for the purposes disclosed in clause 4.2 above;
- to destroy all existing dwellings, grazing, crops and other improvements or erections thereon, which exist at the date of commencement of this lease; provided however that prior to such destruction the Company shall give written notification of such intended destruction to the previous main occupant of the relevant dwelling, and such main occupant shall be entitled at such main occupant's cost within ninety six hours of such notification to remove all materials and other items which such occupant may wish to salvage; provided that the Company shall be entitled to destroy any such materials and other items which are not so removed within such ninety six hours period.

Lastly, clauses in the Master Agreement categorically state that:

- The costs of the construction of the two villages and relocation will be financed by the Section 21 Companies from moneys paid by the company way of rental in the manner and the extent set forth in the community Lease Agreement, the community Sublease Agreement, the community Lease Agreement, the community Sublease Agreement, and the Relocation Agreement.

The false impression created by the company here is that moneys have exchanged hands between company and section 21 companies, when in fact the company, through its Project Management Office, is in exclusive control. Members of the section 21 companies were not required to certify payments to contracted service providers, not even for their so-called legal representatives who are paid from funds appropriated for purposes of advancing the interests of the communities (Action Aid 2008).

Role of the state and tribal authorities

Affected communities have consistently alleged that these two structures have dismally failed people in affected mining communities because of their inability to provide decisive leadership. The state is often perceived as a proxy of mining companies' interests. Traditional leaders in areas where natural resources are discovered and extracted fail to protect the interests of their communities, and instead become directly privy to exploitation or indirectly betray the interests of their own people.

Compensation

The one-on-one negotiations led by a consulting specialist appointed by companies to determine compensation for household monetary value and loss of communal production with homeowners is inadequate. The power balance between companies appointed consulting specialist and illiterate and semi-illiterate homeowners is grossly unfair and prejudicial to the communities (South African Human Rights Commission 2008).

Land ownership

The unresolved land question in South Africa is central to all disputes between companies and mining communities. The issue of land tenure is often not clear from lease documents. People own land, but the land rights are separated from the mineral rights.

Under customary law, the water, plants, and land are owned by the occupiers of that land, which includes the minerals. This has been stated by the constitutional court. Under English law, when the state gave land to the white squatters, the minerals were held in reserve by the state. But in terms of customary law, the minerals belong to the owners. Under the Mineral and Petroleum Resources Development Act (MPRDA, 2002)¹¹ the minerals belong to the state. Until the contradiction is resolved, conflict over land ownership in mining communities will persist, if not increase, as communities continue to live in poverty.

Ecosystems

- South African mining companies set annual targets for their consumption of water and energy, and waste management, and report on these issues in their periodic environmental assessments. But some geological and hydrological matters – such as effects on groundwater level and water, soil and air pollution – and the impact on physical and social infrastructures are neglected.
- Companies refuse to take responsibility for the natural environment, even with the additional threat of climate change on the environment.
- Local and district governments lack the capacity to independently monitor the impact of mining on the ecological and social environment. Most importantly, the communities living in the areas surrounding the mines lack awareness of the risks they are exposed to due to ecological damage caused by the mining activities (Benchmarks Foundation 2003).

Employment conditions and safety

- Although wages are paid in accordance with the legislative environment and negotiated agreements, housing prices are so high that affordable accommodation with a reasonable quality can only be found far from the mining centres. Living further away from the workplace increases transport costs and travelling time for employees.
- Formally, the South African mines comply with International Labour Organisation (ILO) standards. In practice, insufficient funds are spent on workplace safety. Preventive measures to reduce fatalities are not adequate or not provided effectively, corrective measures not enforced or coordinated adequately, and accident investigation is focussed rather on determining blame than on identifying causes and preventing future accidents.

- Though mine fatalities have declined over the past decade, South African mining companies have more accidents and fatalities than elsewhere in the world.
- Mostly, mining companies do not have policies regarding fair treatment at work, equal employment opportunities, sexual harassment and fraud control (although De Beers and Implats have ethics policies and disciplinary procedures with publicly stated induction or training policies).

Additional health care and community development

- Only larger mining corporations provide some level of health, social welfare, education and infrastructure to surrounding communities. Family members residing in more distant areas, however, do not have the same level of access to health and treatment infrastructure. This has led to the development of informal settlements in proximity to the mines as well as group conflicts.
- Health conditions in the informal settlements are often appalling. They lack electricity, water and sewage. Alcoholism and prostitution are rampant and mine workers run the gauntlet of STDs and HIV/AIDS. In these circumstances it is questionable how adequate the health and education programmes offered by the mining companies are.
- The mining companies deny that mining activities are partly responsible for the increase in respiratory diseases in the area, or for the HIV/AIDS pandemic.

Diversity and human resource development

- The South African mining industry is still white male dominated. Targets set in the Charter for inclusion of blacks and women are rather low and slow. Mines do not yet have the necessary support infrastructure to lessen the domestic load of working women.
- All the corporations provide ABET (college and university) training for workers. The educational programme generally target small groups (current and future managers), and have no or little impact on functional and widespread literacy.

Communications and reporting mechanisms

- There is a severe imbalance of power between the different stakeholders of mining corporations in terms of wealth and knowledge. Although they communicate with their stakeholders through different media, the technicality of information puts it beyond the grasp of many.

- Negative issues, (such as community conflicts, geological and hydrological issues) are often not reported to stakeholders.

Legislation and mining arrangements

- To comply with legislative requirements, mining companies spend a minimal amount of time and resources on environmental issues. As a share of their income, this contribution is marginal.
- In addition to national legislation, mining corporations have defined a set of business principles in the Mining Charter. These include indicators of corporate social citizenship. However, these indicators are vague; the Charter avoids critical issues and is not sufficiently consultative. The main stakeholders involved in drafting were mining corporations, labour and government. Civil society structures were not adequately represented.
- Community leaders, senior civil servants and politicians increasingly sit on the boards of mining corporations. This represents a serious conflict of interest, blurs the lines between the public and private sector and weakens communities.
- Like most companies, mining corporations tie executive compensation to performance, determined by market and shareholder interests. Community and environmental concerns are until now excluded.

Conclusion

Although South African mining companies are showing signs of progression from the history of poor corporate governance, most companies are still falling short of expectations with cases of corruption, human rights abuses and environmental degradation. There is lot of pressure on mining companies with the global financial crisis, the fall in metal prices and negative national and international media publicity to improve their corporate governance practices.

Evident from the case studies presented in this paper are the varying approaches and tactics adopted by companies to increase their profile in communities and contribute to the national development goals set by the host nation. The companies are very eager to demonstrate that they are adopting corporate governance best practices by providing more background information on directors as well as the details on the composition and meeting of the board and its sub-committees, increasing representation on the board and management to reflect historically disadvantaged people and women, providing timely, sustainable development report with detailed information on employees health, safety, environment and community engagement and projects. However, without efforts to work with host communities to improve perceptions and find a lasting solution to the underlying contradiction between the need for profit without violating good corporate practices, sustainability of mining will remain in the balance.

The greater willingness on the companies' part to implement a corporate governance framework that allows for building and protection of shareholder value while balancing the expectations of shareholders needs to be broadened to include non-conventional stakeholders (host communities). The state must increase its vigilance and ensure corporate compliance with established national statutory provisions. Violations of human rights and good corporate governance practices should not be optional for business. It is part of the cost of doing business.

Bibliography

- Action Aid. (2008) *Precious Metal, The impact of Anglo Platinum on poor communities in Limpopo*. ActionAid South Africa
- Bench Marks Foundation for Southern Africa for Corporate Social Responsibility (BeFSA CSR) (2003) *Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance*, 3rd. South Africa.
- Breaking the Curse*, (2009). *How Transparent Taxation and Fair Taxes Can Turn Africa's Mineral Wealth into Development*. Christian Aid, London
- Calland, R. (2009) Positive actions, *Sasol Sustainable Development Report 2009*
- Implats Fact Sheet. (2009a) www.implats.co.za
- Implats Annual Report (2009b)
- Jenkins, H. & Obara L.J. 2006. *Corporate Social Responsibility in the Mining Industry - the Risk of Community Dependency*. Paper presented at The Corporate Responsibility Research Conference, Dublin, September 4-5, 2006.
- The Policy Gap (3). Corporate Social Responsibility in the Zambian Mining Industry*. Bench Marks Foundation (2008).
- Metorex Limited Annual report, 30 June 2009
- Needham, C. (2009). Metorex Strategically Refocused. Mining Indaba Presentation, 11 February 2009, www.metorexgroup.com
- OECD(2004). *Principles of Corporate Governance*. Organisation for Economic Corporation and Development, Paris
- Rustenburg Environmental Commission (2008) *Extractive Industries and Community Justice in post-apartheid South Africa, Conference Report 21-22 April*.
- Sasol (2009). *Positive Actions: Annual Review and Summarised Financial Information*.
- South African Human Rights Commission. (2008) *Mining-related observations and recommendations: Anglo Platinum, affected communities and other stakeholders, in and around the PPL Mine. Limpopo*.
- Tricker, R. 1984. *Corporate Governance*. London. Gower

Endnotes

- 1 Independent Development Consultant
- 2 King I - The South African corporate governance code, King Report on Corporate Governance, 1994
- 3 King II - The South African corporate governance code, King Report on Corporate Governance for South Africa, 2002
- 4 South African companies' are still falling behind expectation with cases of corruption, human rights abuses and environmental degradation dominating the public debate.
- 5 Metorex as at June 2009 has 742 538 403 ordinary shares
- 6 Metorex Limited Annual report for the year ended 30 June 2009
- 7 Researcher's note, February 2010
- 8 Researcher's note, February 2010
- 9 David NNkoana, Limpopo Provincial Government, Office of the Premier. Comments and response on the South Africa Human Rights Commission on Motlhotlo, November 2008
- 10 Sample of Master Agreement signed between section 21 company on behalf of communities and mining companies
- 11 MPRDA, 2002, sections 5(4)(c), 10 and 22(4)(b) and 54

South African Mining Companies Corporate Governance Practice in Zambia: The Case of Chibuluma Mine Plc.

John Lungu and Sumbye Kapena

Most countries in Africa are rich in natural resources, yet they remain poor. Over the course of previous centuries, the extraction of resources from Africa has supported industrial development in the former colonial powers and the rest of the industrialised world. In contrast, historically, the benefits obtained from natural resource exploitation throughout the continent itself have been limited. Today, however, we are witnessing a new scramble for Africa's resources in which demand from established industrial countries is being matched by that from newly emerging powers such as Brazil, India, and China. Meanwhile, an important additional factor is that the new scramble has been joined by companies from post-apartheid South Africa, whose increasing presence throughout the continent constitutes a distinctive factor of the new era. South African mining houses are at the centre of this advance, and have been investing in many African countries, including Zambia, where their investment has been making a marked impact on host communities and the environment.

It is a not uncommon allegation that South African companies have a dubious record regarding corporate social responsibility and environmental protection within South Africa. Is this the case when they operate outside South Africa? In Zambia today, the only major South African company operating in the extractive sector is Metorex. It operates as Chibuluma Mines Plc and as Sable Zinc in Kabwe. The concern here is to explore the corporate social responsibility profiles of Metorex as it operates through these two subsidiaries.

From 2002 to mid-2008, commodity prices fetched high prices on world markets. In particular, the prices of copper and cobalt, (the minerals in which Zambia has the largest stake) rose at an unprecedented rate from around US\$1000 in 2002 to \$8000 in mid-2008. Despite this, poverty remained pervasive throughout the country. The commodity price boom did not translate into tangible development, even though the growth rate rose from negative before completing the privatisation of the copper mines in 2000 to an average of 5 percent in 2008. On the Zambian Copperbelt, in

particular, there was, if anything, a deterioration of infrastructure and in social service provision. It can be argued that this can, in part, be explained by the types of agreements which the Zambian government entered into with foreign mining companies.

In recent years, it is Chinese companies which have tended to bear the brunt of criticism regarding alleged poor corporate governance and environmental responsibility. Yet, as already noted, South African corporations have been accused of having little consideration for the rule of law when doing business on the continent, especially when it comes to conforming to environmental protection laws. According to the terms of reference provided for this research, there have been accusations, for instance, that South African gold mining companies in the Democratic Republic of Congo (DRC) are seriously damaging the livelihoods of local rural communities and that South Africa's gas pipeline is damaging forests in Mozambique. Consequently, with South Africa now playing a leading investment role throughout the continent, it becomes imperative that the role of its companies be more thoroughly explored.

The aims and objectives of the Zambia country study

The major objective of this study is to investigate the conduct of Metorex's activities in Zambia and how they affect the communities where they operate.

Specifically the study aims at:

- defining corporate governance and identifying the available international standards;
- identifying Metorex's operations in Zambia;
- assessing Metorex's investments, its annual turnover and its contribution to taxes and royalties;
- determining the number of people, (both male and female) employed by its operations and the conditions of work they provide;
- determining the extent of their investment in social services;
- determining the operations' HIV and AIDS policies;
- identifying the social, environmental and economic effects of these operations;
- identifying the consultation mechanisms with local stakeholders;
- identifying the operations' beneficiation policies and actual practices on the ground;

- identifying the role civil society can play in enabling open, accountable and transparent operations of South African companies on the continent of Africa; and
- formulating recommendations on how South African companies, (as exemplified by Metorex) can contribute to the development of countries in which they operate.

In fulfilling these objectives the study will follow through the items that were also agreed between the Zambian government and Metorex in the development agreement, as this constitutes the corporate governance guide for the company.

Overall, Metorex operates in five locations for base metals, two locations for industrial metals, and four locations for gold in West, Central and Southern Africa (see map). In Zambia, the company operates in Lufwanyama district as Chibuluma Mine Plc, and at Kabwe as Sable Zinc. As it happens, there are other South African mining interests operating in Zambia: these include Teal at Munali Hills and BHP Billiton, both involved in exploration work. However, they are of little immediate interest to this study as they are not yet operative. In short, Metorex stands as the effective representative of South African mining capital in Zambia at this present time.

Background to Zambian copper mining

Commercial copper mining in Zambia started at Roan Antelope (Luanshya) in 1928. Since then, copper mining has dominated Zambia's economy. During the colonial era (until 1969) two private companies owned the copper mines: Roan Selection Trust (RST) and the Anglo-American Corporation (AAC). Favourable world prices of copper through the 1960s and early 1970s raised the confidence of the ruling United National Independence Party (UNIP), enabling the party to promise the country's people development based on rapid growth of the mining sector, which, it was expected, would spur industrialisation and bring an end to poverty. Indeed, the wealth earned from copper mining helped Zambia attain middle-income country status by 1969. Out of an urban population of one million, 52,600 were working in the mining industry. President Kenneth Kaunda announced the nationalisation of the mining companies in 1969, ostensibly (amongst other reasons) for their reluctance to expand their investments. All rights of ownership of minerals reverted to the state and the government obtained 51 percent of shares in all existing mines. The nationalised mining companies were in 1982 consolidated into Zambia Consolidated Copper Mines (ZCCM). During the era of a nationalised mining industry, the government was able to direct the profits of newly nationalised copper mines towards building hospitals, schools, roads and other infrastructure, and providing subsidies to state-owned manufacturing companies. At the time, mining contributed over 50 percent of the country's foreign exchange requirements and over two-thirds of central government revenue (GRZ, 2005).

Historically, the copper mines have made significant contributions to the development of the country. For example, as early as 1929, the private mining companies provided orderly residential areas to house employees as well as supplying food rations. The companies also provided hospitals and recreation facilities. ZCCM continued with this welfare policy. It operated "a cradle to the grave" welfare policy, providing nappies to the newly born and subsidising burial arrangements for the dead.

The copper mining company did not just look after its workers; it also provided services to the whole community.

This happy situation was to be challenged in the years to come. Following the first oil crisis in 1974 and the resultant collapse of copper prices, the country started borrowing in order to maintain social provision. Then, after the second oil crisis in 1979, the country drifted into a severe debt crisis, and the economy collapsed at an unprecedented rate as copper prices plummeted relative to the prices of imports. Between 1974 and 1994, per capita income slumped by 50 percent, leaving the country the 25th poorest in the world (Ferguson, 1999). Throughout the economic crisis, ZCCM was treated as nothing more but a cash cow, milked without corresponding investment in machinery and prospecting ventures. To compound the problem, the ore bodies within the existing mines could only be accessed at great depths, resulting in a rising average cost of production. Thus overall, output fell from a high of 750,000 tonnes in 1973 to 257,000 tonnes in 2000 (Chamber of Mines of Zambia, 2005). With declining copper revenues, the state could no longer support the social infrastructure it had created, while GDP per capita declined to less than \$300. Over 80 percent of the country's population started experiencing extreme poverty, forcing the government to borrow for both social and economic infrastructure maintenance and balance of payments' support. With massive debt, the country had no choice but to adopt economic liberalisation policies designed by the World Bank and the International Monetary Fund (IMF). The country entered its first World Bank structural adjustment programme in 1983, and since then the international finance institutions have tightly policed Zambia's economic policies.

The economy continued to decline such that by 1989, there were repeated urban food riots and industrial unrest indicative of the growing unpopularity of UNIP and Kaunda. In 1990, the Movement for Multiparty Democracy (MMD) was formed, headed by Frederick Chiluba, chairman-general of the Zambian Congress of Trade Unions (ZCTU), and proceeded to sweep the board in elections in 1991 (Bratton and Van de Walle, 1997; Baylies and Szeftel, 1992; Lungu, 1997). The MMD ran on a manifesto that promised to liberalise the economy, privatise state-owned enterprises, and secure a new democratic political dispensation. This election victory also ensured a return to neo-liberal thinking and market economics. In other words, this constituted a rejection of the socialist ideas embedded in the humanism of the Kaunda era.

Privatisation process

Right from the start, the crown jewels of the privatisation process were understood to be the copper mines. As early as 1993, Zambia's second Privatisation and Industrial Reform Credit (PIRC II) from the World Bank required that the government study options for privatising ZCCM. A Germany Company, Kienbaum Development Services (GmbH), was contracted to assess the options and reported in April 1994, recommending that ZCCM be unbundled into 5 separate units (Lungu and Silengo, 1997). By 1995, the Bank (Economic Recovery and Investment Project or ERIP) and IMF (Enhanced Structural Adjustment Facility or ESAF) extended loans that required Zambia to adopt and implement plans within the ESAF framework. The Bank repeated the demand in 1996 (Economic and Structural Adjustment Credit or ESAC II) and 1999 (Structural Adjustment Fund or SAF), as did the IMF in 1999 (Enhanced SAF) (Situmbeko and Zulu, 2004). Throughout the process, the government sought delays for technical and political reasons, and the issue became a sticking point in relations with donors, with repeated accusations of bad faith on either side (Fraser and Lungu, 2007). The Mineworkers' Union of Zambia expressed concern that the unbundling of ZCCM into a number of companies would leave the least attractive assets with insecure futures in government hands. Better, they concluded, to encourage one serious investor to take on all of the liabilities and all of the facilities. The union was also concerned that introducing intra-company competition would drive down conditions of service for their members (Muchimba, 1998).

Zambia's qualification in 1996 for the World Bank's Heavily Indebted Poor Countries (HIPC) initiative broke the deadlock. This process for relief of unpayable poor country debt established frequent hurdles (most importantly HIPC decision and completion points) for the country to clear, each of which involved an assessment of performance by international finance institutions' staff before debt relief was delivered. As each hurdle approached, Zambia came under pressure to push through

privatisations that were more controversial. In most cases, the state stalled, tried to appease domestic interests, and then eventually went ahead, choosing debt relief over domestic politics. Throughout the privatisation period, the government was being encouraged by donors to establish an “investor friendly” policy regime. The most significant policy changes were enshrined in the 1995 Investment Act (reform of the Act was a condition of the World Bank’s 1993 PIRC II loan) and the Mines and Minerals Act of 1995.

The Investment Act established the Zambian Investment Centre (ZIC) to assist companies through the process of buying into the Zambian economy, as well as laying out the procedures for doing so. It provided general incentives available for all investors as well as special incentives for investors in particular industries. It also provided assurances against forced acquisition of companies by the state, preventing a repeat of Kaunda’s nationalisations. The Act also did away with foreign exchange controls, allowing companies to take out of Zambia, without interference, all funds in respect of dividends, principal and interest on foreign loans, management fees and other charges.

The Mines and Minerals Act of 1972, which regulated the nationalised industry, was also repealed. This gave way to the Mines and Minerals Act of 1995, which provided for particular incentives for investors in mining. Under the Act, tax paid for copper removed from Zambia – called a “mineral royalty” – would be charged at the rate of 3 percent of the net back value of the minerals produced (Mines and Minerals Act, 1995), although this was later amended to 2 percent. The Act permitted companies to minimise their income tax returns by allowing deductions for investment in mining. It also provided relief from paying customs duties on imported machinery and equipment. The Act did not specify the amounts of these forms of relief. Rather, it permitted the government to enter into “Development Agreements” with specific companies, under which more incentives than the Act grants could be extended (including reductions in royalty rates).

Two international consultants, Rothschild, and Clifford Chance, finally advised the Zambian government on the practical modalities of privatising ZCCM (ZCCM, 2000). They suggested that the company be privatised in two stages. In stage 1, substantial majority interests in all ZCCM assets were to be offered in a number of sep-

arate packages that would leave the Zambian state – in the form of a company called ZCCM Investment Holdings (ZCCM-IH) as an owner of minority interests in companies controlled and managed by the incoming investors. In stage 2, the government would then dispose off all, or a substantial part of, its share holding. These shares were to be offered for sale to the Zambian public.

The final outcome of the process was that the ZCCM was broken up, with different assets being sold to different companies. Thus:

- Konkola Copper Mines went to the Anglo-American Corporation. This sale included Konkola mine, Nchanga mine, Nampundwe mine and Nkana Smelter.
- Mopani went to Glencore (Switzerland) and First Quantum (Canada). This transaction included Nkana and Mufulira mines.
- Luanshya Mine first went to the Binani group of Companies (India) before being sold on to Enya of Switzerland, (which proceeded to sell it onto the Chinese owned NFC Africa in early 2009, although Enya clung on to Chambeshi Metals plc, formerly owned by Anglo-Vaal of South Africa).
- Chambeshi Mine went to NFC Africa, a Chinese company.
- Bwana Mkubwa was bought by First Quantum together with Kansanshi mine in North western Province (the new Copperbelt).
- Chibuluma mine was bought by Metorex of South Africa, which also acquired interests in Sable Zinc, formerly known as Kabwe mine.

In 2002, Anglo-American Corporation sold its interests in Konkola Copper mines and left the country, while Anglo-Vaal left after it lost a bid to purchase Luanshya mines (destined to become the major source of the cobalt concentrate). These developments have left Metorex as the only major South African company in the mining industry in Zambia. The development agreements signed with these companies outline the terms under which the different mines operate.

Links between the South African and Zambian economies

The Zambian and South African economies have been closely linked ever since the rule of the British South African Company (BSAC). The company obtained mineral rights from chiefs and ruled the territory of Northern Rhodesia up to 1924 when the British colonial office took over the administration of the territory. Commercial mining started during the period of British colonial rule. The BSAC retained mineral rights over the whole of North Western Rhodesia, which covered the current Copperbelt, an area which at independence was renamed Western province. The first two mining companies to operate were the Anglo-American corporation and the Roan Selection Trust, based in South Africa and Southern Rhodesia respectively. These companies operated the Zambian mines up to the time of nationalisation in 1969.

Labour migration to South Africa constituted another link between South Africa and the Northern Rhodesian economy as Northern Rhodesians migrated to work on the South African gold mines, remitting part of their income home. However, trade links weakened during the period of the liberation struggles in Zimbabwe, South Africa, Mozambique and Namibia, when Zambia turned to China for trade using the Tanzania-Zambia railway and the Great North road as the major routes for transportation of exports and imports into Zambia. The period of socialist practice in Zambia also affected trade with South Africa. However, thereafter, the privatisation era opened up the floodgates for South African companies' participation in the Zambian economy.

With the advent of the privatisation era after 1992, Anglo-American Corporation re-entered the Zambian mining sector using its pre-emptive rights. Several other South

African companies such as Anglo-Vaal and Metorex also entered the Zambian mining sector during this period. However, because of poor mineral prices, Anglo-American Corporation and other South African companies sold off their interests to other private companies. The departure of Anglo-American Corporation and Anglo-Vaal did not, however, foreclose the presence of South African companies in the Zambian economy. Today, in trading, there is Shoprite Checkers, PEP stores, Game Stores and Woolworths. In tourism, many lodges (especially on the lower Zambezi) are operated by South African companies. In the hotel industry, prominent names such as Southern Sun, Sun International, Protea Hotels and the Royal Livingstone are all South African outfits.

Trade data shows that South Africa is Zambia's largest trade partner. This is reflected in the demand for the Rand. Meanwhile the foreign exchange market has continued to register net outflows reflecting the significance of South Africa as a major source of imports for the Zambian economy (Bank of Zambia, 2009). Rand purchases have increased steadily from 2007 to 2009, as shown by Table 1 below.

Table 1: Rand Purchases between January 2007 and June 2009

Year	Period	Amount (million)
2007	January-June	1 283.8
2007	July-December	1 671.3
2008	January-June	583.1
2008	July-December	1 423.3
2009	January-June	2 642.8

Source: Bank of Zambia Monetary Policy Statements (2007-2009)

As can be seen, Rand purchases have increased steadily except for the period January to June 2008 because of the effects of the recession when contracts from the copper mines became difficult to obtain.

Problem definition

During the period of the nationalised mining industry from 1969 to 1996/7, the industry lacked investment, and production declined from a peak of 750,000 tonnes in 1973 to 257,000 tonnes in 2000 (Chamber of Mines of Zambia, 2005). The price

of copper also fell to less than US\$1 200 per tonne. This resulted in a decline in government revenue. As noted, with falling copper revenues, the state could not support the social infrastructure it had created, GDP per capita declined to less than \$300, poverty became pervasive, and the government was forced to borrow to finance basic maintenance of social and economic infrastructure and support the balance of payments. With massive debt the country had no choice but to adopt externally generated policies of economic liberalisation, including the return of the mining industry to private ownership.

When privatisation was effected, hopes among ordinary Zambian people were raised. Generally, there was a widespread expectation of a return to the good old days: the days of good road infrastructure, extensive social service provision, well equipped hospitals and clinics, and good schools and recreation services. However, few such benefits were to be provided. In particular, the extensive social network of support to workers and to communities that had historically been supplied by private mining companies was never restored, and indeed, the conditions of work and service which obtained in foreign firms were, it was widely alleged, below those they operated in their countries of origin. Meanwhile, the separation of ownership and management which resulted from privatisation was to raise new issues of corporate governance, not least regarding the interests of wider stakeholders. The privatisation of the ZCCM thus triggered a major debate concerning corporate governance and the corporate social responsibility performance of Zambia's mining industry.

Methodology of the study

Data was gathered using an interview guide. A structured questionnaire intended for mine management and its agents was designed. Published and unpublished literature was also used. Interviews were carried out using an unstructured interview guide. The structured questionnaire was sent to the Chibuluma Mine Plc offices on two occasions, but the company did not respond. Once more the questionnaire was faxed and on another occasion delivered physically by the researchers to the office of the manager health, safety and training. Even after this effort, the researchers were still asked to direct the request to the General Manager. Finally on the 17th August 2009, the researchers received a response indicating that the management was unable to respond to the questionnaire because the Zambian government had nullified the Development Agreement. Nonetheless, information on the company was obtained

through various secondary sources, including the company's own publications. This was supplemented with primary data from other stakeholders such as the Mine Workers' Union of Zambia, people in Chief Nkana's area where the mine is located, the Local Authorities and non-governmental organisations. The limitation of this study however, lies in the non response of management or its agents to the structured questionnaire.

Corporate governance defined

In contrast to the extensive literature on corporate governance in developed countries, that on Africa is just emerging. Part of the reason for this lies in the fact that the separation of management and ownership of modern corporations is a fairly recent development in most of Africa as, during much of the independence era, most economies were dominated by state-owned enterprises (SOE's) whose ownership and management structures derived from a single (source i.e. government). With the current developments, where ownership and management of corporations is being separated through the process of privatisation of state-owned enterprises (SOE's), the interests of those who effectively control the firm (management and the shareholders) may differ. According to Okeahalan and Akinboade (2003), the principal agent relationship may be reflected in management pursuing activities which may be detrimental to the interest of the shareholders of the firm. According to them, the agency problem can only be resolved through the protection derived from good corporate governance.

The concept of governance is very broad. This is because the issue of governance touches many areas of human operations. It touches on how economies and the entities within it are managed, the political and juridical methods of governing a country and how disputes are resolved in particular communities.

Oman (2001) defines corporate governance as referring to private and public institutions, including laws, regulations and accepted business practice, which in a market economy governs the relationship between corporate managers and entrepreneurs (corporate insiders) on the one hand, and those who invest resources in corporations. This goes well beyond such narrow definitions provided by others who define it as simply the prevention of theft. In contrast, Shleifer and Vishny (1994), state that corporate governance deals with the ways suppliers of finance to corporations assure

themselves of getting a return on their investment, how they make sure that managers do not steal capital or invest in bad projects. In other words, corporate governance is “the mechanism through which outside investors are protected against expropriation by insiders”. Insiders according to this definition include managers, major shareholders (individuals, other firms, family interests and or governments) as well as large creditors such as banks while outsiders include equity investors, providers of debt and minority shareholders. Thus far, the divide in the discussion of corporate governance seems to be between insiders, those that have a management role of the firm (at either management or board levels), and those that have an interest in the firm but do not have any management roles, generally referred to as outsiders.

Although in the literature, the discussion seems to centre on the relationships that develop within a firm and specifically concerning managers and investors, it is our view that, the concept of corporate governance is much wider than this. It also encompasses the relationship created between the corporation or firm with its shareholders, the workforce and the wider society.

Corporate governance also encompasses the establishment of an appropriate legal, economic and institutional environment that allows companies to thrive as institutions for advancing long-term shareholder value and maximum human-centered development while remaining conscious of their other responsibilities to stakeholders, the environment and society in general (Okeahalam and Akinboade 2003). Conceived this way, corporate governance assumes a development dimension.

Good corporate governance practices are now being associated with the advancement of whole societies. Governance affects the provision of both public and private goods. It is also concerned with the processes, systems, practices and procedures as well as formal and informal rules that govern institutions. It concerns the manner in which the rules and regulations are applied and followed, the relationships these rules and regulations determine or create, and the nature of these relationships.

It is clear from this discussion that corporate governance is not only about the maximization of shareholder wealth, but involves an effort to balance shareholder inter-

ests with those of other stakeholders (such as managers, employees, customers, suppliers of the corporations inputs and investors) to achieve long-term sustainable value and contribute to the economic development of the countries in which the corporations operate. Implied in this broad definition is the concept of Corporate Social Responsibility (CSR), because good governance promotes efficient, effective and sustainable corporations that contribute to the welfare of society by creating wealth and employment. It promotes responsive and accountable corporations; legitimate corporations that are managed with integrity, probity and transparency and which recognise and protect stockholder's rights.

Corporate social responsibility also revolves around the sustainability of the environment surrounding the corporation. This include the natural environment and the economic and social environment. It involves the protection of workers' political, economic and social rights, as well as preventing damage or negative externalities to the natural environment. We can conclude this discussion by emphatically stating that corporate governance aims at protecting investor rights and values as well as the rights of other stakeholders and enhances good corporate citizenship.

As stated earlier, various institutions have developed standards for good corporate governance. The next section presents the standards so far developed.

Corporate governance standards

A number of institutions and countries have been trying to develop corporate governance standards to improve the way corporations behave and the way stakeholder interests are protected. Some of the most prominent approaches to corporate governance developed so far include the following:

- The Organisation of Economic Co-operation and Development (OECD) principles of corporate governance;
- The King Report on Corporate Governance for South Africa (2002);
- The New Partnership for Africa's Development (NEPAD) Peer Review Principles;
- The Commonwealth Association for Corporate Governance (CACG) Guidelines, Principles for Corporate Governance in the Commonwealth;
- other standards such as those developed by the Benchmarks Foundation of South Africa.

Other standards have been developed for specific sectors of business such as the Basle Committee Report for the Banking Sector, the Higgs Report (UK) which has made recommendations on the status of Non-Executive Directors and the Smith Report on Audit Committees. In the USA, the Sarbanes-Oxley (SOX) Act was enacted in 2002 to curb executive fraud. It establishes new guidelines for financial management. The Act also aims at restoring investor confidence and seeks to regulate the accounting profession in the USA by establishing the Public Company Accounting Oversight Board (PCAOB). The Act has also issued new rules on auditor independence and also created penalties for destruction of accounting documents (Mwanakatwe, 2005). In this research paper we review in detail the standards devised by the OECD. These are important because many investors in most South African companies come from the OECD countries. However, there have been other standards such as NEPAD and the King Report which are relevant to the research.

The New Partnership for Africa's Development (NEPAD) was adopted in October 2001. This was followed by the adoption of the African Peer Review Mechanism (APRM). These two steps have been hailed as significant in the continent's decision to take control of its future. NEPAD recognises the role the North can and should play in helping Africa back on the path of economic development and growth and also in the effort to reduce and eradicate poverty. However, today, African leaders understand that, while welcome, neither an increase in aid nor reductions of trade barriers by developed countries will be sufficient to pull the continent's poor (estimated at 46 percent of its total population) out of poverty (Armstrong et al, 2005). African leaders therefore also stress the need for good corporate governance. Thus, for instance, the corporate governance issues covered by the APRM can be grouped under five main objectives:

- promoting an enabling environment and an effective regulatory framework for economic activities;
- ensuring that corporations act as good corporate citizens with regard to human rights, social responsibility and environmental sustainability;
- promoting the adoption of codes of good business ethics in achieving the objectives of the corporation;
- ensuring that corporations treat all their stakeholders (shareholders, employees, communities, suppliers and customers) in a fair manner; and
- providing for accountability of corporations, directors and officers.

While there might be discrepancies between the theory and practice, the APRM remains a significant step towards improving corporate governance in Africa. While many argue that it is premature to talk about corporate governance regulations in much of Africa where the private sector is very small and capital markets fairly underdeveloped, it can also be argued, to the contrary, that any society requires a set of minimum conditions that can help attract foreign direct investment (FDI) and also encourage local people to invest in productive activities.

In 1994, the King Report on Corporate Governance (King I) was published (Cliffe Dekker, 2002). The report was the first of its kind in South Africa and was aimed at promoting the highest standards of corporate governance. Over and above the financial and regulatory aspects of corporate governance, King I advocated an integrated approach to good governance in the interest of a wide range of stakeholders. Although this was a ground-breaking report, changes in the global economic environment and legislative developments necessitated its updating. As a consequence, the *King Report on Corporate Governance for South Africa* (Cliffe Dekker, 2002) was produced. This second report acknowledges that there is a move away from the single bottom line (that is profit for shareholders) to a triple bottom line, which embraces the economic, environmental and social aspects of companies' activities. The report states that:

Successful governance in the world in the 21st century requires companies to adopt an inclusive and not exclusive approach. The company must be open to institutional activities and there must be greater emphasis on the sustainable or non-financial aspects of its performance. Boards must apply the test of fairness, accountability, responsibility and transparency to all acts or omissions and be accountable to the company but also responsive and responsible towards the company's identified stakeholders. The correct balance between conformance with governance principles and performance in an entrepreneurial market economy must be found, but this will be specific to each company (Cliffe Dekker 2002:2).

The second King report (King II) has outlined specific governance standards starting from the board to the auditing function. Recently King III has also been produced to enhance the effectiveness of King II.

The proliferation of guidelines, in a way, demonstrates the need and requirement to control the power of corporations, in the hope that the directors and managers of these corporations will in turn appreciate that corporations and firms should not simply be about profit maximisation. The need to appreciate that to become good corporate citizens, there is need for them to respond to some of the requirements of sustainable economic and social development as corporations and that the way they operate affect societies in general.

The OECD standards

The OECD recognises that international investment is of major importance to the world economy at large, and that multinational enterprises play an important role in the investment process. Countries of the third world stand to benefit greatly from foreign direct investment and in particular from investment that is sensitive to the economic, social, and environmental development needs of local communities. The organisation, therefore, encourages enterprises to contribute to economic, social and environmental progress with a view to achieving sustainable development. To that end, it has produced a set of guidelines for multinational enterprises whose aim is to encourage universal adherence to a set of business principles or standards of corporate governance that promote information disclosure, good employment and industrial relations and protection of the environment among other issues.

The European Union has, since 1993, been promoting a fight against social exclusion by appealing to a company's "sense of social responsibility concerning best practices for lifelong learning, work organization, equal opportunities, social inclusion and sustainable development" (Lungu J and Mulenga C, 2005:20). As a result of these efforts, many international companies are beginning to promote corporate social responsibility practices in response to a variety of social, environmental and economic pressures. What are these general concepts, principles and indeed standards of good, desirable corporate behaviour and citizenship? These are encapsulated in the OECD Guidelines for Multinational Enterprises (2008). They include the following;

- enterprises are expected to contribute to economic, social and environmental progress with a view to achieving sustainable development;
- enterprises must respect the human rights of those affected by their activities including the employees and the host communities;

- enterprises should encourage local capacity building through cooperation with the local communities, including local businesses;
- enterprises should encourage human capital formation (human resource development) by creating employment opportunities and facilitating training opportunities for their employees;
- enterprises must refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives or other issues;
- enterprises must support and uphold good corporate governance principles and develop and apply good corporate governance principle practices;
- they must develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the communities in which they operate;
- enterprises must promote employer-awareness of and compliance with company policies through appropriate dissemination of these policies including through training programmes;
- enterprises must refrain from discrimination or disciplinary action against employees who make bona fide reports to management or as appropriate, to the competent public authorities, on practices that contravene the law (whistle blowers);
- enterprises should encourage, when practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with good corporate governance and socially responsible citizenship;
- enterprises must strive to abstain from any improper involvement in local political activities.

In this paper, reference has already been made to the concepts, principles and standards adumbrated here that condition corporate behaviour.

Chibuluma Mine

Historical profile and location

The Chibuluma Mine complex is situated near the town of Kalulushi, which is approximately 12 km west of Kitwe, one of the metropolitan and industrial centres of the Zambian Copperbelt. The current mining area is Chibuluma South, some 13 km from Kalulushi. The topography is generally flat, with elevations above mean sea level of 1 220m to 1 300m. As with the rest of the Zambian Copperbelt, the weather is tropical with the rains occurring in summer, being particularly heavy in April. Kalulushi has approximately 3 300 houses. It has its own recreation club, golf course, hospital, school and clinic as well as a small shopping facility. Potable water is supplied to the town of Kalulushi. Electricity is readily available on the Copperbelt, and supplied by the Copperbelt Energy Corporation to the mine and town. The Copperbelt itself is well supported by road, rail and air services. An international airport at Ndola, an hour's drive from Kitwe, services the Copperbelt.

The main road links were once tarred, and Chibuluma Mines was once linked by rail to the Zambian rail network as well as to the countries to the south of Zambia. However, the rail link no longer exists. Copper from the smelters and refineries on the Copperbelt are exported mainly through Durban in South Africa; although other links exist to both Tanzania and Mozambique.

Chibuluma Mine began production in 1955 as a self-contained unit producing copper concentrates, which were treated at the mine concentrator. However, the concentrator was closed in 1991 and the ore has been treated locally. The Chibuluma South deposit, which is being mined currently, was discovered in 1969. The Copperbelt Mines were nationalised and merged into Zambia Consolidated Copper Mines (ZCCM) in 1982. Chibuluma was the first mine to be privatised, being acquired by a Metorex consortium in October 1997 with ZCCM/Zambian Government retaining

a 15 percent interest. Chibuluma South is the first new underground mine to open on the Zambian Copperbelt in 30 years.

The town of Kalulushi was developed to support Chibuluma Mines in the early 1950s. When the Chibuluma East mine was closed, the excess housing and facilities became available for use by ZCCM corporate and technical officials. The town of Kalulushi thus housed a number of ZCCM corporate divisions, and on the privatisation of ZCCM, many of these employees purchased the houses they resided in and still continue to live in the area.

The Metorex group

Metorex is an independent mid-tier mining company based in South Africa. Metorex occupies a unique position within the mining industry of sub-Saharan Africa, specialising in identifying, turning to profit and managing mineral deposits. The current focus of the company is on base metals, industrial minerals, and gold (see the map). The company ethos includes partnerships in all investments, and a centralised strategic logic combined with a strong decentralised profit centre concept at operational level, which gives management at the specific mines the confidence and flexibility to conduct their operations efficiently. Metorex is guided by the following principles: natural caution, operational leanness, minimal overheads, rigid cost control, strong accountability, limited capital expenditure, the utilisation of specialist consultants, and the quality of the ore body (www.metorexgroup.com).

The Metorex Group has evolved by assembling a portfolio of profitable mining companies with a well-balanced commodity mix and good growth prospects. The Group has a record of sustained profitability, despite the cyclical nature of commodity prices. The current mining activities are in antimony, cobalt, copper, gold, fluorspar and zinc. Metorex's expertise ranges across the broad spectrum of the mining industry, from prospect selection, ground acquisition, exploration and feasibility studies through operations management and financing, to mine closure.

Metorex Limited of South Africa acquired a majority stake in Chibuluma Mines plc in October 1997. The assets under purchase comprised two separate potential mining areas, namely the Chibuluma West and South Mines. A condition of the Sale Agreement was the development of the Chibuluma South copper deposit, which was

viewed as the long-term future of mining in the Kalulushi area. Chibuluma Mines Plc subsequently partnered with the Industrial Development Corporation of South Africa to establish the Chibuluma South Shaft system to exploit the ore body. The underground mineral reserves are estimated at 7,568,480 tonnes grading at 3.6 percent, giving a sixteen year life of the mine operating at 480,000 tonnes per annum. Plant trials to produce cobalt concentrate took place in October and November 2005. These were generally successful, and circuit modifications to allow the filtration of a cobalt concentrate on the sludge filter press were completed in November 2005.

Chibuluma mine is jointly owned by Metorex, which holds 85 percent of the shareholding, and ZCCM Investment Holdings Plc, which holds 15 percent of the shares. It produces copper and cobalt. Cobalt recovery is on a very small scale. Copper production has been increasing since 2006 from 8002 tons to 14 583 tons in 2008. The mine has been making profit since 2006 as the table below shows.

Table 2: Production, Cost and Profit Information for Chibuluma Mine Plc

Chibuluma Mines plc		2008	2007	2006*
Tons milled	(t)	555 575	503 880	363 311
Head grade	(percent)	2,9	2,5	2,7
Overall recovery	(percent)	89,6	86,1	81,6
Copper produced	(t)	14 583	10 770	8 002
Copper sold	(t)	14 491	10 761	8 017
Total cash cost/ton sold	(US\$/t)	2 663	2 787	2 984
EBITDA	(R000)	501 459	323 022	125 521
Depreciation	(R000)	49 070	36 011	16 916

* First year of production of Chibuluma Mine Plc

Source: www.metorexgroup.com/ops_chibuluma_mines.htm (7th may 2009)

Chibuluma expanded its milling capacity to 50 000 tonnes per month and operated at this level during the second half of the financial year 2008. The copper head grade improved as mining advanced through the waste parting present during the previous year and is expected to further increase with depth. Overall, copper production increased by 35 percent, which had a positive impact on the unit cost per ton of copper produced. Chibuluma South is now a fully established mine with 4.7 million tons of reserve at an improving grade. Pre-development of the decline shaft is progressing on

schedule ensuring increased maximum mining flexibility. The cost of production per tonne of copper has been significantly reduced as the mine develops. From the table above, it is easy to see that at the start of production of Chibuluma South Mine costs per tonne of copper were as high as US\$2 984 per tonne. These have been reduced to US\$2 663 per tonne by 2008. This tallies with the Mineworkers' Union of Zambia's submissions in an interview that the success of Chibuluma mine is largely accounted for by cost containment measures. The Director of Research at the Union submitted that

the cost of production at Chibuluma mine fluctuates between US\$2 400 and US\$2 600". "The mine is basically a new operation and is highly capital intensive. Having already made major capital investments, the mine has been able to meet variable costs during the recession (Muchimba Charles, Interview, 20th August 2009).

Production has also steadily increased from the time the mine began its operations. From Table 2 above, it is clear that production increased from 8 017 tonnes in 2006 to 14 491 in 2008. It is expected to go above 15 000 tonnes in 2009.

Human resources and management

Management of Chibuluma Mine is directed by Metorex, who provide technical and financial consulting services, market copper, and liaise with the Zambian government and ZCCM-IH (the successor to ZCCM). At the time of privatisation of the mine in 1997, the employee complement was 550 staff, of which 62 were medical staff. Most of the employees resided in the town of Kalulushi and in nearby villages.

The management team at Chibuluma mine is composed of six members: General Manager, Financial Manager, Mining Manager, Engineering Manager, Chief Medical Officer and a Finance Executive. Of all these, only the Chief Medical Officer is a Zambian. Reporting to these are ranks of middle management, which include, the Manager Human Resources, the Head Industrial Relations and the Manager Environment and Training. All these ranks are filled by Zambians. The Board of Directors is composed of five members, three of whom are Zambians. Of interest is the fact that both in the senior management team as well as the board there is no female representation. Currently, the mine employs about 562 staff of whom about 300 are unionised.

The legislative framework and the Chibuluma mine Plc development agreement

As stated in the section on the privatisation process, the Mines and Minerals Act 1995 contextualises the legal framework in which the Chibuluma mine Development Agreement was anchored. The Act provided incentives for investors in mining, and permitted the government to enter into “development agreements” with specific companies. Under these agreements the government could extend more incentives than stipulated in the law. The Investment Act 1992 also laid down the procedures and process for buying into the Zambian economy and provided incentives that applied to all investors other than those applying to the mining sector. The Development Agreement for Chibuluma Mine Plc included clauses on mine development, local business development, medical services, education services, recreation facilities, the environment, training and human resource development and taxation. Since these were the blueprints guiding the development of mining from the time of privatisation to 2008 when the government cancelled all the development agreements, we use them here to assess the corporate governance practices of the Chibuluma Mine Plc. In operational terms, however, mining regulations constitute the blueprint of standards and guide on mine operations. These are contained in the Mining Regulations 1971 (Statutory Instrument N0. 107 of 1971) and Mining (Amended) Regulations 1973 (Statutory Instrument No. 95 of 1973). These acts and statutory instruments provide the legal framework for mine operations, although the financial side of mining is regulated by the Income Tax Act and its amendments.

Mine development

The Chibuluma Mine Development Agreement specified the development areas as Chibuluma West and Chibuluma South. Chibuluma West was acquired with full knowledge that within 3-4 years it would be out of production. The Development Agreement specified that it was going to remain in production using the methods applicable then, but placing emphasis on maximum recovery of known ore resources. The expected output was 9500 tons annually of “A” grade copper and 200 tons of cobalt of various grades. Production levels were expected to decrease progressively as the ore body approached exhaustion and remnants mined.

Chibuluma South mine sulphide ore body was to be developed to the production stage to coincide with the decline of Chibuluma West. Processing of the concentrate

from this mine was to be done at Nkana smelter and refinery. The development commitment of approximately \$34 million was to be expended on surface infrastructure such as power, buildings, roads, drainage, shaft sinking, mine development and mining equipment, a milling and floatation plant and various ancillaries. Developing the mine was to take three years. This has been done and the mine is operative. The processing of the concentrate, however, was initially done partly in Zambia and partly in Namibia due to limited smelting capacity in Zambia.

Smelting and concentration and infrastructure problems

As stated above, ore processing up to concentration is done on the mine site. Smelting however is done at Chambeshi Copper Smelter (CCS) which is Chinese-owned. Before Chambeshi Copper Smelter became operational in 2008, the company used to send its concentrates to Namibia for smelting. The Chamber of Mines explained this partly as a lack of smelting capacity in the country. Since the country has to transport its concentrates to other sites for smelting, it has been compelled to develop a 12km road from the mine site to the Kalengwa road. However the company does not maintain the other government roads it uses as these are supposed to be maintained by the Municipal Council of Kalulushi and the Kitwe City Council.

Because these roads are critical to the company's operations, Chibuluma Mines have stressed to the Kalulushi Council the importance of maintaining the Kalengwa road.

The irony of the matter, however, is that even though the road is in Kalulushi Municipal Council's jurisdiction, the mine is located in Lufwanyama district, and this is the body to which the mine pays its rates. Thus, Kalulushi Municipal Council is being asked to repair a road mainly used by heavily loaded trucks from the mine located in another district from which it does not receive rates. The Deputy Director of Planning at the council also indicated that "the responsibility of road repair does not lie with us but with the Roads Development Agency (RDA)" (Interview with Deputy Director of Planning, Kalulushi Municipal Council, 20th August 2009). Since most mine taxes are paid to the central government, the RDA is the responsible authority. The RDA, however, is based in Lusaka and may not see the urgency involved in maintaining the road. Thus, even

though the company is not responsible for maintaining the road in good repair, its condition is a matter of great concern to the company, as its present poor state is affecting its operations. Trucks transporting ore are taking much longer to travel the stretch than is normal, and this may start reflecting in the company's cost structure. It is also important to mention that the company has also invested in offices at the mine site. This implies that all mine vehicles have to use the rugged road to and from the mine site. The company must impress on the local authority the need to inform government about the condition of the road. The irony of the matter however, is that with all the tax exemptions the company enjoys, the company would not be in a position to press the government on this.

Local business development

The Development Agreement committed the company to local business development. It was envisaged that local business would benefit from the privatisation and combined operation of a successful mine. The mine undertook to help and facilitate local business and support the development of local entrepreneurship. This could be done through the programme of capital expenditure for the development of Chibuluma South. Through the works at the mine, local business would supply goods and services. The company was going to submit to the government of Zambia a detailed programme for local business development within twelve (12) months of closing the negotiations. Some of the businesses to be taken over by local business were the Kalulushi hospital and the primary school. The company also pledged to use the assets of the engineering department to spawn a number of smaller private engineering enterprises to serve Chibuluma initially and ultimately the entire Copperbelt. At the time, Chibuluma assigned a Mr Legg to take an active role in assisting Zambian citizens in setting up of small business enterprises. However, hitherto, there is no evidence of companies that have been established through this process.

The company has proceeded by providing contract work to some Zambian registered companies such as Sandvik. There are also many others supplying goods and services to the mine. Security is one such service which is visibly outsourced.

As pointed out earlier, the smelting of concentrates has also been contracted to the Chambeshi Copper Smelter. Although this is not a Zambian company, it nonetheless

employs many Zambians. Thus, the linkage between Chibuluma Mine Plc and Chambeshi Copper Smelter has created more jobs within the environs of Kalulushi District. By and large, this is the greatest effort at beneficiation.

Education services

Before privatisation, ZCCM was running the Kalulushi Mine primary school for the benefit of the children of mine employees and the general public. At the time of privatisation, Chibuluma mine took over the running of the school. However, it was envisaged that the school would become self supporting by offering its services on a fee paying basis. The school was established in 1973 for children of expatriate miners. At privatisation the school had 235 pupils. The cost per child was K800 000 but the children of miners only paid K79 500 while the children of non-miners paid K1 200.000 per year. At the time, this latter figure was exorbitant. The school had 109 Zambian boys, 122 Zambian girls, one expatriate boy and three expatriate girls. Miners' children constituted the majority 222 pupils while non-mine were 13 only owing to the high fees. At the time the school had 25 employees. At present the school has been turned over to a private operator and it is fee paying. Thus, many miners' children can no longer enter the school because of exorbitant fees. The school was sold to another private operator and it operates on a fee paying basis.

Although the development agreement stipulated that the company was going to strengthen the teaching of science and mathematics in schools, this has not been done, and the company has no intention of doing so (Interview with Mineworkers' Union of Zambia Branch officials, 26th August 2009).

Recreation facilities

During the time of ZCCM, various sports and recreation clubs and facilities were provided for the benefit of Chibuluma and non-Chibuluma mine employees. These included the recreation club, golf club, tennis club, bowling club, squash club and rugby club. The clubs were autonomous in terms of management, but were heavily subsidised by ZCCM, and ZCCM had the power to veto the affairs of each club. Chibuluma mine pledged to continue offering sports and recreation facilities of standards no less than those available to employees and club members, and the ZCCM

veto was to be transferred to Chibuluma mine management. Currently the clubs are being run by committees appointed by members, while the recreation club and the squash club have been sold to private businesses. Thus, Chibuluma mine has not honoured its promise as per the development agreement. Although the company is still supporting the golf club and the rugby club, it appears to the local mine workers representatives that the current management only supports the sports they like.

“Although they bought footballs and jerseys for the football team, the stadium and the infrastructure around it are dilapidated and yet this is the sport which the community likes, not golf or even rugby. This management is selective. They only support that which they like” (Interview with the Mineworkers’ Union of Zambia Branch Officials, 26th August 2009).

Women’s clubs and activities

Under ZCCM, the company operated the Lubuto Women’s Centre, which offered training to young women and wives of miners in home economics. It covered the following subjects: housewife skills, knitting, sewing, embroidery, cookery, nutrition, and child care. The company also employed full-time staff for this function. There are currently no women’s clubs in the townships. The Ward Councillor and the District Development Committee have written to the mine management for help in this area. At the time of writing this report, they had not received a response from the mine. It must be stated, however, that it is not Chibuluma mine alone that has miners in Kalulushi, as the Chinese owned Chambeshi Mine has employees living in the area. Thus to be effective, the mine companies could carry out joint programmes with the municipal council if they wished to help in this area. This project will also provide an opportunity for the company to interact with the community at large and not its workers alone. Such a programme will help empower women who, in the process, will support their families.

Municipal services and housing

Before privatisation, ZCCM together with the Kalulushi Municipal Council provided municipal infrastructure services comprising drinking water and sewerage facilities, electric power distributed to the township from the mine bus-bar, refuse collection and disposal, roads and parks maintenance, township maintenance and housing. Under government policy, housing units were sold to occupants and the municipal services were handed over, first to AHC Municipal Services and later to Nkana Water

and Sewerage Company. Chibuluma mine does not consider municipal services as a part of its obligations. Since the company has no housing units like the ZCCM had, it considers municipal services as a local government affair.

The implication of both government policy and the company's understanding of its responsibilities is that many young and new miners have to stay in village conditions because the mine no longer provides housing. This is more or less a national policy since all housing which once belonged to the mine was sold at privatisation. The company, however, does provide a housing allowance. Because of the pressure exerted on the existing stock of houses around Kalulushi, rental values have gone up making it difficult for new miners to afford housing in the formal areas. According to union officials, the General Manager had promised housing loans but these are not being given and there is no housing scheme. The local authority also has no capacity to embark on new housing development. There is a plan by the National Pension Scheme Authority (NAPSA) to develop a housing scheme around Kalulushi but this has not yet started. What this means then is that the new miners have to provide their own accommodation. Having found a job, the easiest thing to do is to build their own shelter on the periphery of the town. Very often, this is substandard muddy housing without water supply and can only have pit latrines for toilets. Thus most new miners who can't find a rented room in the formal areas have to bear the squalid conditions of the informal housing areas. While the mine has provided jobs and a steady income, the conditions of living for its workers remain backward. Further, much as the economy of the district has improved, development as measured by living conditions is not being achieved, an example of the phenomenon of "growth without development".

Environmental plan

At the time of privatisation, Chibuluma mine had been operating for more than 40 years. The mine undertook to "conduct rehabilitation relating to previous and current mining operations identified in the Environmental Impact Statement and to conduct an Environmental Management Plan to an acceptable standard designed to minimise the effects of mining on the environment and to affect a closure certificate on Chibuluma West. The environmental plan was to cover:

- dust and water pollution with the aim of minimizing them by re-vegetating disturbed areas and by control of storm water and related drainage of tailings and rock disposal areas;

- implement a monitoring programme for water flow, levels, qualities and discharge;
- sealing of old shafts and rehabilitation of the concentrator site by removal of foundations, structures and scrap prior to re-vegetation; and
- monitor surface caving.

Chibuluma mine also assumed responsibility for historical liabilities. The company does maintain proper health and safety records. According to the President of the Mine Workers' Union of Zambia, "Chibuluma mine has the best safety record among the mining companies on the Copperbelt" (Interview with the President, MUZ, 20th August 2009).

The environmental protection programme has centred on tree planting around the slug dam and the plants seem to be doing well.

The mine carries out fortnightly safety and environmental checks. All the reports made available for 2008 showed that the air quality entering the mine was as specified.

The air quality at portal entrance was 133.0m³/s with temperatures of 6.0° to 7.0°. The highest recorded temperatures for the decline, 314 metre level, 327 metre level South, 327 metre level North and 348 metre level ranged between 25° and 30° and were all in compliance with the regulations. The maximum permissible temperature is 31°.

The dust count at the concentrator was also below the maximum permissible of 350 ppcc. The highest dust count was recorded at the crusher with 212 ppcc. All other areas, such as the Hazemag crusher, Se/tetary, sizing screens, backfill plant, R G Stockpile tunnel, F G stockpile tunnel and the leach plant were all below the limit. The company also ensures that dust masks are worn where dust counts exceed 350 ppcc as a precautionary measure. Dust masks are also provided. In the mining area the potential dust areas are the entrance to 314 metre level and the entrance to the 252 metre level. The company has ensured that the decline is watered regularly to suppress dust levels.

Water quality

The water quality in buildings is completely safe for drinking. Data taken in July 2008 shows that the actual iron content was 0.02 mg/l while the maximum permitted should be 2mg/l. Manganese was 0.03 mg/l while the maximum permitted is 1mg/l, cobalt was 0.03mg/l while the maximum limit should be 1mg/l, while copper was 0.02mg/l when the maximum should be 1.5mg/l. Taps outside the buildings, however, discharge river water and this is not safe for human consumption. Drinking water points are all signposted. Tailings dam discharges are safe for discharge into the environment. Thus, so far the company has a good health and safety programme in place.

Land conflicts

There has been one known conflict with Chief Nkana, who the mine thought was in the mine area. They wanted the chief and his people to relocate to another place. The Citizens for a Better Environment (CBE), a non-government organisation based in Kitwe, intervened with proposals to compensate those affected. To date the chief and his people are still in the area.

Training and human resource management

In the Development Agreement, the company undertook to provide basic skills training to ensure that every employee possessed the technical knowledge to successfully complete the job required of them. Courses were to be conducted aimed at ensuring technical competence together with the acquisition of knowledge in areas unfamiliar to the particular employee. The company also pledged to work with the local administration to provide assistance with schooling facilities for employees. Mine workers and their immediate family members were to be encouraged to have access to these facilities. The education was to comprise of basic courses in English, Mathematics and Technical subjects. It was also planned that bursaries and loans could be set up to assist employees and their family members to study at reputable institutions within Zambia and abroad. However, the union questions whether the company's training policy is being fully implemented. Currently, there is only one person sponsored to study at the Copperbelt University. A second person undertaking studies at the Northern Technical College in Ndola is only partially sponsored. The company has kept his job but he is not paid a salary when he is at school. One of the nurses applied to undertake further training but was denied. She had to resign to

undertake her training although she was reemployed after completing her training. She has since resigned for greener pastures (Interview with the Mineworkers' Union of Zambia Branch Officials, 26th August 2009).

Taxation issues

The Development Agreement also set out the tax regime that was to affect the Chibuluma mine over the stability period. The stability period was set at 15 years. During this period, corporate tax was set at 35 percent, but should the company list at the Lusaka Stock Exchange (LUSE) the tax would be 30 percent. The company was permitted to carry over losses for a period of 10 years from the date at which the loss is incurred. Losses would be liquidated on a first-in-first-out basis with earlier losses used earlier than later losses. Capital allowances were pegged at 100 percent in the year in which the expenditure is incurred because by definition, Chibuluma mine was deemed to be a new mine. Chibuluma mine would also pay royalties of 2 percent on the net bulk value of minerals produced in the mining area. The net bulk value means the market value of mine products free-on-board at the point of export from Zambia or in the case of consumption within Zambia, at the point of delivery within Zambia less the cost of transportation, handling charges and the costs of smelting and refining and other processing costs. Royalties were also to be deductible for tax purposes. Value Added Tax was zero-rated while input VAT was refundable. The table below compares the tax regime affecting Chibuluma mine with those of other companies operating in Zambia.

With a stability period of 15 years and the life of the Chibuluma mine pegged at 16 years, people have wondered when the Zambian Government will start clawing back benefits for the Zambian public. Currently, the benefits have been very limited.

Between 2004 and 2008 economic conditions changed for the copper industry. The price of copper rose dramatically to US\$8 900 per tonne. These conditions forced civil society and opposition political parties in Zambia to mount pressure on the Zambian government to renegotiate the development agreements. Some of the contentious issues in the development agreements were those clauses relating to taxation and the stability periods. Even the World Bank urged the Zambian government to renegotiate the agreements. At some point the government considered constituting a team to renegotiate the agreements but they did not, choosing to follow the path

Table 3: Incentives given to the various mining companies in their respective development agreements

Name of company / year of agreement	Royalty tax rate	Provision for capital investment deductions	Corporate tax rate	Provision of carry-over losses	Customs duty	VAT	Foreign currency retention	Withholding tax	Stability period
Konkola Copper Mines 2000	0.6	100 percent	25 percent	Can Carry forward Losses	Exempt (Excise duty on power (0 percent))	Refund on Net input VAT (0 percent)	100 percent	On Dividends (0 percent)	20 years
Mopani Copper Mines 2000	0.6	100 percent	25 percent	As Above	As above	As Above	100 percent	On Dividends (0 percent). After stability period (10 percent)	20 years
NFC (Africa Ltd) 1998	*	100 percent	35 percent	As Above	As above including no customs duties on personal effects	As Above	100 percent	0 percent	15 years
Chambishi Metals 1998	2.0	100 percent	35 percent	As above	Exempt on Machinery and Equipment. Excise duty on power (10 percent)	As Above	100 percent	0 percent	15 years
Chibuluma Mine Plc	2.0	100 percent	35 percent	As above	10 percent	As above	100 percent	0 percent	15 years

Sources: Fraser and Langu 2007 with the addition of Chibuluma Mine Plc by authors.

of law reform. In the budget for the year 2008, the government announced reform measures which included, among other things, the increase in the royalty rate from 0.6 percent to 3 percent, increasing the corporation tax from 25 percent to 35 percent, and reducing the capital allowance from 100 percent to 25 percent. The government also introduced a windfall tax which would be triggered at a price of US\$2.50 per lb. This would rise to 50 percent when the price of copper is US\$3.00 per lb up to a price of US\$3.50 when the tax would rise to 75 percent.

Chibuluma, together with other mining companies in Zambia, set out in correspondence the provisions and recourse under the Development Agreement and requested discussions with the government in this regard. Chibuluma receive a response agreeing to further dialogue in order to find an amicable solution. Chibuluma mine has stated that it continues to reserve its rights in terms of the Development Agreement. There have been new developments though. In the budget for 2009, the government of Zambia rescinded its 2008 decisions on the windfall tax and has restored some incentives under the development agreements. This, however, has been done at a time when the copper price bubble has burst, with the mining companies requiring government support if they are to keep people in employment. This development has opened up a new chapter in the development of mining in Zambia. Citizens are now asking serious questions as to whether investors should be the only beneficiaries from the mining industry. The OECD guidelines also question arrangements where local people are marginalised and cannot enjoy benefits from resource extraction. As a consequence, Zambians are calling for greater local participation by either the public or the government with the hope that if this happens, then the country can claw back some benefits from resource extraction.

Health: the Chibuluma mine hospital

When Chibuluma mine was bought by Metorex, they inherited both the public health department and Chibuluma mine hospital. However, shortly after privatisation, the company closed the public health department which was responsible for carrying out public health activities. According to Mr Alick Banda, then Chief Health Officer, “the new investors didn’t see the need to maintain the public health function” (Interview, 8th May 2009). However, Metorex did maintain the Chibuluma mine hospital for its employees and their families and dependants. Given the retrenchments that had taken place prior to privatization, Metorex now has a smaller number of

employees to deal with. The employment levels at Chibuluma reduced from 2000 before privatisation to about 500 at the time of privatisation. The hospital also adopted an income generating approach by taking on fee paying members of the general public.

The mine management has, however, been trying to sell the hospital because it is not interested in providing this service. This is an area of concern for the workers.

Further, the standards at the hospital have gone down. “The hospital cannot be compared to the other mine hospitals such as Wusakile in Kitwe, Macolm Watson in Mufulira and Nchanga South in Chingola”. According to union officials, managers make statements like “we are not a hospital company or a school company”. Although the General Manager has stated that “we have no intentions of selling the hospital”, the institution was at one time advertised for sale and offered to the Zambia Catholic University who wanted to start using it as a teaching hospital for nursing. The sale did not go through because the government objected.

The hospital has three doctors, two general practitioners, and a consultant. The nursing staff has, however, been reduced in number. “The hospital has not been recapitalised and most of the equipment comes from the ZCCM era (Interview with Mineworkers’ Union of Zambia Branch Officials, 26th August 2009).

One of the reasons that might explain the state of affairs at the hospital is that management has opted to have a separate health scheme. According to union officials, “senior Zambian as well as expatriate staff preferred to be attended to at a private clinic in Kitwe” (Interview, 26th August 2009). This appears to show the lack of confidence of the senior managers at the level of service being provided at the hospital.

HIV and AIDS policy at Chibuluma mine

Throughout Africa, HIV and AIDS has ravaged communities, and Zambia is no exception. HIV and AIDS prevalence in Zambia stands at about 14 percent nationally. However, the Copperbelt province has one of the highest prevalence rates in the country. Nationally it is agreed that in order to respond effectively to

the challenge of HIV and AIDS, it is important that the government, corporate bodies and the communities come together in implementing policies and activities aimed at reducing prevalence. In the mining industry, the major mining companies in Zambia, such as Konkola Copper Mines and Mopani Copper Mines, have HIV and AIDS policies in place. It should be mentioned that in the 1990s, the government had already started implementing a National Prevention and Control programme and also provided funding for district HIV and AIDS coordinators. In Kalulushi, where Metorex operates, a coordinator was appointed to spearhead the programme. Coincidentally, the coordinator happened to be working for Chibuluma mines. At the time, the government programme concentrated on training peer educators to communicate HIV and AIDS prevention messages in the community and in work places. Heads of departments especially at Chibuluma mine also held focus group discussions on HIV and AIDS including briefings from the Chief Medical Officer (Fraser and Lungu, 2007). ZCCM, the parent company, also started including training on HIV and AIDS in their course to prepare people for retrenchment, in safety meetings and first aid training and antenatal clinics. Employees retiring were educated on the dangers of contracting or spreading HIV and AIDS after they returned to rural areas having been paid handsomely after their period of service to the copper mines.

After eight years of operation, Chibuluma Mine Plc had no HIV and AIDS policy. They, however, started facing problems in terms of how to deal with employees who were chronically ill and those who had been diagnosed HIV positive. According to Alick Banda, the company then realised that prevention was better than cure. Thus in 2005, the mine management approached the Copperbelt Health Education Programme (CHEP) to provide technical support on the development of an HIV and AIDS policy which would state the company's stand on several issues ranging from care and support of infected and affected employees, information, communication and education and policy implementation. The Metorex head office in South Africa was instrumental in pushing the management in Zambia as Metorex in South Africa had an HIV and AIDS policy. Thus far, CHEP has helped the Chibuluma mine train its peer educators, and the company has a draft HIV and AIDS policy. However, at the time of writing this report, the policy had not been endorsed by management, and nor had CHEP been informed whether the draft policy had been launched. The draft policy document, however, addresses issues such as counselling,

testing and care and networking with other like-minded non-governmental organisations involved in the field of HIV and AIDS prevention.

In an interview with the local mineworkers' representatives, it was disclosed that there is currently no HIV and AIDS policy at the company. There has been a draft policy for a long time but this has not been launched.

“We as a Union have been distanced from the policy. We do not know what is happening”. The mine management has, however, been working with the Zambia National Aids Network (ZANAN) which has been distributing anti-retroviral drugs (ARV's) at the hospital. “This however does not amount to having an HIV and AIDS policy. We do not know what will happen if ZANAN left. The policy will also spell out the company's attitude towards those infected or affected by the HIV and AIDS pandemic. We need this as quickly as possible. The ZANAN programme is running in isolation although it is helpful” (Interview with Mineworkers' Union of Zambia Branch Officials, 26th August 2009). The lack of an HIV and AIDS policy at Chambeshi mine contradicts the position of Metorex (South Africa) which claims that it already has a policy in place.

Employment

Chibuluma Mine has been in existence for over 40 years. In 1969 it employed 4 074 people rising to 5 656 in 1976. At the time, Chibuluma was comparable to Konkola Mine which employed 4 929 and 5 419 people in 1969 and 1976 respectively. Employment, however, fell to 2000 just before privatisation. At privatisation, the mine only employed 500 employees. Currently the numbers of people employed is about 520 as at March 2009, a slight decline from 548 in December 2008. These figures, however, should be treated with caution because they are based on the returns from the National Pension Scheme Authority. There are some employees in management who may not be contributors to this scheme. This implies that the number of people employed may be slightly higher than has been presented. According to the Union, there are about 562 employees working for the company although the figure keeps fluctuating. We can take it, however, that the true figure may lie between 520 and 560 employees. Of these, nearly 300 are unionised. Those not in the union are working on contract after having been retired. One observation that can be made from the employment data provided here is that since 1997, the company has only

been able to add about forty additional employees. This probably conforms to the company's operational principle of operational leanness and rigid cost control. In social terms, however, this might mean having more and more unemployed youths roaming the streets of Kalulushi and the Copperbelt. Thus the impact in terms of employment creation has been limited.

Employment of women

Employment in the copper mines in general is male-dominated, with many women taking nursing, secretarial, accounting and computing jobs. Very few women work underground. Generally speaking, women are not allowed to work underground. The Mining (Amendment) Regulation 1973 as read with the Mining Regulations 1971, state that "save as is provided in sub-regulation (2), no person shall employ underground a youth under the age of eighteen years or a female". There are, however, females being employed to work underground on exemption.

Chibuluma mine, like KCM, has employed women to operate dump trucks which go underground. There are currently about three women working as dump truck operators. It should be mentioned, however, that there are many other females employed as administrators, accountants, secretaries, laboratory technicians and as nurses as these jobs are all done from the surface.

Other than the law, one other explanation for women not working underground is societal expectations, which make women choose the softer jobs, choosing careers that entail working on the surface. This view should be challenged as society has been undergoing transformation. Women today are training as engineers and if these negative social perceptions persist, discrimination on the basis of gender will continue. There is need therefore to reform the law in this regard.

Salaries and other conditions of service

While there is some discrimination in terms of the jobs that can be done by women, there is no discrimination when it comes to salaries and other conditions of service. These are accessed by grade or position in the company regardless of gender. At Chibuluma mine salaries have been improving in the past five years and have been structured as in the Table below.

**Table 4: Salary levels for selected grades 2003 to 2008
(in Zambian Kwacha (K5000 =US\$))**

Grade	2003	2004	2005	2006	2007	2008
G1	729 731	846 488	999 769	1 979 891	2 337 003	2 667 172
G3	639 206	741 479	875 588	1 760 325	2 077 835	2 508 151
G5	533 576	642 148	758 177	1 552 726	1 832 791	2 397 438
G8	500 856	580 993	685 843	1 424 832	1 681 829	2 222 322

Source: Collective Agreements 2002 to 2008

Salaries, as can be seen from the table, have been rising in some instances above the inflation rate of 12 percent. However, when compared to salaries in other mines in the country for the same grades, it is easy to see that these salaries are not as high. For example, the salaries at Mopani Copper mines for the highest-paid unionised employees in 2008 inclusive of other allowances were K4 158 748. This was K1 491 576 more than the equivalent G1 salary at Chibuluma Mine. For the lowest paid in M8 at Mopani, the salary for the highest paid in the scale was K2 917 360 while their counterparts at Chibuluma were on K2 222 322 which was K695 038 less even though this was far better than the salaries at NFCA a Chinese owned mine. The other mining companies such as Konkola Copper Mines and Mopani Copper Mines have been paying better salaries than Chibuluma Mine. The local mineworkers' representatives had this to say on their salaries and conditions of service:

“the salaries here at Chibuluma Mine are not that bad. However, considering that we are a low cost mine here on the Copperbelt, our workers should be the highest paid but this is not the case. Where it comes to bonuses, there is a very big discrepancy between seniors and juniors. While many junior workers will be paid a bonus of K200 000, most seniors are paid about K1 200 000. This requires to be resolved. The other problem is that bonuses are paid when management wishes. They are a prerogative of management. We do not have a say as workers' representatives” (Interview with Mineworkers' Union of Zambia Branch Officials, 26th August 2009).

The advantage workers at Chibuluma have had, though, is that during the period of economic recession between July 2008 and June 2009, none were retrenched. Perhaps the levels of salaries and the low numbers of workers employed have made it manageable for the company to operate without retrenching labour. The Chinese-owned NFCA mine at Chambishi has also not retrenched any workers during the period of the economic recession.

There are other conditions of service which Chibuluma mine extends to its employees. In the case of retirement, the mine pays a repatriation allowance and also helps employees when they have funerals for spouses or their registered dependants. It also provides a leave allowance and for those that have worked for the company for twenty years or more they provide a twenty-year service token of K2 360 000 as at 2008 in addition to a wrist watch and two neckties for male employees or scarves for female employees. If an employee reaches thirty years of service, they are given a cash token of K2 950 000, a long service certificate and two neckties for men or scarves for women employees. At retirement, the normal retirement benefits are paid. There has been a debate as to whether these long service bonuses are adequate for people that have served the company that long. This, however, is an industry-wide practice essentially for those working on a permanent and pensionable basis, emanating from ZCCM days. Metorex also operates Sable Zinc in Kabwe. However, since nearly all workers at the latter work on a contract basis, they are not entitled to all the benefits discussed above. They are, however, entitled for gratuity to which they qualify every two years. In research done by the National Economic Advisory Council in December 2007, it was found that there were 121 employees at Sable Zinc all working on one-year contract terms (NEAC, 2007).

Chibuluma mine and its response to the recession

While the company has maintained low levels of employment since privatisation as a cost control measure, this paid dividends during the recession in the last half of 2008 and the early part of 2009. Chibuluma Mine Plc did not close nor put its mine under care and maintenance basically because they were able to maintain costs. “The cost of production per metric tonne of copper fluctuated between US\$2400 to US\$2600. As a part of the explanation, the mine is new and is highly capital intensive. Having already made the major capital investments during the period of high international copper prices, the mine could meet its total variable costs during the

recession (Muchimba Charles, Interview, 20th August 2009). As a result it kept all people in its employment unlike other mines whose costs of production per tonne were around US\$4000. Furthermore for Chibuluma mine, the lowest price per tonne of copper of US\$2900 during the recession was still higher than the price of copper per tonne at privatisation in 1998. Having started with a very low price, together with cost containment strategies, the mine was able to weather the effects of the recession. However, it should be pointed out that the mine management did not achieve this on its own. According to the union:

team work has, by and large, accounted for the success of the mine. Workers who are members of the union have been cooperative and, in general the union and management have cooperated well in cutting costs. As a union, we have held seminars with the general membership at which we have emphasised the need to desist from unnecessary damage to company property and machinery and the workers have responded very well.

The other factor has been that the mine has only one union: the Mineworkers union of Zambia. Therefore the membership is easier to mobilise for anything as opposed to the situation in other mines where there is more than one union (Interviews, 26th August 2009). Thus the most important factor accounting for continued operations during the recession have been that Chibuluma South is a new mine, the ore body is not very deep and the workers through their union were very cooperative, thereby contributing to cost control measures.

Recommendations and conclusion

Recommendations

Arising from the discussion in this chapter, the following recommendations are offered.

Infrastructure

The road network linking the mine to Kitwe and Chambeshi (where smelting of its concentrates is done) is in a deplorable state. Even though it is not the responsibility of the mine to build roads as per the development agreement it entered into with the government of the Republic of Zambia, the mine still needs to assist in the repairs of the major roads it uses. This is because if it does not repair the roads, these are in the long run going to affect its cost structure. While the company has made representations to the Kalulushi Municipal Council, there is nothing the council can do about this because the road repairs fall under the jurisdiction of the Roads Development Agency based in Lusaka. The mine management needs to confront this predicament and becoming proactive in bringing the various stakeholders to resolve this problem which has an effect on its operations.

Recreation

Chibuluma mine is currently providing support to the golf and rugby clubs. It also, to a limited extent supports the football club. However, it was the view of many people interviewed that the support to clubs and other recreation facilities is lopsided, tilting towards the golf and rugby, the sports most favoured by the senior expatriate staff, despite the fact that the majority of the people in Kalulushi prefer football. It is therefore recommended that the mine management pay attention to the football stadium and its infrastructure to satisfy the interests of the majority.

Gender issues

There are fewer women working for the company than men. This is partly explained by the fact that the law prohibits women from working underground. There are, however, a few women now working as dump truck drivers on exemption. Most women working for the company are doing traditional jobs such as nursing, secretarial work etc. Changing this requires amending the law and this is definitely beyond Chibuluma Mines Plc. This is an issue the government may wish to review. The mine, however, can help the community in establishing women's clubs. These were in existence during the ZCCM era. The local councillor and the District Development Committee have made applications to the two mines in the district, namely Chibuluma mine Plc and NFCA. It will be important for the mine to respond favourably to these requests.

Housing

Housing for miners is a pressing issue in the area. Government policy, however, revolves around private ownership of housing and property. In this respect the government as well as the Municipal council sold off all their housing stock to existing tenants at the time the policy became effective. Workers at Chibuluma mine have requested the company to establish a housing loans scheme from which workers can obtain loans to build their own housing. Considering the conditions in which the majority of the young miners are living in it is recommended that the company either establishes a housing loan scheme or facilitates in acquisition of loans from building societies.

Environmental management

Nearly all the people interviewed and talked to expressed satisfaction with Chibuluma Mines Plc care for the environment. The company must be congratulated for this. However about three years ago the company had plans to relocate Chief Nkana and his subjects because they were in the mine area. This came as disturbing news as no measures were in place to compensate those identified as needing to be relocated. The Citizens for a Better Environment (CBE) intervened. The chief and his subjects are still in the area. It is therefore recommended that consultations be held with all stakeholders and compensation levels be determined for those to be relocated.

Training

The company claims to be implementing a vigorous in-house training policy. However, there are currently only two employees sponsored by the company for training at higher institutions of learning. Most people interviewed did not think the company had a good record on training. It is important that the company re-think this strategy and start sponsoring young Zambians for training at higher institutions of learning. This will not only be advantageous to the company, but it will also be considered a long term contribution of the company to the country's human development and this will be in accord with the OECD guideline.

Taxation

Chibuluma mine has been contributing to the government treasury by paying corporate taxes. However, it is one of the companies that have indicated that they reserve the right to legal action should the government not only rescind the changes effected to the tax regime in 2008 but also refund the windfall taxes they paid as a result of that change. This is a contentious issue but it would appear that the company is contravening the OECD standards which state that

“enterprises must refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives or other issues” (OECD, 2008:14).

The company should simply operate under existing law. Like all persons, legal or biological, they must obey the rules and regulations being promulgated by the government from time to time. The company should also contribute to economic, social and environmental progress with a view to helping the country achieve sustainable development. Exempting mining companies from paying some taxes has reduced the resources available to government for provision of public goods leading to the phenomenon of growth without development.

Health

Health facilities, especially a hospital, constitute a highly desirable asset for any mining company because of the dangerous nature of mining operations. Chibuluma mine must not only abandon the idea of selling the hospital, but must also re-capitalise it and employ adequate nursing staff.

HIV and AIDS policy

The Metorex group in South Africa boasts a vigorous HIV and AIDS policy. The Chibuluma Mine Plc in Zambia, however, does not have a policy in place. It has, for over eight years, had a draft policy, but this has not yet been launched. It is important that the mine management launches this policy. An effective HIV and AIDS policy is one which consists of doing more than distributing anti-retroviral drugs (ARVs).

Employment and conditions of service

Chibuluma mine is guided by its policy of operational leanness and rigid cost control. This explains why the company has maintained almost the same numbers of employees from the time of privatisation. With a lean work force, and operating a low-cost mine, workers expect to be paid better if not the same as those at Mopani or Konkola Copper mines. The company should review its conditions of service.

Openness and transparency

Despite civil society activity in the country, companies are in no mood to open and operate transparently. This is testified by the refusal to provide information to researchers. Companies, though, are not the only culprits. The Zambia Revenue Authority was also not in a position to provide information by individual company, for fear of breaking confidentiality regulations.

Mining legislation

It is also important to review legislation affecting the mines. Government should not be changing these too frequently. It is important for government to settle the matter concerning windfall and variable taxation. It is obvious that the gains from variable taxation will be less than those that could be gained from windfall taxation. As long as the government does not resolve issues hinging on revenue collection, it will always face the predicament of who repairs infrastructure for lack of financial resources.

Conclusions

This case study has analysed the context in which the Chibuluma mine has been developed. The mine was first in private hands under the Roan Selection Trust from 1955 until it was taken over by the Zambian government in 1969. From that year

until 1996 it remained in government hands. It has since been privatised and operating under Metorex of South Africa as Chibuluma mine Plc. Thus far, contrary to the promise of the development agreement, the mine has not been listed on the Lusaka Stock Exchange. Thus it has not given the Zambian people a chance to participate in the ownership of the mine. Secondly, under the development agreement, Chibuluma mine was supposed to provide education to its employees and the public by starting the teaching of mathematics, english and technical subjects. This has not started and needs to be fulfilled. While Chibuluma mine has given business to some Zambian business people, it has not helped in setting up new business as the development agreement requires. The HIV and AIDS policy requires to be launched to reflect management's commitment to contribute to the prevention of the disease both at the work place and in the community. The policy has remained too long in draft form.

The company also needs to review its employment policy at Sable Zinc in Kabwe where most people are working on contract. This will help improve Sable Zinc's corporate image being a part of Metorex South Africa. As economic conditions improve, Chibuluma mine can consider paying salaries and wages comparable to Mopani and Konkola Copper Mines, since they are operating a new and therefore lower-cost mine. Thus, the company is operating contrary to one of the OECD standards which states that the mine should "observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country" (OECD, 2008: 17 (4a)). This is a matter which the trade unions should address.

Chibuluma mine is part of the group of mining companies which have been considering suing the Zambian government for having altered the tax regime affecting them before the end of the stability periods. However, the company should consider that despite the fact that they were granted a stability period of 15 years, the mine has only an economic life of 16 years. The company also needs to shelve the idea of selling the Kalulushi mine hospital as this will be a major disadvantage to the mine workers and their dependants. Despite these observations, the mine has not contravened major legal requirements.

Map Of Africa Showing Metorex's Operational Areas



References

- Armstrong P, Nick Segal and Ban Davies (2005). Corporate Governance: South Africa, a pioneer in Africa. Johannesburg: South African Institute of International Affairs.
- Bank of Zambia, 2009. Monetary policy Statements (2007, 2008 and 2009).
- Baylies, C, and Szeftel, M. (1992). The fall and Rise of Multiparty Politics in Zambia, *Review of African Political Economy*, 54: 75-91.
- Bratton, M, & Van de Walle N., (1997). *Democratic experiments in Africa: regime transitions in comparative perspective*, Cambridge: Cambridge University Press.
- Callaghy Thomas & Ravenhill J, (eds) (1993). *Hemmed in: responses to Africa's economic decline*, New York: Columbia University Press.
- Campbell-White, O & Bhatia A (1998).. *Privatisation in Africa*, Washington, D.C: IBRD.
- Chamber of Mines of Zambia, (2005). *Survey of the Zambian Mining Industry 1995 to 2004*. Mission Press, Zambia, October.
- Cliffe Dekker (Attorneys) (2002). *King Report on Corporate Governance for South Africa*. www.clifedekker.com.
- Collective Agreements between Chibuluma Mines Plc and Mineworkers Union of Zambia, 2002, 2003, 2004, 2005, 2006, 2007 and 2008.
- Craig, J. (2000). Evaluating privatisation in Zambia: a tale of two processes, *Review of African Political Economy*, 27(85): 355-366.
- Economic Commission for Africa. (2004). *Report of the Southern African Working Group with recommendations and Plan Action*. Lusaka: Zambia.
- Ferguson James (1999). *Expectations of Modernity: Myths and Meanings of Urban Life on the Zambian Copperbelt*. University of California Press, Berkeley and Los Angeles, California.
- Fraser, A, and Lungu, J. (2007). For Whom the Windfalls? winners and losers in the privatisation of Zambia's copper mines. Lusaka: Catholic Commission for Justice, Development and Peace and Civil Society Trade Network of Zambia, Lusaka.
- GRZ, (2005). *Conditions Monitoring Survey Report 2004*, Central Statistics Office, Republic of Zambia, Lusaka.
- Lungu J and Mulenga C. (2005) *Corporate Social Responsibility Practices In the Extractive Industry in Zambia*. Ndola: Mission Press.
- Lungu, J, (1997). Privatisation Property Rights: The Structural Adjustment Programmes and Land Policy in Zambia. *Journal of Business* 1, 74-93
- Lungu, J, and Silengo M, (1997). *The Socio-Economic Impact of Privatisation on the Zambian Copperbelt: The case of Mufulira and Konkola*. Durban: Institute of Natural Resources, University of Natal, May.
- Mesnard M. (2005). *The OECD Guidelines on Corporate Governance of State Owned Enterprises*. Kiev.

Metorex Ltd (2009). Chibuluma Mine Plc. www.metorexgroup.com/ops_chibuluma_mines.htm. Downloaded 7th May 2009.

Mwanakatwe, C. (2005). The Role of Corporate Governance in the Banking Sector. Paper presented at a Workshop on Economic and Corporate Governance in Southern Africa, 7-9th December 2005 at Cresta Golf View Hotel, Lusaka.

Muchimba, C B. (1998). Issues on the Privatisation of the Mines. Paper presented to the INDABA III, "Beyond the Horizons of Privatisation", held at the National College for Development and Management Studies, Kabwe, 8-10 November.

National Economic Advisory Council. (2007). *Survey of quality and quantity of Employment in the mining and Manufacturing Sectors in Zambia*, May to December 2007

New Partnership for Africa's Development (2002). *NEPAD Annual Report: Towards Claiming the 21st Century*. Midrand: NEPAD Secretariat.

Ngandu K E B. (2005). Financial Intermediation and Corporate Governance: The Case of the Development Bank of Zambia. Paper presented to the Workshop on Corporate Governance and Accountability In Southern Africa, 7-9th December 2005 at Cresta Golf View Hotel, Lusaka.

OECD. (1997). *The OECD Report on Regulatory Reform Synthesis*. Paris.OECD

OECD. (1999). *OECD Principles of Corporate Governance*. Paris .OECD .

OECD. (2008). *OECD Guidelines for Multinational Enterprises*. Paris OECD

Okeahalam and Akinboade O. (2003). *A Review of Corporate governance In Africa: Literature, Issues and Challenges*. Paper Prepared for the Global Corporate Governance forum.

Oman C (2001). *Corporate Governance and National Development*. Technical Paper No 180. OECD Development Centre. Paris.

Rakner, L, Van de Walle, N, and Mulaisho, D, (2001). 'Zambia' Chapter in *Aid and Reform in Africa*. World Bank, Washington: D.C.

Shleifer A and Robert W Vishny (1994) Politicians and Firms. *Quarterly Journal of Economics* 109, 737-783.

Situmbeko, L. C. and Jack Jones Zulu, (2004). Zambia: Condemned to Debt: How the IMF and World Bank have undermined development, World Development Movement, April.

ZCCM, (2000). Report on the Privatisation of Zambia Consolidated Copper Mines Limited: The Process, Progress and Status as at May 2000, GRZ/ZCCM Privatisation Negotiating Team, ZCCM Corporate Head Office, Lusaka, Unpublished.

List of Interviewees

- | | |
|------------------------|---|
| 1. Mr Rayford Mbulu | President – Mineworkers' Union of Zambia. 24 August 2009 |
| 2. Mr Mwansa Cornelius | Mineworkers' Union of Zambia Chibuluma Branch
Chairman 26 August 2009 |
| 3. Ms Agness Bwalya | Councillor (Kalulushi) 24 August 2009 |
| 4. Mr Charles Muchimba | Director of Research, Mineworkers' Union of Zambia
20 August 2009 |
| 5. Mr W Mushota | Health and Safety Officer, Mineworkers' Union of Zambia
20 August 2009 |
| 6. Ms Silvia Kateule | Deputy Development Director, Kalulushi Municipal
Council. 24 August 2009 |

7. Mr Mwansa Conelius Mineworkers' Union of Zambia Branch Chairman.
26 August 2009
8. Mr Sichone Elliot Mineworkers' Union of Zambia Branch Secretary.
26 August 2009
9. Mr Peter Kabwe Mineworkers' Union of Zambia Branch Vice Secretary.
26 August 2009
10. Mr George Wana Mineworkers' Union of Zambia Branch Treasurer.
26 August 2009
11. Mr R Zulu Mineworkers' Union of Zambia Branch Deputy Treasurer.
26 August 2009
12. Mr Peter Sinkamba Executive Director, Citizens for a Better Environment (CBE)
telephone interview 11th September 10:40 am.
13. Mr Alick Banda Copperbelt Health Education Project (CHEP) Kitwe.
8th May 2009
14. Dr G Beene Permanent Secretary Ministry of Mines
(Thursday, 3rd September 2009).

Review of South African Mining and Oil Companies in Mozambique: Mozal and Sasol

Camilo Nhancale with Herculano Vilanculo

Mozambique has abundant quantities of natural resources, most of which are yet to be explored: natural gas, coal, mineral sands, hydropower and probably oil as well (Bucane and Mulder, 2007b). However, as in many other African countries which have an abundance of natural wealth, the local population has not benefited in any significant way from the resources which have been extracted to power industrialisation elsewhere. Ordinary people in Southern Africa want to see this commodity boom translating into improved conditions of their life.

The main resources of the country are hydroelectric power, natural gas, coal, minerals (titanium, graphite, etc.), timber, and fish. The main exports include prawns, cotton, cashew, sugar, tea, aluminium, cotton, citrus, timber and electricity (INE, 2008). The main mineral resources that involve major investments in Mozambique are: coal, natural gas, mineral (heavy) sands and probably, in the future, also oil. Other minerals include gold and semiprecious stones occurring in small quantities, which tend to be exploited by artisanal and illegal labour (in consequence not formally contributing to the country's accounts).

The mining potential in the country is estimated at five million ton joules of natural gas in Pande/Temane fields, six billion tonnes of mineral coal in Moatize and Mucanha-Vuzi coal mines in Tete province, and 456 million tons of mineral sands, (299 million tons in Moma, Nampula province, and 157 million tons in Chibuto, Gaza Province). Mozambique's heavy sands minerals potential represents one of the world's largest deposits and has an estimated lifespan of over a hundred years (Andersson et al. 2007).

Mega-projects with South African capital participation are: Mozal 1 and 2 (which produces around 500 000 tons of aluminium per year, involving a capital investment of US\$2.4 billion); the Temane-Secunda gas pipeline (Pande gas), US\$1 billion; Limpopo Heavy Sands, (US\$1.2 billion); Maputo Iron and Steel, (US\$1.1 billion); Beira Petrochemical complex (US\$1.7 billion); the Maputo Corridor for infra-struct-

tures in Mozambique (US\$ 1 billion); Motraco for electricity supply to Mozal (US\$ 140 million). These figures represent the total value of each investment. This does not mean that the total capital investments are South African; Direct Foreign Investment (DFI) in Mozambique has been through South African companies, although they are not the major shareholders). The South African companies involved in the minerals-energy investment are Billiton and IDC (major partners in Mozal); Sasol (Pande gas reserves, pipeline Temane-Secunda, and Beira Petrochemical complex); ESKOM (Motraco, Cahora Bassa, M'Panda Uncua); and Corridor Sands and Southern Mining (Heavy Sands), (Castel-Branco, 2003, 2002a; Andersson et al., 2007).

Objectives of the study

This review of South African mining and gas companies in Mozambique is part of a regional research which covers six countries within the Southern African Development Community (SADC), namely: Botswana, Democratic Republic of Congo (DRC), Mozambique, Namibia, Zambia and Zimbabwe. The study was commissioned by Southern Africa Resource Watch (SARW) to investigate the conduct of South African companies' corporate governance when doing business abroad, and specifically in the Southern African region. This study focuses on two major South African companies, Sasol and Mozal.

The objective of the study is to review the operations of BHP Billiton (Mozal) and Sasol with regard to their corporate governance, their contribution to economic and social development and their environmental impact in Mozambique with particular regard to the livelihoods of grassroots and local communities. Necessarily, this will involve a review of the legal framework relating to corporate governance in Mozambique and related compliance by the companies.

Research methodology

The research methodology pursued involved utilisation of both primary and secondary material. Primary data was gathered via questionnaires which were elaborated to gather information from different target groups of informants, namely from the companies themselves, the government institutions related to the companies' work, and non-governmental organisations, trade unions and community-based organisations, and local communities.

At Mozal, the research team attempted to make appointments with the management. Letters requesting appointment were sent and many calls were made to the Human Relations Officer to receive guidance regarding appropriate interviewees, and approaches were made to the company's investor relations office in London. However, our requests were variously denied or ignored, the only exception being the Social Corporate Responsibility branch, the Mozal Trust for Community Development, which provided the research team with data regarding social responsibility. Similarly, the Corporate Affairs Manager at Sasol indicated to the research team that for any response to be made to the questionnaire, approval would be required from the "Disclosure Committee" in South Africa. Only a sheet with responses to the call for the Ernest & Young Entrepreneurs of the year 2008 was made available, which relayed information about social responsibility projects the company had undertaken. However, interviews were carried out with a range of informants and stakeholders; from high level government officials in ministries, district officials, companies' managers and officials and non-governmental organisations officials, community leaders and community-based organisations leaders. Interviews were generally carried out through the administration of questionnaires. However, in some instances, informants chose to respond to the questionnaires in writing and to send their responses to us. Furthermore, discussion focus groups were held with affected and beneficiary communities. The focus groups were constituted by the community-based organisations or groups that benefited from the projects. In addition, the research team made its own direct observations of infrastructure and community-based organisations' activities which fell within the scope of social assistance by the companies.

Secondary data was collected from available reports from diverse sources such as the reports made available by research institutions, non-governmental organizations, companies reports and Websites, government institutions reports, Central Bank, Promotion Investment Center, community-based organisations, district government and local government reports, and information gathered from interviews with officials of the different institutions mentioned above. Other sources included government Websites, newspapers, magazines and broadcast news.

The reticence of the two companies in providing information directly to the research team placed unfortunate limits on the depth of the study, for while the interviews with stakeholders proved valuable, this report is otherwise heavily reliant upon secondary sources.

Overview of SA's economic relations with Mozambique

Before launching into a study of the social responsibility activities of Mozal and Sasol directly, it is appropriate to locate these in the wider context of trade and investment relations between South Africa and Mozambique.

Contemporary economic relations between the two countries have their origins in the late nineteenth and early twentieth centuries. Four dynamic factors have built such linkages: first, the strength of the South African economy within the region; second, the weaknesses and public policy options of the Mozambican economy; third, the weakness of the South African economy internationally; and fourth, the dominant role of the minerals-energy complex around which most of the political, social and economic dynamics of capital accumulation in South Africa has been structured. The initial economic linkages between South Africa and Mozambique were based initially on migrant labour and transport services, followed by the extension of trade and investment relations.

Economic linkages through migrant labour

In the late nineteenth and early twentieth centuries, migrant labour was recruited from Southern Africa countries, including Mozambique, to work on the South African mines. According to Mhone (2001), the underdevelopment of the rural economies of neighbouring countries (notably Lesotho, Swaziland, Mozambique and Botswana) is in part due to this long tradition of migrant labour.

South African mineral capital developed a regional labour strategy for cheap labour. The strategy defined the southern part of Mozambique (the region below parallel 22) as a labour reserve, particularly for the gold mines. The South African mining industry became the single most important employer of Mozambican wage labour, with

earnings from the mines providing the most important investment input into the Mozambican agricultural sector. It employed an average of 110 000 migrant workers per year in the early 1970s, representing 25 percent of industrial employment in Mozambique. However, in the mid-70s, the number of Mozambican migrant workers fell rapidly, from 118 000 in 1975 to 41 300 in 1977. This resulted in high unemployment in southern Mozambique (Castel-Branco, 2004, 2002a).

To enable the transportation of migrant labour to the mines, a transport system that linked South Africa to Mozambique was developed and partially financed by the minerals-energy complex. Not only did the minerals-energy complex become the major beneficiary of the Port of Maputo, but the railway and port system became the second largest source of employment in Mozambique. The transport system of the Port of Maputo became the main source of foreign currency for Mozambique. In addition, net foreign currency income resulting from transport services linked to South Africa, along with net workers' remittances, kept the overall balance of payments in equilibrium (Castel-Branco, 2004, 2002a).

Trade and investment relations between South Africa and Mozambique

Trade and investment relations between South Africa and Mozambique were developed in the middle of the twenty century. Trade involved export of primary products such as prawns and oil products from Mozambique to South Africa; and exports of equipment, raw and intermediate materials, accessories and parts, and a variety of consumer goods from South Africa to Mozambique. By the early 1970s, South Africa was the second largest trading partner of Mozambique, challenging the dominance of Portugal (Castel-Branco, 2004, 2002a).

Large-scale Foreign Direct Investment (FDI) by South African capital in Mozambique took off in the late 1960s. The FDI was directed in particular to two major development projects in Mozambique:

- 1) the building of the hydroelectric Cahora Bassa dam across the Zambezi River in the northern province of Tete. The government of South African was (and remains) one of the three shareholders along with the governments of Portugal and Mozambique;

- 2) the restructuring of labour and industrial relations in Mozambique colony as a result of political and military pressures to eradicate forced labour; the need for expansion of industrial production as a result of economic opportunities and political pressures, and the insistence by the Portuguese colonial administration on financial severity and financial autonomy for the colonies, as Portugal itself was facing major fiscal difficulties (Castel-Branco, 2004).

Consequently, the colonial administration adopted an “open door” policy towards foreign direct investment, as result of which many industrial projects were launched. South African capital participated in many of these industries, particularly in the larger ones associated with the minerals-energy complex, which included Maputo’s oil refinery, fertilisers, Hydroelectric of Cahora Bassa dam and smelters (Castel-Branco, 2004, 2002a).

Currently, the trends and patterns of economic linkages between South Africa and Mozambique continue to be reflected in two fundamental dynamics of the past two centuries; (1) the minerals-energy complex of South Africa is still dominant in shaping economic linkages and the structure of economic development in Mozambique; and (2) the economy of Mozambique is still functionally absorbed as part of the economy and dynamic process of capital accumulation in South Africa.

However, there are changes. According to Castel-Branco (2004, 2002a), the end of apartheid in South Africa and of the war in Mozambique in the early 1990s brought new links between the two economies, which were influenced by traditional dynamics and new processes. The end of the economic and political boycotts against apartheid opened space for the expansion of South African companies throughout the region.

In addition, two major transformations have resulted from changes in both regional and global political economy. First, the regional labour policy and strategy of South African mining is no more the dominant form of influence of South African capitalism in the region. Trade and FDI have assumed the driving roles of South Africa’s regional expansion via of the Spatial Development Initiatives (SDI). Second, South African corporations are globalising, and the Southern African region is an economic space being more deeply integrated with the global economy and becoming more

internationalised. Further, the process of internationalisation and globalisation of the Southern Africa region has been facilitated by South African government policy towards large corporations, in particular in the minerals-energy complex (Castel-Branco, 2004, 2002a).

Since the number of Mozambican migrant labour in the mines of South Africa was reduced in the mid-70s, the trend has been towards a further decline in the employment of migrant labour from Mozambique. This took place due to the restructuring and rationalisation of the gold mines, and the closure of some of the mines. This resulted in reduced remittances from migrant workers, which in the past use to be a crucial source of net foreign currency earnings to Mozambique (Castel-Branco, 2004, 2002a). However, migrant labour in South Africa continues to be the single most important source of employment in Mozambique. The total number of legal Mozambican migrant labourers employed in the South African mines continues to exceed the number employed in the manufacturing sector in Mozambique. Further, income from migrant workers continues to be the most important source of finance for the family agricultural sector in the south of Mozambique (Castel-Branco, 2002a). In addition, many of the Mozambican entrepreneurs that emerged during late colonialism and after independence have initiated their process of asset accumulation working on the mines. Indeed, many of Mozambique's skilled and semi-skilled workers, employed in the rail and transport services, construction, heavy metal-engineering and other industries were formerly migrant workers who acquired their skills and industrial experience labouring in the mines in South Africa (Castel-Branco, 2002a).

South Africa has become the major trading partner of Mozambique. 44 percent of Mozambique's imports and 20 percent of exports are from and to the South African economy, resulting in a substantial trade deficit (Castel-Branco, 2004, 2002a). This reflects South Africa's regional dominance and the subordination and weakness of the Mozambican economy (Castel-Branco, 2002a, 2004).

South Africa's principal exports to Mozambique are: vehicles, equipment and parts, mineral products and chemical products, manufactured foodstuffs, base metals (iron and steel), and energy. In return, Mozambique's main exports to South Africa are: energy, prawns, cotton, construction equipment, and food industry residues (Castel-Branco, 2004).

Meanwhile, there is also a major trade in energy between the two countries. In particular, the export of energy from Mozambique to South Africa, increased 20 times since the establishment of the world aluminium smelter, Mozal, in Beluluane, Maputo province. Mozal consumes more energy than the rest of Mozambique.

The energy for Mozal is supplied from South Africa by Motraco, a joint venture company. The energy trade is crucial within the strategy of expansion of South African capitalism. Mozal has enabled a dynamic and structural link between the electricity grids of South Africa, Mozambique and Swaziland through Motraco. Furthermore, the energy that Eskom, the South African electricity parastatal, is exporting to Mozambique is an entry point for further South African involvement in the energy sector in Mozambique, notably to strengthen participation in projects linked with two large hydroelectric dams, Cahora Bassa and M'panda Uncua, and to negotiate contracts for supplying electricity to another energy-intensive mega project, the iron and steel industry in Maputo (Castel-Branco, 2002a).

In the late 1990s and early 2000s, a large component of trade between Mozambique and South was construction equipment, in particular accessories and parts during the construction of the Maputo-Witbank toll road, which is part of the spatial development initiative and of the expansion of the minerals-energy complex. Mozambique supplied imported equipment and accessories needed to build the road on the Mozambican side of the border, this therefore, registering as Mozambique's exports to South Africa.

The operation of mega projects in Mozambique increases Mozambican imports in equipment, accessories, parts and investment services from South Africa. Increasing FDI inflows to Mozambique result in an increase of imports and the size of Mozambique's trade deficit has been mostly determined by what happens to the investment. Thus major capital investments, like those around Beluluane industrial park (Mozal, iron and steel), although developing industries which are export-oriented, cause the size of the trade deficit to fall only slightly as their net contribution to exports is countered by the sheer size of their simultaneous demand for imports: the export share of output cannot compensate for the import dependence of output (Castel-Branco, 2003). Although mega-projects increase FDI inflows to Mozambique, their contribution to reduce the trade deficit between the two coun-

tries is slight as they depend and increase Mozambican imports in equipment and services from South Africa, and therefore having little impact in trade deficit.

In terms of FDI between South Africa and Mozambique, it is overwhelmingly a one-way flow, from South Africa to Mozambique. Indeed, South Africa has become the major investment partner of Mozambique. Thus while South African investors were involved in only 300 out of 1 607 investment projects approved between 1990 and 2001, the importance of South African investment in Mozambique was much bigger than its share (19 percent) of the number of projects. South African investment represented 35 percent of FDI inflows to Mozambique, and the projects with South African participation absorbed 85 percent of FDI inflows, 35 percent of national direct investment, and 75 percent of total investment (Castel-Branco, 2002a).

South African FDI is mainly involved with the largest projects ever developed in the country, linked to the minerals-energy complex. The companies, projects and projected investments are: Mozal 1 and 2 (US\$2.4 billion); the Temane-Secunda gas pipeline, US\$1 billion; US\$1.2 billion (although problems led to a withdrawal in 2009); Maputo Iron and Steel, US\$1.1 billion; Beira Petrochemical complex, US\$1.7 billion; the Maputo Corridor (infra-structures in Mozambique), \$1 billion; and Motraco (electricity supply to Mozal), US\$140 million. The main South African companies involved are Billiton and IDC (major partners in Mozal); Sasol (Pande gas reserves, the Temane-Secunda pipeline, and the Beira Petrochemical complex); Eskom (Motraco, Cahora Bassa, M'Panda Uncua); and Corridor Sands and Southern Mining (Heavy Sands) (Castel-Branco, 2004, 2003, 2002a; Bucuane and Mulder, 2007b).

Other investments which South African investors control are: sugar (three out of every four sugar estates), beer (all four breweries), soft drinks (through coca-cola), and large cereal milling. Furthermore, the tourism sector, said to be on the fastest growing industries, features extensive South African investment, with South African firms having a controlling interest in many projects. For instance, South African investment is central to the development of the Limpopo and Lubombos Transfrontier Conservation Areas (Lubombo Spatial Development), while also being involved in the development and management of associated infrastructure, such as major ports, toll roads, and telecommunication systems.

South African banking is becoming more important as a result of the growth of South African investments in Mozambique. The majority of private capital invested in Mozambique in recent years has come from South African and international financial institutions (the latter often, in practice, operating through the former). Almost three-quarters of private investment in Mozambique depends on inflows of foreign capital, and half of such inflows are in the form of FDI associated with large South African corporations. South African banks in Mozambique include: Standard Bank (which recently bought the Portuguese Standard Totta), ABSA (a major shareholder of Banco Austral), First National Bank, and Nedbank. According to Castel-Branco (2004), Nedbank, Standard Bank and Banco Austral represent approximately one-third of banking operations in Mozambique.

Importantly, the dynamics of South African FDI in Mozambique are related to the regional and international strategy behind the decisions to invest (Castel-Branco, 2003, 2002a, 2009b). Industrial policy in South Africa promotes the interests of large South African firms and industrial corporations throughout the region, sometimes at the expense of other international or local investors. In Mozambique this involves; Eskom's and Sasol's expansion of their control over energy sources, production and distribution; Sasol's forcing the withdrawal of Enron from Pande; IDC and Billiton's forcing the withdrawal of Kaiser from aluminium; SAB's commitment to control over the regional beer industry (as demonstrated by its predatory acquisition of Laurentina, the second largest and internationally renowned Mozambican brewery); Tongat-Huellet and Illovo's decisions to invest in sugar in Mozambique, each one having taken their decision partly as their response to the regional strategy of the other. South African corporations also seem set on a move towards the Zambezi Valley, which is very rich in energy and mineral resources, and is naturally suited for the development of agro-industries (Castel-Branco, 2002a).

Castel-Branco (2002), argues that it is important to study the internationalisation strategies of South African investors for the following reasons: (1) to understand the trends, future directions, structure, dynamics and opportunities of regional foreign investment; (2) to develop strategies of selective incentives (rather than generalised, redundant and costly systems) to attract desired investment; (3) to identify the bargaining position of Mozambique vis-à-vis specific foreign investment projects; (4) to develop and implement strategies that maximise transfer of capacities, linkages and

other dynamic gains to the Mozambican economy, linked to foreign investment; and (5) to maximise balance of payment gains from foreign investment without compromising diversification of productive and trade capacities.

It is also important to appreciate the positive impacts of South African FDI in Mozambique on the South African economy: (1) as the demand for specialised investment and industrial services and goods increases, this may develop a multiplier effect from FDI projects back into the South African economy by creating new opportunities for investment in South Africa; and (2) trade, and particularly exports from South Africa to Mozambique, increase and facilitate the creation of new investment opportunities in South Africa. Thus small and medium enterprises (SMEs) in South Africa have developed links to large FDI (mega-projects) along the Mozambican border. For example, South African firms supply about \$100 million per year in goods and services imported to Mozambique by Mozal. Furthermore, the construction and operation of the Maputo-Witbank toll road, the rehabilitation of the Maputo and Matola Ports and the construction of the Temane-Secunda pipeline were supplied and rely heavily on South African SMEs.

The impact of South African FDI in Mozambique depends on five fundamental indicators, namely: the direct and induced impact on investment, economic growth, employment, transfer of capacities, and the overall balance of payments. We will discuss these aspects of South African FDI when discussing the economic impact of Mozal and Sasol. However, it is worth noting that mega-projects have little impact on the domestic economy of the country due to fiscal incentives, as will be shown in the following section.

Mozambique policy and regulations regarding extractive industries

Historically, Mozambique has lagged behind countries like South Africa, Botswana, Zambia, Zimbabwe and DRC in exploiting the potential of its mineral resources. However, in recent years, this has changed, and Mozambique is now more actively engaged in the exploration and exploitation, including the search for oil by multinational corporations. Thus, a key role is now played by the investment promotion centre (CPI), a government body which provides assistance to investors regarding the approval and implementation of investment projects in coordination with the specific sectors under which the investment falls.

Mozambique has developed a framework to regulate extractive industries. The Code of Fiscal Benefits (Decree 16/2002 of 27 June) establishes the framework of fiscal incentives applicable to eligible investments for that effect. Fiscal benefits are tax measures that reduce the amount of taxes payable in order to benefit activities having a recognised public social or cultural interest as well as promoting the nation's economic development. Fiscal benefits include tax and customs incentives, namely: deductions from taxable income, deductions from the amount of tax assessed, accelerated depreciation, tax credits, exemption from tax and the reduction of the rate of taxes, and other fiscal payments, the deferment of the payment of taxes and other special fiscal measures. Fiscal benefits are considered to be fiscal expenses, and a duly made declaration of the benefits used in each tax year is required for the determination and monitoring of such benefits.

The exceptional incentives are granted for a period up to ten (10) years. To qualify for the exceptional incentives, the project has to demonstrate financial, technical and economic feasibility and satisfy the following conditions: it must (a) materially promote and accelerate national economic development; (b) materially reduce regional

imbalances; and (c) directly create at least five hundred jobs or indirectly create at least one thousand jobs within a maximum period of three years.

Investment sectors that fall under the exceptional incentives' rubric include: (a) agriculture, aquaculture, livestock agriculture and forestry; (b) agro-industry; (c) manufacturing; (d) construction of railway, road, port and airport infrastructure and related equipment; and (e) tourism activities. Meanwhile, the minimum value of investment required to access the guarantees and fiscal benefits are \$50 000 for direct foreign investment and a mere \$5 000 for national direct investment. For large scale projects, however, the Fiscal Benefit Code entails exceptional incentives for undertakings involving investment that exceeds the equivalent of \$500 000,000 (five hundred million US Dollars). Mozal and Sasol both fall under this category. In addition, investments in public domain infrastructure carried out under the regime of a concession may benefit from exceptional incentives with regard to import duties, income tax, real property transfer tax and stamp duty (as in the case of Maputo-Witbank toll road).

The Investment Law (Law nr. 3/93 of 24 June) also entails the creation of "Industrial Free Zones", which are defined as an area or unit(s) of industrial activity geographically delimited and regulated by a specific customs regime whereby goods therein which are destined exclusively for export production, including the export goods produced by such activities, are exempt from any customs duties and related taxes or para-fiscal charges. They also benefit from appropriate exchange, fiscal and labour regimes especially instituted and designed for the efficient functioning of the undertakings operating therein, particularly with regard to their commercial and financial obligations abroad, provided the expected benefits to Mozambique include the general stimulation of regional development and the generation of general economic benefits and, in particular, the expansion of productive and commercial capacity, a wider tax base, the creation of jobs and the generation of foreign exchange.

Furthermore, the fiscal code entails indirect tax exemptions for developers of Industrial Free Zones (IFZ). They are exempted from customs duties on the importation of construction materials, machinery, equipment, accessories, accompanying spare parts and other goods destined to the exercise of the activity licensed as an IFZ. Furthermore, IFZ enterprises are entitled to an exemption from customs duties on the importation of goods and merchandise destined to be used in the implementation of projects and the

operation of the activities. The exemptions extend to Value Added Tax (VAT) and the Specific Consumption Tax (SCT), and include internal acquisitions. Additionally, developers of Industrial Free Zones benefit from a 60 percent reduction in the rate of Corporate Income Tax (IRPC) on the profits derived from the exercise of activities for the period of ten years; including exemption from real property transfer tax (SISA) payable on the acquisition and use of immovable assets.

Recently, the government has also updated tax legislation, notably via the Mineral Activity (Decree no 11/2007 of 27 June); Petroleum Activity (Decree no 12/2007 of 27 June); and (Decree no 13/2007 of 27 June) concerning revision of the fiscal incentives regime in Mineral and Petroleum Areas. These revisions are devised to ameliorate the tax system to benefit the Mozambican economy. However, contracts made under the previous regulation remain in use, even after revocation of such regulations. Thus, certain companies still benefit from exemptions and incentives according to previous regulations.

Investments under the Mining Law are extended import and export benefits. Projects benefit from an exemption from customs duties owing on the importation of equipments, apparatus, materials and spare parts for prospecting and exploration, mineral production and the exportation of mineral resources. Such imports benefit from an exemption from VAT, and benefit both the contractors and subcontractors. In addition, projects benefit from Income Taxes Benefits if the investments value exceeds US\$500 000 for the first five years from the commencement of production and also benefit from a 25 percent reduction in the rate of the Corporate Income Tax (IRPC).

Investments under the petroleum law similarly benefit from import and export benefits. Investments on petroleum operations, onshore and off-shore benefit from: (a) exemption from customs duties with regard to the importation of goods destined to be used in petroleum operations, vehicles and other imported supplies; (b) exemption from customs duties and customs charges with regard to the exportation of petroleum produced in the Republic of Mozambique; (c) exemption from the VAT. Accordingly, until the year 2010, investments carried out under the petroleum law, for the first eight years from the commencement of production, benefit from a 25 percent reduction in the IRPC.

The petroleum law (Law nr.3/2001 of 21st February) and its regulation (Decree no. 24/2004 of 20 August) assets that petroleum exploration, development and production activities shall be carried out under a concession that results from a public tender, simultaneous negotiation or direct negotiation. The granting of rights for the activities referred above shall always respect national interests in respect of defence, navigation, research and conservation of marine resources and the environment in general.

The conduct of petroleum operations is subject to the prior execution of a contract which may include; (a) reconnaissance; (b) exploration and production; (c) oil pipeline or gas pipeline. An exploration and production contract gives an exclusive right to conduct petroleum exploration and production, as well as the non-exclusive right to construct and operate oil pipeline or gas pipeline systems for the purposes of transporting crude oil or natural gas produced from the contract area, except where access to an existing oil pipeline or gas pipeline system is available on reasonable commercial laws.

The holder of an exploration and production right shall pay a royalty on petroleum produced from the development and production area, according to rates between 2 percent and 15 percent. Where the royalty is paid in cash, it is calculated according to the agreed contract prices in the case of natural gas and on the basis of international prices in the case of crude oil. The taxes applicable for petroleum production undertakings are according to the recently updated regulation are: 10 percent for crude oil and 6 percent for natural gas. The regulation envisages that a percentage of the revenues generated from petroleum activity shall be channelled to local communities' development in the areas where petroleum production is undertaken. It is the Council of Ministries that inventory the revenues generated from petroleum production and make them public periodically.

Land tenure

According to the Land Law (Law 19/97 of 1st October), land is a state property. This means that the right of ownership over land is vested in the state. Consequently, land may not be sold, alienated, mortgaged or attached. However, all Mozambicans have the right to use and enjoy the land (right of land use and benefit). Right of land-use and benefit is a right that individual or corporate persons (be they national or foreign) and local communities acquire in respect of land, subject to the demands and limitations of land legislation. Individual and corporate persons can be holders of a right of land-

use and benefit. Foreign corporate persons may be holders of a right of land-use and benefit, provided that they have an investment project that is duly approved under the provisions of the investment legislation (Law 3/93 of 24 July and Decree 14/93 of 21 July) and are established or registered in the Republic of Mozambique.

The right of land-use and benefit for purposes of economic activities is subject to a maximum term of 50 years, which is renewable for an equal period upon application by an interested party. If the right of land-use and benefit over a plot of land is restricted owing to the need to use part of the plot for the installation of air, surface or subterranean conduits for electricity, telecommunications, petroleum, gas, water or other such factor, then the public or private entity is required to compensate the title holder with an amount that represents the actual loss arising from the loss of use of the affected part, and a servitude shall be created over such part of the plot and shall be registered in the National Land Cadastre and noted on the respective land title.

The right of land-use and benefit acquired for the realisation of an investment project, approved in accordance with the legislation applicable to national and foreign investments, shall have the term corresponding to the term established in the Investment Authorisation. Such term shall not exceed 50 years and may be renewed in accordance with the provisions of the Land Law and the terms for the renewal of the Authorisation.

Furthermore, since land belongs to the state, natural resources contained in the land are also state property. In the case of extractive resources, particularly petroleum, the Petroleum Law, stresses that all petroleum resources in situ as natural resources in the soil and the subsoil, in interior waters and in the territorial sea, on the continental shelf, and in the exclusive economic zone, are the property of the state. The state reserves to itself the right to participate in petroleum operations in which any legal person is involved. The participation of the state may occur during any phase of petroleum operations or during the construction and operation of a gas or petroleum pipeline in accordance with the terms and conditions to be established by contract. Mozambican and foreign individuals, collective persons and companies who demonstrate that they have the technical competency and adequate financial resources may be holders of the right to conduct petroleum operations. Mozambican juristic persons have a preferential right in the granting of blocks. Foreign juristic

persons who associate with Mozambican juristic persons can also enjoy the preferential right referred to above.

Land-use and benefit for the purpose of conducting petroleum operations is regulated by the Land Law. For the purpose of conducting petroleum operations, the duration of the right of use and benefit of the land shall be the same as the duration of the Contract. The lands where installations are located, and a defined strip of land surrounding those installations, are considered to be a zone of partial protection in accordance with the Land Law.

The holder of a right to conduct petroleum operations who, causes damage to crops, soils, building and improvements or requires the relocation of the legal users or occupants of the land within the defined contract area, has the obligation to compensate the holders of title (in case of local communities whom almost do not have formal title, the holders of rights to use the land) to the assets and the persons relocated. However, subject to the payment of compensation that is due, the holder of the right to conduct petroleum operations may require a right of way in order to have access to the locations where petroleum operations are conducted.

According to the Petroleum Production Law, a percentage of the revenues generated from petroleum activity should be channelled towards the development of local communities' in the areas where petroleum production is undertaken. However, local non-government organisations tend to argue that this provision is inadequate.

Environmental protection

Investment law entails that investors, and subsequently their companies shall, in the process of elaboration, implementation and operation of their investment projects carry out and submit the relevant studies and evaluations of the environmental impact and of any pollution and sanitation concerns that may result from their activities and the damages and/or wastes of their undertakings. Accordingly, the studies and evaluations shall include any potential effects and/or implications on forest, geological and hydrological resources, whether within their area of concession or close to the peripheries of the areas in which the undertaking is being or is to be implemented and operated.

It is the responsibility of the investors and companies to undertake appropriate measures for the prevention and minimisation of any negative environmental effects, particularly those identified in the environmental impact studies and subject to observance of the rules and guidelines issued by the Ministry for Coordination of Environmental Action (MICOA), and in conformity with any legal provisions, and any terms specified in the licence granted for the operation of the activity. In addition, activities with levels of pollution and contamination likely to alter and negatively affect the environment or public health are required to comply with restrictions established by law and/or issued by competent authorities, as well as to any rules or international agreements on such issues to which Mozambique has become a signatory.

The Petroleum Law stresses that, in addition to carrying out their operations in accordance with good oilfield practice, all holders of exploration and production rights shall conduct petroleum operations in accordance with environmental and other applicable legislation as well as the respective contracts in order to:

- a) ensure that there is no ecological damage or destruction caused by petroleum operations, but where unavoidable, ensure that measures for protection of the environment are in accordance with internationally acceptable standards (for this purpose, the holder of a right is required to prepare and submit to the relevant authorities for approval an environmental impact assessment, including environmental impact mitigation measures);
- b) control the flow and prevent the escape or loss of petroleum discovered or produced within the contract area;
- c) avoid damage to petroleum reservoirs;
- d) avoid destruction to land, the water table, trees, crops, buildings or other infrastructure and goods;
- e) clean up the sites after the closure of petroleum operations and comply with environmental restoration requirements;
- f) ensure the safety of personnel in the planning and conduct of petroleum operations, and take preventive measures if their physical safety is at risk;
- g) report to the competent entity regarding the amounts of operational and accidental discharge, leakage and waste resulting from petroleum operations.

Further, a holder of a right under this law is required to act in a secure and effective manner when conducting petroleum operations in order to guarantee the disposal of

polluted water and waste oil in accordance with approved methods, as well as the safe plugging of all boreholes and wells before these are abandoned.

Despite the government policy review to facilitate foreign direct investment in the mining and petroleum sector, there is still no clear definition when it comes to transparency in the extractive industry. For example, it is expected that a percentage of revenue generated from petroleum activity should be channelled to local communities' development in the area where the operations are undertaken. However, it is not clear what that percentage is and with which mechanisms such revenue is to be channelled, and whether local communities are entitled to participate in the definition of the application of such revenues.

Castel-Branco (2002a), asserts that the government does not have policies and strategies which can effectively deal with mega-projects, especially those in extractive industry. Incentives entailed to mega projects are different from those entailed to small and medium investments, and the costs of incentive systems are high because government has neither adequate information on incoming corporations nor strategies to negotiate with foreign investors. According to Boocock (2002), the absence, weakness and/or poor enforcement of regulations governing natural resource extraction, increases openness to foreign investment but may accelerate unsustainable resource use patterns. The ability of developing countries to maximise the associated benefits and minimise the risks of FDI, therefore depends on the effectiveness of their policy/institutional frameworks and institutions.

Mozambique is not a signatory of the Extractive Industry Transparency Initiative (EITI). Thus, as yet, there is no obligation on the part of the government and the company to make information public. However, the government has announced its intention to become a member of EITI.¹

Of the two companies under review here, only BHP Billiton (the major shareholder of Mozal) has endorsed the international EITI (Andersson et al, 2007). Sasol has not endorsed it. Nonetheless, although BHP Billiton has endorsed EITI, Mozal has been reluctant to collaborate with the research teams, claiming the need to obtain authorisation from London. Similarly, at Sasol, although the public relations officer agreed to respond to our questionnaire in writing, he later backtracked, citing the need to obtain authorisation from head offices in South Africa.

South African extractive industries in Mozambique

Sasol in Mozambique

Established in 1950, Sasol Group is a private company, and world leader in the conversion of coal to fuels and petrochemical products. Sasol Limited is listed on the Johannesburg Stock Securities Exchange (SOL) and NASDAQ in New York. It is the second largest industrial company in South Africa, with a market capitalisation of US\$7 billion and annual revenue of US\$3 billion. The company is active in coal mining, crude oil refining and fuel product marketing, synthetic fuel and petrochemicals productions and petroleum exploration. The company has developed world-leading technology for the commercial production of synthetic fuels and chemicals from low-grade coal, as well as the conversion of natural gas to environment-friendly diesel and chemicals. Sasol manufactures more than 200 fuel and chemical products at its plants in Sasolburg and Secunda in South Africa as well as at several plants abroad. Its products are exported to more than 90 countries around the world.

In 1997 Sasol Petroleum International (Pty) Ltd (SA), a subsidiary of Sasol Group formed an alliance with Arco International Oil and Gas Company Limited,² a division of Atlantic Richfield Company of the US and Rara Petroleum Resources, also of the US,³ to undertake further oil and gas exploration in Mozambique. The alliance signed a Memorandum of Understanding with Empresa Nacional de Hidrocarbonetos de Moçambique (ENH), the state oil company of Mozambique, for the Mazenga Block in southern Mozambique in an investment project of \$1.2 billion.

Contribution to Mozambican economy

In 1998 Sasol and its allied companies signed a Petroleum Production Agreement (PPA) with the government of Mozambique through the *Empresa Nacional de Hidrocarbonetos de Moçambique* (ENH).⁴

Subsequently, in 2000, Sasol acquired Arco's 47.62 percent interest, as well as Rara's 4.76 percent holding in the Temane field, and therefore holds 100 percent of the Temane gas field. Additionally, Sasol signed other agreements with the government that provided for the joint development of the Pande and Temane gas fields and the piping of the gas to customers in Mozambique and South Africa. The Production Sharing Agreement (PSA) granted Sasol the rights, with an interest of 100 percent to explore for hydrocarbons in the remaining acreage around the two reservoirs. The ENH, the state oil company, through its subsidiary *Companhia de Hidrocarbonetos de Moçambique* (CHM) holds a 25 percent equity share, and Sasol Petroleum Temane, a subsidiary of Sasol Petroleum Gas, holds a 70 percent equity share, and the World Bank's International Fund Corporation (IFC) holds 5 percent. They are, accordingly, partners in gas production and processing in Pande and Temane gas fields.

Furthermore, Sasol and the government of Mozambique also agreed on the terms of a pipeline agreement that transports gas from Pande/Temane to Secunda in South Africa. The pipeline is 865km long and has a 66cm diameter. The Mozambican route portion is approximately 531km long; it runs within a corridor starting from the Temane Gas Field near the town of Vilanculos to the border, near the town of Ressano Garcia. The South African portion is approximately 334 km long. It continues from the border town of Komatipoort to the Secunda petrochemical complex. ENH through its subsidiary the *Companhia Moçambicana de Gaseduto* (CMG) holding a 25 percent equity share, Sasol Petroleum Temane a 50 percent share and the South African government holding a 25 percent equity share, are partners in the pipeline company ROMCO. Within the context of the Production Sharing Agreement, ENH and Sasol are jointly searching for new gas fields.

Recently new gas fields were discovered, namely: Inhassoro, Temane 8, Temane East and blocks 16 and 19 at Baruto offshore, although these are yet to be brought into production. In the new gas fields, ENH holds 15 percent equity share and Sasol 85 percent.⁵

In June 2001 Sasol and Enron Southern Africa Development Limited signed a gas sales agreement, which provides for the sale of natural gas to the Maputo Iron and

Steel Project (“MISP”) and to Beluluane Industrial Park, where the BHP Billiton Mozal Smelter project is located, contributing to local industry energy needs.

Although Sasol started its activity in Mozambique in 1997, natural gas production only started in 2004 with an investment of \$235 million (Andersson, 2001). This was the investment for natural gas production, as a company under the provisions of the petroleum law enacted on February 2001, which provides for three kinds of concession contracts, namely: a) reconnaissance contract, with maximum two years exclusivity; b) exploration and production contract, with an exploration period of 8 years maximum and a production period of 30 years maximum, and c) pipeline contract, the period depending on the project. Sasol also takes advantage of the Code of Fiscal Benefits. According to the law, the corporate income tax rate is 32 percent of net profit, with no ring-fencing and the development costs are depreciated over four years. Government royalty is set at between 2 percent and 15 percent; normally rates are 3 percent to 7 percent for crude oil, and 2 percent to 4 percent for natural gas offshore, depending on water depth; and 8 percent for crude oil and 5 percent for natural gas onshore, the royalty being in kind or in cash.

Tax issues

In terms of South African FDI, Sasol is one of the largest investors in Mozambique; its project is seen as an example that serves as a model for other Public-Private Partnership (PPP) ventures so necessary for the Southern African economy. The project is expected to contribute to the development of the Mozambican economy through monetising its gas reserves. Accordingly, the Sasol project meets two of MIGA’s priority concerns: it is a South-South Investment, and it is in an IDA eligible country. Furthermore, it represents the first cross-border initiative in sub-Saharan Africa in developing regional natural gas markets, and is within the SADC protocol on cross-border development initiatives. The Ministry of Natural Resources and Energy (MIREME) estimates that Mozambique will receive royalty payments as well as dividends, production bonuses, and corporate taxes of around US\$2 billion over the 25-year lifetime of the project.

Andersson (2001) suggests that the overall tax revenues, after starting slowly with \$2-3 million in 2004 and rising to \$16 million in 2006, will increase to \$50 million in 2010 and close to \$90 million in 2025. According to MIREME’s estimation, the div-

idend to ENH will be US\$20 million per year at the end of the project period, and the financial reward to the the Mozambican economy will be of the order of \$ 61 million per year. Furthermore, Andersson (2001), has estimated that exports to South Africa will reach US\$200 million (120 mKj). Domestic consumption will be divided between MISP, US\$30 million (25 mKj), and the Mozambican government through ENH, US\$5 million (5mKj).

According to Centre for Promotion of Investment (CIP, 2009), gas exports in 2007 were estimated at \$160 million, although if the costs of transport through pipeline are added, the value of gas exports are estimated at US\$240 million. Our findings show that in 2007/2008 exports reached a value of \$374 million (107 mGj), and the same in 2008/2009. It is expected that production and export will double, with the new fields, reaching US\$840 million (240 mGj), and the dividend for the Mozambican government will reach US\$210 million. In 2007/2008 and 2008/2009, the dividends for the Mozambican government are estimated at US\$93.5 million through ENH's (25 percent share).

The major portion of natural gas is exported to South Africa, although domestic consumption tends to increase due to the realisation in 2005 of a new pipeline to Bebeluane industrial park near Maputo and will grow further because of the natural gas-fired electricity plant which is yet to be constructed. Some of the natural gas is used to generate electricity in Vilanculo, Inhassoro, Mambone districts and to the Islands of Baruto archipelago in Inhambane, while in Maputo, at Ressano Garcia take off point, it is distributed by Matola Gas Company (MDC) to Beluluane Industrial Park, cement plants and for vehicles. There are five take-off points established in the pipeline in Mozambique, but only the Ressano Garcia point is as yet operational. The other take-off points depend on their economic viability. It is expected that natural gas will be piped into Maputo City, where, however, priority will be given to large consumers, like industry, who are capable of bearing the full costs.

In terms of economic impact and linkages to other companies and adding to the value chain, the project provided contracting opportunities for both Mozambican and South African companies during the construction phase. The upstream benefits for local enterprises were estimated to be in excess of US\$1 million per year.

The agreement signed between Sasol and the government entitles the former to an income corporate tax exemption of up to 50 percent of the 32 percent tax. Put differently, currently Sasol pays only 16 percent of corporate tax according to the agreement, instead of 32 percent. Sasol will start to pay 32 percent income corporate tax in 2010. It also pays 5 percent royalties, 3 percent in cash and 2 percent in gas, which is distributed to Mozal, the cement plant, and for fuels for gas vehicles.

Employment

In terms of social impact, it was expected that the project would create more than 720 job opportunities for local employees during and after construction; the Central Processing Facility (CPF) and the pipeline would employ staff components of 25 and 85, respectively. According to the Ministry for Coordination of Environmental Affairs' environmental auditing report, (MICOA, 2002), during the pipeline construction phase, only 300 jobs for nationals were created. However, the project is seen as a substantial addition to Mozambique's infrastructure through the development of roads, water supplies to local communities and the removal of land mines,⁸ especially at the pipeline route.

Our findings show that currently, Sasol oil and Sasol gas, employ 89 people in their head offices (although – given our limited data – we are unable to disaggregate this figure by gender and whether employees are national or expatriate). Meanwhile an additional 85 people are expected to work on the pipeline, and 25 in the central processing facilities. Thus Sasol employs approximately 200 workers in Mozambique.

We estimate Sasol's contribution to the Mozambican economy through salaries for the 89 employees at the head offices at around US\$1 million per year. The wage to the managerial senior staff category is at around US\$5000 per month, to the junior staff at around US\$2800, and the minimum wage at around US\$400. These salaries are far more than what is paid by the Mozambican state and local firms. Meanwhile, Sasol invests US\$5 million per year in social projects, mainly in villages and towns around the pipeline. The company has built schools and health facilities, extended water supplies, and promoted community development initiatives.

During the project construction phase, 14 national companies were sub-contracted (including the national police). However, presently, given the capital intensive nature and high technology required, the company creates very few jobs relative to the abundant labour (OSISA et al., 2009).

According to the President of the National Union of Metal, Mechanic and Energy workers, Sasol remains ununionised. Consequently, the National Union for the sector is working to build a union presence at Temane gas field. Only the ENH, the state partner, recognises the union. However, because the latter does not have adequate information regarding company finances, its efforts to negotiate for better earnings for its members are severely hampered. It is surprising that Sasol pays little attention to workers' organisation considering the level of unionisation in South Africa.

Corporate social responsibility

Sasol's corporate social responsibility objectives are: to improve the living conditions of the communities where Sasol operates; to encourage cooperation and partnership with different stakeholders; to improve the well-being of the local society through creation of opportunities; to be known as a responsible company and improve the company's image; and to lead by example and through good practice to encourage employees to work in social development projects.

Sasol has implemented several social development projects.

- Since 2005 through 2008 Sasol has assisted more than 15 communities to obtain a water supply through the construction of a small dam and the installation of cisterns and tanks in Chókwe and Chigubo districts in Gaza province, Magude district in Maputo province, and Vilanculos and Inhassoro districts in Inhambane province.
- Sasol has built and rehabilitated the libraries of more than 18 primary and secondary schools in the three provinces (Inhambane, Gaza and Maputo).
- It has purchased about 138 computers, and equipped IT rooms in secondary schools, as well as in the Faculty of Tourism Management in Inhambane.
- It has assisted agricultural communities through a cashew nut treatment project in Funhalouro, and has fenced community grazing areas in Machanga.
- It has assisted a women's artisan group, HIV positive women and orphanages, purchased ambulance bicycles for all localities and towns of Inhassoro district;

and purchased a tractor and two trailers for the town of Inhassoro. It has also constructed a police station in Mangugumete, Inhassoro district in Inhambane province; and rehabilitated schools, clinics and 13 houses in areas affected by the Favio cyclone.

Health and safety

The Central Processor Facility (CPF) in Temane gas fields works uninterruptedly. The shift system sees two shifts weekly; the employees work two weeks and then have two weeks' leave. Expatriate workers have the right to air transport for leave while the nationals do not. Health and safety provisions are carried out in line with OHSAS 18001 certification. There is a clinic equipped for emergency cases, and provision for immediate evacuation of personnel in case of accidents. Each worker has his or her own individual safety equipment.

Environmental impact

The company states that the project contributes to the reduction of harmful emissions by replacing sulphur-rich coal and heavy oils with clean burning natural gas.

The company's corporate responsibility statement stresses that the company has environmental responsibility in relation to the ecosystem of Govuro River; air quality, soils, subsoil water, flora and wildlife of the operational areas; and that it monitors the water quality of the neighbouring communities. However, environmental auditing undertaken by Ministry for the Coordination of Environmental Affairs reports adversely on the environmental performance of the company. During pipeline construction, 2000 litres of fuel were used daily; however, it is not known how the oils effluents, filters, batteries and accumulated empty oil containers were disposed of. Indeed, the car workshops had neither a pavement nor drainage system for water, and consequently, the activity contributed to soil pollution. Domestic waste generated from the camping sites was deposited in open space without any management system. Further, the water pumping machine, which pumped water to the campsite, polluted the river water. According to the environmental auditing report (MICOA, 2003), up to 2003 there were no environmental procedures for the management of solid waste generated by the project's activities, nor was there any separation of domestic and industrial waste. Furthermore, at Temane 12 gas field, there were no environmental procedures for management of waste resulting from perforation activities.

In terms of work safety, the auditing report states that many workers had no health protection equipment against powder and noise. In addition, intensive forest degradation took place along the pipeline as it proceeded, as workers used wood for domestic fuel.

The Environmental Impact Assessment Report (EIAR) recommended direct horizontal perforation on the pipeline crossing of Changane River. However, the company did not use the method recommended by EIAR. Instead the pipeline was constructed using the open cut method. Consequently, the method applied reduced the river's width and water flow.

Mozal

Mozal was the first large foreign direct investment in Mozambique. The first phase, (Mozal I), was launched in 1998 and involved an investment of US\$1.34 billion. The second phase (Mozal II) was approved in 2001 with an investment of US\$860 million. Thus the total investment is US\$1.894 billion. It is operated as a joint venture by BHP Billiton with a 47.1 percent interest, Mitsubishi Corporation with 25 percent, the Industrial Development Corporation of South Africa Limited with 24 percent and the government of Mozambique with 3.9 percent,, producing aluminium ingots. The alumina is supplied from Australia to produce aluminium ingots in Mozambique.

Contribution to the economy

Mozal has been awarded the right to free profit repatriation under the provisions of the industrial free zone legislation and the investment project authorisation (IPA). Accordingly, Mozal is responsible for 48 percent of total industrial output and 28 percent of manufacturing value added (MVA). It also represents approximately 75 percent of manufacturing exports, 60 percent of exports of goods and 42 percent of total export revenue of Mozambique (Castel-Branco, 2002a, Andersson, 2001).

Since the establishment of Mozal, the trade of energy (particularly Mozambique's imports of energy from South Africa), has increased very sharply. The 2 500 Gwh energy exported to Mozambique by ESKOM has served as an entry point for South African involvement in the energy sector in Mozambique by strengthening its position in projects linked with two large hydroelectric dams, Cahora Bassa and M'panda

Uncua, and in negotiating contracts for supplying electricity to other energy-intensive mega-projects in Mozambique, such as heavy sands and iron and steel in Gaza and Maputo respectively (Castel-Branco, 2002a).

According to Andersson (2001), 200 contractor companies worked on the construction of Mozal. An estimated US\$75 million were spent on goods and services, including labour sourced in Mozambique. This corresponds to around 6 percent of the total construction cost. It is worth noting that the US\$75 million in local spending by Mozal does not mean that a corresponding sum accrued to local benefit, because Mozambican sub-contractors themselves use imported inputs, and in some cases their profits accrue to foreign shareholders.

Andersson (2001) estimated the direct effect of Mozal on national income (i.e. incomes accruing to Mozambicans) amounting to only US\$18 million per year. This was calculated as value added minus transfers abroad of capital, interest, and profits. Mozal was expected to make a profit after debt service of US\$65 million per year, at 2001 world market price for aluminium at US\$1,632.6 per ton.

The dividend to Mozambique is then 4 percent or US\$3 million per year. However, due to the global economic and financial crisis, the price of aluminium dropped by 21.9 percent in December 2008, leading to the reduction of Mozal's revenue to US\$111.5 million. According to the Central Bank of Mozambique, in 2008 the price of aluminium fell by 54.5 percent.⁷

Mozal is expected to continue to improve the country's trade balance. This was calculated to be a surplus US\$160 million in 2001. The overall effect on the balance of payments is expected to be much less (around US\$18 million per year), based on the assumption that all of the profits (aside from the US\$3 million royalty payable to Mozambique) are repatriated (Andersson, 2001).

Mozal has made only a limited impact on government revenues. According to Andersson (2001), the turnover tax will provide US\$4 million, and the dividend around US\$3 million per fiscal year. Furthermore, direct taxes on employment could reach US\$1 million per annum. Since Mozal has export-free zone status, all indirect taxes are exempted.⁸ Thus, total revenues to the country are estimated at around

US\$8 million annually, which implies an increment to fiscal revenues in the order of 2 percent. Since the impact of Mozal on government revenue is smaller than the impact on GDP, the ratio of revenue to GDP actually declined as a result of the project.

Mozal has been important to Mozambique in many ways. First, the project has become a showcase for investment possibilities in Mozambique. It has increased international awareness of Mozambique in the business community, and has reduced perceptions of the risk of investing in the country. Second, the government has been using the project for dealing with many problems of red tape. Third, development of the project stimulated many improvements in infrastructure in the south of the country. Fourth, Mozambican workers have received training and skills development (Andersson, 2001; Castel-Branco, 2002a, 2003, 2004).

To evaluate the impact on investment, it is necessary to take into account the net contribution, (not only the scale) of FDI. Thus, for instance, Mozal has induced FDI from other sources, IDC and BHP Billiton attracted partnership with Mitsubishi. South African FDI has also induced lending to Mozambique from foreign banks and other financial institutions, such as in the case of Motraco, Mozal and the sugar industry. There is no evidence that South African FDI has, on balance, affected domestic private investment very significantly, either by inducing, precluding or displacing it.

Linkages between FDI and domestic firms are weak. For example, only 3-5 percent of Mozal's purchases come from domestic firms. Domestic investment capacity is poor, and most domestic firms which have been displaced by FDI have been able to survive. Given the investment incentive structure in place in Mozambique, which is based on tax holidays and exemptions, most large FDI projects generate very few fiscal linkages. Mozal, has been given the status of a FIZ, pays virtually no taxes. This kind of FDI is not very likely to induce public investment (Castel-Branco, 2009a, 2009b, 2004, 2002a, 2002b).

Neither Mozal nor Sasol are labour intensive on a sustained basis. Mozal employed almost 10 000 workers for little more than one year during the construction phase (Castel-Branco, 2002a), and currently it is operating with only 1130 workers.

Transfer of capacities outside foreign-owned firms has been very limited in Mozambique for two main reasons. First, the companies mostly are concentrated in high levels of asset and knowledge specificity. Thus, their capacities are not transferable to the economy as a whole. Second, linkages with domestic firms are weak. Domestic firms that have managed to obtain medium-term contracts as suppliers to large projects have been able to upgrade their productive capacity, management and general level of skills, particularly when they have developed partnerships with foreign firms. However, the number of such firms is very small, and they usually are anchored to one large project of primary production, which reduces the scope and opportunity for long-term innovation and development (Castel-Branco, 2002b).

According to Castel-Branco (2002b) export-oriented mega projects like Mozal increase the sensitivity of exports to mega project driven economic growth, and the current structure of the symmetric relationship between investment and trade deficit may be changed. However, the economy continues to be, and eventually will become more, import dependent as mega projects of the minerals-energy type dominate the growth strategy in Mozambique. With a very narrow range of primary exports – aluminium, gas, and heavy sands – the Mozambican economy, its investment and growth strategy, and its external sustainability may become excessively vulnerable to the (volatile) behaviour of the world market. This raises serious questions about the sustainability and long-term desirability of a growth strategy in Mozambique that is dominated by the minerals-energy complex of South Africa.

Consequently, the measurable impact of South African FDI in Mozambique is limited to the short-term increase in investment and economic growth. There are reasons for concern about the sustainability of investment and growth strategies driven by mega projects, particularly because of the low intensity of linkages, employment and capacity transfer, and also because of the excessive degree of concentration and specialisation that is emerging in the economy (Castel-Branco, 2002a, 2002b, Castel-Branco and Sulemane, 2005).

Tax issues

According to OSISA et al. (2009), the IMF believes that tax incentives shrink the tax base of low income countries unnecessarily. Such incentives not only shrink the tax

base but also complicate tax administration and are a major source of revenue loss and leakage from the taxed economy.

In Mozambique, mega-project investments such as Mozal benefit from special tax incentives and exemptions. However, taxes on imports are an important source of government revenue. According to Bucuane and Mulder (2007a), mega-projects offer a good opportunity to extend the tax base in Mozambique. However, in Mozambique the reality is the opposite. For example in 2004, customs duties (including surcharges) represented 14 percent, excise on imported goods 3 percent and VAT on imports 21 percent of total government revenue raised through taxes (Alfieri and Cirera, 2007). If mega-project investments were paying adequate taxes, these figures would have been higher.

Royalties are a compensation for extracting non-renewable resources. Because communities living in mining areas are the most affected by mining activity, the practice in many countries has been for a share of royalties to go directly to communities affected by mining, and also to pay for the costs of monitoring the mining sector. However, not all governments earmark royalties for communities affected by mining (OSISA et al, 2009). The deputy minister of minerals of Mozambique has recently announced that the government has approved a legal framework that allocates 1 percent of the royalty for return to the affected communities.⁹

In Mozambique, as in many other African countries, mining tax regimes have failed to encourage mining companies to improve their social and environmental practices, and national laws have failed to adequately protect communities and the natural resources on which they depend (OSISA et al, 2009).

Compliance with labour laws

Mozal employs 1 130 workers, of which 84 are expatriates and 80 are women (both national and expatriates).¹⁰ However, in February, 2009, Mozal made redundant 48 national workers, citing the impact of the global financial and economic crisis. However, while making Mozambican workers redundant, Mozal recruited expatriate workers.¹¹ As a result, the government of Mozambique through the Ministry of Labour fined Mozal for illegal redundancies. According to a press release from the ministry of labour, Mozal did not follow the procedures laid down in the Mozambican labour law

for the collective dismissal of workers. The ministry then decreed that, under the terms of the labour law, the dismissed workers should receive twice the severance pay that the company had given them. The General Inspectorate of Labour also imposed two fines on Mozal – one, of five times the monthly minimum wage, for violating the rules on collective redundancies, and a second, for preventing the exercise of trade union rights, of three times the minimum wage for each worker affected. Meanwhile, because in April 2009 the company had illegally contracted 17 expatriate workers without requesting permission from the Mozambican authorities, the latter suspended the expatriates and fined the company.¹² The General Inspectorate of Labour has taken the case to the court for legal procedures.

According to the media, the government refused Mozal the right to contract new expatriate workers after dismissing the 48 Mozambicans. The Labour Ministry also announced that, together with the Ministry of Health, it is organizing health check-ups for each of the 48 workers, and if any illness which they might have contracted from the work process is detected, Mozal will be held responsible. According to the CPI, this is the first time that Mozal has had a serious dispute with the Labour Ministry.¹³ Indeed, during the 2001 national workers' strike, Mozal dismissed 40 of those striking, including representatives of the recognised union. However, even though it would seem that this was in conflict with Mozambican Labour Law, the government declined to take action, claiming publicly that it was an issue between company and its workers.¹⁴

The Mozambican labour law limits companies to employing up to only 5 percent expatriates within a workforce with more than 100 workers, 8 percent expatriates within a workforce of 10 to 100 workers and 10 percent expatriates within a workforce up to 1000 workers. If the company needs to contract expatriate workers above the fixed quota, it is required to request authorisation from the Ministry of Labour.

According to the Mozal union's representatives, the current challenge is to force the company to comply with the Mozambican labour law. According to the union the company does not comply with the national labour law. For example, salaries of expatriate workers are much higher than the salaries of nationals within the same category. (Although we were unable to ascertain the difference, we did establish that Mozal pays wages ranging from US\$900.00 to US\$5 000.00 to Mozambican work-

ers). In 2008, Mozal's contribution socially and economically to Mozambican families' through salaries was about US\$20 million per year.

According to the union, the company is not open to negotiation regarding salaries paid to certain categories of employee (management and supervision). This is in dispute, because according to the union it should be able to represent employees in all categories, as is decreed by the labour law. This issue remains unresolved, pending the resolution at a higher level.

Corporate social responsibility

In line with its commitment to corporate social responsibility, Mozal has established the Mozal Community Development Trust (MCDT). This is designed to assist communities affected by the Beluluane industrial park. It also operates other social projects. In the first five years of its operation, Mozal invested US\$2.5 million per annum to corporate social responsibility within a 10 km radius of the Beluluane project site. From 2006, the investment doubled in line with an extension of the radius to 20 km. Thus, since the beginning of its investment, Mozal has invested US\$32.5 million in education, health, sports, culture, micro-entrepreneurial development and infrastructures. According to MCDT, the working areas are in line with the five pillars of the Millennium Development Goals (MDGs).

Building facilities and investing in education and health

The first five years were concentrated in developing communities around Belualane. Since its establishment MCDT has built eleven primary schools, one high school and one industrial and commercial school, five clinics and many boreholes for water supply. It supported a malaria programme within the Libombo Spatial Development Programme on pulverisation and trained 255 malaria activists. According to MCDT magazine (2007/2008), the malaria infection rate has been reduced from 85 percent in 2001 to 6.6 percent in June 2008. In addition, it has assisted one hundred and fifty orphans and vulnerable children in orphanages in Matola, Ressano Gracia and Boane districts.

Bulding communities

It has also assisted in the establishment of local community-based organisations and women's organisations, assisting them in training in agriculture and community small

enterprises development, notably poultry production. In addition, it supports sports at local schools, namely volleyball, football, basketball, handball, athletics and swimming. Artisans, as well as researchers on traditional music have also been supported. In the education sector, it is supporting the training of teachers in new curricula and annually awards scholarships to teachers to continue into tertiary education.

Although the companies have assisted communities, the amounts invested in social projects and in community development are “peanuts”¹⁵ when compared to revenues. Revenues from extractive industry should be used to diversify industrial development capacity economically and socially at national and local scale. For example Mozal and Sasol together, contribute US\$10 million in community development and social projects. However, they are tax exempted; if they were paying tax as a company, they could contribute to the Mozambican economy through payment of tax at US\$240 million.¹⁶

Dealing with HIV and AIDS

MCDDT has also supported and trained 50 volunteers within Boane district for counselling those HIV and AIDS patients through a programme named Total Epidemic Control (TCE). The volunteer’s group established an association called “PFUKANE” (wake up) which continues counselling communities door to door. At school level, MCDDT has supported a programme named “opened window”, which has established drama groups for HIV community education. In relation to gender, the MCDDT supports four women’s groups, some HIV positive; the groups were trained to produce mosquito nets and make school uniforms. MCDDT buys the mosquito nets and distributes them to the community.

Issues with community displacement

Mozal’s investment project displaced 1 200 families from their farming and residential land. Accordingly, the communities were resettled with equal assets to what they had, including farming land. Each displaced family has received a plot of 0.5 hectares land for farming.

These communities were assisted by MCDDT to establish the “BEMATCHUME” CBO, an amalgamated CBO of four affected communities. The CBO benefited from farming assistance for the first five years. Currently, the CBO has 600 members, of whom 370 are women.

The CBO representatives asserts that communities were not consulted for the establishment of the project, not least because the government had decided to go ahead with the project without prior consultation with the communities concerned. The conflict arose because the communities which had to absorb those displaced have not benefited from the project. However, the displaced communities themselves are happy with the project as they have seen their life better-off than before the project.

It is worth noting, however, that in 2009, Mozal ceased to invest in corporate social responsibility, citing the impact of the global economic crisis.

Environmental impact

Mozal started its operation in August 2000 before the approval of the company's Environmental Impact Assessment Report (EIAR) and Environmental Management Plan (subsequently these received approval only on the 12 December 2001). The lack of compliance may have been facilitated by the government's eagerness to attract FDI while also reflecting its limited capacity to enforce.

The environmental performance in Mozambique is audited by the Ministry of Environmental Affairs through the National Directorate of Environmental Impact Auditing and governed by Decree 76/98, envisaging environmental auditing in licensed activities and national standards. The environmental auditing reports accessed to the project are from 2002 upwards.

In Mozambique, as happens across Africa, extractive industries have social and environmental effects on local communities. These include the loss of land for farming, soil and water contamination, air pollution, deforestation, forced removals of local communities', physical damage to dwellings and an unsafe living environment (OSISA, et al, 2009).

The environmental impact auditing reported a lack of compliance with environmental responsibilities and standards set by the company environmental management plan and the country's legislation.

Furthermore, the (2002 and 2004) environmental impact auditing reports stated that the company did not comply with the approved EIAR recommendations, as the

monitoring of the project activities (smelter plant) was performed once instead of twice per day. In 2004, the main polluters were flour, powders and solid particles. Furthermore, there was no a certificate that confirmed the environmental viability of the activity. In Matola Port the alumina and coke powder were deposited without separation. In the *raw material reception section* there was a release of alumina and coke powder; the iron steel smelter leaked cooling down water and there was dispersion of untreated smoke.

In the plant production, (at the section known as *reduction factory*), the environmental impact auditing reported that there were dispersion of particles, smoke and gases from the smelter floor. In another section (known as *cast house*), the environmental auditing reports that there were smokes and gases during the burning of fuels. In the *reduction factory*, there were particles and gases dispersion from the smelter floor. In the *cast house* there were smokes and gases during the fuels burning.

In relation to waste management, there was no follow-up on the waste management dumped outside the smelter. Gases and smokes within the smelter area were higher than the site of gases escape. There was an increased level of Na (Sodium), K (Potassium) and Ca (Calcium) in subterranean water in the vicinity of Matola River, which flows in the vicinity of the project site.

Equally disturbing is the fact that the smelter clinic had operated up to 2005 without license and authorisation by the Ministry of Health. The (2005) environmental impact auditing identified the following polluters: Flour, SO₂ (Sulphur dioxide) and Carbon, solid particles and effluents. The air pollution was 1 490.1mg/m²/month; however, the admitted value is 150mg/m²/month. The smelter laboratory had no monitoring of the Matola River pollution, flora (vegetation) and wildlife.

At *anodes cooking section*, the protection equipment was not in right place and was outdated and there was leaking of heavy fuel oil. At the *centre of smokes treatment* sometimes the filters were not operational and alumina particles and water were leaking.

The 2007 environmental impact auditing reported that at the carbon factory there was still a leaking of materials and pollution; the iron smelters were not closed and had no monitoring; In the *pasta plants* there was a leaking of water due to condensa-

tion; at the *bath Plant* there was powder in and outside and a cross of waste. *The reduction services* have no harmonisation. There was no regular following up of incineration of hospital waste. The used oils were sent to IATA without their composition being known (2006, 2007, and 2008 environmental auditing reports) and the incineration products resulted in air pollution. In Matola Port there are no retention barriers at the entrance silos resulting in alumina powder dispersion. It is worth noting that the environmental registration applicable to Mozal does not include international conventions.

In relation to health and work safety the auditing identified a case of professional illness risk to workers. Two workers were killed in a work accident in a sub-contracted company. In terms of working hours the Ministry of Labour foresees 8 hours per day but the workers labour 12 hours per day.

The MCDT distributes trees to families and schools around the project to contribute to environmental betterment and to combat desertification. The cashew trees distributed to the families are expected to contribute to income generation in the near future. Despite all this, Mozal (MICOA, 2002, 2003) environmental auditing reported a failure to comply with the environmental procedures by Mozal.

Recommendations

Mozambique has embarked on a policy review of all spheres of development in the country. The extractive industries is part of this review, and a series of laws and regulations have been revisited in order to respond to the current trends of FDI within the sector.

Large-scale extractive industries such as Sasol and Mozal are dominated by multinationals with oligopolistic power over markets. The corporations' decisions in investing in Mozambique reflect their global strategies, global competition conditions and the power of markets. Multinationals are not looking for incentives so much as for resources, capacities, markets and revenues.

Mozal has been attributed Free Industrial Zone (FIZ) status. It is exempted from paying duties on imports of material inputs and equipment. It is also exempted from paying value-added tax. Mozal pays corporate taxes of 1 percent of sales against a standard tariff of 32 percent; and exports capital freely after registering with the Central Bank.

In addition to the incentives from the Mozambican government, Mozal enjoys incentives provided by the South African government, in the form of cheap energy tariffs as part of export and globalisation incentives. Energy is the single largest cost in aluminium production. Consequently, energy subsidies may play a far more important role in Mozal's profitability than some of the other incentives that are provided by Mozambican investment incentive legislation (Castel-Branco, 2004).

According to Cleeve (2004), the main form of incentives offered to investors has been tax holidays or temporary rebates, which provide large benefits to companies. In many cases the most profitable, tax-insensitive investments are the most likely to

receive incentives, even though these projects could have been undertaken in their absence. For mega-projects, the major part of incentives is redundant. This means that even if they had no incentives they would invest anyway (Castel-Branco and Cavidalis, 2009, Castel-Branco, 2009a, 2009b, Cleeve, 2004). However, it is almost impossible to measure the fiscal gains which might have been made without the incentives having been offered because of the difficulties in obtaining data, due to state secrecy and the incapacity to systematise information, and the reluctance of the mega-projects themselves to provide information.(Castel-Branco and Cavadias (2009).

In terms of economic impact, large-scale projects such as Mozal and Sasol generate very limited impact on the balance of payments, wage and fiscal linkages. For example, a beverage firm producing a small fraction of Mozal's and Sasol's outputs pays far more taxes than either of these companies. Given the investment incentive structure in place in Mozambique, which is based on tax holidays and exemptions, most large FDI projects generate very few fiscal linkages. Hence, South African FDI is not very likely to induce public investment (Castel-Branco, 2004, 2002a).

Both Mozal and Sasol implement large corporate social responsibility programmes, investing a total of \$10 million per year in projects. However, their contribution through corporate social responsibility projects is less than half of what a 1percent increase in turnover taxes of the companies would contribute to the state budget. These projects benefit from the largest tax holidays available in Mozambique due to their status as free industrial zones (Castel-Branco, 2004).

In addition, Mozal and Sasol corporate social responsibility programmes focus on infrastructure construction, such as clinics, roads, schools and water supply. The government is left the financial and administrative responsibility for such infrastructure. This is translated into pressures upon current expenditure, and results in a pressure on the current state budget to maintain the functionality of such infrastructure. Corporate social responsibility programmes could be better served if the large-scale projects were paying adequate taxes to the state.

Another weak contribution of mega-projects has to do with their contribution to employment. To be sure, Mozal and Sasol both employed a substantial labour force during the construction phase. However, whereas Mozal employed nearly 10 000

workers for just over a year during the plant's construction, its normal operation once it was completed requires it to employ only 1130 workers. Likewise, whereas Sasol employed around 720 workers during the pipeline construction phase, it is currently employing only about 200 workers. However, Mozal and Sasol have higher productivity rates per worker than is normally in Mozambique, and they turn their workers into a significantly more skilled, intensive and better organised labour force. Thus most of the recently dismissed workers in Mozal were absorbed by other industries.

Mozal and Sasol are capital intensive; opportunities for direct jobs are scarce. For example, Mozal is responsible for two thirds of exports of goods, 50 percent of industrial and manufacturing net production, and one-third of all private investment, but employs only 2 percent of formally employed labour in the manufacturing industry. In contrast, if the US\$2.5 billion invested in these projects (Mozal and Sasol) had been invested more evenly throughout the country, it could have created 500 new companies, generating 40 times more jobs, and distributing such job posts more equably between different social levels, job categories and qualifications (Castel-Branco, 2008).

Although neither Mozal nor Sasol have created many jobs, those who do gain employment with them enjoy higher wages and better working conditions than is normally to be found amongst average Mozambican companies (Castel-Branco and Goldin, 2003). The total wages and salaries of Mozal's Mozambican workers in 2008 are estimated at approximately US\$10 million. In addition, Mozal also follows strict health and safety regulations for their workers and workers of suppliers that operate in the plant.

Mozal and Sasol have created indirect employment. During the construction phase, Mozal created nearly 6000 limited-period direct jobs. Additionally, a large number of jobs were indirectly created both on and off-site through subcontracts. Also, activities of the MCDT have created indirect jobs through the construction of infrastructure (such as roads, schools, clinics and other community facilities). According to Castel-Branco and Goldin (2003), MCDT activities have created 204 permanent and 202 temporary jobs through the construction of infrastructure in the Bebeluane area. Flatters (2002) asserts that Mozambique has attracted several large capital-intensive

investments based on natural resource availability. However, it has had far less success in attracting investments that capitalize on abundant labour resources, and that would contribute in a more direct way to employment growth and poverty reduction.

An additional factor to be considered is that the transfer of capacities by Mozal and Sasol to Mozambican firms has been very limited. This is due to the high levels of asset and knowledge specificity of these companies. As a result, their capacities are not transferable to the country's economy as a whole. Further, linkages between the large scale South African companies and Mozambican companies are weak.

Thus, in many cases, such linkages as are created tend to be with other South African companies rather than with Mozambican Companies. For example, according to Castel-Branco and Goldin (2003) in their study commissioned by Mozal to investigate the economic impact of Mozal in Mozambique found that Mozal produces on site, approximately 200 tons of dross (of the value of US\$34 000 subject to dross quality) per month of scrap aluminium. The dross is being collected and sold to an entrepreneur in South Africa, who maintains a small scale factory where the scrap is melted and manufactured into low-cost pots, pans, and other domestic products. A similar set-up could be replicated for a Mozambican entrepreneur – with potentially cheaper costs due to lower transport costs. Furthermore, approximately 75 percent of Mozambican firms subcontracted by Mozal were informal subsidiaries or representatives of foreign firms, or foreign firms and investors that had established themselves in Mozambique with the aim of reaching the Mozal market.

However, there are Mozambican companies that have managed to obtain contracts as suppliers to these projects and have been able to upgrade their productive capacity, management and general level of skills, particularly those that have entered in partnerships with foreign firms. Nonetheless, the number of such firms is very small, and they usually are anchored to one of the projects. This reduces the scope and opportunity for long-term innovation and development (Castel-Branco and Goldin, 2003).

There were about 130 Mozambican firms sub-contracted by Mozal for operation; from which 19 went through the training programme established by the government of Mozambique to update the capacity of Mozambican firms to be contracted by Mozal. Some firms providing services to Mozal, particularly, in cater-

ing, cleaning and security, have extended employment of local people, but some have been limited their growth due to the intensity of management and attention required by Mozal. Nonetheless, most such firms consider that they have made certain efficiency gains through their Mozal contracts and subcontracts. However, on the whole, this contribution is limited, mainly because such firms only enjoy short-term contracts, not least because they are often compelled to partner with foreign firms to gain access to Mozal's market. Overall, the most positive impact upon firms working with Mozal and Sasol is related to experience acquired by working at a high level of demand and pressure, strict quality and delivery timing standards, experience with a more dynamic and demanding corporate culture, and management training.

Large-scale investments such as Mozal and Sasol have an impact on Mozambique's large deficit, even though this has been partially offset by the fact that a large share of imports is financed by FDI. However, this does not address overall balance of payments problems. These projects are individually profitable despite running a high external trade deficit. However, by repatriating profits, importing investment services and transferring wages in foreign currency while simultaneously generating an external trade deficit through their pattern of production, they are reinforcing unsustainable growth patterns and are pushing the Mozambican economy closer and closer towards macroeconomic crisis (Castel-Branco, 2002b).

The profits generated by these projects belong to the corporations, not to the economy as a whole. The impact of the revenues produced by mega-projects in the national economy is related to the level of retention and absorption of such revenues by the economy, and not only to the volumes of the generated profits. Thus, the impact of Mozal or of Sasol depends on how the economy absorbs and retains part of the profit and sales of the companies. It is not sufficient to say that the impact is high and positive just because they are the major contributor to the exports of goods (Castel-Branco 2008).

The incentives and fiscal exemptions given and approved to these mega-projects are still in force, although the government has recently revised the fiscal legislation for mega projects to be established in the future. According to Castel-Branco (2008), mega projects, contribute about 12 percent of GDP and three quarters of the export of goods. However, due to the incentives and exemptions, their fiscal contribution is

less than 1 percent of the GDP. Mega-projects, inclusive of Mozal and Sasol, constitute the ten largest companies in Mozambique, yet none of them are amongst the 10 main fiscal contributors.

Civil society and the extractive industries

Civil society in Mozambique remains weak and lacks capacity, (human and financial) to monitor government and companies in the extractive industries. Government and companies are still reluctant to engage with civil society. Our attempts to gather information from the companies and from the government regarding this study were unsuccessful. The contractual terms of the relationship between the companies and the government were simply not available, and were said to be confidential. Nor did the relevant trade unions have any access to contracts between the government and the companies. As it is, rather than paying any regard to the need for transparency, neither the companies nor government have made any effort to make information available to public.²⁴ Furthermore, it is almost impossible to measure potential or real loss to the fiscus because of the difficulties in obtaining data, and state secrecy around the mega-projects (Castel-Branco and Cavadias, 2009).

In Mozambique, a Forum of civil society organisations for EITI has been established. EITI is an opportunity for civil society to participate in the management of natural resources. According to Bucuane and Mulder (2007b), transparency reduces opportunities for corruption. The forum calls all civil society organisations, whether they be involved in research, advocacy or community engagement) to become part of the initiative. The forum is a starting point for civil society to claim and exercise their right to manage resources for the benefit of both present and the future generations. However, Mozambican civil society knowledge about EITI is weak (Selemane, 2009).

The EITI forum in Mozambique believes that transparency and access to information are determinants for the society participate in the correct management of non renewable resources in Mozambique and for the correct social and economic analysis and advocacy for sustainable management of natural resources. The right of the people to manage their resources requires solid information. Thus, transparent access to information on time is the crucial element of the EITI.

The Extractive Industry Transparency Initiative (EITI) provides a useful pressure upon governments to improve their accounting and reporting of revenues from the extractive industries sector. However, the EITI does not require multinational companies to publish their remittances on a country by-country basis. Hence, it is very difficult (if not impossible) for citizens, parliamentarians and governments to detect tax avoidance strategies. Companies cannot be forced to publish national reports using the EITI template unless national laws regulating financial reporting require them to do so – which is not the case at present in Mozambique (OSISA, et al, 2009).

Civil society can be the driving force for a substantial part of public revenues to be allocated to local communities where mega-projects are undertaken, so that the communities manage the profits for their own benefit and that of future generations in an equitable and democratic manner. Therefore, the implementation of EITI in Mozambique should take into account that the extractive industry has potential to generate development and productive linkages upstream and downstream. Civil society in Mozambique must lobby for a speedy implementation of the EITI by government and companies, including Sasol and Mozal.

Extractive industries should create decent and dignified employment in the country. Thus, the civil society forum has called upon the EITI to pay attention not only to the issue of job creation but also to quality and conditions of job, namely: good salaries, high safety and hygiene standards, social benefits, professional training, collective agreements, and respect for the right of association through unions for the workers.

In dealing with Mozal and Sasol, the environmental impact must be a major focus of EITI in Mozambique. Since extractive industry is developed mainly in remote areas and mostly in competition with other activities such as natural resource use and other livelihoods alternatives, EITI should seek to guarantee the rights of the communities and minimise conflicts of interest, taking into account costs and the benefits to the country and to the local communities from short, medium and long-term intergenerational perspectives. In this regard, it is necessary to guarantee that extractive industry should not automatically be a priority, for there should be due regard for attainment of a desirable equilibrium in the management of development opportunities for all, presently and in the future.

Equally, civil society must monitor state involvement in the running of extractive industry to ensure that it is for the public interest rather than for the private interest of state officials. This may mean the setting of limits to the extent to which the latter are involved in private businesses which may have links to the projects with which they are dealing.

Because of difficulties in gathering information, civil society must advocate for government to enact the access to Information Act. At the community level, since Mozambican law demands that a certain percentage of profits accruing to the extractive industry should be allocated to local communities, a clear challenge is to define what local community is. There is debate regarding “local communities” and different points of view. However, questions as to how are local communities organised; what are the dynamics of political economy within the communities, how a fair distribution of a common good to local communities should be attained, on what issues should communities be able to make decisions, and how the communities can guarantee that they receive what they have right to receive – these and many other such questions are all issues which need to be addressed by civil society. This is a niche where civil society can play an important role within the EITI.

Conclusion

We reviewed corporate governance of Mozal and Sasol, two companies within the Minerals-Energy Complex (MEC), are key players in the first FDI mega-projects undertaken in Mozambique with involvement of South African capital. These mega-projects have become showcases for investment possibilities in Mozambique, and have increased international awareness of Mozambique in the business community, thereby reducing perceptions of the risks of investing in the country.

However, we experienced difficulties in gathering information, as neither the government departments nor companies were able or willing to assist. This presented severe challenges to the research team and restricted this report to the presentation of largely secondary data.

The two projects benefit from large incentives and tax exemptions. This report argues that these were unnecessary for the kind of investment involved, as both projects are likely to have gone forward without the incentives and exemptions offered. The government of Mozambique has recently revised legislation to update the tax legislation. However, contracts made under the previous regulation with the two companies remain in use.

The dynamics of these mega-projects investment in Mozambique are related to their regional and international strategy. Thus, their decisions to invest in Mozambique reflect their global strategies and global competition conditions and the power of market. They are not looking for incentives, but resources, capacities, market and revenues. Their presence in the Mozambique is not due to such incentives, but to their wider interest.

Sasol and Mozal's impact on economic growth is restricted to raising the Mozambican GDP, because neither project generates more than a very limited

impact on the balance of payments, wage and fiscal linkages. Their contribution to the public revenue should be through taxes on profits and annuities, turnover taxes and on local and foreign wages and salaries, thereby improving their impact on the economy.

Given the investment incentives which are based on tax holidays and exemptions, these projects generate few fiscal linkages and therefore these investments are not very likely to induce public investment, although, they have very significant net positive impacts on external trade. This reduces Mozambique's trade deficit significantly. However, the linkages between these mega-projects and local firms are weak; they generate few fiscal linkages, and do little to induce public investment and promote diversification of the economy.

The two companies implement larger corporate social responsibility projects which focus on infrastructure construction, leaving the financial and administrative responsibility of upkeep and maintenance to the government. This translates into pressures upon the state budget. Corporate social responsibility objectives would therefore be better served if the large scale projects were paying adequate taxes to the state.

Both Mozal and Sasol are capital intensive, with a high productivity rates per worker. Further, workers enjoy higher than average wages working conditions. Against this, neither project has created many permanent direct jobs, even though there have been some limited offspin benefits in terms of the creation of indirect employment in supplying firms.

Environmentally, it was found that neither company was fully compliant with the required environmental procedures, responsibilities and standards. This was the case of Sasol during the pipeline construction phase and, more generally, for all Mozal's operations. Furthermore, Mozal has failed to comply with Mozambican Labour Law, especially when it comes to the recognising the right of workers to free association through unions, by terminating workers' contracts unilaterally and by implementing collective redundancies without justifiable reasons.

In Mozambique, a forum of civil society organisation for EITI has been established. The forum calls all civil society organisations to be part of the initiative. It is the

forum's objective to involve all national civil society organisations from a variety of perspectives, and represents a start point for civil society organisations to render foreign firms, government and mega-projects accountable.

Endnotes

- 1 The Deputy Minister of Energy Mr. Abdul Razak made this announcement on the Government of Mozambique/World Bank/AusAID/Norway Conference on Enhancing the Development Impact of Resource Industries Through the Effective Use of Revenues and Corporate Social Responsibility Investments held in Maputo from on 25th-26th March 2009. However, at the National Directorate of study and Planning and the Ministry of Mining the officials did not have the Decree or resolution that stipulates the 1 percent royalty.
- 2 Arco International Oil and Gas Company is the international exploration and production division of the Los Angeles based ARCO (NYSE:ARC), the seventh largest oil company in the US. Worldwide operations include all aspects of exploration, production and marketing of crude oil, natural gas and natural gas liquids, as well as refining, marketing and transportation of petroleum products. Countries in which Arco has oil and gas activities include the United States, Indonesia, China, Venezuela, the United Kingdom, Ecuador and the Middle-East.
- 3 Rara Petroleum Resources holds interest on behalf of Leopardus Resources Limited, an international oil and gas exploration company listed on the Vancouver Stock Exchange (symbol “LEP”) and OTC market in the United States of America. As part of its ongoing activities, the company is currently participating with industry partners in the exploration and development of natural gas reserves in Mozambique, where it has been active since 1991.
- 4 Interview to Engineer Paulino Gregório and Engineer João Venâncio, Board Member and Engineering and Projects Development Division - ENH (Empresa Hidrocarbonetos de Moçambique).
- 5 Ibidem.
- 6 www.sasol.com
- 7 Ferro & Ferro Media Recorte, 11 de Fevereiro de 2009.
- 8 See Castel-Branco, 2009a,2009b, 2004, 2003; Bucuane and Mulder 2007a; Andersson et al., 2001.
- 9 Deputy Energy Minister Abdul Razak’s intervention at Government of Mozambique/World Bank/AusAID/Norway Conference on Enhancing the Development Impact of Resource Industries Through the Effective Use of Revenues and Corporate Social Responsibility Investments, Maputo, 25th-26th March 2009 (author’s notes). However, when we went to the respective department in the Ministry of Minerals they could not tell us precisely which law/decreet is applicable and we could not find the relevant law/decreet to consult.
- 10 Data gathered from the Mozal Workers’ Union Secretariat.

- 11 Mozal Workers' Union Secretariat and General Inspectorate of Labour at the Labour Ministry.
- 12 General Inspectorate of Labour at the Labour Ministry.
- 13 www.cpi.gov.mz.
- 14 General Inspectorate of Labour at the Labour Ministry.
- 15 Authors notes citing the Intervention of Castel-Branco at Government of Mozambique/World Bank/AusAid/Norway/ Conference on Enhancing the Development Impact of Resource Industries through the Effective Use of Revenues and Corporate Social Responsibility Investments held in Maputo from on 25th-26th March 2009.
- 16 Castel-Branco personal communication.

References

Alfieri A and Cirera X (2007) Fiscal Policy and Tax Incidence Mozambique and Regional Integration. Discussion papers No. 39E, Chapter 13 National Directorate of Studies and Policy Analysis and Ministry of Planning and Development, Maputo cited.

Andersson PÅ (2001) The impact of the mega projects on the Moçambican economy. Discussion papers No. 18. Gabinete de Estudos. Ministério do Plano e Finanças, Maputo.

Andersson, PÅ, Bigsten A, Bucuane A and Matsinhe L (2007) The Extractive Industry Transparency Initiative in Mozambique. Discussion Papers No. 62E, Direcção Nacional de Estudos e Análise de políticas e Ministério da Planificação e Desenvolvimento, Maputo.

Aurelio J. Bucuane, A.J and Mulder P (2007) Exploring an Electricity Tax on Mega Projects in Mozambique. Discussion papers No. 37E, National Directorate of Studies and Policy Analysis and Ministry of Planning and Development, Maputo.

Boocock CN (2002) Environmental Impacts of Foreign Direct Investment in the Mining Sector in Sub-Saharan Africa.

Bucuane A. and Mulder P (2007a) Exploring an Electricity Tax on Mega Projects in Mozambique. Discussion papers No.37E, National Directorate of Studies and Policy Analysis and Ministry of Planning and Development, Maputo.

Bucuane A. and Mulder P (2007b) Exploring Natural Resources in Mozambique: will be it a blessing or a curse? Discussion papers No. 54E, National Directorate of Studies and Policy Analysis and Ministry of Planning and Development, Maputo.

Castel-Branco C.N (2002a) Economic Linkages between South Africa and Mozambique. Revised paper from the version produced for the Department for International Development of the British Government (DfID).

Castel-Branco CN (2002b) Mega Projectos e Estratégia de Desenvolvimento, Notas para um Debate, Maputo.

Castel-Branco CN (2003) Indústria e Industrialização em Moçambique: Análise da Situação Actual e Linhas Estratégicas de Desenvolvimento. I Quaderni della Cooperazione Italiana n°3/2003, Maputo.

Castel-Branco, CN and Goldin N (2003) Impacts of Aluminium Smelter in the Mozambican Economy. Commissioned by Mozal Operations Team. Final Version, September, 2003, Maputo.

Castel-Branco CN (2004) What is the Experience and Impact of South African Trade and Investment on Growth and Development of Host Economies? A view from Mozambique. Extended version of a presentation made at the “Conference on Stability, Poverty Reduction and South African Trade and Investment in Southern Africa”, organized by SARPN/HSRC, Pretoria, 29th and 30th of March.

Castel-Branco CN (2008) Os Mega Projectos em Moçambique: Que Contributo para a Economia Nacional? Fórum da Sociedade Civil sobre Indústria Extractiva Museu de História Natural (Maputo) 27 e 28 de Novembro de 2008.

Castel-Branco CN and Cavadias EJ (2009) O Papel dos Mega Projectos na Estabilidade da Carteira Fiscal em Moçambique Autoridade Tributária de Moçambique. II Seminário Nacional sobre Execução da Política Fiscal e Aduaneira, 06-07 de Março de 2009, Maputo.

Castel-Branco CN (2009a) Conference Paper N°15. II Conferência do Instituto de Estudos Sociais e Económicos (IESE) “Dinâmicas da Pobreza e Padrões de Acumulação Económica em Moçambique” Grupo Temático I: “Padrões de acumulação económica e papel da indústria extractiva” Maputo, 22 e 23 de Abril.

Castel-Branco CN (2009b) O Complexo Extractivo-Energético e as Relações Económicas entre Moçambique e a África do Sul. Conference Paper N°16. II Conferência do Instituto de Estudos Sociais e Económicos (IESE) “Dinâmicas da Pobreza e Padrões de Acumulação Económica em Moçambique” Grupo Temático I: “Padrões de acumulação económica e papel da indústria extractiva” Maputo, 22 e 23 de Abril.

Castel-Branco CN (2009c) Indústrias de Recursos Naturais e Desenvolvimento: Alguns Comentários. IDEIAS, Boletim no 10. Informação sobre Desenvolvimento, Instituições e Análise Social. IESE - Instituto de Estudos Sociais e Económicos, Maputo.

Cleeve E (2004) How Effective are Fiscal Incentives to Attract FDI to Sub-Saharan Africa? Manchester Metropolitan University, United Kingdom. Paper presented at the IAABD 5th international conference in Atlanta in April 2004.

Flatters, F (2002) Trade Policy Strategies for Mozambique. Queen’s University, Canada.

INE (2008) Anuário Estatístico 2007 (Statistical Yearbook 2007) – Moçambique.

MCDT Magazine (2007/2008) MOZAL Community Development Trust (Associação Mozal para o Desenvolvimento da Comunidade, Edição n°4.

Mhone, G (2001) Labour Market Discrimination and its Aftermath in Southern Africa. Conference paper. Racism and Public Policy, Durban, South Africa 3-5 September. United Nations Research Institute for Social Development (UNRISD)

Nhancale CC (2007) Participatory Governance for Sustainable Management of Natural Resources in the Great Limpopo Transfrontier Park: the case of Parque Nacional do Limpopo, Moçambique. MSc Thesis, University of Stellenbosch, South Africa.

Open Society Institute of Southern Africa, Johannesburg (OSISA); Third World Network Africa, Accra; Tax Justice Network Africa, Nairobi; Action Aid International, Johannesburg; Christian Aid, London, Eds. (2009) Breaking the Curse: How Transparent Taxation and Fair Taxes can Turn Africa’s Mineral Wealth into Development.

Selemane T (2009) Alguns Desafios na Indústria Extractiva em Moçambique, Centro de Integridade Pública, Maputo.

Consulted documents

Banco de Moçambique – Relatório Anual – Various Reports (2000, 2003, 2005, 2006, 2007, 2008), Maputo.

Governo de Moçambique (2007) Lei 23/2007 de 1 de Agosto, Lei do Trabalho, Boletim da República, I série – Numero 31.

Government of Mozambique (2007) Lei n.º 13/2007, de 27 de Junho – Atinente a revisão do regime dos incentivos fiscais das áreas mineiras e petrolíferas. The Assembly of the Republic, Maputo.

Government of Mozambique (2007) Lei n.º 12/2007, de 27 de Junho – Actualiza a legislação tributária, especialmente a relativa à actividade petrolífera. The Assembly of the Republic, Maputo.

Government of Mozambique (2004) Decree n.º. 24/2004, of 20 August, Petroleum Operations Regulations. Council of Ministers, Maputo.

Government of Mozambique (2002) DECREE 16/2002 of 27 June. Code of Fiscal Benefits. Council of Ministers

Government of Mozambique (2001) Petroleum Law n.º 3 /2001 of 21 February. The Assembly of the Republic, Maputo.

Government of Mozambique (1999) Decree n.º 62/99 of 21 September, Industrial Free Zone Regulations. Council of Ministers, Maputo.

Government of Mozambique (1993) Law No. 3/93 of 24th June. Investment Law. Assembly of the Republic, Maputo.

MICOA (2002, 2003, 2004, 2006, 2007, 2008) Relatórios de Auditoria Ambiental à Mozal, Maputo (Various reports of Environmental Impact Assessment to Mozal).

MICOA (2002, 2003a, 2003b, 2004, 2006, 2007, 2008) Relatórios de Auditoria Ambiental à Sasol, Maputo (Various reports of Environmental Impact Assessment to Sasol).

Accessed websites

www.bancomoz.mz/

www.bhpbilliton.com/bb/ourBusinesses/aluminium/mozal/jsp

www.cpi.co.mz

www.iese.ac.mz

www.inp.gov.mz

www.mzcpi.org/en/

www.portaldogoverno.gov.mz

www.sasol.com

News papers

Ferro & Ferro, 11 de Fevereiro de 2009

South African Mining Companies Corporate Governance Practice in the DRC: Ruashi Mine

Jean Didier Losango

The Democratic Republic of Congo (DRC) is one of the world's richest countries in terms of natural resources. Mines are the engines of development and economic activities orbit around mining (notably in Katanga province, for this province hosts the Central African Copperbelt, which extends from Angola through the DRC into Zambia). The country is a major contributor to the world's mineral production. It is internationally renowned for an abundance of certain strategic mineral resources, accounting for a significant proportion of world reserves. The country is home to 34 percent of the world's cobalt reserves and 10 percent of the world's copper supplies. It is also rich in tin, gold, diamonds, uranium, cadmium, silver, tin, germanium, radium and lithium. However, the DRC has been referred to as a geological scandal, for the Congolese people have never benefited from these resources (Fatal Transactions, 2006).

Today, as during the colonial period, the DRC continues, to rely on copper and cobalt exports as its source of foreign earnings. But the country does not benefit as it should from the extraction of its minerals. The mining industry is plagued by fraud, a weak legislative framework, extensive artisanal mining, and dubious contracts. The industry is controlled by the political class in league with multinational mining companies. Minerals such as diamonds and gold are being smuggled out of the eastern DRC, and continue to be used for money laundering, tax evasion and organised crime. Large quantities of minerals are leaving the country undeclared, representing a huge loss for the Congolese budget. Thus it is that despite the huge potential for economic and social development, the people of the DRC remain amongst the poorest in the world. It is in this context that South African mining companies are investing in the DRC.

Following the Inclusive Peace Agreement (IPA) negotiated by President Thabo Mbeki, and the holding of the first democratic elections in four decades in 2006, South African mining companies have shown increasing interest in investing in the DRC.

All mining companies, whether they are local or foreign, face great operational risks in the DRC. These extend from a major lack of physical infrastructure, through to corruption and a lack of the rule of law. Meanwhile, the government, while anxious to attract foreign direct investors, is criticised for failing to put in place an accountable and transparent management system.

Many mining companies have taken advantage of both the weakness in the legislation pertaining to the mining sector and corruption amongst the country's leadership to pursue predatory policies. Most mining contracts signed over the past decade have been tainted by corruption. Because of the lack of capacity and will of the Congolese state to monitor corruption, many mining companies have no respect for the mining code and other legislation. Consequently, multinational mining companies have used weaknesses in the system to extract resources to the detriment of the Congolese people. Questions are therefore raised about the role, in particular, of South African mining companies in the DRC.

South Africa is the third biggest mining country in the world after Australia and Canada. South African mining companies are competing on an equal footing with western and Chinese companies in Africa. However, there is high expectation on the continent, in the region and in the DRC that South African companies (because they supposedly understand the needs of the continent) will behave differently from non-African companies.

This study will investigate the conduct of South African mining companies in Katanga and how they affect local communities. In particular, it aims at establishing how they may contribute (or otherwise) to the improvement of socio-economic conditions within the province. Further, it will seek to identify any difference which these mining companies demonstrate with regard to compliance with corporate governance requirements in South Africa, (where regulation is well established) and in the DRC (where it is not). In other words, the study is concerned with how South African mining companies investing in the DRC behave with respect to matters relating to corporate governance, environmental protection, human rights, child labour and corporate social responsibility.

The study pursues the case study method by focusing upon Metorex, and in particular its copper mine at Ruashi.

South African investment in the DRC

A South African Liaison Office was opened in Kinshasa in July 1989. This was followed by the establishment of diplomatic relations between the two countries on 30 September 1992, and the upgrading of the liaison office to an embassy. However, a significant inflow of South African investment was to take place only after the successful conduct of democratic elections in 2006.

South African companies were encouraged to venture into Africa after the launch of the African Union and the New Partnership for African Development (NEPAD). Special provision was made by the national treasury to allow South African firms to export capital for investment throughout the rest of the African continent. In turn, African countries have extended a warm welcome to South African investment capital and trade.

Foreign investment in Africa has traditionally been low. According to UNCTAD, Africa received only 1.4 percent of the world's foreign direct investment (FDI) flows between 1994 and 2001.¹ This compares with Asia and the Pacific receiving around 14 percent, and Latin America and the Caribbean receiving 10 percent of the world's FDI. South Africa is often seen as the only significant foreign investor in Africa, specifically in the SADC region. The Business Map Foundation puts South African investment in SADC at 25 percent of total foreign investment.² South African companies have invested an average of US\$435m a year into the SADC region since 1994. Investment started from a low of US\$23m in 1994 and reached a high of US\$1.7 bn in 2001. The corresponding Rand amount for 2001 is R 14.5 bn, which was invested in ten of the SADC countries. Vodacom invested US\$94m for a 51 percent stake in Vodacom DRC.³

South African parastatals have also trekked northwards. Kinshasa's rolling stock is leased from Spoornet, which runs South African railways. In addition, the status of

utilities as the sector with the second highest amount of South African investment is attributable to the plan by African electricity operators for the Grand Inga project. Eskom, South Africa's parastatal electricity supplier, is involved in the first phase to rehabilitate the Inga hydro-electric power station. The R24 billion project is part of a programme to "light up" the whole of Africa using power generated from the Congo River's waterfalls. Electricity generated from Inga Falls has the potential to supply the rest of the continent and to be exported to Europe. This US\$6bn development, the brainchild of Eskom, is planned to generate 40 000 megawatts of electricity. The first power lines would link it to South Africa via Angola and Namibia, over a distance of 3000 kilometres. Power utilities of South Africa (Eskom), Angola (Empresa Nacional de Electricidade – ENE), Namibia (NamPower), Botswana (Botswana Power Corporation – BPC) and the Democratic Republic of Congo (Societe Nationale d'Electricite – SNEI) have signed a memorandum of understanding on the project.

Many South African companies are expanding into the DRC, including South African banks. Standard Bank has made significant inroads into the continent, operating in 17 countries – with a branch (Stanbic Bank Congo) in both Kinshasa and in Katanga province of the DRC. Shoprite, a South African retail group, plans to start trading in the DRC by early 2011 after investing up to R400 million.⁴

The new spate of investment commitments follows other South African companies who already operate in DRC. In 2002, Vodacom invested R564 million in cellular communication in DR, with Alcatel and Absa providing financial backing. Other South African companies such as Dimension Data and NamITech also have investments in Congo.

The South African government has recently adopted a bilateral strategy for economic engagement with the DRC, with the objective of achieving mutual economic growth and development through outward investment facilitation, infrastructure development and trade liberalisation.⁵ An agreement has been reached with the Industrial Development Corporation (IDC) of South Africa whereby IDC will join MagEnergy in the rehabilitation of four turbines currently installed at the Inga II Hydro-electric Station on the Congo River. The agreement defines the participation of IDC which will initially contribute 30 percent toward the first

approved budget of US\$10 million (70 percent MagEnergy). In return, IDC will have the right to acquire a 15 percent participating interest in a Special Purpose Vehicle (SPV) (85 percent MagEnergy) which is the legal operating entity created to proceed with the rehabilitation and operation of the project. IDC is a self-financing, state owned, development financial institution, with the stated mission of contributing to the generation of balanced, sustainable economic growth in the African continent as well as contributing to the economic empowerment of the South African population.⁶ IDC has developed investment partnerships with major mining projects in the DRC, and has a 10 percent shares in Kingamwanbo and Musonoi mining (a subsidiary of First Quantum).

Mining sector laws and regulations in the DRC

The mining industry in DRC is governed by the Mining Code and its accompanying Law No. 007/2002 of 11th July 2002, and the subsequent Mining Regulations enacted by Decree No. 038/2003 of 26th March 2003.

During the war period from 1996 to 2003 and during the transition, many dubious mining deals were signed, which were subsequently found to have been based on corrupt practices. To illustrate this, we may cite, for instance, how during the negotiations of partnerships led by Gecamines (a state owned enterprise), no supporting material was provided, nor was any schedule of conditions and requirements, and nor was there any appropriate contract or convention formulated by the tutelary body or the Gecamines authorities with a view to guiding the negotiations.⁸ Almost all partnerships with Gecamines, including the Ruashi Mining contract owned by Metorex, have been concluded without any feasibility study having been undertaken. This means that Gecamines has always negotiated and sealed its contracts without taking into account the wealth of the mining deposits to be exploited and the project's high level of profitability, with first pay-backs often coming after 2 to 3 years of operations. In light of such loose practice, the transition government and the international community were keen to pass new legislation quickly to ensure that the country's natural resources could be properly managed. Many of the codes and laws were considered inadequate, leading to the formulation of new laws. Even so, the status of some of the agreements signed during the immediate post war period is still disputed. The metallurgic plants and industrial infrastructure of Gecamines in Kambove and in Kakanda for the Centre group were leased to Katanga Mining Corporation (KMC) for a symbolic dollar per month. However, thanks to the energetic intervention of the Mission of the Special National Assembly Commission in Katanga, KMC finally accepted

to pay Gecamines USUS\$100 000 per month, which is USUS\$1 2m for the year 2004 while payments over the previous five years still need to be negotiated.⁷ In fact, the DRC's Mining Code and the Forestry Code both suffer from inconsistencies, and are subject to several additional laws.

The key documents of national legislation relating to social and community issues in the mining industry are:⁸

- Mining Code 2002, Law No. 007/2002 of 11th July, 2002; and
- Mining Regulations enacted by Decree No. 038/2003 of 26th March 2003, including ANNEXE IX – *Directeur sur l'étude d'impact environnemental (chapitre IV, article 38 de la description de l'environnement sociologique)*.

Additional relevant documents and laws include:

- The Forestry Code, Law No. 011/2002 of 29th August 2002
- The Investment Code, Law No. 004/2002 of 21st February 2002, and
- The Labour Code, Law No. 015/2002 of 16th October 2002.

Mining policy and law

The DRC Mining Code is considered an example of third generation mining codes. These place greater importance on the participation of affected people, and require some level of state involvement to meet environmental and social development objectives. More explicitly, the Mining Code stipulates that a percentage of revenues from the sale of mineral products (2 percent of revenues from non-ferrous metals such as copper and cobalt, 0.5 percent of iron or ferrous metals, 2.5 percent of precious metals, 4 percent for precious stones, 1 percent for industrial minerals, solid hydrocarbons and other substances not specifically mentioned, and 0 percent for standard construction materials). This is designated as a royalty for social infrastructure. In particular, it has made provisions to ensure that revenue distribution favours social development and communities impacted by mining activities. According to the code 60 percent of royalties should go to the central government, 25 percent should be paid to the provincial administration where the mining project is located and 15 percent to the town or the administrative territory in the area where the exploitation activities take place. These funds are allocated exclusively to the building of basic infrastructure in the interests of the community.

In addition, and on the issue related to the resettlement of community, the main provisions of the 2002 Mining Code and 2003 Regulations make it clear that consultation over potential loss of assets and land with affected parties is required. Compensation should be at their actual replacement value plus 50 percent or the assets returned to their original condition. However, a resettlement action plan (RAP) is not required under the DRC law; mining companies have to comply with international best practice in drawing up a resettlement action plan for a mining project in the DRC.

The Directorate of Mines and the Directorate of Protection of the Mining Environment are responsible for administering these laws and supervising mining activities with regards to social and environmental impacts. *The Cellule Technique de Coordination et de Planification Minière (CTCPM)*, which sits within the Ministry of Mines, provides advice and coordination for mining activities in DRC. The CTCPM also plays a role in developing mining policies and strategies.⁹

Tax rates for mining companies

Mining companies operating in the DRC are subject to a clearly specific tax regime set out in the Mining Code (Law No. 007/2002 of July 11, 2002). The category of taxes for mining activities is presented in table 3.2.1 below. In addition to the professional tax rate of 30 percent on net income further taxes, there is an additional 3.5 to 4 percent tax levied on net sales. However, there is a significant gap in the taxes that should be generated from the mining sector and the tax receipts officially reported by the central authorities.¹⁰

All forms of taxation due as defined in Title IX of the Mining Law of 2002 are as follows:

The taxes applicable to the permit holders are: Taxes on vehicles and road traffic at the common rate, incomes tax (30 percent of imposable income), tax on rental income (22 percent), surface areas of mining operations and hydrocarbon concessions (US\$0.02 to US\$0.08 per hectare for exploration, and US\$5.00 per hectare for exploitation, US\$8.00 per hectare for tailings), taxes on land and built-up property (at the common rate), salaries, as well as exceptional taxes on salaries of expatriates (10 percent of salary) and on internal turnover (3-5 percent on interior services of products);

The fees charged by the customs administration applicable to the holder in the national territory include: taxes upon entry, consumption and excise taxes;

The DRC fiscal regime also allows for deductions for the usual depreciation, interest and development charges.

Table 1: Mining sector customs, royalties and tax regime

Tax Category	Taxation level	
Import duty on listed goods and products prior to exploration work at preferential rate	2 percent	
Import duty on listed goods and products post to exploration work at preferential rate	5 percent	
Import duty on fuel, lubricants, reagents and consumer goods destined for mining activities for duration of project	3 percent	
Export duties in relation to the mining project	0 percent	
Property tax outside of concession area	In accordance with the provision of substantive law	
Tax on vehicles used in concession area	0 percent	
Special road tax	In accordance with the provision of substantive law	
Tax on surface area of concession in Congolese Franc equivalent to US\$ per hectare year	Exploration	
	US\$0.02 Yr1	US\$0.04 Yr1
	US\$0.03 Yr2	US\$0.06 Yr2
	US\$0.35 Yr3	US\$0.07 Yr3
	US\$0.04 Yr4	US\$0.08 Yr4
	Onwards	Onwards

Royalties on net sale price	0.5 percent for ferrous metals 2 percent for non-ferrous metals 2.5 percent for precious metals 4 percent for precious stones 1 percent for industrial mineral solid hydrocarbons and other N.E.S. 0 percent for standards construction materials.
Tax on dividends and distributions	10 percent
Tax on profit	30 percent
Domestic turn over tax	
Sales of products within the national territory	10 percent
On supply of services benefiting corporate purpose	5 percent
On goods produced locally related to mining activities	3 percent
Employment fees, business registration fees	Various

Source: Mining Code (Law No 007/2002 of July 11, 2002) and Kolwezi Municipal Tax rates 2007

Foreign investment regulation

Foreign investments are regulated by Law No. 004 of February 2002. The National Agency for Promotion of Investment under the authority of the Ministry of Plans and Portfolio deals with proposals for foreign investment. Foreign investment is considered under the following conditions:

- the entity applying should be an economic entity in the DRC;
- the entity should be capitalised to a minimum of USUS\$200 000;
- it should undertake to protect the law, environment and train local personnel for technical and management posts;
- it should guarantee a value added rate of more than 35 percent.

Some favourable terms (including outright exemption of importation tax on machinery, equipment and other materials required for the operations) are given to investors. Investors are also accorded guarantees and security on property. This includes fair treatment as accorded to all Congolese nationals and companies. Allowance is also made for the settlement of disputes, and these may be subject to arbitration.

In fact, mining contribute 13 percent of GDP and 70-80 percent of export earnings. As can be seen in Table 2, the primary sector dominates the economy and the secondary sector is poorly developed. It is important to note that a large proportion of the economic activity is in the informal sector and therefore not captured by official economic data.¹¹

The economy of the DRC has been declining over most of the last three decades due to the war and conflict. However, since 2002 there has been a marked recovery. The democratic elections of 2006 have resulted in a substantial improvement in stability, and the direct impact is more investment interest from the global community. However, the uncertain legal framework, corruption and lack of transparency continue to hamper growth.

There is also a proliferation of donor activity, and the DRC is part of a few bilateral and multilateral agreements which are contributing to the outlook of the country as a favourable destination for foreign direct investment. One of the most significant bilateral agreements is with South Africa. Under the South Africa-DRC Bi-National Commission, there is discussion around developing the Bas Congo development corridor and the rehabilitation of infrastructure in Katanga.

The other key players in the development agenda of the DRC are the UN, UK DFID, USAID, World Bank, EC, and the Chinese. The issues on their agenda include macro-economics, infrastructure, and capacity building of government institutions, environment, poverty alleviation, HIV/AIDS, safety and security.

From the information collected during the field research it was found that the current infrastructure in the DRC is inadequate for the economic growth of the country. The main features of the energy sector are a national electrification rate of just 6 percent (urban 30 percent, rural 1 percent), energy demand in excess of capacity, poor management, obsolete equipment, a lack of resources, revenue collection of below 30 percent, a high (some say excessive) industrial tariff, and an installed capacity of 100 000 MW but availability of only 2500 MW. Peak demand is 950 MW and export demand 360 MW. Initial development objectives are grid improvement, rural electrification (with the aim of supplying each village with 80 kW for household and 100 kW for industrial use) an emphasis on local power generation by micro-power

Table 2: Distribution of GDP by Sector at 2000 Prices, 2001-2006

	2001	2002	2003	2004	2005	2006
Primary Sector	59	58.3	57.1	55.6	54.6	53.1
Agriculture, forestry, Livestock, Hunting and fishing	48.5	47	45.1	42.5	41	40.3
Mining and mineral processing	10.6	11.2	12.1	13.1	13.5	12.8
Secondary Sector	9.6	10	11.1	11.9	12.2	12.2
Manufacturing	4.1	4.2	4.4	4.5	4.6	4.4
Construction and public works	4.6	5	5.8	6.7	6.9	7.1
Electricity and water	0.9	0.9	0.8	0.8	0.8	0.8
Tertiary Sector	29.6	29.7	29.9	30.4	31.1	32.5
Wholesale and retail trade	16.9	17.2	17.6	18.8	20.3	22.3
Transport and communications	3.5	4.1	4.9	5.2	5.4	6
Trade and Commerce	5.6	5.8	5.8	5.9	5.7	6.1
Public administration and other services	2	1.6	1.6	1.7	2.1	1.7
GDP at factor cost	98.2	98	98	97.9	97.9	97.8
Import duties and taxes	1.8	2	2	2.1	2.1	2.2

Sources; IMF Country Report No. 07/329; Congolese authorities; and IMF staff estimates.

plants and large-scale electricity generation for export to Nigeria, Egypt, Congo Brazzaville and South Africa. Specific projects include rehabilitation of the Inga Dam and power station, electricity transfer from Inga, electricity supply to large towns, commercialisation of supply, utilisation of Tshimbulu's energy for Kasai Province, and development of renewable energy sources.

The DRC's transport infrastructure comprises 16 238 km of navigable waterways, 5 033 km railway lines dating for the most part from the colonial era, 145 000 km of national and regional roads and secondary rural roads, 7 400 km of urban thoroughfares, and 720 airports throughout the country (include 5 international airports, in Kinshasa, Lubumbashi, Kisangani, Goma and Gbadolite), 284 landing strips, 3 sea harbours, a 150km long harbour canal, and a 350 km long fuel pipeline. However, this no longer provides an adequate basis for trade, and the mobility of persons and goods.

A new construction programme was started in 2002. Requirements included control and harbour structures for the Congo River, national road rehabilitation (Kinshasa to Matadi and Kinshasa to Kikwiti), provincial interconnection and urban transport improvement, the rehabilitation and extension of the rail system, a rail connection between Matadi and Lubelo, airport modernisation, harbour canal maintenance, maritime dredging, Matadi and Kinshasa port rehabilitation, and an increase in the capacity of the *Office National de Transport* (ONATRA).

The country has one fixed-line operator, *Office Congolais de Postes et Télécommunications* (OCPT) and seven private cellular service providers, including Vodacom, but only 0.8 fixed-line and 0.2 cellular telephones per 1 000 people. The main sector reform included the introduction of a new Telecommunications Act in 2002, and the establishment and maintenance of regulatory independence. Opportunities exist in the restoration of the telecom system, rehabilitation of the cable network for the OCPT, interconnections, spectrum management and planning, satellite and fibre-optic installations for international communications, rural telecommunications, capacity building, introduction of new technologies and applications, and postal service re-engineering.

The DRC has also 120m ha of arable land, and has plans to develop a large portion of this for subsistence and commercial agricultural purposes. Encouragement of private sector investment is a major government objective. It aims to foster the professionalisation of agriculture through training and the importation of foreign skills. Lands for food crop production are made available to foreign farmers, while the rehabilitation of cash crop production is on a joint-venture basis. Rehabilitation of livestock farming in the short term is a priority. The development of a potential 750 Mt/a fishing industry is dependent on equipment inputs, especially cold storage facilities. Specific projects include the provision of improved inputs for agricultural production and for wood and agro-processing.

Furthermore, one of the objectives of the new government is to increase access to running water by rebuilding the existing water network and constructing new facilities. Specific projects include the completion of the water processing plant in Lukaya, improvement of the water supply network and supply of water treatment. Other specific projects include the privatisation of secondary and higher technical education, and the building of private clinics. Apart from the improvement of the coun-

try's access to water and electrification, pollution, disease control and environmental preservation are important tasks.

Critique of DRC mining laws and regulation

Within the DRC, there has been increasing pressure on mining companies to be more accountable for and transparent about their actions in the communities in which they operate. This entails that mining companies not only focus on the profitability and production, but also direct the focus of their core business to CSR. This implies their being involved in sustainable development within these communities. However, these policy interventions have their limitations, and the fact that many mining operations still confuse CSR with philanthropy or hand-outs to communities has resulted in numerous problems associated with omissions, deliberate cutting of corners, and overt and covert misrepresentations.

In assessing the effectiveness of the DRC's laws and initiatives that place a demand for CSR on mining companies, the study found an inconsistency between the country's constitution and the Mining Code with regard to CSR and social obligations. It is also notable that there is no clear implementing legislation on the ground to assess the contribution of mining companies to resolving social issues. In reality, the DRC's mining policy has failed to improve the living conditions of people resident in mineral rich mining areas. It has also not resolved the resource conflicts that helped sustain the long-running conflicts in the vast central African country.

The DRC's Mining Code fails to define the social and economic contributions a company should consider when operating in the DRC. Further, there is a lack of government engagement in CSR matters in general and laws on the environment, labour practices, safety and health are not yet and clearly in place. This leads some South African mining companies to assume that taxes and royalties paid to the DRC's government should cover those responsibilities.

In short, under the present DRC's Mining Code, organisations will argue that social development falls under the jurisdiction of the state. In contrast, the state argues that the mining companies are obligated to improve the social conditions of people where they operate. The result is a grey area where social development fails to gain any prominence because actors refuse to take responsibility on the basis of poorly outlined mining legislation.

Corporate governance practices of SA mining companies in DRC

SA mining companies investment in DRC

In recent times, South African mining companies have been attracted to the DRC's abundance of copper, cobalt, diamond, gold and petroleum resources. They are increasingly investing in these sectors in apparent competition with western, Chinese and Indian companies, for they all wish to maximise profit from the favourable international markets for minerals.

There are many mining companies in the DRC with South African interests. The study identified the following companies in the Katanga province alone (see Table 3).

During President Thabo Mbeki's state visit to DRC in January 2004, the two countries signed a bilateral agreement worth R60-billion covering areas such as infrastructural development, agriculture, defense and security.

As far as the mining sector is concerned, South African mining group Metorex invested up to US\$400 million (R3 billion) in new copper and cobalt project development in the DRC to increase output of the metals. The firm lifted full-year headline earning per share by 19 percent to R 1.32 on the back of higher copper and cobalt sales.¹²

Over the next decade, Tokyo Sexwale's Mvelaphanda Holdings is to invest R60-billion in the DRC. The company is set to move into mining, road building, railways and the hotel industry. Mvelaphanda and Zwelakhe Sisulu's Afriminerals Holdings Group lead a consortium that committed itself to a R600-million investment in copper and cobalt mining deposit in the eastern parts of the DRC. The consortium is also investing in gold mining.

Table 3
Companies

Companies	Physical Address	No of employees	Annual production 2007	Capacity of production per month	Location of Mines Exploitation	Production 2008
COMISA	1029,Av Kamanyola/Ishi	600	5 957 053 T	Not Available	Lonshi	800 000 T
FRONTIER SPRL	-	1260	244300 T Oxyde de Cu 1-1,5 percent	30000 t de conc- cu	Kijiba 1 Concentrateur	8000000 T des minerais 1-5 percent Cu
KALUMINES	Av. Lac Kipopo No 1864, Ishi	400	1248 T de Cu	Not available	Lupoto	+/- 30000T Mx Cu +/- 19000T Mx Co
MUMI	32 Av Kigoma, C/Kampemba, Ishi	400	60.000 T	135000 t De Conc- Cu	Kolwezi (Kisenda) 1 Concentrateur	+/- 342 000 t des minerais
RUASHI MINING	109 Av. Songololo	530	77912 T de Conc- Hum	6000 t de conc	Kalukuluku 1 Concentrateur 1 Usine Hydrometallurgique	+/- 72.000 T Conc-Cu
SOCIETE MINIERE DE KOLWEZI	7409 Av de la révolution, Ishi	374	-	-	Mutshatsha Exploration	-
SWAMINES	39 Av. Lofoi O/golf. C/Ishi				Exploration / Kzi (Kalukundi)	
AMCK	7409 Av. De le Revolution, Ishi	905	1 420 445 T	4200t/con	Kinsevere Tshifua 1 Concentrateur	47 000 T (Civre contenu)
RED FOX	Kambove, Av Kamarengé No 43	-	-	-	-	-
SOUTHERN	Kambove, Av. Koumuriko No 415	-	-	-	-	-
CLUMINCO	-	-	-	-	-	-
KUMBA MINING ¹⁵						

Source: Rapport Annuel 2008 – Division Provinciale des Mines Katanga Province

On 31 October 2009, Randgold Resources Limited announced that, together with AngloGold Ashanti Limited (Anglo Gold), it had entered into an agreement for the acquisition of a further 20 percent interest in Kibali Goldmines from the *Office des Mines d'Or de Kilo-Moto* (OKIMO) for an aggregate consideration of approximately US\$113.6 million (the Kibali Acquisition).¹³ In connection with its acquisition of an indirect 50 percent interest in Moto, AngloGold Ashanti Limited has funded the payment to former Moto shareholders and has paid Randgold approximately US\$171 million.¹⁴

Meanwhile, the BHP Billiton aluminium smelter project in the Bas-Congo is on hold but could become one of the biggest investments in the DRC.

Metorex investment and governance in the DRC

Diversified miner Metorex is increasing its copper assets in the DRC by 2.4 million tonnes of contained metal in a R600m, all-share transaction with AIM-traded Copper Resources Corporation. Metorex expected to produce 70 000 tonnes of copper from the middle of year 2008 from its Ruashi project in the DRC and its Chibuluma mine in Zambia.

Metorex bought a 38.7 percent stake in Copper Resources Corporation (CRC) and five percent of *Minière de Musoshi et Kinsenda Sarl* (MMK) from the Forrest Group. MMK is a 75 percent subsidiary of CRC, and has reserves and resources of 2.4 million tonnes of contained copper at three projects that vary from near-production to exploration.¹⁵ “This acquisition of this significant stake in CRC provides us with a major opportunity to enhance our already well established copper interests in the DRC,” Metorex CEO, Charles Needham said in a statement. “With high grades, the resources offer great potential to add materially to our future copper output,” he said.

CRC has exposure to copper in DRC through its holding in MMK, which owns the Kisenda, Musoshi and Lubembe copper deposits in Katanga province where the Ruashi project is situated.

Kisenda's high grade ore body has brought into production by the middle of 2008. CRC has been refurbishing the existing mining infrastructure over the past year to begin treating 100 000 tonnes of ore a month from about the middle of 2008. A

bankable study completed by Auastralia's Mineral Engineering Technical Services assumed annual production of 1.2 million tonnes of ore containing 54 000 tonnes of copper in a 45 percent concentrate at a cash operating cost of US\$0.71/pound.

Historical profile

During 2004 South Africa's Metorex Limited reached an agreement with the Government of the DRC, the State run Gecamines (*La Generale des Carrieres et des Mines*) and Sentinelle Global Investments (Pty) Ltd (*Sentinelle*) to mine and treat the high grade copper/cobalt Ruashi orebody and the Ruashi and Etoile stockpiles. Subsequently, Metorex purchased the Sentinelle shares to increase the company's shareholding to 80 percent of Ruashi.

Situated in Katanga Province the Ruashi and Etoile project site is approximately 10 kilometres from Lubumbashi in the southern DRC. Ruashi Mining sprl is a registered DRC company, and is the registered owner of the mining rights (*Permis d'Exploitation* (PE) 578). The project has been developed in two phases; Phase I being the construction of a concentrator to treat the oxide stockpiles at both Ruashi and Etoile with a life of approximately 4 years,¹⁶ and Phase II is the mining of the Ruashi open-cast ore body.¹⁷ These are high-grade copper/cobalt resources with a life in excess of 30 years. Metorex has the benefit of the most modern and state-of-the-art plant at Ruashi with production capacity of 45,000 tonnes of copper per year. The Kinsenda mine, also located in the Katanga province, brings Meterox and additional 35,000 tonnes of copper annually (See Table 4).

The acquisition of Copper Resource Corporation (CRC), a significant high-grade copper asset in the DRC, was initiated in mid/late 2007 and finalised in early 2008. Subsequent to the minority offer by Metorex, a significant minority stake in CRC was acquired by CAMEC, and Alternative Investment Market (AIM) listed company. Metorex holds 50.3 percent of CRC, with the right to convert a further 5 percent of the operating company, which would give it a 56 percent shareholding in the group.

Metorex – Ruashi Mine development

During 2008, the Ruashi concentrator operated at design capacity with recoveries improving significantly from the previous year. In addition to normal production, 6800 tons of concentrate, containing 835 tons of copper and 55 tons of cobalt, was

Table 4: Selected Statistics for Metorex – Ruashi Mining 2006-2008

Ruashi Sable	2008	2007	2006
Tons milled (t)	601 505	473 090	363 311
Head grade - Copper (percent)	3.2	2,9	2,7
- Cobalt (percent)	0.4	0,6	-
Overall recovery -Copper (percent)	57	46	-
-Cobalt (percent)	23	5	-
Copper produced (t)	10 767	6 361	8 002
Copper sold (t)	8 800	6 346	8 017
Cobalt produced (t)	565	132	-
Cobalt sold (t)	386	129	-
Total cash cost/ton sold (US\$/t)	3 476	4 695	2 984
EBITDA (R000)	174 695	83 624	125 521
Depreciation (R000)	32 244	21 805	16 916
Workforce (Contractors) ²³	-	-	-

Source: Metorex Annual Report 2008 – Review of operations – Base Metals, pg. 18 & http://www.ruashi.com/ops_Ruashi_Mining_sprl.htm

transferred to the Ruashi Phase II plant in order to charge the leach tanks for commissioning. The total cash cost per ton of copper sold includes export taxes, haulage costs and documentation costs, approximating US\$1900/ton of copper metal. On-mine costs at Ruashi I and the Sable processing facility amounted to approximately US\$1600/ton of copper metal, net of cobalt credits. The Ruashi II plant, which is in a staged commissioning phase, will produce copper cathode and cobalt hydroxide on site. This negates the excessive export and haulage costs incurred at Phase I. In addition, the leach and SX/Ew facility should achieve copper/cobalt recoveries of 85 percent and 60 percent respectively.

Furthermore, the Musonoi deposit is also held by Ruashi Mining. Drilling on the Dilala East deposit at Musonoi has identified mineralisation similar to that mined at the Kamoto UG, 5 km to the west of the project area. In total, 33 holes have been drilled for a total of 6247 metres on a 100 metre by 50 metre grid over a strike length of 600 metres since exploration commenced in December 2006.¹⁸ The mineralisation does not outcrop due to strike parallel faulting and consists of steeply dipping, high grade oxide copper (average 4 percent Tcu) and cobalt (average, 0.9 percent TCo) mineralisation from 50 metres to 230 metres below the surface. The mineralisation is hosted in two

wide (10 to 25 metres each) zones separated by a low-grade unit of 15 metres in width. Sulphides have been intersected below 230 metres in three boreholes covering 100 metres of strike. Grades and widths are comparable to those obtained from the oxide intersections and are open ended at depth and along strike. Step out drilling is in progress at depth and along strike to confirm the extent of the sulphide zone.

Geotechnical and metallurgical sample drilling has commenced and a preliminary resource estimate is being prepared. A scoping study will commence once the resource estimate, geotechnical drilling and metallurgical test results have been received to evaluate the financial viability of an operation to exploit the deposit.

Whilst the commissioning of the Ruashi Phase II plant has been delayed and project costs are higher than original estimates, the challenges and complexities of establishing a plant of this magnitude and technical advancement have been largely overcome. The ultimate plant at completion will be world class and the largest and most modern SX/Ew plant in Katanga. The plant will be commissioned in modules commencing with the HG solvent extraction plant, followed by the cobalt plant, the front-end crushing plant and finally the acid plant. Commissioning delays have resulted in copper and cobalt production of approximately 18000 tons of saleable copper and 650 tons of contained cobalt in the forthcoming financial year. This will be achieved through a phased build-up. Thereafter, Ruashi II should produce at its design capacity of 45000 tons of copper and 3500 tons cobalt per annum. Mining operations are established in the first of the three pits with the opening of the second pit under way. Pit 2 is expected to produce higher grades than those of the first pit.

Corporate governance

Tax issues

Because mining royalties are a function of estimated sale value outside of the DRC and the total cost of exportation, the study found that Ruashi mining often seeks to increase the costs associated with the transportation of the minerals.¹⁹ The logic is similar to how corporations in Western countries will seek to increase their overall expenditures in an effort to lower their tax payments. Thus:

$$\text{Mining Royalties} = (\text{Estimated Sale Value after exportation}) - (\text{Costs linked to the transport costs}) \times 2 \text{ percent}$$

It is therefore in the interest of Ruashi mining to inflate the costs associated with exportation as it lowers the royalty payable to the state. For example, Ruashi mining in Katanga claims to export 10kg of copper. The estimated value of the copper on the international market is US\$10.00 per kg. This means that the estimated value of the sale will be US\$100.00. It is alleged that in order to lower the overall mining royalty, Ruashi mining attempts to falsify all documents in an effort to increase the appearance of costs associated with exportation (such as transportation costs), and ensure therefore that the overall royalty is lower. If the real cost of transportation is US\$50 000 the overall mining royalty would be:

$$\text{US\$100 000} - \text{US\$50 000} = \text{US\$50 000}$$

$$\text{US\$50 000} \times 2 \text{ percent} = \text{US\$1}$$

Another way for Ruashi mining to increase the cost of expenditure is to report a false final destination for the company products. For example, Ruashi mining may claim that the final destination of its products is the Asian continent, while in reality the final destination is South Africa. Again, this serves to increase the overall exportation costs. The situation is exacerbated because most of the transport of minerals is conducted by out-of-country transport organisations. Since these transport organisations are based outside the DRC, the collecting agents do not have the authority and capacity to audit the real cost of the destination of the product. (interview Lumbumbashi, 2009)

A specific study is needed to undertake research and identify the real costs associated with the transport of minerals across borders. In broader terms, this will help collecting agencies in the DRC to get a sense of what is involved in transportation costs. With a proper pricing for transport, it should (in theory) be easier to recognise when a mining company is inflating costs associated with exportation. Transportation companies in Katanga remain few, and as a result much of the transportation of the minerals out of Katanga occurs courtesy of predominantly Zambian, South Africa and Tanzanian companies.

Although taxes seem to be paid by Ruashi Mining Company in Katanga, the study finds that there are flaws in many of the government mechanisms for receiving these revenues. As a result, an imbalance has emerged through a lack of regulation leading

Table 5

LIST OF BENEFITS AND PROFITS

Receipts No	Date	Tax No	Social reason	Period	Sum declared	Sum paid in CF	Difference in FC
728	31/03/2009	A0704687 D	RUASHI MINING	Exercice 2008	46 582 232	39 142 125	7 440 107
721	31/03/2009	A0704687 D	RUASHI MINING	Exercice 2008	0,00	0,00	0,00
Total declared 2			Total:		46 582 232	39 142 125	7 440 107

to fraudulent practice, whereby a small concentrated number of individuals benefit to the detriment of the country and its citizens. This lack of regulation reinforces the underpayment of taxes by Ruashi Mining Company in Katanga. Table 5 summarises all taxes on profits paid and need to be paid by Ruashi mining.

In fact, it is hard to provide solid evidence for allegations of corruption or to prove the existence of private stakes of government institutions in Ruashi mining activities. At all levels of the state apparatus, public office is seen as a means to acquire personal wealth and privileges. For low-ranking officials, who are underpaid (or not paid at all) petty corruption is a strategy for survival.²⁰ This situation leaves Ruashi mining operations in an environment of systematic corruption within which its business activity becomes immobilised if Ruashi doesn't subscribe to the use of so-called facilitation payments.²¹

The study found also that this systematic corruption extends within the Ruashi Mining Company itself, where bribes are said to be used to under-value products with respect to weight, the quality of the mineral, the radioactivity and possibly the very type of mineral itself. As a result, certain minerals exported by Ruashi mining have been reported as having been smuggled out simply by mislabeling the product and taking advantage of the convenient oversight of government institutions.²² It is suspected that certain employees are paid by Ruashi Mining under the table, as part of the mining company's effort to circumvent the

verification process to determine the exact amount of taxes on profits to be paid to the government. Staff will expedite the calculation processes if they can solicit cash, petrol, cellphone airtime and other perks from the company. The company is also alleged to falsify production documents in an effort to decrease the total amount of taxes on profits and royalties to be paid to the government.²³

The central and provincial governments are aware of these fraudulent practices, especially concerning the under-reporting of Ruashi Mining minerals for exportation. At the Katanga level, the authorities measure weighbridge (*pont-bascule*) at the border. However, the provincial government body responsible for measuring payload at the border is subject to facilitation payments as well.²⁴

During the course of an interview, the director of Human Resources declined to reveal the capital injected in the project. However, he asserted that the fixing of the level of expatriates salaries and the remission of taxes and royalties to the government have been done in a transparent manner and in line with DRC mine regulations. Nonetheless, the company complains about the taxation level, claiming that it receives few services in return, although because of the impact of the global financial crisis, the government has waived certain taxes and reviewed others to allow the company to continue with its operations and to maintain employment of its workforce while monitoring the situation on the global market. A check with the revenue authorities revealed that Ruashi Mining is up to date with all payments due to government.

Ruashi Mining's corporate activities in the DRC should not just be about setting and compliance, but it should also be about companies paying rather than avoiding taxes to welfare-minded the Congolese state.

Mining contract review

At a minimum, all companies are required to obey the laws and regulations of the countries in which they conduct their business, and South African companies are no exception. This obligation is set down in Article 1 of the Congolese Labour Code and is also explicitly recognised by South African authorities at the highest levels.

At the commencement of its activities outside Lubumbashi, Ruashi Mining implemented a social programme as per its development agreement entered into with the

DRC's government within the area around the mine, which also incorporated the use of some of its infrastructure. Many of these activities are a "work in progress", such as spreading access to Ruashi Mining's power and water supply infrastructure. Ruashi Mining also provides ongoing social input, such as screening the World Cup Soccer series on a big screen inside the Ruashi village and sponsoring local soccer tournaments for the children living in Ruashi village.²⁵

However, Ruashi Holdings (Pty) Ltd, a wholly owned subsidiary of Metorex Limited, has received a letter from the DRC Minister of Mines advising of the results of the Review commission's revisit of the Ruashi Mining sprl Mining Convention. The letter has requested Ruashi Holdings to submit certain documentation pertinent to the Ruashi Mining operations, including:

- the original feasibility study of the Ruashi Project with the objective of clarifying and evaluating the equity of the real contribution in the Ruashi Mining Joint Venture, namely Ruashi Holdings 80 percent and Gecamines 20 percent;
- a description and evaluation of the social programmes that have been performed and are planned for the future;
- a description of the involvement by Gecamines in the day-to-day management of Ruashi Mining.

According to Metorex's response to the Ministry, Ruashi Mining has engaged in active social and community development, and values the active involvement by Gecamines executive in daily management, monthly management meetings, and quarterly board meetings. It further submits that the real value of Gecamines-carried interest in the Ruashi projects is considered to be equitable. This has been valued on a discounted cashflow basis and it will accompany the submission.²⁶

Needham said Metorex could address all these three issues as Gecamines held a 20 percent stake in the project, but in fact received higher returns than earned by a 20 percent equity stake if taxes and royalties were considered. The company has contributed to the social environment through sponsorship programmes and other initiatives, and Gecamines was in fact involved in the daily management of Ruashi.

In fact, Metorex fell into B category of mining contract reviews in the DRC which had to clarify certain issues to the DRC's government, while there were no compa-

nies in the A category reserved for companies with flawless contracts, but the company is confident that its position in the DRC is well respected.

Needham said “the DRC government has accelerated the mining contract review process in the country as mining companies received letters from the Ministry of Mines on Monday, 11 February, after the Cape Town Mining Indaba. We are comfortable where we are... we have performed on our partnership agreement... we have a good relationship with all levels of government and we are well respected in the DRC”.

As an example of a due diligence failure, the study refers to Ruashi Mining (concessions 627 578, and 72), that Niko Shefer, “ex-convict and currently indicted by the authorities of South Africa, is the controlling shareholder of Ruashi Mining”. Under cover of layers of entities, including Sentinelle Global Investments, Shefer “sold” Ruashi to Metorex (JSE: MTX, R28.20), and later realised benefits to the tune of around US\$400m, according to individuals familiar with the situation.²⁷

It is clear that the Metorex concession is among the most valuable in the DRC, and during the field research, Metorex steadfastly refused comment of any kind on the quality of title of its Ruashi concession, and the content of its development agreement.

Conditions of service: safety and labour standards

Management of Ruashi is overseen by Metorex, who provide technical and financial consulting support. According to information gathered from the Metorex /Ruashi website, the company employs 272 staff. However, during the interviews we conducted at the Ruashi Mining, we received information that the company has a total of 1024 workers in formal employment made up as follows:

- 212 expatriates
- 12 Congolese in managerial positions
- 800 Congolese as unionised workers.

Among the 812 Congolese workers, 25 are women and 787 men.

According to the company,

- The workers are given sacks of maize meal depending on the position held and the size of their family.

- The workers are given working kit: boots (leather and plastic); working suits and overalls; leather suits for use in the rain season; and helmets
- Wages vary between US\$150 and US\$400 depending on the position held, for unionised workers according to department and performance, and between US\$450 to US\$700 for staff in managerial positions.
- There is canteen to cater for all workers during lunch hour, and lunch is provided by the company to workers

Environmental plan and environmental protection

The Congolese Constitution provides for the right to a healthy environment, and states that everyone has a duty to protect it.²⁸ Article 54 of the constitution also requires economic actors to pay compensation and undertake remediation if pollution or environmental damage occurs as a result of their activities. Enabling environmental legislation, though drafted, has yet to be approved. Under the DRC's Mining Code a plan also provides for the operations relating to a mineral or quarry exploration or to a Temporary Quarry Exploration to carry out certain mitigation measures of the impact of the mining activities on the environment and to conduct an Environmental Management Plan to an acceptable standard designed to minimise the effects of mining on the environment (See DRC's Mining Code under Environmental Impact, Act. 40: Mitigation and Rehabilitation Plan – MRP). However, the rules are easily circumvented and these documents are not usually available to the public, even though local communities are supposed to be consulted.²⁹ (In comparison, it is worth noting that the 1991 Minerals Act (RSA, 1991) also required that the licensing of new mines would require the provision of an Environmental Programme Report (EMPR) which would detail the measures to be taken to minimise environmental impacts, as recommended by an environmental impact assessment). As noted by Mr Delphin Kayimbi, Counselor of the Provincial Minister of Environment Katanga, in interview, even though the DRC Mining Code is large and vague, there are laws in place to support its implementation. Nonetheless, with the exception of Tenke Fungurume and one or two others, few South African companies have an environmental rehabilitation plan in place in Katanga.

Although Ruashi Mining Company is subject to such environmental legal provisions in DRC, Ruashi Mining is notorious for resisting compliance with environmental legal requirements in Katanga; nor does it maintain a proper health and safety record.

According to *L'Action Contre l'Impunité pour les Droits Humains* (ACIDH) a local NGO, Ruashi mine has recently been accused of discharging waste directly into a river.³⁰ Although the effects are being naturally mitigated by dense vegetation and rock that is rich in carbonate. Nevertheless, farmers in Katanga and those living around Ruashi's mining activities complain about the loss of livelihoods and the pollution of waters.

ACIDH, recently denounced the pollution of water pits in the Lwano's village, a Ruashi Mining direct affected village (report published on Wednesday, 22 October 2009). According to this report, many hectares of agricultural fields have been spoiled by acid water discharged by Ruashi mining directly into the river, whose water as a result has been heavily polluted. *Groupe d'appui aux femmes mal nourries* reported that 50 households were directly affected by this water pollution as they all depend on small agriculture activities – the only means of survival for this community. In addition, ACIDH made it clear that this is not the first time that Ruashi Mining has discharged directly into the river and damaged the local environment. ACIDH has called for an urgent investigation to assess the negative impacts of the company's activities on communities.

Local business development

In line with industry-wide developments, Metorex traditionally considered CSR primarily in terms of CSI, even though the latter is not clearly defined in the DRC. The mine undertook to facilitate local business and support the development of local entrepreneurship. This is done through the programme of capital expenditure for the development of Ruashi Phase II. Local contributions focus on support to education programmes, such as school infrastructure and social upliftment, including the construction of a power and water supply. Table 6 outlines the company project focus areas in Katanga.

Recently, Ruashi Mining's CSR projects have also focused on enterprise development. However, the company's social contributions budget has decreased significantly from 2007 to 2008 due to the global financial crisis.

At the operational level, social contributions are organised within the company in such a way that the social and community department will recommend projects to mine managers or Human Resource managers, who will then disburse

Table 6

Project focus area	Locality of the project	Target groups (beneficiaries)
Education Rehabilitation of the Mamba School and the ONESS School	Ruashi town, which is a suburb of Lubumbashi	Children of Ruashi
Regular planting of trees	The entirety of Lubumbashi	The population of Lubumbashi
The construction of an internet café	Ruashi town	The population of Ruashi, with particular emphasis on the youth
Social upliftment Power and water supply, now fully commissioned	Ruashi town	The population of Lubumbashi
The construction of a bridge, which provides access for many people to attend a school and church	Ruashi town and Lubumbashi more widely	The youth of Ruashi
The repairing of roads		The population of Ruashi and the surrounding areas
Participation in and sponsoring of numerous clean up campaigns		
Promotion of sport, by arranging an annual marathon and a soccer tournament		The population of Ruashi, although the marathon is open to all residents of Lubumbashi
Enterprise development Utilizing local entrepreneurs and artists, for various construction activities on the mine, such as wall construction, small buildings, etc	Ruashi town	The population of Lubumbashi
Company has policy of utilizing and purchasing from local business	The whole of Katanga	The population of Katanga

Source: Metorex Annual Report 2008

funds. In general, the overarching priorities in Katanga, as identified by many interviewees from a variety of sectors, relate to poverty, job creation, infrastructure, malaria, tuberculosis and HIV. However, the study found that the company pays minimal attention to notions of community participation and stakeholder engagement in formulating its decisions concerning its social contributions and CSR priorities.

Even though Metorex formally recognises that the sustainability of its operations is dependent upon attaining and maintaining the good will of the communities in the periphery of its mining operations, in practice the company appears to operate within a social void in Katanga province. The company social activities for the most part seem oriented toward meeting the requirements imposed upon mining companies by the provincial government rather than presenting any independent initiative. Overall, it appears there is a major need for Ruashi mining to identify environmental and social responsibility methodologies, which will include codes of conduct, corporate sustainability reports, performance indicators, supplier standards and performance evaluation audits.

The study also found that the personal values of the manager of the community department are potentially the key driver of social responsibility practices in Ruashi mining. This view was confirmed by the majority of interviewees. While the social priorities of community may be for example, clean water, in practice decisions with regard to social projects appear to be made by the company alone without a proper consultation plan. Nor does the company's social development plan aim to provide opportunities for upgrading the capacity and increasing the skills of local employees.

Employees interviewed (Lubumbashi, 2009), suggested that Ruashi Mining seeks to keep the differences in the provision of benefits to expatriates (mostly South Africans) and its local Congolese employees to itself.

In short, Ruashi mining does not appear to have a comprehensive understanding of its social responsibility in Katanga, i.e. how the different areas of environmental and social contributions can combine to bring improvements across the triple-bottom-line of integrated economic, social and environmental performance. All the company's social activ-

ities appear to approach each social contribution issue as a discrete area of activity. These practices are carried out through with little or no performance monitoring.

As indicated, this study highlights divergences in opinion of the value Ruashi Mining places on social contributions as a business strategy in Katanga. Whereas the critics of the company view social responsibility as a matter of ethics and intuition, the company tends to see it as a strategy to improve business.

Stakeholder engagement

Comprehensive stakeholder engagement throughout the life of mining companies is the cornerstone to establishing and maintaining long-term community support for the company's operations. Ongoing dialogue with community stakeholders is one of the most effective tools mining companies have to address these aspects of the business. Public meetings and citizen committees provide valuable opportunities for sharing and learning by both local residents and mining companies. Thorough stakeholder identification and analysis, along with transparent, inclusive and ongoing interactions and appropriate community feedback mechanism help to build trust among stakeholders. Typically, stakeholders must include:

- local communities, most of which are directly and indirectly affected by the mining activities;
- local communities, most of which are located in areas neighbouring the mining operations;
- employees and their families;
- governments – local, provincial and national;
- non-governmental organizations;
- not-for-profits organizations;
- indigenous communities;
- industry and business associations;
- labour unions;
- traditional leaders;
- faith based groups;
- suppliers and contractors.

The study found that Ruashi mining in Katanga has been communicating with local community representatives via a specialised communications company. This suggests

the company's limited willingness and capacity to communicate directly and sincerely with local stakeholders in Katanga. Consequently, there is an urgent need for effective management of Ruashi mining company's wider impacts on and contributions to Congolese society, making appropriate use of stakeholder engagement. As observed by one interviewee, "A mining company social project cannot be an effective social contribution if it was never consulted with the community affected by the project. For us a community development strategy is a consensus plan that has come out of negotiation with all stakeholders."

Social contributions

- The company, together with the government, decided to demolish all the houses near the company's operations, especially those below the high tension electric cables. It would compensate those affected. So far US\$2500 to US\$5000 has been given to householders according to the size of their house. However, the community has not been happy with the arrangement and claims the amounts offered in compensation are too low.
- The company financed the installation of a reservoir to increase the amount of clean water available to the community.
- The Ruashi community has also benefited by upgrading of available electricity supply, this achieved by the construction of a new substation has been constructed and additions to the existing grid.
- Before Ruashi Mining was established, there used to be small-scale miners on the same site. The company took upon itself to employ all the youths over 16 found on the site, while minors were reintegrated in society by taking them back to school. A number of women were given money to start their own small businesses.

Health and safety policy

The company does not have a health policy for the community, but workers have access to a scheme provided by the company which allows them to attend a chosen private clinic in town.

The company does not have a HIV and AIDS programme at the moment, but reports that it is included in a future plan.

A significant part of the minerals that are used in batteries powering the world's portable electronics today are linked directly to mining companies activities, including Ruashi Mining activities in the DRC, where working conditions are often unacceptable and the environment is damaged by ongoing operations that the government has neither the resources nor the will to control.

Health and Safety on the mines, being a crucial concern to the unions in South Africa and the new South African government after 1994, was subject to a prominent commission of inquiry (Commission of Inquiry into Safety and Health in the Mining Industry, 1995) and significant requirements were legislated through the 1996 Mine Health and Safety Act (RSA, 1996b). Crucially, the Act allowed South African workers to refuse dangerous work, and it required that tripartite health and safety committees (comprising representatives from management, labour and the state) be set up for each mine.

While, the DRC still has a long way to go in implementing mining laws and regulations, the manner in which Metorex – Ruashi Mining Company responds to their own national regulations inside the DRC has to be a major consideration in our assessment of their CSR.

Although, the Metorex Group has adopted an approach ensuring that appropriate and sustainable measures are taken on a daily basis to ensure proper and effective management of the HIV and AIDS pandemic in the workplace, the study found that the following activities were often neglected and absent in the activities of Ruashi Mining's engagement in Katanga: awareness, education and training programmes in consultation with all role players; voluntary counseling and testing campaigns; mechanisms to promote acceptance and openness with regard to HIV and AIDS in the workplace; provision of support to all employees infected or affected by HIV and AIDS; and continual and repetitive campaigns to ensure the sustainability of all actions and programmes, including safety aspects.

The number of accidents and fatalities reported by the local Ruashi mining's employees during the field research, including the company's so called contracted employees, is increasing year by year. Safety plans and policies are not well developed and in place to manage accidents. Incidents of particular diseases such as malaria, tuberculosis and HIV and AIDS are reported as increasing in the company's workplace.

Social projects aimed at building health services for employees, their families, and members of the local community in which Ruashi mining company operates are reported as non-existent. The study also found that only few mining companies in Katanga have effective policies which place a special emphasis on HIV and AIDS in the workplace. Ruashi mining company has no clear policies and strategies in place to identify and manage the impact of HIV and AIDS on its workplace.

The industry's response to HIV and AIDS is, of course, a crucial aspect of CSR and business survival in Katanga. In this regards, interviewees from organized labour commonly voiced the concern that other role-players, especially civil society organisations, are not sufficiently involved in business' response to HIV and AIDS pandemic in the Katanga province of the DRC.

Rushi mining surrounding population agree that some mining companies with activities in Katanga have HIV and AIDS policies, but as far as they are concerned, they are not policies. "We cannot recognise a policy that was never consulted with our union structures. Policy should result from a consensus that has come out of negotiations. Their so-called 'policies' – we just consider them as their mission statement" (Mulamba, interview).

A recurring concern is that social contribution initiatives and programmes in Katanga seen to be driven by competition between mining companies, thus thwarting collaborative measures:

We don't want the competitive approach to social contribution, where companies are trying to outdo each other in terms of malaria, tuberculosis and HIV and AIDS initiatives or building poor clinics, when what we need is for these efforts to be coordinated (Mulamba, interview).

Of course, the role of Ruashi mining company in the HIV and AIDS pandemic needs to be seen in the context of the widely perceived lack or insufficiency of provincial government action in Katanga. Hence, the public commitment made by company such as Tenke Fungurume in Katanga to provide anti-retroviral treatment to their workers can allow civil action groups to put pressure not only on other mining companies such as Ruashi Mining, but also on the provincial government to follow suit. But this public

commitment, though widely welcomed, was also perceived by some as being mainly a public relations exercise, especially in connection with the 21st of September's 2009 meeting with mining companies organised by the provincial ministry of mining in Katanga. Efforts, at instituting a more collaborative approach in a form of a mining sector HIV and AIDS summit are required in Katanga.

Human rights

Since the outbreak of the second Congolese war in August 1998, the people of the DRC have been caught up in a fight over their country's vast natural resources. Six neighbouring states and several rebel groups compete to extract maximum commercial and material benefits at an exorbitant human cost for millions of Congolese. The private sector played a vital role in contributing to this war by facilitating the exploitation, transportation and marketing of Congo's natural resources.

With a democratically elected government in the DRC, major foreign companies such as South African Mining companies and more recently, Chinese enterprises are pouring billions of dollars into creating modern mechanised mines to tap some of the purest concentrations of copper and cobalt in Katanga province of the DRC.

However, the study reveals that the activities in different parts of the Katanga province of the DRC of Ruashi mining company have elicited complaints about their adverse impact on the human rights of the inhabitants of the areas in which the company operates, areas that other than for their mineral wealth are usually economically deprived. Like other mining companies, Ruashi mining seems to be driven by profit at the expense of human rights. Because its areas of operation are economically and socially disadvantaged, Ruashi mining company often cites the impacts of their social programs to show that their presence really does provide value to the local communities in which the company works.

Contribution to education

In a country where government pays little attention to education, Ruashi mining's contribution is of great significance. Ruashi Mining renovated one of the biggest buildings which provides a home for various primary and secondary schools in the town of Lubumbashi (Athenee de la Katuba). It also renovated a Secondary School for girls in the Ruashi compound (Hodary Secondary School).

Recommendations

Arising from the discussion in this paper, the following gaps have been identified between compliance of Metorex (based in South Africa) and its Ruashi Mining's operations in Katanga in DRC:

Sustainability, safety and environmental management

Ruashi mining's business contributes substantially to environmental and water pollution. Ruashi mining has a dedicated focus to these two areas in their report. Attempts have been made to reduce air and water pollution in Katanga by identifying areas for improvement. Although there has been some progress, this has not been adequate. Ruashi does not mention how it plans to achieve its proclaimed goal of reducing the deleterious environmental outcomes of its mining activities to acceptable levels. It merely mentions ad-hoc initiatives which do not display a commitment to overarching improvements. The report states that all Ruashi mining's operations are not active in improving environmental management, and fails to mention how this aspect can be improved. Thus there is a need to adopt a new direction and to engage with the occupational health and safety liaison committee about an appropriate sustainability, safety and environmental strategy for the company.

Stakeholder participation

Ruashi mining is not doing enough to engage with its immediate communities to identify social needs and by mobilising programmes to address these needs. Lack of improvement on areas that continue to be the subject of greater focus, such as initiatives to improve stakeholder participation and effective reporting and disclosure to all stakeholders, have been negatively reported in this paper.

Social Issues

Ruashi mining defines their operational boundaries by ten development priorities. These priorities include environmental and social impacts of the organisation yet in

practice economic and social impacts have been neglected. In the case of initiatives for responsible business investment, environmental management, poverty alleviation, employment, social contributions, human rights and HIV and AIDS, no reference is made to specific achievements within the 2009 activity plans. Consequently, Ruashi mining needs to develop a policy guideline in allocating the social amount contribution in term of priorities such as poverty, education, housing and HIV and AIDS in Katanga.

The company's relationship with its workers

Ruashi mining needs more comprehensively to address its relationship with its workers. A number of cases of assaults were reported. Local work inspectors, police and magistrates are not usually willing to prosecute a company or Ruashi Mining even for flagrant violations of workers' rights and Congolese law. The workers are powerless and do not have access to lawyers willing to take on cases pro bono, contingency fee arrangements are almost unknown in DRC.

Freedom of association and unfair dismissal

The DRC has ratified Convention 98, the Right to Organise and Bargain Collectively and the right to form a free and independent union as enshrined in Article 38 of the Constitution. But in Ruashi Mining, there is no trade union and attempts to negotiate with managers are usually ignored, or (worse) may lead to instant dismissal. Raising any kind of issue with the managers is useless; as one worker put it, 'If we raise a problem, it's as "if we didn't exist." Voicing concerns can also be dangerous, and workers risk losing their jobs if they complain. Ruashi mining must allow workers to form a union.

Reduction in jobs at Ruashi

The reduction in the number of jobs at Ruashi mining is significant. Ruashi needs to explain why so many staff have been laid off; to indicate what is being done in terms of skills development; and to explain what skills shortages exist in the utility. Only a minority of Congolese workers have posts as administrators or supervisors, but these are also often low-paid jobs compared to South African workers. While there is a general lack of vocational training and education available to Congolese people, these low-skilled, low-paid jobs clearly do not provide them with opportunities to acquire technical skills that could be of benefit to themselves and the DRC's long-term development.

Different remuneration for South African and Congolese employees

South African employees receive higher wages and the costs of their board and accommodation are taken care of the company for the duration of their contract. An adequate motivation for this practice needs to be provided. There is a need for investigation into the DRC's remuneration policy, and reports made to the appropriate bodies and the local community.

HIV and AIDS

The ravages of HIV and AIDS are not adequately dealt with either in the local community or more particularly in the workplace. Ruashi needs to develop programme for staff which include ARVs.

Ethical business conduct

There is a need to conduct an independent ethic survey among stakeholders to review the Ruashi mining business conduct policy.

Corporate citizenship

The Congolese employed by Ruashi Mining enjoy few benefits. In some cases, workers have to pay for their transport – which costs about a tenth of their monthly pay – or walk, which can take about half hours each way. The company needs to consider whether compensation should be made.

Ruashi Mining needs a development plan for improving the quality of life of its workers, through an integrated, efficient and effective action plan.

Gender issues

There are only few women working for the company compared to the number of men employed, and those women who are employed, are doing what are widely construed as “women's work” (such as serving as secretaries). The company needs to develop a gender policy.

Contractors

There was no mention of how many contractors are hired by Ruashi mining, just a status of full time employees was provided during the filed research.

Environmental education

The company needs to give far greater consideration to providing environmental education for communities

Workplace safety and health

Ruashi mining needs to effectively address integrated sustainability (economic, environmental and social) issues, and to implement policies, strategies and guidelines particularly for safety, health, environmental issues.

Ruashi mining is widely seen as not caring sufficiently for its employees. Equipment is usually only provide to those working at the furnace and consists of poor quality masks, gloves, clothing and plastic boots which are never renewed.

Stakeholder engagement

Ruashi mining refused to list who are the company's stakeholders. It is important that Rushi Mining contributes to the creation of an open society in the DRC by providing information to Congolese people to allow them to monitor government and the company itself.

Conclusion

The motivating question for this study was, “to what extent do South African mining companies investing in the DRC contribute to improvement of socio-economic conditions?” The overarching conclusion is that social contributions in particular can be improved only by companies and communities working in partnership with each other, along with the government, civil society, and in strong collaboration with all stakeholders in the Katanga province of the DRC.

The study came to the unambiguous conclusion that social contribution planning for Ruashi Mining in Katanga-DRC should be revised. Highlighting the significance of a lack of consultation with the community affected by the company activities, it argues that a more in-depth community participation programme implemented by independent facilitators is necessary.

While the company’s social contributions initiatives have created some progress towards more ethical corporate practices in the DRC, this research has found there to be serious limits to what Ruashi mining company’s social development plan, as it presently exists, can achieve in DRC. The evidence presented in this study, suggests that corporate governance and CSR of Ruashi Mining Company in the DRC is unlikely to have a significant impact on poverty in Katanga, except in a limited number of rather specific cases. The study found that South African businesses in Katanga are all being increasingly called upon to change the manner in which they have traditionally conducted their activities – not only by laws and precedents, but by customers and stakeholders, including an ever-forceful phalanx of interest and advocacy groups. Consequently, Ruashi Mining in Katanga needs to regain the moral high ground in the eyes of a broader range of stakeholders. It has become clear that the way to do so is to re-examine the way society and individuals in Katanga perceive the Ruashi Mining company’ operations though the way they behave interact with society and environment in the DRC.

References

Address by Minister of Trade and Industry, Mandisi Mpahlwa at the South African and RDC Business Forum. Issued by the Department of Trade and Industry on 15th of June 2007.

Accountability, 2003, AA 1000 Assurance Standard, London : Accountability.

Binaifer, Nowrojee, 2003. “ Africa on its Own: Regional Intervention and Human Rights.

Bowen, H.A., 1953. Social Responsibility of the Businessman. New York : Harpen and Bothers.

Caroll, A.B., 1979. A three-dimentional conceptual model of corporate social performance. *Academy of Management Review*, 4: 497-505

Caroll, A.B., 1990. Corporate Social Responsibility: Evolution of a definitional construct. *Business and society*, 38,3:268-95

Clarkson, M.B.E., 1995. A stakeholder framework for analyzing and evaluating corporate performance. *Academy of management review*, 20,1:92-117.

Compte Courant Fiscal – Direction Générales des Impôts, Centre des Impôts Lubumbashi, 2009

Denzin, N.K., and Lincoln, Y.S., 1994. Introduction: Entering the Field of Qualitative Research

DRC Mining Contract Review : Behind the DRC Mining Contract Review – November 2007

Elkinston, J., 2001, the Triple Bottom Line for 21st Century Business. In R. Starley and R. Welfird (eds). *The Earthscan Reader in Business and Sustainable Developmen*. London. Earthscan.

European Commission, 2001. Promoting an European framework for corporate social responsibility – Green paper. Luxembourg: Office for Official Publications of the European Communities.

Friedman, M., 1970. The Social Responsibility of Business is to increase its profits. *New York Times Magazine*, September 13, 32-33, 122-126.

Global Reporting Initiative (GRI) (2006) [Online] *G3 Guidelines*. Available from: <http://www.globalreporting.org/Services/ResearchLibrary/GRIPublications/> (Accessed 30 May, 2007).

Global Reporting Initiative, (GRI) 2006, Governance and Mining in Katanga : The State vs. the people. Sustainability Reporting Guidelines. Den Hague: Global Reporting Initiative.

Global Reporting Initiative (GRI), MMSD(Mining, Minerals, and Sustainable Development), 2002. Proposed GRI indicators for the mining sector. Draft document presented at the GRI regional workshop, Johannesburg 11 November 2002

Industrial Development Corporation (IDC) Department of Research and Information – Economy Overview, 1 July 2009- IDC.

Johnstone P and Laidler-Kylander N (2004) *The World Business Council for Sustainable Development (WBCSD) Millennium Report*. Final Report of the World Business Council for Sustainable Development. World Business Council for Sustainable Development.

Johson Matthey, 2003. The expansion of platinum mining in South Africa.

Kasai Oriental : des enfants exploitées dans les mines a Kabeya Kamunga – Radio okapi, Jeudi 01Mars 2007.

Lee, N. and Hassard, J., 1999. Organization Unbound: Actor-Network theory, Research Strategy and Institutional Flexibility. *Organization*, 6, 3: 391-404.

Metorex (2008) [Online] *Annual Report 2008*. available at http://www.ruashi.com/ops_Ruashi_Mining_sprl.htm

Profile of the Humanitarian Situation in the DRC, OCHA, October 2006.

Rapport Annuel 2008 – Province du Katanga – Division Provinciale des Mines. Présenté par : Emmanuel Kianda Kibawa, Chef de Division – Janvier 2009.

RSA (Republic of South Africa), 1991. *Minerals Act (No. 50 of 1991)*. Available via http://www.iucnrosa.org.zw/elisa/Environmental_percent20Law/south_africa/minerals_act.html

RSA (Republic of South Africa), 1996b. *Mine Health and Safety Act*. Available via <http://www.gov.za/gazette/acts/1996/a29-96.htm>

Warhurst, A and Mitchell, P., 2000. Corporate Social Responsibility and the case of the Summitville mine. *Resources Policy*, 26: 91-102

Warhurst, A and Noronha, L., 2000 (eds) *Environmental Policy in Mining: Corporate Strategy and Planning for Closure*. London: Lewis.

Endnotes

- 1 Current estimates of the DRC's mineral reserves are 70 Mt copper, 4.5 Mt cobalt, 7 Mt zinc, 10 Mt iron ore, 240 Mct diamonds, 30 Mt niobium, 600t gold, 450 Mt cassiterite, 7 Mt manganese, 130 Mt bauxite and 200 Mt phosphates
- 2 Surprise in SA-SADC investment figures – August 2002 available at <http://www.trader-safrica.com/articles.asp?articleid={27E6676D-C599-4A6F-9B38-9C5D0E9B72A1>
- 3 Idem
- 4 Shoprite DRC move met with skepticism: available at <http://www.fastmoving.co.za/news-archive/retailer-news/shoprite-drc-move-met-with-scepticism>
- 5 Address by Minister of Trade and Industry, Mandisi Mpahlwa at the South Africa and Democratic Republic of Congo (DRC) Business Forum. Issued by the Department of Trade and Industry (DTI) on 15th of June 2007. Available at <http://www.polity.org.za/article/mpahlwa-south-africa-democratic-republic-of-congo-drc-business-forum-15062007-2007-06-15>
- 6 <http://www.congopanorama.info/economy/econ-snel-fr.shtml>
- 7 Unofficial Translation of Lutundula Report – December 2005 in page 12
- 8 Further information about mining regulation can be found on the CTCPM website: <http://www.miningcongo.cd>
- 9 Further information about mining regulation can be found on the CTCPM website: <http://www.miningcongo.cd>
- 10 Mining Royalties Study, Katanga DRC – February 2008 author Jean Didier Losango Nzinga

- 11 The majority of the information presented here is sourced from ESIPP Mines 2006 Country Profile: DRC (www.mines2006.com)
- 12 US\$400m Investment for DRC project - <http://www.busrep.co.za/index.php?fArticleId=4571149> August 22, 2008.
- 13 Randgold closes Kibali transaction – 22 December 2009 available at [http://www.randgoldresources.com/randgold/content/en/page6111?oid=9040&sn=2009 percent20 detail&pid=6111](http://www.randgoldresources.com/randgold/content/en/page6111?oid=9040&sn=2009%20percent20detail&pid=6111)
- 14 [http://www.motogoldmines.com/aurora/assets/user_content/File/Final percent20Joint percent 20News percent20Release.pdf](http://www.motogoldmines.com/aurora/assets/user_content/File/Final%20Joint%20News%20Release.pdf)
- 15 4 Metorex buys more DRC Copper assets available <http://www.miningmx.com/news/archive/175509.htm>
- 16 Phase I of the Ruashi Project entails mining of the stockpiles and tailings material surrounding the existing Ruashi and Etoile open pits, and was commissioned in July 2006. The focus of this Phase is on the high grade cobalt bearing material; the stockpiles could be fully depleted by 2008.
- 17 Phase II involves the expansion of the concentrator and the construction of a new acid leaching and solvent extraction/electrowinning plant for the production of copper and cobalt metal on site at Ruashi. This Phase will be the mining of higher grade copper ores from the Ruashi orebodies with direct leaching of the ore, which will result in higher copper and cobalt recoveries and less dependence on cobalt.
- 18 http://www.ruashi.com/ops_Ruashi_Mining_sprl.htm
- 19 Telephone Interview with a staff member of the provincial department of mines, affected in Ruashi Mining in Katanga – DRC, (18 October 2009)
- 20 Governance and Mining in Katanga – The State vs. the people available at www.ipisresearch.be/download.php?id=127
- 21 The Governor of the Central Bank issued on June 14, 2007 a public announcement to the effect that a conspiracy had been unmasked whereby companies with the complicity of government officials would falsify documents to defraud the government of legitimate tax revenues. The Governor announced a series of audits for the years 2005 and 2006.
- 22 Interview with a chief officer of the provincial department of mines in Lubumbashi – Katanga (17 September 2009)
- 23 Interview, with Monsieur Justin, Secrétaire du Receveur au Centre des impôts de Lubumbashi,
- 24 OCC Interview
- 25 <http://www.ebizguides.com/guides/sponsors/alone.php?sponsor=663&country=23> Ruashi Mining Project. 5 Metorex talks about DRC copper/cobalt mining contract questions <http://mineweb.co.za>
- 26 DRC Mining Contracts Review - Metorex Limited http://www.metorexgroup.com/downloads/sens/2008/2008-0225-DRC_Mining_Contracts_Review.pdf
- 27 Behind the DRC Mining Contracts Review – November 2007 available at: <http://www.mineweb.com/mineweb/view/mineweb/en/page36?oid=39266&sn=Detail>
- 28 Metorex talks about DRC copper/cobalt mining contract questions <http://mineweb.co.za/mineweb/view/mineweb/en/page36?oid=47890&sn=Details&pid=36>
- 29 Idem
- 30 Toute personne a droit a un environnement sain et propice a son épanouissement intégral. Elle a le devoir de le défendre. Article 53 Congolese Constitution (2006)

South African Mining Companies Corporate Governance Practice in Zimbabwe: The Case of Zimplats and Mimosa

Theresa Moyo and Manasa Hwenga

This study on South African mining companies in Zimbabwe is part of a broader research project which covers six countries in Southern Africa, namely, the Democratic Republic of Congo (DRC), Mozambique, Namibia, Zambia, and Zimbabwe. It was motivated by recognition that during the post-apartheid era there has been a growing trend of South African mining companies moving into the wider Southern African region to invest in the mineral sector. Although it is generally acknowledged that foreign investment can play a positive role in the development of a country through, for example, its contribution to foreign currency reserves, tax revenue, overall economic growth and social development, there is concern about the nature of some South African investments in Africa. Questions have been raised about the extent to which they are contributing to the development of communities within which they operate. Whilst such questions are raised in regard to the impact of mining companies in South Africa itself (notably with regard to the treatment of communities who have been displaced from land earmarked for mining activities), they are posed with greater urgency in regional host countries where there are weaker regulatory and enforcement capacities than at home.

A report by the Limpopo Government released in November 2008 criticized various mining companies for their “paternalistic relationship with communities and for only paying lip service to their obligations to socio-economic development.” (*City Press*, 16 November 2008). A separate report by Action Aid accused some mining companies of polluting rivers and violating the human rights of communities (Action Aid, 2008).

This study is about two South African mining companies which are subsidiaries of the South African platinum mining company, Impala Platinum Mines (Implats) Pvt Ltd, i.e. Zimplats and Mimosa. These two companies have been mining platinum in Zimbabwe since 2003.

Platinum was discovered in Zimbabwe’s Great Dyke in 1925. The Great Dyke is a geological feature running through the heart of Zimbabwe for about 550 kilometres

in a roughly north-south direction. The Dyke has vast reserves of minerals: apart from platinum, it has gold, diamonds, base metals, energy minerals such as coal and industrial minerals such as lithium, tantalite, graphite, uranium. After South Africa, Zimbabwe has the biggest platinum resources in the world. However, early attempts at platinum mining were generally unsuccessful, and even today Zimbabwe does not produce significant amounts of the white metal, although in recent years interest has been growing. However, attempts to step up production have been hampered by a reluctance of foreign mining companies to invest in the country because of the depth of Zimbabwe's economic and political crisis, although the situation has begun to improve since the formation of the GNU in 2008.

Aim and objectives of the study

The aim of the study was to investigate and assess the role of South African mining companies operating in Zimbabwe in terms of corporate governance as mandated by the legislation, policies and standards laid down in both parent and host countries.

The specific objectives of the study were:

- To identify and profile South African mining companies operating in Zimbabwe in terms of shareholding/ownership structures, management and control and type of mining activities in which they are involved.
- To assess the operations of the mining companies in terms of production volumes and trends.
- To analyze the impact of the mining companies on economic development of the host country. In that regard, the study aimed to assess the companies' contribution to tax revenue and royalties to the host country government and overall, to the economic growth of the country in terms of Gross Domestic Product (GDP).
- To assess the impact of the mining companies on social development especially of the communities within which the mines are operating. The assessment focused on issues such as impact on employment creation, social and economic empowerment of communities and the extent to which this was being done in a sustainable manner. It also aimed to analyze the extent to which the company's operations were promoting the interests of women, youth, persons living with a disabilities and any other disadvantaged groups.

- To examine how the companies have taken care of the environment in order to mitigate any adverse effects on employees and communities this may have arisen from their operations.
- To make appropriate recommendations which would enhance the role of mining companies in sustainable social and economic development within the context of national and international legislation, policies, standards and best practices in the mining sector.

Research methodology

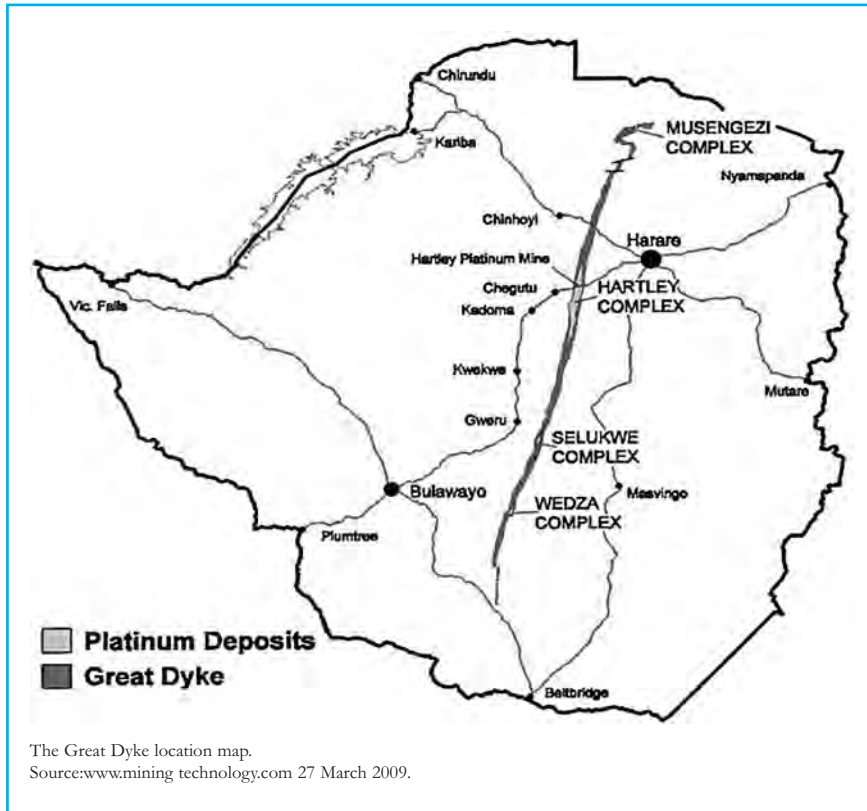
A qualitative research methodology was adopted, not least because the political conditions determined that the research process would be difficult and partial: the customary reticence of companies imparting information about their operations was heightened by the political sensitivities of operating in contemporary Zimbabwe. Overall, therefore, this study can be characterised as merely exploratory and further work will be required to elicit a detailed understanding of the operations of South African mining companies in Zimbabwe.

Study area

The map shows the location of the Great Dyke. Geologists report that the Great Dyke is a sinuous, layered, mafic-ultramafic intrusion, which is 550km long with a width ranging between 4km and 11km. It consists of four geological complexes (from north to south): Musengezi, Hartley, Selukwe, and Wedza. The Hartley Complex is by far the largest and contains approximately 80 percent of Zimbabwe's total Platinum Group Metals (PGM) resources. The Hartley Complex is some 90km in length and is comparable in size to the western lobe of the Bushveld Igneous Complex in South Africa, the source of most of the world's PGM production.

Zimplats' Ngezi mine is located south-west of Harare in the Sebakwe sub-chamber of the Hartley Complex in the Dyke. Also in the Hartley Complex is the Hartley Mine, but in the Darwendale sub-chamber, 77km to the north. The Hartley Complex is about 100km long and contains approximately 80 percent of Zimbabwe's PGM Mineral Resources. The platinum-bearing Main Sulphide Zone (MSZ) lies between 5m and 50m below the base of the mafic sequence. The MSZ is a continuous layer between 2m and 10m thick that forms an elongated basin. Peak values for the base metals and various PGMs are offset vertically with palla-

Zimplats and Mimosa mining complexes



dium at the base, platinum in the centre and nickel above. It is difficult to visually identify the MSZ.

Description of the study population and sample

There are few South African mining companies still operating in Zimbabwe. Estimates based on internet searches indicate that there were approximately seven such mines as at the end of 2007. A number of the companies have either closed down due to the difficult operating environment in Zimbabwe arising out of the political and economic meltdown or they have put operations on hold, pending an improvement in the operating environment for business in Zimbabwe.

The researchers were left with little choice but to focus on just two of the South African mines which are still operational, namely, Zimplats and Mimosa. These were also selected because compared to the others, they have been in operation for at least four or more years and for that reason, it was considered that they could provide useful insights with regard to the key research questions.

Data sources

Most data was gathered from secondary sources such as the annual reports of the two mining companies under study, their CSR Reports, and any available audits and evaluation reports on the companies. Published and unpublished reports of mining-sector related bodies were also used. Some field work was also undertaken in order to seek views of key stakeholders with regard to the role of the mines in social and economic development. Although the team had developed a very comprehensive questionnaire for the collection of field data, this was eventually not utilized because the mining companies refused to grant the researcher's access to conduct the interviews, insisting that permission should be obtained from Implats in South Africa.

Data collection and analysis

Data was collected from three main sources. These were primary and secondary and finally through non-participant observation. This means that, in addition to actually speaking to respondents, researchers made their own observations of community members and also observed the environment in and around the mine. In research, non-participant observation is an accepted method of data collection.

For the primary data, interviews were held with available key stakeholders such as community members. Unfortunately, the companies' management declined to grant the researchers any interview arguing that all the information which was requested was available on internet. Whilst a fair amount of useful information was obtained from the net, there were issues which would have been constructively amplified by intensive discussion with the management, for example, with regard to their policies on issues of gender, environment, safety and security and community development.

Interviews were held with representatives from all the villages which constitute the community around the two mines. Some useful insights were obtained. A major

drawback was that due to the companies' refusal to grant permission for the researchers to interview their officials and employees, the study had to rely on information from the companies published reports as well as the information obtained from community representatives. Very limited discussions were held with some employees outside of the mine's premises but the researchers could see that these employees were very uneasy talking about the issues under discussion.

Non-participant observation was also used to gather data. The two researchers visited the premises of Zimplats and made observations on a number of issues such as the living conditions of the different categories of employees of the mine, the state of infrastructure, the state of the environment around the mine. The researchers also made observations about the living conditions of some of the villagers who lived close to the mine and contrasted these with the living conditions of the mine's employees.

One of the researchers made a site visit to the Mimosa mine, made his own observations, and recorded the findings.

Overview of South African mining companies in Zimbabwe

According to Implats Annual Reports of 2007 and 2008, Zimplats holds mining rights over two areas comprising a total of 48 500ha across the Hartley Complex in the Great Dyke. It currently operates both an opencast and an underground mine at Ngezi. The Selous Metallurgical Complex (SMC) where the ore is concentrated and smelted is located some 77 km north of the mine. The company also owns the Hartley Platinum Mine situated at the SMC which is currently under care and maintenance. Zimplats was established by Delta Gold Limited (Delta) in 1998 to take over its platinum interests. In May 1999, the company purchased BHP's interests in the Hartley Platinum and the Mhondoro Platinum Joint Ventures which included a concentrator and smelter. Zimplats initiated the Ngezi/SMC project in 2001 and the first converter matte was exported in April 2002.

Zimplats Holdings Limited (Zimplats) is 86.9 percent owned by Implats and is located on the Hartley Geological Complex on the Zimbabwean Great Dyke south-west of Harare. 13 percent is owned by independent shareholders. Zimplats holds 100 percent of the shares of Zimbabwe Platinum Mines (Private) Limited. Zimplats holds 100 percent of the shares of Ngezi Platinum Mine, Selous Metallurgical Complex (SMC) and Hartley Ore Resources (Zimplats Annual Report 2008:25). In 2007, the operation produced 96 500 ounces of platinum in matte and plans have been approved to increase annual production to 160 000 ounces of platinum by 2010. Zimplats has the potential to grow into a major player in the platinum industry. The authorized share capital of Zimplats was 500 million shares of nominal value of Australian dollars (AU\$) 0.10 each. Issued share capital was 107 637.649 shares of AU\$ 0.10 as at the end of 2005. Zimplats defines itself as a single purpose company whose business is producing platinum group metals from the Great Dyke in Zimbabwe. Zimplats' mission is "to conduct the business in a socially and

environmentally responsible manner for the benefit of its shareholders, employees and Zimbabwe” (Implats Annual Report 2007).

Zimbabwe’s oldest platinum mine is the Mimosa operation, located in the southern part of the Great Dyke on the Wedza Geological Complex. Ownership is currently split 50:50 between Impala Platinum and Aquarius Platinum.

Mimosa is wholly owned by Mimosa Investments Limited, a Mauritius-based company jointly owned by Implats and Aquarius Platinum Limited (Aquarius) in a 50:50 joint-venture. It is located on the Wedza Geological Complex on the Zimbabwean Great Dyke east of Bulawayo. In Financial Year 2007 the operation produced 78,200 ounces of platinum in concentrate. The operation comprises a shallow underground mine accessed by a decline shaft, and a concentrator.

The mine was acquired by Zimasco from Union Carbide in 1993. Zimasco piloted platinum mining in Zimbabwe by resuscitating the operation and steadily increasing production to 1,000 tonnes per day by 1998. In July 2001, Implats acquired a 35 percent stake in Mimosa for a consideration of R246 million. This stake was increased to 50 percent with a further acquisition of 15 percent in August of the following year. Aquarius acquired a 50 percent stake in Mimosa during the same year.

The Mimosa lease encompasses four areas namely North Hill, South Hill, Mtshingwe Block and Far South Hill. These areas, covering some 6,590 hectares, are separated by major faults. Its mineral resources are currently estimated at 8.3 million platinum ounces. Unlike much of the Great Dyke, Mimosa has a well-defined grade profile with an identifiable reef horizon marker facilitating grade control.

Since 2002, output at Mimosa has gradually been expanded, and the mine – which is among the lowest-cost platinum producers in the world - extracts around 85,000 oz of platinum annually.

Legislation governing extractive industries in Zimbabwe and South Africa

In Zimbabwe, mining is regulated under the Mines and Minerals Act (Chapter 21:05, 1961). also referred to as the ‘principal act’. The Minister of Mines and Mining

Development is responsible for the implementation of the Act. The Act makes provision, inter alia, for:

- Approval and issue of exclusive prospecting licences (for individuals, private business-local and foreign), exploration and extraction rights.
- Amendment, transfer, suspension or cancellation/termination of such licences
- Registration of mining blocks, and mining locations
- Issue of mining leases and certificates of registration
- Issue of rights to erecting or removing of temporary buildings and structures

The Act also makes provision for environmental protection. It should be noted however, that such provisions are very limited within the Act since separate legislation exists under the Environmental Management Act [Chapter 20:27].

Section 257B of the Mines and Minerals Act requires large-scale miners to establish environmental rehabilitation funds. It defines the “large-scale miner” as:

- (a) the lessee of a mining lease; or
- (b) the holder of a mining location whose output in any period of twelve months exceeds or is likely to exceed such amount as may be prescribed.

In contrast, the “small-scale miner” means a holder of a mining location who is not a large-scale miner.

The large-scale miner is required to:

- (1) establish a fund for the purpose of financing –
 - (a) any quittance work or other work that will be required in terms of section 269 of the Act upon the cessation of mining operations in the miner’s mining lease or mining location; and
 - (b) any other work required, whether under this Act or any other enactment, to protect or restore the environment from the consequences of the miner’s mining operations.
- (2) A large-scale miner shall establish an environmental rehabilitation fund for a mining lease or mining location within twelve months after commencing mining operations in the lease or location, or within such longer period as the Board may allow.

(3) Where a large-scale miner conducts mining operations in more than one mining lease or mining location, he or she shall establish a separate environmental rehabilitation fund for each such lease or location unless the Board permits him or her to establish a single fund to finance quittance and other work at all such leases or locations or at any two or more of them.

Section 257E (2) makes provision for the accounts of an environmental rehabilitation fund to be audited once a year by a person who is registered as a public auditor under the Public Accountants and Auditors Act (Chapter 27:12).

The Act is therefore very clear about the obligations of companies and other large-scale miners in terms of protecting the environment.

Meanwhile, Zimbabwe recently introduced the Indigenisation and Economic Empowerment Act .Chapter14:33 has the main objective of making provision for the indigenisation and localisation of the mining industry. In terms of the Act, “indigenous Zimbabwean” means any person who, before the 18th April, 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest. This provision was absent in the Mines and Minerals Act (Chapter 21:05).

Part II Section 3 of the Indigenisation and Economic Empowerment Act lays down that:

- At least fifty-one percentum of the shares of every public company and any other business shall be owned by indigenous Zimbabweans.
- Indigenous Zimbabweans to be equitably represented in the governing body of such businesses or companies.

The Mines and Minerals Amendment Bill of 2007 (*Government Gazette*: Friday 16th November 2007) Sections 416 and 417 provide details about the thinking which was behind the new legislation. Arguments for amendment of the Mines and Minerals Act were presented in the following statement which was presented to Parliament:

These new sections provide for the indigenisation or localisation of existing and future holdings of mining rights, and relate both to those mining rights that are held by mining companies engaged in extracting or exploiting any strategic energy minerals or precious minerals, and mining rights held by other persons or entities. It requires that a controlling interest in all mining enterprises must eventually be held by the State or indigenous persons. A right of first refusal for the purchase of the shares in any mining entity is given to the state and to indigenous Zimbabweans. Future mining enterprises will either be required to comply immediately with the indigenisation or localisation requirements, or, like existing enterprises, may also be given time within which to comply. A timetable is set out within which existing or future mining companies must be localised or indigenised, as follows:

- 1 in relation to every mining company which on or after the fixed date is engaged in the extraction and exploitation of any precious metals or precious stones:
 - at least 10 percent of its shares shall be owned by the State or one or more indigenous Zimbabweans, no later than two years from the fixed date or (in the case of future mining enterprises) the date of the company's incorporation or registration as a mining company or the date when it acquired the relevant mining right, whichever is the later date;
 - at least 20 percent of its shares shall be owned by the State or one or more indigenous Zimbabweans, no later than five years from the foregoing date;
 - at least 26 percent of its shares shall be owned by the State or one or more indigenous Zimbabweans, no later than five years from the foregoing date;
- 2 in relation to every mining company which on the fixed date is engaged in the extraction and exploitation of any mineral other than a strategic energy mineral, precious metals or precious stones:
 - at least 20 percent of its shares shall be owned by the State or one or more indigenous Zimbabweans, no later than two years from the fixed date or (in the case of future mining enterprises) the date of the company's incorporation or registration as a mining company or the date when it acquired the relevant mining right, whichever is the later date;
 - at least 40 percent of its shares shall be owned by the State or one or more indigenous Zimbabweans, no later than five years from the foregoing date;
 - at least 51 percent of its shares shall be owned by the State or one or more indigenous Zimbabweans, no later than seven years from the foregoing date.

Wilful failure to achieve these targets may render the mining company concerned liable to have all its mining rights cancelled by the Chief Mining Commissioner.

The new Act also provides for the establishment of a fund-known as the National Indegenisation and Economic Empowerment Fund. Part IV 2 (a) of the Act specifies the objectives of the Fund as:

- the financing of share acquisitions;
- the warehousing of shares under employee share ownership schemes or trusts;
- management of buy-ins and buy-outs;
- the provision of finance for business start-ups, rehabilitation and expansion;
- and to finance capacity-building projects on behalf of indigenous Zimbabweans.

The new legislation has come under heavy criticism from the private business sector, and foreign mining companies which all argue that it will scare away any future foreign direct investment. It has been viewed by some as tantamount to nationalisation of the mines or a ‘take-over’ in a manner reminiscent of the seizure of white-owned farms under the country’s controversial land reform programme.

Although the idea of economic empowerment for indigenous Zimbabweans is widely accepted, the challenge has always been that some of these initiatives are made in the name of indigenisation and yet in reality, it is usually a small elite of black Zimbabweans or those connected to ruling parties that ultimately benefit. Thus, this new Act is also viewed with scepticism among ordinary Zimbabweans, even though they believe in and have for years called for economic policies and reforms which will benefit the rank and file of Zimbabweans regardless of their political affiliations or social and economic status. It has also been pointed out that the 51 percent indigenous ownership has been difficult to achieve practically because of lack of capital to finance such share ownership.

Since Zimplats and Mimosa are both South African-owned companies, it is also important to highlight the nature of mining legislation in South Africa because they are bound by such host-country legislation.

The extractive industry sector in South Africa is regulated under the Mineral and Petroleum Resources Development Act of 2002. The main objectives of the Act are stipulated as follows:

- to entrench the State's role as owner and custodian of South Africa's mineral wealth by changing the mineral rights system so that all mineral rights are exclusively State owned and the government has greater authority in the granting of legal rights over minerals and petroleum properties;
- to promote equitable access to mineral resources and associated geological and mining information, with an assurance that historically disadvantaged persons and companies can benefit from this information;
- to promote economic growth through increased beneficiation of mineral production;
- to ensure that mining contributes to rural development through employment opportunities and advancement of social and economic welfare;
- to guarantee security of tenure while at the same time ensuring that mineral developers comply with the principles of sustainable development and with the 'use-it-or-lose-it' vision of the Mineral Policy, and
- To ensure that holders of rights contribute towards socio-economic programmes through the implementation of proactive social and labor plans.

It is clear that the state is vested with extensive powers in terms of control of mineral resources and in regulating their use. Meanwhile, another important dimension of the Act is its laying down of the specific provisions for the mining industry to ensure that Historically Disadvantaged South Africans (HDSA) in particular benefit from the country's mineral wealth and resources. HDSA includes the category of any persons or community that was at a disadvantage because of historic unfair discrimination before 1994 when South Africa achieved democracy. The Act intends to correct the imbalance in economic power by expanding opportunities for HDSA in the minerals sector. It aims to achieve substantial and meaningful black ownership of and participation in mining projects. The Act makes provision for providing access to capital needed to acquire equity stakes in mineral projects and for technical and financial assistance for such disadvantaged persons and communities.

The overall goal of the Act is 'to balance the mining industry's ability for creating wealth from natural mineral resources with the environmental and social needs of society. By implication, South African companies are bound to comply with these requirements and even where a company has subsidiaries operating in other countries, these norms and standards should also guide their operations.

Review of the nature of the agreements Zimplats, Mimosa and the Government of Zimbabwe

Neither the Government of Zimbabwe nor Zimplats and Mimosa were in a position to disclose the nature of the agreement(s) which they entered into prior to commencement of mining operations. Most information presented in this section is based on secondary data which, unfortunately, did not have detailed information on some important aspects of the agreement. According to the Implats Annual Report of 2007, the company reached a landmark agreement with the Government of Zimbabwe in 2006. The agreement ensures that the ground required for a steady state 1 million ounce per annum platinum mine with a fifty year life is secured under two mining license regimes. In terms of the agreement, Zimplats released 36 percent of the company's resource base amounting to 51 million ounces of platinum in return for empowerment credits and/or cash. The company committed to 15 percent empowerment participation in the company by Zimbabwean nationals. However, this has not been achieved yet due to the failure by the nominated nationals to raise the required funds for the equity share.

Following the signing of the agreement, Zimplats announced the approval of the Ngezi Expansion – Phase 1 project which is the start of the company's long term expansion plan. This project heralds the replacement of the remaining opencast operation with underground mining operations. The investment of US\$340 million was earmarked for the simultaneous development of two new underground mines (Portal 1 and Portal 4) at Ngezi and the construction of a new 1.5 million tonne per annum concentrator. Platinum production is set to rise from the current 90,000 ounce level to 160,000 ounces of platinum in matte per annum by 2010.

The arrangements announced at the end of financial year 2006, whereby Zimplats released a large portion of its mining claims in exchange for a combination of empowerment credits and cash were concluded with the exception of the commercial payment. The extension of the special mining leases 1 and 27 were duly executed in 2007 as part of this agreement.

Zimplats entered into an empowerment agreement with the government of Zimbabwe in 2006. The agreement was seen as an opportunity to create a platform for further large scale investments by the Implats group, the major shareholder of Zimplats. In addition, the agreement ensures that the ground required for long term expansion is secured under the special mining lease regime.

In terms of the agreement, Zimplats will release claims together amounting to 36 percent of the company's resource base on the Great Dyke in Zimbabwe. The contained metal in the ground to be released is 51-million ounces of platinum or 99-million ounces of platinum, palladium, rhodium and gold. The released ground is outside Zimplats' long term expansion programme of one-million platinum ounces per annum over the 50-year life of the mine. The first phase of expansion will involve new investment of US\$258-million, including US\$69.5 million for the replacement of the opencast mine and an increase in platinum production from the current 90,000 ounces per annum to 160 000 ounces per annum. The expansion also includes the simultaneous development of two new underground mines at Ngezi and the construction of a new 1,5-million tonnes per annum concentrator at Ngezi. A total of 715 new staff houses will be constructed near Ngezi and amenities within the area will be upgraded.

It was expected that about 1 200 new direct jobs would be created, plus an estimated further 3 000 contractor jobs during the three year construction phase. Zimplats states that in the short to medium term, its major challenges are retention of skills, reliable power supplies and the rebuilding of the local supplier network.

According to the company, "This latter issue is a direct result of the shrinkage of the economy and has created a situation where Zimplats has no option but to import practically all of its goods and services." Zimplats is expanding its operations to

160,000 ounces annually, from the current output of 91,000 ounces a year. The firm has a long-term output target of 1 million ounces.

Indigenization and black economic empowerment

In 1998 Zimplats agreed with the government of Zimbabwe to set aside 15 percent of its issued share capital as part of the Black Economic Empowerment initiative. However, none of the prospective purchasers of the stake were able to take it up. National Investment Trust (NIT) was the first to bid for the offer but failed to raise the required US\$31 million. Zimplats was also reported to have awarded a 15 percent stake in the mine to local consortium, Grassroots Investment, which is made up of individual investors, private companies and the ZMDC [Zimbabwe Mining development Corporation]. Grassroots Investment paid US\$31.4 million and received 13 390 423 shares of the company.

The company had made prior arrangements with the government in which the company had to cede some of its mining claims to the government in return for empowerment credits of up to 29.5 percent of its total capital. In addition, the company was to be awarded additional shares in return for infrastructure development and community projects in which the company is or had engaged in. These include houses and roads which the company had already built. In December 2007, President Mugabe said that the government would treat mining companies that have invested part of their profits in the country fairly. Addressing visiting ambassadors at State House, the President said, “Government will not demand majority shareholding in such companies since they were complementing its development programmes.” He also added that “where we read that a company has invested its profits over the years, we will not demand majority shareholding but of course, we will need some shares”, (*Herald*, 21 December 2007).

Zimplats and payment of taxes

According to several media reports, and most notably in the *Herald* and *Sunday Mail*, there has been a clash over allegations that Zimplats owes the Zimbabwe Revenue Authority (ZIMRA), taxes in the form of Value Added Tax (VAT).

According to reports, an audit of Zimplats conducted by US-based firm Alex International between October 2007 and May 2009, is alleged to have

exposed a liability of US\$115 million by Zimplats to the Government of Zimbabwe in unpaid taxes with the total liability rising to US\$300 million when penalties and interest of late payment were added (*Sunday Mail*, 10 September 2006; *Business Herald*, 7-13 September, 2008).

Zimplats has repeatedly refuted the allegations. In 2007, ZIMRA was reported to be demanding US\$12 million from the company in unpaid taxes.

In February 2009 the Reserve Bank of Zimbabwe ordered the Zimbabwe Revenue Authority to collect all that the company (Zimplats) was said to owe to the government of Zimbabwe. However, up to the time of the field interviews, payment of the outstanding taxes had not been resolved as Zimplats has repeatedly denied any wrong doing. ZIMRA continued to make demands in the public media, arguing that the company was indeed liable.

Corporate structure: board and management profiles

Zimplats has 10 board members (3 black, 7 white). Of the three blacks, two are local and one is South African. The two locals are the CEO and Chief Financial Officer. The Board is 100 percent male. No reasons are given for the imbalance of this gender composition.

The Executive Committee has one female who is the Acting General Manager for Human Resources. 6 out of the 9 members are black whilst 3 are white. Thus, in terms of race, there appears to be a balance but certainly not in gender terms as women are grossly underrepresented. Again, there is no explanation in the reports as to the composition of the Executive Committee.

No data on the structure of the management of Mimosa was available.

Workforce profile, conditions of work and training

In interviews with a major national union organization, the latter labeled the company anti-union, and stated that Zimplats did not like its employees to be unionized. He told the researchers that any employees who did anything linked to the union were most likely to lose his/her job. The union representative cited cases where

employees had been fired for participating in union activities. Furthermore, it was alleged that union officials had been refused access to the mine premises of Zimplats when they had tried to visit their members who worked for the company.

At the Mimosa mine, interviews with some worker representatives indicated that workers received some benefits from the company. These benefits included:

- Groceries for their families;
- Provision of a company clinic for the employees;
- Houses for employees;
- Free transport from Zvishavane town to the mine site.

However, they were not very happy over the groceries benefit because they did not receive them on a regular basis. They also explained that the clinic was only for employees and employees' dependants were not allowed. They were also not satisfied with the terms of the housing benefit, arguing that the houses were based on a rent- to- buy basis and that the payback period was 10 years and the problem was that if the employee left the company before the expiry of ten years, then they would lose the house with no refund.

One worker who requested anonymity complained about how the houses were allocated to the employees. He mentioned that only those who were friends to the workers' representatives benefited from the scheme. He cited an incident in which a former union chairman had demanded a bribe from any employee who wished to secure a house.

Another concern was that dependents of employees were not allowed to use company buses. Discussions with one of the largest trade unions in the country revealed that at Mimosa, union members have been weakened and were very inactive. There has also been a high turnover of employees who had been active in unions and these also confirmed that the mine environment did not welcome union activity. It was the view of the national union representative who was interviewed, that Mimosa had not done much to the community around it.

Safety and security

The Implats 2006 Annual Report proclaimed that “Zimplats is cultivating a strong philosophy that all injuries can be prevented and that all hards can be controlled. If a job cannot be done safely then it should not be done at all.” It also committed itself to ensuring that occupational health and safety remained a key focus throughout the year. The overarching goals of the company with regard to safety is that of being a world class platinum producer with an exemplary safety record. Consistent with that focus, during the year the organization intensified its Chengeta (Behaviour Based Safety) initiative, enforcing existing platinum safety rules and developing platinum rules for sections initially not covered.

Implats claims that both Zimplats and the Impala Platinum Refineries can boast excellent safety performances, despite the fact that both of these operations undertook recent significant expansions. However, the company also admits that the group’s safety performance during financial year 2007 was extremely disappointing, with 13 employees losing their lives through work-related injuries during the year. Nine of these fatalities were at the Rustenburg operations, three at Mimosa and one at Marula. The primary cause of fatal accidents remains falls of ground (62 percent), followed by explosives (23 percent) and gassing (15 percent). Fatalities as a result of gassing are rare but, tragically in FY2007, two employees died from this cause at Mimosa (Zimplats Annual Report 2007).

In terms of lost-time injury frequency rate (per million person-hours) (LTFR), Zimplats recorded a decline from an LTFR of 0.90 in 2006 to 0.28 in 2007. Mimosa has not fared so well. It recorded a worsening record from 1.25 in 2006 to 1.74 in 2007. Although there was an increase, by standards, it is said that the injury record is low (Zimplats Annual Report 2007).

Zimplats has received a number of safety awards including the Mining Gold Shield for the best safety achievement among all mines in Zimbabwe, the Premier Gold Zimbabwe award and the EMCOZ Rothmans Gold Shield for the best company in the country in respect of safety. Some of the factors which explain the relatively good safety record of the mines arise from the intensive efforts which the mines have made to address safety performance. These include: (as laid

down in Impala's annual reports 2006, 2007 and 2008) the implementation of a new incident investigation system at Implats to assist in understanding the root causes of injuries; and the re-introduction of a strata control course to improve employees' knowledge of geological features. In addition, a task team was formed at Impala's Rustenburg operations in light of the fact that the majority of fatal and serious injuries were caused by falls of ground. The task team identified six key themes, with 18 projects planned to address the issues identified based on accident analyses and audits. A project champion has been assigned to each project and tasked with formulating initiatives and action plans to minimize the risk associated with each theme. Thus, safety road shows have been conducted to heighten safety awareness and to reinforce the mindset that mining can be undertaken without injury; the functioning of the safety and health committees has been improved and there has been a review of procedures on the handling of noxious gases at Mimosa; full-time health and safety representatives, as well as safety stewards, have been elected, and the functions that they should fulfill defined; further training has been given to safety and health representatives; there has been an elaboration of procedures whereby employees can exercise their rights to withdraw from circumstances that they perceive to be dangerous; procedures have been devised for the resolution of disputes relating to safety and health; provision has been made for wider participation in incident investigations and regarding any other issues relating to safety and health which may arise. Finally, there has been an improvement of the management and control of explosives at all operations and a more concerted focus on training, particularly in respect of basic hazard identification. A key shortcoming identified at Impala's mining operations during the year was the high turnover experienced among supervisory staff, which had an impact on safety performance.

Formally constituted safety and health committees are a requirement of the South African Mine Health and Safety Act and their effective functioning underpins the joint responsibility for safety and health at an operational level. Committees are in place at all Implats' operations. The functioning of these committees is regulated by the health and safety agreements that have been entered into with the representative trade unions which deal with a broad range of safety issues. Interviews with some community members also confirmed that the safety record of Zimplats was quite good. They pointed out that the company showed commitment and explained how

the shafts are lined by supports which prevents collapsing of the shaft. But they also expressed concern that in the year ended 30 June 2008 there five fatal accidents were recorded.

The preceding section gives a good account of the safety record of Implats. However it is not always clear which operations are being referred to in company reports, i.e do these actions refer to what takes place in Zimbabwe as well as in South Africa? Furthermore, it would help to get the opinions of unions in Zimbabwe on the safety record of these two mines. The capacity of the Ministry of Mines in deploying mining or safety inspectors needs mention otherwise as it is both the study and the government is dependent on the mines own reports.

Social investment and corporate social responsibility

Throughout its annual reports, Zimplats states that it remains committed to social development initiatives and engages in, develops and builds community relationships. It takes responsibility for economic, social and environmental issues that have an impact its employees, communities and environments.

The corporate social responsibility (CSR) of Zimplats is guided by that of the parent company, Implats. In South Africa, Implats has a more formal institutional structure to handle its Socio Economic Development (SED) activities. This takes place under the rubric of the Impala Community Development Trust (ICDT) which was established in 1998. The Trust was designed to be a facilitator of social development rather than to be the sole sponsor of activities. This was deemed to be crucial in terms of promoting sustainable development. It also promotes a collaborative approach whereby government, NGOs and CBOs and communities work together. Zimplats does not have a similar arrangement although the company has also contributed to SED.

The group also has a Corporate Social Affairs Policy which was adopted during the year 2007 and is aimed specifically at the social and economic development of communities in which the group operates and the areas from which the group's employees are drawn. The policy aims to ensure that the company makes a positive contribution to poverty alleviation, community development (infrastructure development and empowerment of community structures) and the empowerment of government to facilitate improved service delivery and local economic development. While it aims to empower a broad range of stakeholders, it does place a specific emphasis on black youth, women and people living with disabilities. (Implats, CSR Report 2007).

A review of the company's various CSR reports (in the Annual Reports of 2006, 2007 and 2008) noted the many claims which it made about how it was supporting the community in a number of ways. In one of its reports, the company claims that the Ngezi community has witnessed a significant improvement in the overall standard of living due to the company's investment in the community. Inter alia, the company reported:

- That it had refurbished the Turf Primary School near Ngezi, transforming it into a more modern school.
- That it had built houses for its employees in an area which they call the Turf village. The roads in this working community are well tarred and the houses range from one to two bed rooms.
- That it had commissioned water retention, purification and reticulation infrastructure, and that this had recently been carried through as part of the Portal 2 project.
- That it had installed electricity supply and telecommunications infrastructure which were benefiting both the company and the wider communities. In its reports, Zimplats indicates that it has also provided a 132kv Zesa Power line to supply the electricity to the mine and surrounding areas, as well as fibre optic line and a switching equipment for Telone. It claims that it has allowed those who can afford to do so, to connect to the line and so access electricity for their homesteads. No information was available as to how many households have now been able to access the service.
- That it had also built teachers' houses at the Turf Secondary School and they promised to electrify the school although they have not stated yet.
- That it has committed to spending US\$645 000 (R4.6 million) to refurbish the Wanganui Turf High School and increase its capacity, over a period of five years. This school project is the company's first big educational support initiative. The project is being undertaken in partnership with the local authority and the national Ministry of Education. Included in the project scope are new classroom blocks, teachers' housing, water and electricity reticulation and school furniture. The refurbishment of the school includes building a new classroom block with four classrooms, building a new grade 0 (crèche) block, drilling a borehole for clean water supply to the schools and providing pumped water for the teachers' houses and toilets. It is estimated that some 450 learners will benefit from the project.

- That it is involved in the refurbishment of the Turf Clinic with the aim of restoring it to a fully functioning primary health care point for employees, their dependants and the local community. The project, which was undertaken in conjunction with the local authority, was expected to cost of US\$185 000. About 800 people are expected to benefit. (Implats CSR Report 2007).
- That it had funded the construction of offices to be used by the local authority at Turf at a cost of US\$145 000. The Turf community (comprising between 8 000 and 10 000 people) is expected to benefit from the investment through improved delivery of services by the local authority.
- That it had constructed 77 kms of tarred road which it says is benefiting the general public.
- The company promised construction of 715 new staff houses near Ngezi, the upgrading of amenities in the area and the creation of 1 200 new jobs, plus an estimated further 3 000 contractor jobs during the three year construction phase.
- And that in 2006 the company donated 44 desktop computers to the University of Zimbabwe Faculty of Engineering.

The research team visited the Zimplats area to confirm the community projects in which the company claims to be engaged on. In addition, interviews were conducted to verify the general feeling of the community members about the company. Community representatives included the Village Development Committee Chairman and their secretaries. They were led by the former councilor. All the 7 villages were represented.

The representatives explained that when the company started its operations in 2000, it promised to do a lot of things for the community including building schools and roads, clinics, and bridges, reating jobs and launching agricultural programmes. However, the community is not satisfied with the company since progress to date is insignificant.

With regard to Mimosa Mine, a review of the reports revealed claims that the mine has been involved in some community projects mainly in the town of Zvishavane, 40km away from the mine city. It has been involved in school projects, clinics, roads and also working in partnership with Zvishavane rural district council.

Community response to Zimplats' and Mimosa's CSR

Extensive interviews were conducted with some community representatives with regard to their perspectives or opinions about the CSR activities which the companies' reports alluded to as summarized above. The key findings are presented below.

Building of schools

Virtually all the community representatives who were interviewed contested the claim about Zimplats refurbishing schools in the area for the benefit of the community.

One representative explained that they had built enough blocks for their employees' children before the company started operations in the area. Speaking in Shona, he said,

“Zvikoro vakavakira vana vavo nekuti isu takanga tazvivakira kudhara vasati vanyu”, meaning that “they built the school blocks (as opposed to whole schools), for their children. We had built the schools ourselves long before they came”.

Interviewees unanimously agreed that the blocks were built for the benefit of the children of the mine's employees and not for the wider community and so, in their opinion, the company should not use the refurbishment issue as their contribution to community development.

It was also significant to note the ‘us’ and ‘they’ attitude in the responses of the community members. This was also evident in other interviews and suggested to the research team that there was a deep-seated division between the communities and the mine and its staff.

Wanganui secondary school (16 teachers)

Zimplats reports indicated that the company built the Administration block, Library, two classroom blocks and 2 WC toilets at Wanganui secondary school. They have also built one teacher's house at the secondary school and refurbished 3 houses which were already there. Currently, the company is constructing a water pipe that runs water to the secondary school and in addition electrification of the school is in progress. Community members acknowledge the company's role but emphasized that the improvements were primarily meant for their employees' children who needed a good quality education.

Turf primary school (20 teachers)

Zimplats has renovated one classroom block and built two blocks (one for the primary and the other for the Infant group). The company has also built one teacher's house and toilets. They have electrified the school and provided the school with tap water. The company has also built and refurbished some school blocks and teacher houses at the local primary and secondary school

Although the company claims to be doing something for the community, the villages surrounding the mine feel neglected by the company. The mine has been accused by the communities of villages 1-8 of concentrating in developing areas away from the mine site but ignoring those within reach of the mine site. Those community representatives who were interviewed felt that it was not doing as much as the wider local community expected.

Mimosa mine has built only one block at Makwasha Primary School in Zvishavane town. The school is situated in the high density suburbs of Zvishavane town where most of the Mimosa workers stay. It also became evident from the interviews that the classroom block was built to cater for the children of company's employees. At the school, one block is unfinished because of lack of funds and one parent at the school expressed hope that the company would contribute more resources. However, although the company had built this block, the Makwasha Primary School was in a better position as compared to Mhondongori Primary which is very close to the mine site where the company has done nothing at all. Furthermore, the community in the areas very close to the mine are struggling to build a secondary school (Mukwizi Secondary) where financial help is desperately needed but they complained that the company had ignored them completely. The parents at the school have molded their own bricks to build the school and the buildings are at roof level; however they cannot afford to roof the building and build teacher's houses. Community representatives approached the company for assistance on the issue but to no avail. Both Mhondongori Primary and Mukwidzi Secondary are within 8-10 km radius from the mine but the mine went has given assistance to a school 40km away from the site (the Makwasha Primary School in Zvishavane).

Housing

Overall, Zimplats appears to have done a good job in providing housing for its employees. However, this is the case more with regard to its higher employees such as different grades of managers and supervisors than for the mass of it is less skilled and manual employees..

In many of its published annual reports, Zimplats emphasizes how it has been responsible by providing housing in the area. The truth is that the housing is overwhelmingly, if not exclusively, for employees of the company and their dependents. No housing has been provided for ordinary villagers or community members.

The company has performed dismally with regard to housing for its casual and/or unskilled workers who still leave in grass thatched mud huts. One village representative complained that these huts are did not have toilets. He further complained that the general hands (casual workers) are the ones who dig the minerals but they are receive minimal benefit and have nowhere to stay except these squatter camps. The research team actually saw these at very close range. Some worker explained that the situation has been compounded by the fact that commercial sex workers have come into the area and also set up their own cheap structures as a base for their business. Whilst these workers have a right to freedom of movement and work, the challenge relates to the inadequacy or altogether absence of health and information facilities to raise awareness on HIV and AIDS. Although company reports indicate that the company was providing information to warn the workers about the pandemic, the community seemed concerned that not enough was actually being done to ensure that commercial sex activities in the unskilled workers' compounds would not lead to an increased incidence of HIV and AIDS.

In the case of Mimosa, most of the workers stay in Zvishavane town. The company has built houses for its employees in both the high as well as the low density suburbs of the city (high density is generally associated with low income groups whereas middle to high income groups tend to reside in the low density areas). After the company had built the houses they handed over the houses to the Zvishavane Rural District Council. Employees occupy the houses on a rent-to-buy basis for a 10 year period. However, if the employee leaves the company after only 10 years of service, then he is expected to vacate the house.

At the mine site, the company has also built a few houses. The company argued that the reason for building more in the Zvishavane town (40km away from the mine) and few at the mine site is to avoid the ‘ghost town’ scenario which often follows resource depletion and mine closures. Although the mine handed over the houses to the council, Mimosa has since assumed council duties in the suburbs where its employees stay. These include road maintenance and on one occasion involved replacing a broken electricity transformer. Although the company has built many houses, they are not enough for the workers and they are using some of Zvishavane Mine houses on a lease basis.

Road infrastructure development

In 2000, when the company started operations in the area, Zimplats promised to upgrade the roads and bridges in the local area and tar the Kadoma road which is frequently used by the community. Hitherto, the company has only constructed the 77 km road to Selous which it uses itself when transporting its produce from the mine to the Selous Metallurgical Complex where their smelter is located. The village representatives complained about how the company’s heavy vehicles have destroyed the local bridges but the company has refused to repair them to date. Their main worry was the Kadoma road which they use for their shopping since it is the nearby town and presently the road has dangerous dips and is bumpy. This has forced most public transport to use alternative but less ideal routes to get to Kadoma town. The village representatives also pointed out that the wide tarred road was of limited use to the community since they have less business in the Selous area. The road improvement was, in their view, for the benefit of the company.

These trucks operate 24 hours a day including weekends. Villagers claim that the tarred road was constructed to facilitate transportation of the ore from the mine to the smelter about 77 km away. The village representatives also pointed out that if, indeed, Zimplats intended to improve road infrastructure for the community, they should also have repaired or built better bridges in the area. Most of those bridges were too low and were vulnerable to flooding in the rainy season. The research team actually saw two such bridges. It also noticed that the only tarred road was the one connecting the company to the smelter in Selous. All other local roads linking the community, for example, between villages and the schools, the villages and the growth point, were not tarred despite their frequent use by the community.

Like Zimplats, the road infrastructure which Mimosa has developed was primarily for the benefit of the mine and not directly for the community. From the Zvishavane-Bulawayo highway the company constructed a 30 km road to the mine site. Community members who were interviewed argued that the road benefited the mine only. They pointed out that the roads in the community surrounding the mine were dilapidated, forcing a bus which was serving the villages to withdraw. One of the researchers was able to confirm this. The people in villages 1-8 have to walk 10-13 kms to the mine site to access transport. Meanwhile, there has been no commitment from the mine to refurbishing the roads although the community has engaged them on the matter.

Mimosa has constructed and tarred the roads within Zvishavane. However, whilst at one level this is appreciated, the complaint has been made that the gravel which was used in the construction of these roads was extracted from the grazing lands of village 8 near the stream Makazani – thus ‘eating up’ nearly half of the grazing land.

The company used to give passes to the community so that they could be ferried by Mimosa buses to Zvishavane. This has stopped, the company arguing that in case of accidents the company would be held responsible. However, the interview with the village representatives revealed that the facility of bus passes was in place when Bulwark was contracted by Mimosa to provide transport to the mine workers, so it was Bulwark which offered the transport assistance. After Mimosa acquired its own buses the facility was removed which greatly affected the villagers.

Transforming the growth point into a modern small town

Zimplats is in partnership with Kadoma Rural District Council in transforming the Turf growth point into a small town. About 180 hectares were reserved for those interested in investing that area. Old Mutual, OK Zimbabwe, Red Star, Jiggers and Spar are some of the investors that have shown interest. They are also inviting more investors especially those in banking, agriculture and hospitality.

The OK chain at the Old Mutual Centre in Ngezi

The company has built a shopping centre for its employees. There is an OK Bazaar supermarket, a bank and a clothing store. Community members are welcome to buy from the centre and indeed, it has benefited them although once again the villagers

said that it was built primarily for the company's employees. Furthermore, although there is a growth point which has served the community for years, village representatives complained that the company had never made any improvements. The research team visited the site and noted that indeed, the centre looked dirty and dilapidated, with a few old shops. As a shopping centre, it lacks many social amenities. The centre is not electrified and there is no provision of piped water. Instead of developing this area the company helped Old Mutual to build its own premises some four kilometres away from the growth point. The settling of OK Zimbabwe, Nyorenore, and Power sales at the Old Mutual premises has negatively affected the local businesses at the growth point. One businessman complained about the issue. He said *"isu zvakatitikanya kuti vana Ok vanya nekuti hapana achazotenga kuno, vese von-goenda ikoko"* meaning that they have lost their customers to OK and the new or more modern centre. He further added that the setting up of the new shopping centre with (OK) did not help the community at large and rather favoured Zimplats employees – that is, those who were regularly in receipt of an income. In contrast, poorer members of the local community members find it that they cannot afford to shop at the new shopping centre. (Zimbabwe's dollarisation problem).

Community members also commented upon the weir that runs water to the Turf village (employee residences). Initially this was constructed so that it passed through the local growth point. However, when the company heard that local businesses wanted to connect their pipe from this weir to provide water to the shopping centre, the company moved the weir further away to hinder this facility to the growth point. Recently, too, a former local councilor applied to the company for assistance to bring electrification to the growth point, but the application was turned down. Electricity would be a major boon to the community as it would make it possible to set up and run grinding meals. At the time of the field research, there were no grinding mills at the growth point and the team was informed that people had to go a long way to find them.. Community representatives argued that if Zimplats was indeed interested in assisting the wider community, they could have invested in the provision of water, electricity and other vital services to the growth point. As one representative expressed it: *'kambani iri kungobatsira vashandi vayo chete'* meaning the company is just helping its employees.

Health facilities

The clinic which exists at the Zimplats mine area is a council clinic. It was built by the DDF (District Development Fund). When Zimplats wanted to build a clinic for its employees, it approached the Kadoma rural district council for land, and this was granted on the condition that the clinic would be available for the community at large as well as for the company's employees. This is when Zimplats established the Trauma Centre (the company clinic). Village representatives explained that the Centre is not accessible to relatives of the employees as well as the wider community. It is exclusively for the employees of the mine. The representatives expressed anger and contempt at any claims that the company did this for the benefit of the community.

In Zvishavane, Mimosa has built a mortuary at the Zvishavane Rural District hospital. The hospital serves the town residents who are mainly mine workers. The mortuary was completed in early 2009 and has just started functioning. In addition to this, Mimosa has donated 4 beds and sunk a borehole at Mhondongori Clinic, about 9 km away from the mine. The company promised to provide the clinic with medicines and an ambulance but nothing had been done at the time of the interviews. At the mine, the company has its own clinic. Before 2001, non-workers (villagers) could access medication upon payment of a fee which one community member described as a no option scenario. This was stopped in 2001 when (according to the respondents), the company argued that the outsiders were congesting the clinic and this essentially barred the community members from accessing services. Unfortunately, this statement could not be confirmed with the company since, as already pointed out earlier, the mine refused to grant interviews to the research team.

Water infrastructure

Zimplats has constructed a 132 Kv ZESA power line to supply electricity to the its mine and Turf village (where company workers reside). This project benefited Turf Primary school also.

Furthermore, in addition to the borehole at Mhondongori Clinic, Mimosa sunk another one in village 8 to replace one which had become malfunctioning, making a total of two boreholes in the area around the mine. However, the borehole serves 8

villages and this was clearly inadequate. The community leaders in villages 4 and 8 approached the company on this issue and the company promised to build a water tank. The main water pipe line which runs water to the mine passes through village 8 and the company has fixed a tap 30 metres from the pipe to supply water to the villagers, albeit only for washing and watering gardens.

Job creation

Although information derived from the company reports of both Zimplats and Mimosa claim to have generated jobs, discussions with community representatives indicated that the only positions available for local people are the at the level of general hand. The community accepted that the company employs their children. However, they still feel that employment of local people in the village around the mine is a tool to solve the housing problem, since unskilled and casual workers have to provide their own housing. The highest position to which local people have been appointed has been that of an operator. They explained that the communities felt cheated because then the company first started operating in the area, they had promised to employ locals. However, hitherto, very few locals have managed to secure a job from the company. The village representatives complained about the lack of transparency in the selection process. Some of them claimed that the company actually preferred to employ relatives of senior managers and supervisors, most of whom do not come from the local communities. They also complained about unfair treatment at work for those who do manage to get a job.

Unfortunately, the issues raised by the representatives could not be verified with the company. Nonetheless, it was clear from interviews that the local community feels bitterly disappointed and resentful towards the company – even though it may be that that the reason why so few locals have been employed may be a reflection of local's low level of education and skills.

Agricultural projects

Zimplats is engaged in the Timbaugute Conservation farming project. In terms of this project, the company lends the farmers 10kg maize seed, 2 bags compound D fertilizer and 2 bags Ammonium Nitrate fertilizer. The farmers who are the beneficiaries of the project have to set aside one acre of their land for the project. The farmers have to dig holes and grow the seeds as directed by the instructor contracted by Zimplats.

After the harvest, the farmers have to give Zimplats 1 tonne of maize as the repayment of the seeds and inputs which they received. Although the company may have genuinely intended to assist the farmers to improve food security, this is a project which the community is very bitter about. This emerged in the interviews with village representatives. Virtually all the participants dubbed it 'naked exploitation', *'kusveta simba'* because in their view, they did the bulk of the work and they felt that 1 tonne of maize as payment for the inputs was way too high. It left them with so little maize for their own consumption that it was not worth the effort of participating. One of the elders complained bitterly about the issue. To use his words, *"Takazvipinza muchirongwa ichi nekusaziva, iyezvino tava muzvikwereti, musbure mekunge mbeu yanonoka kupiva futi"* meaning they entered the programme without much knowledge and insights into its potential negative effects. It had now led them into indebtedness which they were not prepared for. They also explained that part of the problem was that the company disbursed seeds late most of the time and this led to poor results. Output produced was much less than the amount required to pay back what had been borrowed from the company.

Environmental management

Zimbabwe's Environmental Management Act makes it mandatory for mining companies to control air and water pollution resulting from their operations. Companies are required to hold emission licences and to comply with set standards for dust, smoke, gases and fume emissions. In South Africa, Implats is signatory to the Department of Minerals and Energy (DME) South Africa Strategy to limit green house gas emissions.

In their reports, both Mimosa and Zimplats indicate that they have maintained ISO 14001 certification. The 2008 CSR report of Implats outlines the company's commitment to achieve zero harm to the environment and total compliance with legislation. The report states that in 2008, 66 internal audits and 13 external audits were undertaken (no details were available on these audits). The report also states that no fines were imposed and also that there were no cases of non-compliance. It is known that Zimplats emits sulphur dioxide (SO₂) which affects air quality. Other emissions include chlorine and ammonia.

The Implats report indicated that the company was investing in plant and equipment to limit the emissions. No evidence was available to the research team to prove that this had been done.

Interviews with some community members presented a different story, however. Although researchers did not see evidence of environmental damage arising directly from the mining activities, their attention was drawn to the poor management of sewage at the Zimplats mining site and how it was negatively impacting on the livelihoods of the community.

Zimplats constructed a temporary sewage pond near the Ngwazani River. As villagers explained, the pond is too small, so that during the rainy season, it overflows into the Ngwazani River. This is a river on which many households depend for drinking water and other uses. Furthermore, the villagers explained that it has been the practice of the people in villages 4 and 5 to dig their wells in the flood plains of river. The contamination of the river by the sewage therefore contaminates their drinking water. Initially, despite community complaints, the mine ignored the issue, and it was only after the women from village 4 and 5 demonstrated by blocking company vehicles on their way to and from the company to the turf village that the company paid any attention. Only then did it start to deliver water boozers to the area and later on sank a borehole in the area. However, as representatives indicated, that borehole could not cater for all the water needs of the community.

Resentment against Zimplats runs high over the pollution of Ngwazani River, which flows into the Mungezi river, which in turn feeds into the Munyati. In short, the pollution issue has affected communities well beyond the Zimplats area. As one participant from village 4 put it: '*vakatiuraya*' – 'they have killed us'.

During the drier months, villagers normally dig wells on the river bed but can no longer do so because the water is contaminated. They also explained that since the river drains into a larger river, the Ngezi, many households along the river are also affected. Despite repeated pleas to the company, nothing was done for a long time until a group of women physically visited company management to complain. The company then started to supply the villagers with drinking water in tanks.

At Mimosa, a villager confirmed the existence of mine dumps (slime). Although he was satisfied that hitherto, no harm had come from them, he expressed concern about what was likely to happen during the rainy season when some of the debris was washed away into the small stream which feeds into Ngezi river.

Consultation with the community

Consultation between the two mines and the respective communities is weak. In fact, there is no clear structure of consultation. At the Zimplats mine, community representatives explained that initially, it was agreed that the community would engage the council and the council would then engage the mine. Unfortunately, this was only done once when the company, rather than meeting with the entire council, consulted only a single councilor to whom they gave the information about what they were planning to do for the community when they settled in the area in 2000. The company informed that it would channel any funds meant for the community, via the council. At the time of the interviews, community members confessed that they had no idea how such funds, if they have been provided to the council, and if they have, how they have been spent. They fear that the mine gives the council money but that it never reaches the community at large.

At the Mimosa mine, only villages 4 and 8 were active in engaging the mine. None of the other 6 villages have engaged the mine in any way. Villages 4 and 8 engaged the mine particularly on issues of local road, water problems and the Mukwidzi Secondary School. After failing to secure any assistance from the mine they approached their Member of Parliament to help them in negotiating with the mine but he never gave feedback to the community with regard to his efforts. Meanwhile, the current local councilor for the area lives in Mamina far away from the area which surrounds the mine. Accordingly, the villagers feel that no-one represents them with regard to their problems.

Who is benefiting?

The community representatives complained about the expansion of the mine into their grazing land and the blasting of dynamites is causing some of the nearby huts to crack. In addition, the community complained about how they lost their cattle hit by the road trains from the company to the smelter as one villager summed it up: “*Mine baina ukama nesu*” – “the mine is not our relative.” Meanwhile, another representative complained that the company had displaced the resettled people who had occupied the area before the company had moved in, without granting any let alone adequate compensation.

These findings raise some fundamental questions about what is corporate social responsibility. The large body of evidence gathered in the study shows that what

Zimplats and Mimosa are doing is primarily for the benefit of their employees. Only in a few instances, where it was unavoidable, did the wider community did gain, as for example, with the building of the Old Mutual Centre with OK supermarket (although even here the benefits were unevenly skewed). Furthermore, from the information provided by villagers, it would seem that the company has not built schools as they have claimed in their annual reports. Rather, it was the community that pooled their resources and constructed both Turf Primary and Secondary Schools, with the company only stepping in to add to the facilities (notably by constructing classrooms) only when it became clear that they were needed to cater for their employees' children. Meanwhile, the housing that has been provided has been largely for the benefit of managerial and supervisory staff, with little if anything done for the mass of the company's ordinary, less skilled employees. Furthermore, as also indicated, there are numerous claims of contamination of rivers, boreholes and drinking water by inadequately constructed sewage tanks and seepage from mine spills.

Despite this dubious and contested record, Zimplats Pvt Ltd has publicized its various projects and activities in the local media, notably in the state-owned *Herald* paper, as well as in the *Daily Mirror* and Zimbabwe *Independent*, as indicated, for example, by the following headlines:

- “Zimplats’ expansion drive on course: Platinum producer spends US\$1 million on exploration” (*Herald*, 12 September, 2007).
- “Zimplats embarks on US\$150 million housing” (*Herald*, 18 January, 2006).
- “Zimplats donates US\$13 million computers” (*Daily Mirror*, 2 December, 2006).
- “Impala releases US\$20m for Ngezi project; (*Herald* This means that, in addition to actually speaking to respondents, researchers made their own observations of community members and also observed the environment in and around the mine. In research, non-participant observation is an accepted method of data collection. 15 February, 2008).

Another pertinent example is an article which appeared in the *Daily Mirror* of 18 July 2006 which reads as follows:

“Platinum mining company Zimplats says it has invested a total of US\$40 million into social responsibility projects in the last five years. The company said last week that the investment was part of its vision to ensure that its growth and

expansion are matched by corresponding positive improvements in the levels of living standards (sic) among communities from which it taps the human resource base...Zimplats has extended its activities to assisting others living in the locality with direct support for schools and clinics and by sinking boreholes to improve on water supplies.”

However, as this study’s findings show, there is such a wide gap between the claims of the company and the community’s views on the corporate social responsibility.

It appears the company has been successful in terms of its public relations image to the extent that even President Mugabe has cited the company as a good role model in terms of corporate social responsibility. Addressing ambassadors at State House (*Herald*, 21 December 2007), the President singled out the Zimbabwe Platinum Company in Ngezi which he said had built houses and other infrastructure such as roads, adding that if all companies were doing that the country would be “highly developed.” Even so, it would seem that some official doubts remain. When in January 2009, Zimplats donated 30 tonnes of maize meal to communities in Mhondoro-Ngezi in order to address the food shortage at the time, the Minister of State for Policy Implementation, Mr Webster Shamu, challenged the company to do better by embarking on yet more developmental programmes such as road construction in Mhondoro. He also urged the company to consider establishing a platinum refinery plant in Zimbabwe in order to create more jobs and financial rewards for the country (*Herald*, 8 January 2009).

Mimosa and corporate social responsibility

In its mission statement, Mimosa commits itself to fostering a mutually beneficial relationship with the surrounding community. It emphasizes that it is committed to social development initiatives and engages in, develops and builds community relationships. It takes responsibility for economic, social and environmental issues that impact its people, communities and environments and is involved in a number of community projects in the area.

According to the Implats 2006 Annual Report, some of the Corporate Social Responsibility projects supported by the company included the following;

Kyle School project

In FY2007 Mimosa donated 130 bags of cement towards the construction of a foot-bridge at the Shagashe River to provide easier access to the school. A total of R28 000 was spent on this project. Mimosa continues to have a close relationship with this school, which is used to benchmark its educational assistance policy.

Community co-operative and borehole projects

As part of a community engagement initiative, Mimosa runs community co-operative projects which include work assignments such as growing gum trees around company sewerage ponds, digging trenches, and clearing fire guards around the company perimeter fence, etc. Proceeds from such projects are channeled towards community projects, for example, the construction of Mukwidzi Secondary School. Approximately R36 500 has been spent on these projects, which are of an ongoing nature. In addition, Mimosa has provided a borehole pump, accessories and the installation of a 5 000-litre water reservoir, for a total amount of R426 000.

Community borehole projects and improvement of sanitation facilities

Mimosa has repaired two boreholes in the Kromdraai resettlement area. This joint project between Mimosa and community leaders saw two broken down boreholes being repaired through assistance with pipework and other ancillary equipment. The mine also donated borehole and water reticulation equipment for the local clinic, and a water reticulation system to a local charity's (Jairos Jiri) Handicapped Old People's home. It made a contribution towards the construction of water tank, roads, sewerage and water reticulation system. It was also reported to have funded the construction of toilets at Bungwe Primary School

Better schools programme

Each year Mimosa contributes towards the Better Schools programme by funding and/ or providing academic material in the form of prizes for the best schools in the Zvishavane district. In 2007, the mine provided textbooks to the value of R18 000 as a contribution towards prizes for the winning schools and children within the district. Mimosa has also funded the construction of a classroom block with three classes, including furnishings, at Makwasha Primary School. A total of R805 000 has been spent on this project.

Cop of the month scheme

Mimosa runs a “Cop of the month” and a “Cop of the year” scheme as part of its commitment to the ongoing efforts by various stakeholders to fight crime within society. The competitions are run every quarter at the Zvishavane police depot and are presided over by senior Mimosa management and the provincial police command.

According to the annual report of Implats, Mimosa receives regular requests for assistance from various community stakeholders, including schools, co-operatives and other independent centres. These requests are evaluated according to needs and they are measured against Mimosa’s corporate governance guidelines. In 2007, a total of R1.3 million was spent on such projects.

Community response to mimosa’s CSR

Information gathered through interviews with some community representatives (a village head, a ward coordinator and a community member) indicated that there were some positive contributions made by the companies to the development of the community and that the latter appreciates the direct benefits they derive from the company. Community representatives also mentioned that the company provided their children with jobs and that they were benefiting from the maize provided to the employees by the company. The respondents also acknowledged that the mine was making a contribution to the development of the community through building school blocks. Furthermore, the company has sunk a borehole for the community, provided beds for the local clinic and also allowed villagers to connect electricity to their homes from a line it had had installed which passes through the village.

However, community representatives also expressed some concerns. For instance, they complained that, although it had consulted the village head on a number of occasions, the mine did not have an established method or mechanism of consulting with the community. Meanwhile, other concerns were largely around the failure of the company to fulfil some of its promises. The community members explained that although the company had promised to build 4 blocks at Makwasha primary (the primary for Dadaya high school.), to date; only one was under construction. It was supposed to be completed by January 2009 but at the rate at which the work was progressing, the target was not likely to be achieved. Community members were also

concerned that although the mine had promised to provide an ambulance, this had still not been made available at the time of the interviews.

A major criticism was raised in relation to the company's expansion into their grazing areas. They described an incident in which the head boys destroyed the water pipes of the company to provide water for their cattle. The company, however, had started to build water ponds where the community herds can drink.

They also complained about toxic materials which the company dumps and that the waste flows into the nearby dam. The community was trying to contact the management of the company in order to present their complaints but had not been successful. The extent of water pollution and the impact on the community, however, could not be established. This is an issue for further research and investigation.

Mimosa's performance on social investment seems to compare unfavorably with that of Zimplats. Mimosa has invested much less in road infrastructure and housing. Most of its investments have been into refurbishment rather than new community investment projects. In dollar terms, the investments did not amount to significantly large amounts particularly in relation to the profits which were generated from the mining activities. According to the annual report of Implats (2007), gross profits of the mine increased by 153.8 percent between FY 2006 and FY 2007 (from R 458 2 million to R 1 163 million).

There was nothing in the annual reports about Mimosa embarking on extensive skills development, or empowering local communities by encouraging shareholding and joint ownership of the mining interests. The social investments of the company appeared more of a window dressing exercise than a substantive effort to share the mineral and wealth resources with the community. When compared to the social investments made by Implats in South Africa (for example, community trusts which Implats has created with the Royal Bafokeng nation in Rustenberg), what both Zimplats and Mimosa have done seems very limited.

Economic impact

In order to assess the economic impact made by the two mines, the researchers reviewed data on production, sales, gross margins, financial ratios, payment of taxes and royalties, and the allocation of profits among the various factors of production (for example, labour and capital). Tables 1 and 2 present some production statistics for the two mines.

Zimplats

Table 1: Production, sales and profit statistics

		FY2007	FY2006	FY2005	FY2004	FY2003
Production						
Tonnes milled	(000 t)	2,133	2,019	2,058	2,006	1,937
Platinum in matte	(000 oz)	96.5	90.3	86.8	85.3	82.4
PGM in matte	(000 oz)	205.7	195.6	187.0	186.7	185.2
Mining cost of sales						
Mining	(Rm)	495.7	451.0	400.3	297.7	318.1
Concentrating and smelting	(Rm)	153.5	92.8	104.3	114.6	106.6
Total cost						
per tonne milled	(R/t)	318	282	259	216	222
	(\$/t)	44	44	43	31	24
per platinum ounce in matte	(R/oz)	7,033	6,302	6,141	5,074	5,223
	(\$/oz)	978	986	992	735	574
Financial ratios						
Gross margin	percent	54.7	41.8	20.1	35.7	26.6
Capital expenditure						
	(Rm)	448.7	252.5	137.7	76.3	27.3
	(\$m)	62.4	39.5	22.3	11.1	3.0
Labour complement						
(including contractors)		3,400	1,800	1,700	1,500	1,500

Source: Implats Annual Report 2008.

According to the figures, Zimplats has been increasing production since 2003. In terms of total tonnes milled, (measured in 000 oz), this increased slightly from 1,937 in 2003 to 2,133 in 2007. The volume of platinum in matte produced rose from 82.4 thousand ounces in 2003 to 96.5 in 2007. Meanwhile, gross margins have more than doubled from 26.6 in 2003 to 54.7 percent in 2007. Capital expenditure rose phenomenally from US\$3.0m in 2003 to US\$62.4m in 2007.

The company has also more than doubled its labour complement (including contractors) from 1500 in 2003 to 3400 in 2007. However, the problem with the data is that they are not disaggregated in terms of permanent and contractual employees, gender, skilled, semi-skilled and skilled. This makes it difficult to analyze the economic impact of the company's investment in terms of its impact on gender empowerment, benefits to the community in terms of creation of permanent vs temporary jobs etc.

Mimosa

Table 2: Production, sales and profit statistics

		FY2007	FY2006	FY2005	FY2004	FY2003
Production						
Tonnes milled	(000 t)	1,692	1,532	1,424	1,334	755
Platinum in concentrate	(000 oz)	78.2	72.2	66.7	61.4	36.0
PGM in concentrate	(000 oz)	163.3	150.5	137.8	126.1	63.2
Mining cost of sales						
Mining	(Rm)	284.8	268.6	277.9	208.5	200.6
Concentrating	(Rm)	79.3	62.8	67.2	41.5	–
Total cost						
per tonne milled	(R/t)	250	242	256	193	222
	(\$/t)	35	38	41	28	24
per platinum ounce in concentrate	(R/oz)	5,413	5,133	5,472	4,199	4,672
	(\$/oz)	753	803	884	609	514
Financial ratios						
Gross margin	(%)	69.0	52.5	29.9	45.5	37.0
Capital expenditure						
	(Rm)	113	208	88	81	174
	(\$m)	16	33	14	14	21
Labour complement						
(including contractors)		1,630	1,630	1,620	1,507	1,459

Source: Impala Platinum Limited, Annual Report 2008.

Production levels have been lower at Mimosa than at Zimplats. However, production has also been increasing since 2003. In terms of total tonnes milled, (measured in 000 oz), this increased slightly from 755 in 2003 to 1,692 in 2007. The volume of platinum in matte produced (in 000 Oz) doubled from 36.0 in 2003 to 78.2 in 2007. Meanwhile, gross margins more than doubled from 37 percent in 2003 to 69 percent in 2007. Capital expenditure decreased from US\$21m in 2003 to US\$16m in 2007.

The labour complement (including contractors) increased from 1459 in 2003 to 1630 in 2007. As with Zimplats, the aggregated nature of the labour complement makes it difficult to assess the impact of the company in terms of creation of permanent vs temporary jobs, the impact on gender and the benefit to the community in terms of employment of its predominantly unskilled labour resources.

It was noted in the annual report that mining operations in the country were at risk from the unreliability of the power supply. To mitigate this, Zimplats had agreed in principle to import power directly from neighbouring Mozambique. It had also decided to fund the construction of a 330-kV substation at Selous. Other hurdles that Zimplats faced were a “skills flight” from the country, and empowerment legislation.

According to the 2007 Annual Report of Zimplats, Mimosa had seen a large increase in gross profit, rising from R 433.6m in 2006 to R 928.6 million in 2007. It had also made a gross margin of 41.8 percent in 2006 and this rose to 54.7 percent in 2007 (a 30.8 percent increase). Royalties paid out by the company increased from 19.7 percent of Gross Operating Profit in 2006 to 30.8 percent in 2007 (a 56 percent increase). Capital expenditure increased from R252.55million in 2006 to R 448.7 million in 2007. These investments indicate the company’s long-term plans to continue operating in Zimbabwe after the political and economic climate improve.

Unfortunately, available secondary data were aggregated, so it was difficult to determine the distribution of value added between different categories of employees. However, the data show that 80 percent of value added was retained for future growth, 3 percent was for capital expenditure, 1 percent for taxation and royalties and 8 percent was earmarked for employee costs. The Government of Zimbabwe derived some benefit through the mine’s investment in the form of

taxes and royalties. However, this item constituted 1 percent of the value added as compared to 80 percent allocated to retained earnings. Whilst this may be normal for mining companies, it still raises questions about who the ultimate beneficiaries of mining operations are.

It must also be pointed out that the research team had no mechanism for independent verification in terms of the tax and royalty payments. Zimplats has been under media scrutiny over an audit report which claimed that the company was not paying the full amount of tax for which it was liable to. The company has repeatedly denied this even though the auditor is a reputable international company. The Zimbabwe Revenue Authority (ZIMRA) was also endorsing the claims of the audit firm and has urged the company to honour its obligations.

For Mimosa, there was a decline in payment of royalties and also capital expenditure (over 40 percent decline) largely due to the high operating costs arising from a hyper-inflationary environment in Zimbabwe. Gross profits increased however, from R 458,2m in 2006 to R 1.163million in 2007. Gross margins also increased from 52.5 percent to 69 percent over the same period (a 31.3 percent increase). No data were available to show the distribution of value added. However, what is significant is that while the company made reasonable profit, its contribution to social investment seemed disproportionately modest. Again this raises questions about who the ultimate beneficiaries from mineral resources really are.

The role of civil society

Evidence from both secondary as well as primary sources revealed that civil society was not involved in a significant way in terms of engaging both Zimplats and Mimosa regarding issues which were of concern to the communities, for example, the issue about water pollution, as well as concerns over the terms of access to the housing provided by the mines etc. The Zimbabwe Congress of Trade Unions was about the only visible organization which seemed to be aware of the mine's operations and as indicated before, the Congress on the whole appeared satisfied with the social performance of the mine. A contributory factor to the limited role of civil society could be the absence of a strong worker organization at the mine.

Recommendations and conclusion

Recommendations Mining and indigenization

More broad-based consultations are necessary with regard to the new Indigenization Act. A more gradual approach particularly with regard to the introduction of shareholding by indigenous Zimbabweans (as opposed to 51 percent) may be a useful starting point not only in view of the capital constraints which have made it impossible for locals to acquire the stake proposed in the Act, but also out of consideration of the potential negative impact on foreign direct investment in mining as well as other sectors.

Mining companies and corporate social responsibility

It is recommended that the Zimbabwean Government should integrate clauses on corporate social responsibility into the mining legislation. A review of the Mines and Mineral Act (Chapter 21:05) and the new Indigenization and Economic Empowerment Act are not very strong or elaborate on corporate social responsibility. This, however, does not exonerate the mines from responsibility because in terms of the South African Mineral and Petroleum Resources Act, social obligations of mining companies are more clearly described. Strong advocacy is necessary to lobby both Zimplats and Mimosa to change their narrow interpretation of CSR towards a much broader perspective that recognizes and mandates them to contribute more significantly towards the development of the communities around them instead of just concentrating on their own employees.

Call for an independent external audit of Zimplats

It is recommended that the Zimbabwean Government should be lobbied to insist on another independent external audit of Zimplats in order to determine the truth about the claims against the company, For instance, the allegations of taxes owed by

Zimplats to the Government of Zimbabwe and the claims made by communities in Ngezi and Shurugwi about the failure of the two mining companies to live to their promises as reflected in their failure to provide services such as housing, jobs and infrastructure for local communities living around the mines. Although there are some positive contributions which both Zimplats and Mimosa have made through their investments into platinum mining in Zimbabwe, evidence from the research shows that it is the companies which have been the largest beneficiaries. The Government of Zimbabwe has also benefited from the payment of royalties and taxes but evidence from an external audit on Zimplats suggested that they were not paying the full amount of what they are supposed to pay.

Accountability, openness and disclosure

It is recommended that the Government of Zimbabwe should introduce an amendment to the current mining legislation in order to require mining companies to be more open and transparent with regard to their operations. Accountability implies that the companies should allow independent investigations, researchers or anyone who may have questions about their activities, to talk to the company officials and its employees. If the companies are operating above board, there should be no reason for such refusal. They could designate a department or unit to attend to any such enquiries. The parent company, Implats should be pressured to ensure that its subsidiaries comply with the policies and laws of the parent country with regard to all mining operations and social responsibilities.

Environmental management

It is recommended that the SARW should contract an environmental management expert/specialist to investigate further the environmental pollution which the research team witnessed. Because of the sewage pollution of one of the main rivers which sustain livelihoods for many villagers, a more detailed expert investigation is strongly recommended. Alternatively, the SARW should urge the Zimbabwean government to investigate the matter through the Environmental Management Agency.

Role of civil society organisations

SARW should also raise awareness among civil society organizations about what is happening in Ngezi and Zvishavane. The organization should also consider intro-

ducing a capacity building programme which aims to raise awareness within civil society about mining companies and their failure to contribute significantly to the development of communities around them. They should also be trained to engage those communities so that they can in turn develop the capacity of the communities to take up appropriate action that will ensure that they derive greater benefit from the mineral resources which are being exploited every day under their eyes and yet with little or no direct benefit to them. Such capacity building should also target councilors and local government officials who have been more at the forefront of dealing with the companies on behalf the communities but with little evidence that they have in fact been representing the interests of the people.

With the signing of the Investor Protection Agreement between Zimbabwe and South Africa, and also the recent trends in South African and other foreign companies visiting Zimbabwe to explore investment opportunities, the time is ripe for human rights' groups, labour and civil society organizations to lobby for a mining legislation which is favourable to the development of local communities and for the strengthening of the institutions, structures and machineries to enforce such policies and legislation.

Capacity building and awareness rising of labour unions

In particular, the capacity of the Zimbabwe Congress of Trade Unions (ZCTU) and those unions serving the mining industry should be developed in order to strengthen their skills in engaging mining companies over the working conditions of mine workers for example, the unskilled casual workers who are still housed in grass-thatched huts at the Zimplats Ngezi mine.

Conclusion

The purpose of the study was to find out about the nature of the operations/activities of South African mining companies operating in Zimbabwe. In particular, it was to describe the nature of their investments, and their relationship with the government of Zimbabwe in terms of any agreements which they may have entered into with regard to their mining sector investments. An important dimension of the study was to assess the impact of the activities of the companies in terms of a number of indicators, such as, economic impact (creation of jobs, infrastructure development, impact on the communities around which they operate and their impact on the environment).

Due to the economic crisis which the economy of Zimbabwe has experienced over the last seven or so years, a number of South African companies which had invested in mining in Zimbabwe either suspended operations or closed down altogether. The research team therefore selected to study two mines, namely, Zimplats and Mimosa, both of which are owned by Impala Platinum Mines, a South African company. Although the study offers some useful insights into the mines' operations and their economic, social and environmental impacts, it was limited to the extent that both mines are owned by the same parent and were governed by similar policies and practices. This in turn limited the comparative dimension of the study.

A major obstacle was the refusal of the two companies to grant interviews to the research team. This also meant that the team could not enter the premises of the companies to interview management, other company officials as well as employees. Zimplats argued that all the information which the team was seeking was available on internet. The team reviewed many of the annual and quarterly reports produced by both mines but also identified a lot of gaps which could have been filled through interviews with the company. However, some primary data was collected through interviews with representatives of the communities around the mines.

The main findings of the study were as follows;

Despite the political and economic crisis which has plagued Zimbabwe over the last seven years, South Africa still has maintained close trading and investment ties with Zimbabwe. However, during 2008-09, as the crisis deepened, some of the companies either closed down or suspended their operations. However, after the establishment of the Government of National Unity (GNU), there has been renewed interest by South African investors. This is evidenced by visits to Zimbabwe by South African business delegations to discuss possible investments in that country.

The spirit behind the new Indigenization Act is positive to the extent that it seeks to ensure that indigenous Zimbabweans share in the mineral wealth of their country. However, the heavy criticisms against the legislation by most Zimbabweans, including those from the private sector, indicate poor consultation prior to passing the legislation. The Act has scared off potential investors who fear what they see in the Act as the nationalization of the mines.

Zimplats and Mimosa, subsidiaries of the South African-based Impala Platinum Mines, are among the very few South African companies which have continued to operate in Zimbabwe despite the crisis, their argument being that they believe that some day the country will turn around for the better. Furthermore, because the companies had invested substantive amounts of money into the exploration and extraction of platinum, and also because of the vast reserves of the mineral (despite the fall in commodity prices due to the global recession), they saw the positive spin-offs in the long-run.

Evidence from the company's reports show that Zimplats has been making profits and has also increased employment since it started operations. However, as the data on jobs created was aggregated, it was difficult to determine how much of that increase was for unskilled and semi-skilled labour. It was also impossible to determine the gender impact of the mines job creation effort. The same problem arose with Mimosa whose reports also presented aggregated employment figures. In terms of the agreement with the Government of Zimbabwe, the mines were supposed to pay royalties and taxes. Their reports indicate that they have been making those payments. However, the research team learnt that there has been a heated argument between Zimplats and the Zimbabwe Revenue Authority (ZIMRA) with the latter accusing the company of failing to pay its full tax obligations. This followed an audit by an external company which concluded that there was some fraud with regard to the company failing to pay the full amount of their obligations. The company has publicly refuted the accusations and the wrangle is still on-going. It was difficult for the research team to ascertain the truth. However, given that the audit firm was a reputable American company, it seemed unlikely that it would falsely accuse Zimplats of wrong-doing. The controversy over the issue still continues. In the conclusion of the study, a specific recommendation is made to deal with the situation.

Zimplats has done some commendable work for some of its employees. It has provided some modern housing for its managers, supervisors and technical staff. The units range from one to two-bedroomed houses and are allocated based on seniority and level of management or supervisor grade. However, the company has failed dismally to provide decent accommodation for its unskilled and lower grades workers, most of who live in grass-thatched huts which they build for themselves. These are the workers who go underground and risk their lives in search of the precious

mineral which spins off millions in profits for the company. Interviews with some workers and community representatives showed the intense bitterness which they had against the company for what they saw as naked discrimination and total disregard for ordinary laborers. The interviews also revealed that the company had provided housing only for those under its employment and not any member of the wider community, despite the poverty under which they live.

The company has also built additional blocks at both the primary and secondary schools in the area in order to make it possible for the schools to accommodate the children of the company's employees.

Zimplats claims that the 77km tarred road which it constructed to facilitate transportation of the raw mineral ore to the smelter, also benefits the community. Interviews with community representatives were very skeptical of this claim. They were unanimous that the road was never meant for the community primarily. Instead, it was to facilitate the mines operations. In any case, the community did not use that particular road extensively, preferring instead some shorter routes (which ironically were not tarred). A visit to the communities around the mines showed that the roads linking the villages, the schools and the growth point were not tarred. Participants in the community interviews cited this as evidence of the failure of Zimplats to improve road infrastructure in the area. They also pointed out that the bridges in the villages were too low and often got flooded during the rainy season but that the company never did anything about it, despite pleas from community leaders.

Although both mines claim that they exercise responsibility with regard to protecting the environment, evidence from the interviews as well as physical evidence which the researchers witnessed showed that there was some environmental damage from sewage effluence from the Zimplats housing scheme, effluence which had polluted the Ngwazani River on which many villagers depend on. Interviews with some of the villagers showed the depth of bitterness which they harboured against the company for destroying their source of livelihoods and the little effort which they made in trying to address the problem. There was no visible evidence that the companies were failing to manage any waste from the mine processes and operations. However, because the researchers were not environmental experts, this may have eluded them. Overall, Evidence from reports and also from interviews with some community

members showed that Mimosa appears to have done much less than Zimplats with regard to the community.

Raising questions about CSR

The research raises the fundamental question of what is meant by corporate social responsibility. Community representatives painted a picture that, in reality, Zimplats took the attitude that it did not have any obligation towards them, only to their employees. They were visibly angry and full of contempt for the company. It would appear that both Zimplats and Mimosa interpret corporate social responsibility to mean responsibility to their own employees few of whom actually originate from the local community. This is against what is generally understood as corporate social responsibility, for this calls for companies to plough back some of their profits into community development i.e. beyond their own employees. However, the two companies have chosen to adopt a very narrow definition or interpretation of CSR which they present in their reports. Provision of services such as housing, education and health has largely been for the primary benefit of their own workers and not the broader community who were very bitter that the company was doing very little for them.

The study also raises questions about the capacity of the Zimbabwean Government to monitor operations of the mines. Where is the government in all this? Why are the interests of the community disregarded? Interviews with community representatives insinuated that part of the problem was that the local councilor who should be representing their interests was evasive and rarely took up community issues to the company. Many suspected that he been bribed into silence. However, the research team could not verify this.

Who benefits?

Who is benefiting from the platinum mineral resources which are being extracted by Zimplats and Mimosa? The research team saw for itself how the huge trucks operate 24 hours a day, transporting the mineral ore from the Ngezi Mine to the smelter in Selous. It means that day and night, week in, week out, vast mineral wealth is being dug from the ground, smelted and sent to South Africa for processing. Whereas the mines are making substantial profit, there was very little visible evidence that the communities (beyond the employees of the mines), derived any benefit from the

mineral resources which exist in their area. In particular, it is worth noting that the community does not have a single share in the mine as appears to be the case with some South African mining communities. For example, the Royal Bafokeng in Rustenberg in South Africa have a community investment trust and they shares the profits of local platinum mines, which in turn, have contributed significantly to community development.

It would appear that the failure of Zimplats and Mimosa to invest extensively in community development could simply be a reflection of the Zimbabwean government's oversight and the weakness of its monitoring role.

References

- Mmakau Mining (Pvt) Ltd. (2005). New Life blast into Eureka Gold Mine. Houghton, South Africa.
- Mobbs, P.M (2005) the Mineral Industry of Zimbabwe.
- RSA Mineral and Petroleum Resources Development Act, 2002. Act No 28, 2002.
- Saunders, R (2007) Netherlands Institute for Southern Africa: Mining and Crisis in Zimbabwe. Fatal Transactions Campaign.
- US Geological Survey (2005) Minerals Yearbook. Zimbabwe.
- Articles from Websites
- Department of Trade and Industry Broad-based Socio-Economic Empowerment Charter for the South African Mining Industry. www.dti.org.za 22/01/2010
- Implats Annual Reports, 2007 and 2008. www.implats.co.za
- Impala Corporate Social Responsibility Report, 2006 and 2007
- Makoshori, S. Zimplats Output Set to Increase. In www.fingaz.co.zw 2008/10/08.
- Muleya, D (2006). Zimbabwe's Mining Proposals Amounts to Sabotage. In www.Resourceinvestor.com 2008/10/14.
- Viviers, S and Boulder, J.M. (2008). Corporate Social Investment in the Mining Sector: Critical Issues. In www.isbee.org 2008/11/06
- Zimplats Annual Report 2008 www.implats.co.za 2008/12/10
- Zimplats Holdings Ltd (formerly Zimbabwe Platinum Mines Ltd) Annual Report 2005, 2006 and 2007. www.researchandmarkets.com 2009/01/24

Corporate Governance Practices of South African Mining Companies in Namibia: The Cases of NAMDEB and NAVACHAB mines

Hilma Mote and Iipumbu Sakaria

*NAMDEB is literally a post office through which money is despatched.
The money is just for operational costs and the real profits go to De Beers'*
(Namibian Minister of Mines and Energy, Erkki Nghimtina, February 2009).

The purpose of this report is to examine the nature of South African mining investments in Namibia. This includes examining the nature of governance and corporate social responsibility of two South African companies, one partly South African owned and the other fully South African owned: Namdeb and Navachab. The report is based on the premise that globalisation has increased the bargaining power of mining companies relative to host societies, the latter finding themselves in conditions of heightened competition in their search to attract foreign investors. According to World Bank Business Partners in Development, therefore, companies should be required to obtain a detailed “licence to operate” by any society in which they intend to operate, or in which they are already operating. In other words, there should be some sort of social contract that itemises their responsibilities and obligations alongside their rights and privileges. In addition, the wise company will ensure that there is a sufficient reservoir of “social capital” to be relied upon when times become difficult. Indeed, if a company promotes sustainable development, it will stand a better chance of eventually becoming a company of choice for local and national government, customers and employees.

Namibia’s mining legislation is explicit in its expectation with regard to the mining industry. The government expects the mining industry to take up the challenge of social responsibility, especially with regard to planning for closure, community involvement, and empowerment of formerly disadvantaged people. The government further argues that the social responsibility of companies can be practically implemented through capacity building, skills development and the provision of access to knowledge and technology (Ministry of Mines and Energy, 2002). However, there are indications that the government is not really taking enough responsibility to make

sure that these companies are enforcing whatever promises they make, either when they apply for an exclusive prospecting license or when they eventually commence operations and start making profits. The major question therefore is: what is the extent of corporate social responsibility of South African companies in mining in Namibia? Before proceeding to answer this, it is appropriate to provide an introductory review of social and economic conditions in Namibia.

Namibia: social and economic profile

Namibia is situated on the southwestern coast of Africa, and covers an area of 824 293 square kilometers. Until 1989 Namibia, a UN Trust Territory, was ruled from Pretoria and subjected to similar apartheid laws as were applicable in South Africa. In 1989, black Namibians were allowed to participate in national elections for the first time. The South West Africa People's Organization (SWAPO) won the majority of seats in the national assembly. In 1990, a new constitution was drafted granting independence and establishing a presidency and a national assembly. This change made way for black majority rule in Namibia.

Nineteen years after independence, the country is still characterised by pervasive socio-economic inequalities that were created and entrenched by the apartheid government. Namibia is inhabited by just 2.1 million people, more than half of whom are below the age of (20 and many are below 15). 35 percent are estimated to be living below the poverty line of US\$1 per day. 60 percent of Namibians reside in rural areas.

Despite its small population, Namibia has one of the highest HIV and AIDS prevalence rates in the world. Close to 20 percent of pregnant women visiting antenatal clinics are reported to be HIV positive, and by year 2000, about 160 000 Namibians aged 14-24 were HIV-positive. AIDS is the number one cause of death, accounting for about 28 percent of deaths in all age groups by 2000. Around 100 000 children under the age of 15 have lost one or both parents and are now orphans. At independence in 1990, life expectancy was estimated at 60 years of age, but now it has dropped to less than 42 years. HIV and AIDS is undermining the availability and productivity of Namibia's work force. Figures on employment and unemployment are beginning to be outdated since the last Namibian Labour Force Survey was conducted in 2004. Using those figures, however, shows that official unemployment figures stood at 36.7 percent.

The economy

Mining is the mainstay of the Namibian economy, contributing over 50 percent. Food processing (mainly meat and fish) contributes about 9 percent of GDP, with fish processing accounting for more than 50 percent.

Namibia is regarded as one of the wealthiest countries in Africa with a Gross Domestic Product estimated at US\$14.3 billion in 2005, although down precipitously to US\$10.72 billion in 2007. Namibia's GDP per capita is five times more than the per capita GDP of Africa's poorest countries. The World Bank classifies Namibia as a lower middle-income country, based on the annual average per capita income. However critics hasten to point out that only about 1 percent of Namibians can be classified as rich, whilst the majority of the population languishes in poverty. Indeed, the top 1 percent is worth more in value than the poorest 50 percent combined, so that Namibia displays one of the highest levels of income disparity in the world. The Household Income and Expenditure Survey of 2004 (the most recent available) notes Gini coefficient of 0.6. On average, medium income countries have a Gini coefficient of 0.43. According to Robin Sherbourne (2009: 6), a Namibian economist: "every economy is different, but Namibia's is more different than most." This presents special challenges, not only to policy makers and economists, but to all Namibians.

This high level of inequality is due in considerable part to the historical apartheid legacy of divide and rule. Many black Namibians were relegated to a rural-cash less economy whilst the white minority was concentrated in the urban economy. The inequality figures thus take into account people who do not actually rely on the formal economy for their survival. It is for this reason that more than 80 percent of the population cannot be classified as middle-income citizens. The GDP per capita figures that gave rise to Namibia being classified as middle-income country are therefore grossly misleading. Nonetheless, because of this classification, international donor assistance to the country has declined as many donors have either reduced or totally discontinued their assistance to Namibia.

Namibia's policy on foreign direct investment

Following independence in 1990, the Government tried to create a favourable environment for foreign investment by enacting the 'Foreign Investment Act, 1990'. The Act:

- empowers any foreign national to invest in or engage in any business activity which any Namibian may undertake;
- does not discriminate against foreign nationals with regard to taxation;
- allows 100 percent foreign ownership with the exception of the granting of rights over natural resources;
- grants Certificate of Status Investment, which entitles the recipient to several incentives: investments of N\$2 million or any amount of profit reinvestment provided such investment constitutes 10 percent of the equity, provides employment and training, particularly for women, earns foreign exchange, locates in less developed areas and/or utilises local resources;
- ensures availability of foreign exchange for payment of dividends and repatriation of profit, fees, etc.; and
- provides for compensation in case of expropriation and for arbitration in case of dispute.

In Namibia the private sector and foreign direct investments (FDIs) in general are often regarded as panacea for employment creation and elimination of poverty. Such attitude can be seen through the government's policies on mineral resources:

The government of Namibia recognises that the exploration and development of its mineral wealth could best be undertaken by the private sector. Government therefore focuses on creating an enabling environment for the promotion of private sector investment in the mining sector. This will include competitive policy and regulatory frameworks security of tenure and the provision of national geo-scientific data to further stimulate exploration and mining. In the same vein, the government will expect the industry to take the challenge of social responsibility in terms of planning for closure, community involvement and empowerment of formerly disadvantaged people (Ministry of Mines and Energy, 2002).

From 1993, incentives were offered to manufacturing companies, these including 50 percent tax abatement for five years, accelerated depreciation of building, exemption from sales duty on import of machinery and equipment, cash grant for export activities and a 25 percent deduction of training costs and production wages. Subsequently, in 1995, the government enacted the Export Processing Zone (EPZ) Act of 1995. This provided for the creation of EPZs, whereby the government was

hoping to attract further foreign investment and in particular to boost manufacturing capacity. Under the Act, incentives were offered to industries located in EPZs which could successfully export 70 percent of their output, with further preferences being given to companies using locally sourced raw materials or employing Namibians. The government's expectation was that between 1997 and 1999, some 25 000 Namibians would be employed by EPZ companies. By 2000, however, a mere 400 people were currently employed by EPZ companies (LaRRI, 2000).

Namibia is regarded as offering the most liberal environment for private investment in Southern Africa. However, current and prospective investors argue that official administrative procedures are cumbersome and need to be substantially improved. Thus the Namibian government has been advised by the Foreign Investment Advisory Services (FIAS) to simplify the incentive system, reduce delay in project approval and trademark registration and abolish racial discrimination in land ownership. Some steps towards these ends have already been affected through the establishment of the Investment Centre, a projected "one-stop-shop" for investors. Notwithstanding continuing dissatisfactions among investors, such measures as well as the peace and stability existing in Namibia have created a climate highly conducive to foreign investment.

Size, origin and distribution of Namibia's Foreign Direct Investment

The bulk of FDI in Namibia mainly benefits the financial, real estate, business services and mining (Jauch and Sakaria, 2009). About 75 percent of foreign investment in Namibia is from South Africa. Other major investors include Germany, the Scandinavian countries, Spain, Australia and China (Bank of Namibia 2006). The dominance of investment in mining suggests a diffusion of location through the country, depending on the distribution of mineral resources. Many mines are said to have contributed to development to otherwise undeveloped areas through their operations.

Mining in Namibia

The Namibian economy is heavily dependent on the extraction and processing of natural resources. Mining provides essential revenue for the Namibian economy today. Diamond production alone totaled 1.7 million carats in 2002 and generated over US\$500 million in export earnings. In 2006, the mining industry generated N\$11.4 billion (Bank of Namibia, 2007), confirming its status as the bedrock of the Namibian economy.

For a long time, only diamond mining noticeably contributed to GDP. However, for the first time in 2006, non-diamond mining activities contributed to revenue significantly. These non-diamond activities increased from a low of 4.5 percent in 2005 to a high of 51 percent in 2006. The former President of the Chamber of Mines, Mark Dawe, was quoted in an English-speaking daily newspaper in 2007 saying: 'The increased diversification of Namibia's mining sector away from diamonds is a very healthy development for the future of our country' (Tjaronda, *New Era Newspaper*; 24th April, 2007).

Diamonds are mined in Namibia from secondary deposits located along the Orange River, the southern portion of the coast as well as in offshore areas. The diamonds mined in Namibia are regarded of being of an exceptionally high quality with about 90 percent consisting of gem quality (Ministry of Mines and Energy, 2002). At present, diamonds and uranium account for the bulk of the country's total export sales, but Namibia is also rich in a variety of minerals with 30 different commodities being produced from approximately 40 formal mining operations. In addition to the deposits of gold and silver, Namibia has deposits of the base metals copper, lead and zinc, and industrial minerals salt, graphite, marble, fluorspar and limestone. Semi-precious stones such as rose quartz, amethyst, agate and tourmaline, as well as dimension stones such as granite and marble, can also be found.

At present, Namibia has five major mining operations, Namdeb (diamonds), Rosh Pinah zinc), Rössing (uranium), Tsumeb Corporation (copper) and Navachab (gold).

The impact of the global financial crisis on mining in Namibia

The primary sector in Namibia was the most adversely affected by the global financial crisis. This is because Namibia is hugely dependent on foreign markets to sell its commodities such as diamonds, gold, copper etc. By the end of 2008, about 643 workers lost jobs in the copper mines. This happened because of the closure of Weatherly International's operations, which ceased operations at Otjihase mine, Matchless mine and Tschudi West. The low commodity prices were cited as the main reason for the closure. Diamond mining was also negatively affected. Between January and February 2009 there was no single diamond sale. Production resumed again in July 2009. We will now turn to the two companies in question, starting with Namdeb and then Navachab.

Namdeb

The name Namdeb was assumed following a reform in ownership of the previous wholly owned De Beers Consolidated Diamond Mines (CDM). CDM, an offshoot of De Beers, was formed after World War I and by 1919 had taken over all the diamond companies of the then South West Africa (Hazelton, 2002: 9). Namdeb was founded in 1994, four years after Namibia attained independence, when De Beers conceded fifty percent ownership of CDM to the Namibian government. Its core business is diamond mining but includes related activities such as sorting, cutting and polishing.

Management structure

The operations of Namdeb are overseen by a board of directors consisting of eight non-executive directors, five alternate directors and a full time managing director. Directors are appointed by shareholders. All members of the board of directors enjoy unrestricted access to all company information, records, documents and property (Namdeb Annual Review, 2007: 50). The board of directors is responsible for governance, group policies and the provision of reliable information to the two shareholders. The board is led by a non-executive chairman and a non-executive deputy chairman. The composition of the board is male dominated since it is comprised of four women and eleven men. The post of managing director is, however, held by a woman.

The company has a management committee, which is a sub-committee of the board and consists of six non-executive members who meet three times a year. The shareholders are equally represented at management committee level (Namdeb Annual Review, 2007).

Namdeb: taxes, royalties and profits

In Namibia, companies are subject to a diamond mining tax and a diamond profits tax of 55 percent, a diamond royalty at 10 percent of revenue – irrespective of the profit level – and a non-resident shareholders' tax at 10 percent of dividends (Hazleton 2002: 10; Boer and Sherbourne 2004). However, it is not clear how much each specific partner receives in profit sharing since upon enquiry we were told that this kind of information is confidential.

It has been stated over and over again that Namdeb has been contributing more than any other company to government revenue. However, the data regarding tax payments is unclear. The figures derived from the Namdeb Annual Review of 2007 states that taxes paid to the government amounted to N\$633 million while 2006 taxes stood at N\$989 million (Namdeb Annual Review, 2007:10). (The N\$ is equivalent to the South African Rand). In contrast, data from the Chamber of Mines (2007: 31) indicates that the company paid corporate taxes and royalties of N\$588 million.

Namdeb's contribution to the economy is hailed by the company itself and the government of Namibia. The revenues generated through partnerships forged with the Namibian government have meant that Namdeb is the country's largest financial contributor. Diamonds are an important generator of export earnings, accounting for more than 40 percent of export revenue, 7 percent of government revenue and more than 10 percent of gross domestic product for Namibia (Namdeb Annual Review, 2007). As such, diamonds are regarded as Namibia's single biggest export product and the backbone of the economy acting as a catalyst for the provision and extension of infrastructure such as roads, hospitals, houses and schools.

Production exceeded two million carats for the second year in a row in 2007. However, as a result of production schedules, carat sales were 5 percent below those of 2006 (Namdeb Annual Review 2007). Namdeb's total diamond production continued to exceed 2 million carats, land sourced diamonds accounting for 1.04 million carats while marine sourced ones accounted for 1.14 million carats. Diamond sales revenue at N\$4.56 billion was 15 percent lower than in 2006 and profit before tax decreased to N\$776 million from N\$1.294 million (Namdeb Annual Review 2007: 10). Net profit for the year ended 2007 stood at N\$143 million compared to N\$305 million for the year ended 2006 (Namdeb Annual Review, 2007:13).

Data on the profits accrued from Namdeb's operations are contradictory. The figures are, nevertheless, reasonably high. The Chamber of Mines of Namibia put profits at N\$155 million in 2007 (Chamber of Mines, 2007 Annual review) whilst Namdeb's managing director, was quoting turnover figures of N\$5.6 billion for 2008, N\$4.5 billion, and N\$5.3 billion in 2007 (*New Era*, February 13, 2009). However the true nature of Namdeb's contribution to the Namibian economy was revealed by the impact of the recent global financial crisis. These sentiments were even shared by the Minister of Mines and Energy when he argued:

'Namdeb is literally a post office through which money is despatched. The money is just for operational costs and the real profits go to De Beers'.

In the same vein, a trade union representative who suspected that profits from Namdeb do not stay in the country echoed the Ministers' words. His initial reaction was:

'We do not think the government is really benefiting 50 percent of profits. We think most of the money is still going outside'.

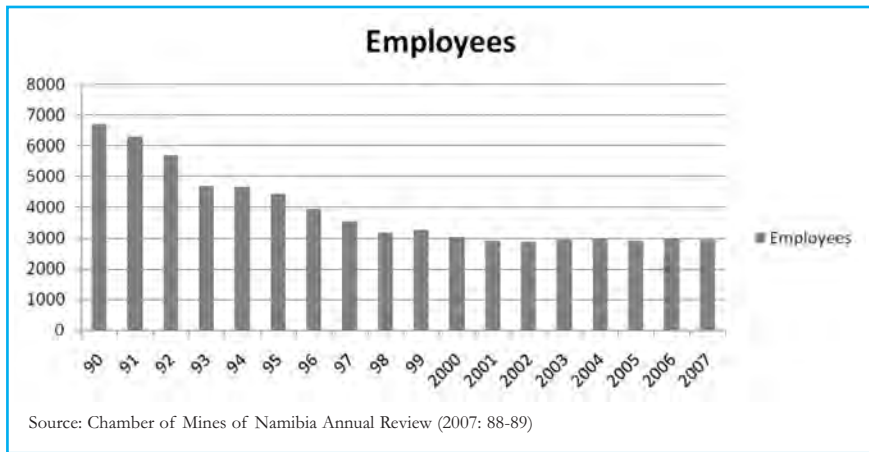
Namdeb has been a significant contributor to Namibia's GDP ever since its inception in 1994. The company is also the largest corporate responsibility contributor to the socio-economic development of Namibia although the number of its employees has been decreasing ever since it became clear that the future of diamond mining was offshore. Though Namdeb has been a significant contributor to Namibia's GDP ever since its inception in 1994. The company is also the largest corporate responsibility contributor to the socio-economic development of Namibia although the number of its employees has been decreasing ever since it became clear that the future of diamond mining was offshore. Though Namdeb is equally owned by the Namibian Government and De Beers it seems that De Beers benefits more from the agreement than the Namibian Government itself. This became clear during the financial crisis that hit the global economy in the last quarter of 2008. Namdeb found itself with diamonds that the De Beers owned Diamond Trading Company (DTC) would not buy during November 2008. Namdeb thus ran into financial problems, as it did not have enough reserves to run its operations. The Minister of Mines and Energy thus noted that Namdeb did not have any reserves at all and that all the money it gets from the diamond

The table below indicates the breakdown of the workforce:

Status of employees	
Citizens	2880
Permanent residents	63
Expatriates	39
Employment type	
Permanent	2435
Fixed term – contract	547
Contractors	54
Temporary	56
Total	3092

Source: NAMDEB Annual Review, 2007: 30

Namdeb employees since 1990, inclusive of subsidiaries.



sales was used as operational costs. This of course exposed the true nature of the agreement signed between the Namibian Government and De Beers. The company has further decided not to give their workers three month 'leave' as the company wants to save costs during the time it fails to sell diamonds. is equally owned by the Namibian Government and De Beers it seems that De Beers benefits more from the agreement than the Namibian Government itself. This became clear during the financial crisis that hit the global economy in the last quarter of 2008. Namdeb found itself with diamonds that the De Beers owned Diamond Trading Company (DTC) would not buy during

November 2008. Namdeb thus ran into financial problems, as it did not have enough reserves to run its operations. The Minister of Mines and Energy thus noted that Namdeb did not have any reserves at all and that all the money it gets from the diamond sales was used as operational costs. This of course exposed the true nature of the agreement signed between the Namibian Government and De Beers. The company has further decided not to give their workers three month 'leave' as the company wants to save costs during the time it fails to sell diamonds.

Workforce profile

The mining sector employs less than 5 percent of the total Namibian employment force in formal employment. Namdeb and its subsidiaries De Beers Marine, NamGem and the Namibian Diamond Trading Company (NDTC) employ 3092 people, most of whom are Namibians. Data from the Chamber of Mines put the total number of employees at 2940, out of which 54 are contractors while 100 are expatriates (2007: 31). This nevertheless makes the Namibian De Beers family of companies one of the country's largest employers, especially in the mining sector. Furthermore, the company claims to have created multiple opportunities for partners in technology, enterprise development and academic research (Namdeb Annual Review, 2007: 30).

As the graph below shows, the number of employees has been on the decrease since 1990. Initially the company concentrated largely on its on-shore mining but this has changed drastically, and today, the company maintains that the future of diamonds is more off shore than onshore. This is not good news for workers because offshore mining is extremely capital and technology intensive and requires fewer workers than land mining activities. This implies that more workers will continue to lose jobs in the future.

The official view is that Namdeb pursues a policy of merit – based staffing, with employees being appointed and promoted on the basis of their qualifications, experience and ability to do their job. However, the trade union representative disagreed with this view as the quote below exemplifies:

We have problems here with recruitment. It puzzles us often because we do not understand on what basis some of the people are recruited. We even have some receptionists who are not local. Are we saying we cannot find local people to do that kind of job?

The current and continued global financial crisis has already had a negative effect on the number of employees in the mining sector including Namdeb. According to media reports during January to March 2009, there have been no diamond sales from November 2008 to date. Namdeb therefore proceeded to lay off a number of workers while sending others on three months paid leave. Production resumed again in July and a number of workers returned to work, others did not.

Salaries and benefits

According to the Chamber of Mines (2007: 31) Namdeb's wages and salaries amounted to a total of N\$ 580.9 million. The lowest pay at Namdeb was N\$ 2000 a month plus benefits by year 2000. Additionally all employees on the mine were accommodated free of charge. Meals are provided for single employees at a nominal charge and every person qualifies for paid leave on full pay, medical care and retirement benefits. In 2007 the company extended benefits to its employees by allowing employees on one year, fixed term contracts to be registered as members of the Provident Fund as well as introducing the Sida Ei !gus incentive scheme by incorporating all other schemes into one team based scheme for all employees from band A to D categories.

Working hours at Namdeb especially for workers in operations are based on a shift system. Previously workers worked continuously for 7 days a week. However, the company applied to the Ministry of Labour and Social Welfare for an exemption from the seven – days – on – seven – days – off regulations to allow 14 days – on – 14 days – off to enable employees to spend longer periods with their families (Namdeb Annual Review, 2007: 30). This is what workers had to say:

The wages and benefits are not fair at all. I think the practice of the past still exists. You will find that a mining supervisor and I report to the same person, but there will be a salary discrepancy of more than 50 percent. He might earn N\$ 30,000 and I earn less than N\$15 000.

Namdeb has a discriminatory wage arrangement. Lower personnel (sic) gets less leave days and a senior person gets more.

A remote allowance was only applicable to senior management as if they are the only ones who are away from home. (Interview, November 2009)

Labour relations at Namdeb

Diamond mining in the pre-independence years led to the institutionalization of a contract labour system and the creation of cheap and inhospitable compound accommodation for black miners. The South West African Native Labour Association (SWANLA) was established to recruit low-wage labourers, mainly from the north of the country in Ovamboland, to work in the southern mines. In fact, the contract system developed the so-called homelands into a kind of slave market from which the current labour setup evolved.

The Mine Workers' Union of Namibia (MUN) is the recognized sole bargaining agent for mine workers in Namibia. Although MUN was launched in 1986, the attitude of De Beers' Consolidated Diamond Mines (CDM) towards organized labour remained hostile until shortly before independence in 1990 (Hazelton, 2002: 12). With a SWAPO government in power from 1990, De Beers became more accommodating, but the main battle of the MUN remained the contract labour system. The union also fought against poor wages for black workers and job reservations for whites, which were seen as ongoing racial discrimination.

The real breakthrough came shortly before independence in 1988, when MUN signed a recognition agreement with CDM, providing for some aspects of collective bargaining and employment relationships. Under the agreement, CDM recognized MUN as the sole collective bargaining agent for its workers, and the company also undertook not to victimize, intimidate or unlawfully interfere with MUN activities, its officials and members (*ibid*). The migrant labour system had been in practice at CDM / Namdeb since the very early days of operation and towards the end of 1997, the company and MUN entered into an agreement to abolish this system. It had massive implications as a number of labourers faced retrenchment, many took voluntary separation packages, and others took voluntary early retirement whilst some were converted from migrant to permanent employee status (Corbett, 2002: 119).

By 1997 this relationship had been strengthened to such an extent that a historic two – year wage agreement was reached. Currently MUN remains the sole recognised union in the mining industry and approximately 70 percent (Namdeb Annual Review 2007: 30) of Namdeb's employees are members. No industrial action was recorded during 2006 and 2007.

Our discussion with the acting chairperson of the Namdeb MUN indicated that workers were not satisfied with the labour relations at the company. He indicated that workers faced several problems at the company. He argued that the company was not consulting the union in many matters, including the recent forced retrenchments due to the global financial crisis:

There are many things going on because the company is overlooking the union in important matters. At the moment labour relations are not good. Our main problem has a lot to do with the retrenchment criteria. ...if the company wants to retrench diesel mechanics and there are 10 and they only need 7 they just retrench whoever they want. The company is not following the correct procedures in retrenching people. The first question they need to ask is whether there any foreign diesel mechanic. Then you retrench them first or permanent resident, -and then you look at age-‘first in and first out’ or ‘last in last out’. Ageing people who have 1 or two years to go can go because it is easier-it does not help to retrench people who are younger. People were just told you are surplus, even the one who are Namibians whilst expatriates had to stay (Interview, 27 March 2009).

Another trade unionist argued:

The government’s relationship with De Beers makes it difficult and it is disturbing to us because our issues are not attended to with the urgency it requires. There is conflict of interest (Interview, 24 March 2009).

Social investment and skills development

Namdeb is regarded as the largest corporate responsibility contributor to the socio – economic development of Namibia. Its social responsibility programmes are managed by the Namdeb Social Fund while Oshipe Development Fund, a wholly owned subsidiary of Namdeb, promotes entrepreneurship and small business development through investment in commercially viable business in the country.

Namdeb maintains that it has recognised that its staff is its biggest asset, and is thus committed to creating a dynamic learning organisation in which employees are educated, trained and developed to their full potential. The company has introduced a bursary

scheme, a self – study assistance scheme, in-house training programmes, out of company courses, a technical college and decentralised training facilities (Corbett 2002). Through the bursary scheme, Namdeb provides learning opportunities for students and employees both within and outside Namibia's borders. In 2007, 27 young Namibians were sponsored by Namdeb at tertiary academic institutions in Southern Africa of which 25 were from previously disadvantaged groups. Ten bursary holders completed their studies and took up employment with Namdeb as graduate trainees and another five were in their final years. In total Namdeb spent around N\$2 million for bursaries during the 2007 financial year (Namdeb Annual Review, 2007: 21).

The company also operates a grant scheme which provides financial assistance with no payback obligations to deserving Namibians who wish to pursue their studies. Another self study assistance scheme encourages employees to further their studies in fields of their choice and upon successful completion they receive 87.5 percent payback of the money they used to study.

In addition, Namdeb collaborates with the Maccauveli academy in South Africa to develop employees. The first programmes were introduced in the early 1990s and to date approximately 250 employees have benefited from this partnership. Furthermore, about N\$710 000 was spent on 29 full time employees who were on developmental programmes which prepare them to be appointed to positions held by non – citizens, and enhance their supervisory and training skills. External courses for artisans as well as job attachments are also organised (Namdeb Annual Review 2007).

Namdeb operates a Social Fund, which is hailed as the country's leading corporate social responsibility fund. The fund has donated over N\$20 million to various beneficiaries since its inception in 1994. During 2007 the fund donated over N\$3 million to 42 projects and organisations countrywide ranging from education, health and welfare to community development and Small Medium Enterprise projects.

As part of the companies' social responsibility programme NAMGEM, a diamond polishing company, recently handed over a newly renovated farmhouse to the Ileni Twikwafeni Project while De Beers Namibia launched a Fund to support corporate social investment initiatives in Namibia (Namdeb Annual Review 2007: 20). Education was the biggest beneficiary receiving 36 percent, followed by health and welfare with

16 percent, community development with 12 percent, public affairs also receiving 12 percent and small business development receiving 11 percent of the fund (ibid).

Another aspect that came to light was the future of Oranjemund, the town that was literally built around the diamond industry and built as well as maintained by Namdeb. Things have drastically changed as more and more people move out of the town, as the company is not doing very well anymore. The town is destined to become another ghost town if nothing is done to avoid this.

Employee accommodation: the emergence of Oranjemund

Under the contract labour system, many workers were housed in single-sex hostels for contract periods ranging from 6-12 months without physical contact with family. After independence, this practice was abolished and many workers were allowed to visit their families regularly and also to live with their spouses. Many of Namdeb workers reside in a town called Oranjemund. Gem-quality diamonds were discovered in the Sperrgebiet (South of Namibia) vicinity in the late 1920s, and the town was established in 1936. In 1943 Oranjemund became the headquarters of the monopolistic Consolidated Diamond Mines of South West Africa, Ltd. This town was built specifically to house employees of CDM.

Over the past two years there have been efforts to make Oranjemund a viable and sustainable town. The company claims this is especially to prepare for the closure of the mine when diamond mining comes to end. Oranjemund, located in the Sperrgebiet (literally, forbidden territory in German), is the logistics base for De Beers Marine Namibia crew-change operation and home to most Namdeb employees. The town is dependent on the diamond mine and is a classic company town practically owned by Namdeb. It is a completely closed-off town and if anybody wants to visit the town they are subjected to complicated formalities such as security clearance and authorisation which takes a few days to acquire.

Although the company's influence on the day-to-day management of Oranjemund will still be felt for many years to come, Namdeb promised to slowly transfer control of the town to its inhabitants and to see it through to municipal status and eventual

independence from the company. In 1997 the company started an initiative of building a sustainable Oranjemund that should continue to exist independently of its mining operations. In 2004 Namdeb registered the Oranjemund Town Management Company (Pty) Limited, a wholly-owned subsidiary, as an instrument to drive the sustainability initiative and secure the long-term future for the town. The board of that company comprises senior members of Namdeb, the MUN, the residents of Oranjemund and local business personalities.

The town establishment process will create property rights and institute a Local Authority Council to promote town sustainability as it will create security of tenure and facilitate open access to Oranjemund. By 2009 the town was expected to be operating like all other towns in Namibia as per the Local Authority Act. According to the chair of town management Toivo Nambala:

Namdeb has further approved N\$5 million to investigate alternative sustainable economic opportunities that can support the town and create alternative employment prospects which include tourism, agriculture and secondary school and technical training centres.

Due to many years of Oranjemund's dependence on the mine, it has recently been reported that several former Namdeb employees have died of stress-related illnesses shortly after retirement because they did not know how to look after themselves and their families (*Insight Magazine*, February 2009: 11). The doctor at the Oranjemund private hospital however denied such claims, saying he has not noticed any increase in stress related illnesses despite the looming job insecurity facing workers.

Empowerment and procurement mechanisms

Namibia has no clause on empowerment in any mineral legislation and previously disadvantaged Namibians remain mired in poverty (Ministry of Mines and Energy, 2002). Some companies have therefore created their own ways of dealing with that issue. The Namdeb black economic empowerment (BEE) policy provides guidance on how the company can contribute to Namibia's transformation and the national Vision 2030 development strategy (Vision 2030 is Namibia's roadmap to improve the quality of life of Namibians to the level of their counterparts in the developed world by the year 2030). Once again, workers were not satisfied with the progress regard-

ing affirmative action and employment equity at Namdeb. Consider the sentiments of one worker as expressed below:

Affirmative Action at Namdeb is very poor. The Employment Equity Commission cannot pass a report for that. One finds that a position of a Secretary is filled by an expatriate. She is also not from a disadvantaged background. You even find some teachers coming from South Africa at the primary school.

Furthermore, workers' representatives were clearly not satisfied with how procurement is being carried out. They were particularly concerned about contracts that are not given to Namibian owned companies, but often to South African owned companies:

Government has to come up with a system—contracts are going to sister company. They could go to the local companies to source what they need locally. NAMTRAC is Namibian company but government will get trucks from South Africa. The union suspects corruption. Something has gone wrong with the board. It is disturbing—and the government I think is not in control of the company at all.

Occupational health and HIV and AIDS workplace programmes

The company believes that people working at Namdeb enjoy some of the highest levels of occupational safety. Namdeb's official view is that their operations have been awarded NOSA ratings as well as ISO 14001 certification. The safety performance for 2007 is noted to have improved compared to 2006 as the company closed the year with Lost Time Injury Frequency Rate (LTIRF) of 0.17 and reduced injuries and vehicle accidents by more than 40 percent in comparison to the previous year (ibid: 8). All incidents are reported to be thoroughly investigated and reviewed to achieve a zero fatalities target. The company thus reached the 6 million fatalities-free shift mark in November 2007, retained NOSCAR status as well as the ISO 14001 certification and also obtained OHSAS 18001 (ibid).

During 2007, Namdeb and MUN signed an occupational safety, health and environmental agreement. The agreement highlights the principles and procedures relating to safety, health and environmental issues. Additionally, two full-time safety and

health representatives are employed by the company. The company has also introduced voluntary and random testing for alcohol and drugs abuse as a preventative measures in the form of early detection and rehabilitation.

Oranjemund's isolation creates an ongoing challenge. Many workers continue to be separated from their spouses and other family members. Such separation creates a breeding ground for diseases such as HIV and AIDS. Therefore, a private hospital is maintained by the company. The hospital was commissioned in the 1950s. At the moment the hospital has 5 medical officers, 1 dental officer and 61 supporting staff consisting of nurses, clinical and administrative support staff and 2 physiotherapists. Ninety-two (92.5 percent) of the staff members are Namibian. The rest of the staff are expatriates, mainly from South Africa. The operations of the hospital are funded through Namdeb Diamond Corporation Subsidy and 3rd Party funders such as Medical Aids companies. (Dr. Nashandi, Chief medical officer, Oranjemund private hospital, March 2009).

The company has a policy on occupational health called 'occupational hygiene policy'. According to the mine doctor, the major health problems confronting the workers are in line with what is found in the rest of the country. As per demographic and national challenges, these include: HIV and AIDS, Tuberculosis (no MDR detected yet) and Life style diseases – Diabetes, Hypertension (Dr. Nashandi, Chief medical officer, Oranjemund private hospital, March 2009).

The company runs an integrated disease management program that manages the HIV and AIDS risk as well as other communicable chronic diseases. The Namdeb hospital manages the overall management of diseases which are managed through the Oranjemund private hospital. The hospital also plays a clinical role of ensuring optimal case management through Anti Retroviral Treatment (ART). The hospital further plays a supportive role which relates to treatment support and counseling through peer educators. Meanwhile, "despite the prospect of further retrenchments, there has apparently been no noticeable impact on the health of workers because 'there is constant counseling'" (Dr. Nashandi, Chief medical officer, Oranjemund private hospital).

Namdeb was the first company in Namibia to provide anti – retroviral treatment for permanent employees and their spouses (Namdeb Annual Review, 2007: 5). The HIV and AIDS management strategy covers a range of key areas, including care and support

to employees' life partners and community members, as well as awareness and education programmes to support the efforts of government and other stakeholders.

Education

Namdeb has always been known to provide schooling facilities for employees' children. By 2000, the number of pupils enrolled at Oranjemund Primary School, fully maintained by Namdeb, had reached 805 from Grade 0 – 7, while 120 pupils attended the pre–primary school. Namdeb paid for the children's education, offered them transport and paid for their food too. The children received free stationary and other accessories. Nonetheless, these benefits have been significantly reduced as the company changed with time. The issue of a high school in Oranjemund remains unresolved and most of the primary school's graduates attend high school in Alexander Bay, Windhoek or Cape Town.

Namdeb and environmental plans

The Namibian mining industry operates under the environmental provisions of the Minerals Act of 1992 which provides for Environmental Contracts, Environmental Impact Assessments and Environmental Management Plans as preconditions for various mineral rights. Namibia introduced new environmental legislation in 2007 and gazetted this on 31 December 2007 for implementation by the Ministry of Environment and Tourism as soon as the accompanying regulations are in place (Chamber of Mines of Namibia 2006-07: 11). While mining forms a very important part of the Namibian economy, it has also contributed to major environmental degradation. A trade union representative believes Namdeb is not really prepared for the mine closure:

If there is no market for diamonds today how can they mend what they have destroyed? There is no money set aside for rehabilitation. They said they mended as they go. There should have been at least 5 percent of revenue for rehabilitation, but there is none. If they had prepared, they will not be so affected by the global financial crisis and caught of guard (Interview with MUN representative at Namdeb).

At present there are over 240 abandoned mine sites where the responsibility for rehabilitation now rests with the state. There is inadequate legislation to address mine closure, mine rehabilitation and aftercare. The absence of legislation to address

financial mechanisms to cover the costs of rehabilitation especially in cases of abrupt mine closures is acute.

There is therefore little effective environmental management within the Namibian mining industry: The unfortunate thing is that Namdeb has no rehabilitation plan in place. This is shocking to us because a company that has been operating for so long with no rehabilitation plan is unheard of (Interview with MUN representative at Namdeb).

The minerals agreement between the Namibian Government and De Beers Centenary AG required the submission of Environmental Management Programme Reports (EMPRs) containing environmental management plans addressing the impacts of mining operations on the environment (Corbett 2002:35). Namdeb has complied with this requirement and the EMPRs submitted to the Ministry of Mines and Energy has been approved (ibid). The company also continues to be involved in numerous conservation, monitoring and ecological history programmes which aim to minimise the potential impact of its operations on the environment.

The company maintains that the environment impact assessment process is conducted in all of the mines' operations to enable the company to identify various potential environmental impacts at an early stage of a project or operation by the Centre for Scientific and Industrial Research (CSIR). All site visits were undertaken by the environmental department of De Beers RSA Group Services which were aimed at assessing risks associated with the exploration activities and developing mitigation plans. Before a mining license is granted there should be a final mine closure plan together with a funding mechanism that describes how the company will deal with matters like groundwater pollution, soil degradation, wind pollution and infrastructure. Mine closures will be monitored by the government to ensure that the mining industry has mechanisms to rehabilitate closed mines for the purpose of sustainable land use (Ministry of Mines and Energy, 2002). In line with the Minerals Act of 1992, the company's environmental and rehabilitation policies prescribe the rehabilitation requirements in its license areas. To ensure that Namdeb fully complies with national rehabilitation standards, the company has contracted a specialist desert ecologist to develop its comprehensive rehabilitation plan.

The main environmental issues addressed by the EMS include rehabilitation of old mining areas and infrastructure, scrap and waste management, and pollution prevention and remediation.

Navachab gold mine

AngloGold Ashanti is a leading producer of gold with its headquarters in Johannesburg, South Africa. The group has 20 operations and a number of exploration programmes in both the established and new gold-producing regions of the world. According to the group's country report for Namibia, exploration activities are carried out directly by the group or in collaboration with exploration partners and joint ventures. The group's primary stock exchange listing is on the Johannesburg Stock Exchange Limited but it is also listed on the exchanges in New York, London, Sydney and Accra, as well as on Euronext Paris and Euronext Brussels (AngloGold Ashanti Namibia Country Report, 2007: 2). AngloGold Ashanti had 277,457,471 ordinary shares in issue and a market capitalisation of U\$11.9 billion as at 31 December 2007. The group holds 100 percent ownership of all its mines in South Africa and Namibia. Altogether, AngloGold owns 9 gold mines in South Africa and also runs operations in other parts of Africa. It owns 50 percent of the Geita mine in Tanzania and 40 percent ownership of Morila, 38 percent of Sadiola and 40 percent of the Yetela mine in Mali (Country report for Namibia, 2007). As a result of this spread, in 2007 the group produced 5.5 million ounces of gold from its operations, estimated at 7 percent of global production, thus making it the third largest producer.

Navachab is Namibia's only gold mine and is located 10 km south-west of Karibib and 170 km north-west of Windhoek, Namibia's capital city. Navachab is an open pit mine and produces gold bullion for export to South Africa. Production started in 1989 and the life expectancy of the mine is estimated to last until 2016 (Namibia Chamber of Mines 2006-07: 17). The group's interests in Navachab date back to 1998 when it bought a 70 percent stake in the mine; in 1999 it increased its shares from 70 percent to 100 percent.

In 2007 Navachab produced 80,000 ounces of gold, equivalent to only 1 percent of total group production. This was 2 percent lower than the target set and largely blamed on poor drill availability (AngloGold Ashanti Namibia Country Report 2007: 1). Profits declined from US\$22 million to US\$13 million for 2007 while capital expenditures reached US\$6 million from US\$5 million in 2006 (Ibid: 2).

Navachab: taxes, royalties and profits

The AngloGold Ashanti Namibia reports shows a turnover figure of N\$396 million (Namibia Chamber of Mines 2006-07; 16) for 2007 while the Chamber of Mines Annual Review gives a figure of N\$ 828 million as profit (Namibia Chamber of Mines 2006-07: 17). Payments to the Namibian Government totalled U\$13.158 million which was equivalent to N\$92.501 million in 2007. This figure is almost 11 percent that the national government receives. It seems the tax system favours the company than the state. The breakdown was as follows:

Corporate taxation /provision	N\$ 46.440 million*
Royalties	N\$ 9.983 million
Other taxes and duties**	N\$ 1.758 million
Value Added Taxation (VAT)	N\$ 20.668 million
Employee taxes and contributions	N\$ 13.652 million
Total	N\$ 92.501 million

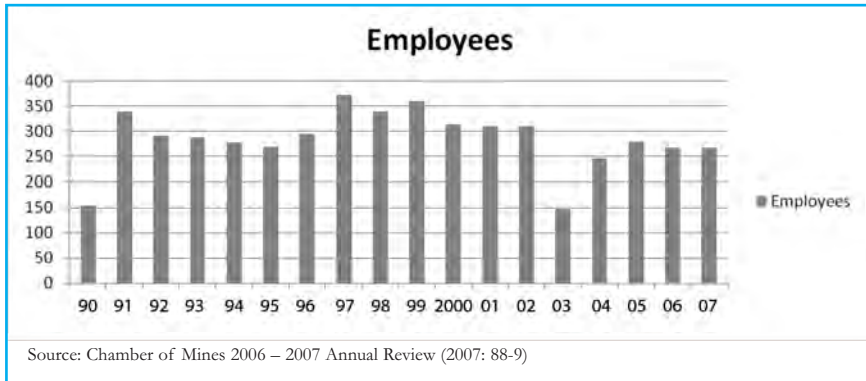
Source: AngloGold Ashanti Namibia Country Report 2007: 6

* The 2006 – 2007 Annual Review of the Chamber of Mines of Namibia shows a figure of N\$ 18.9 million as corporate tax

** Employee taxes and contributions include remittances made to government but borne by employees as individual taxation

Workforce profile

Prior to the extension of the mine's life span, the mine relied heavily on subcontractors to carry out the mining activities at Navachab. The company sub contracted the Karibib Mining and Construction Company (KMCC) (Pty) Ltd, to carry out the mining operations. Under the contract, the subcontractors mined about 3.6 million tons per year. The company planned from the beginning to fully take over operations. This eventually happened at the end of 2003 after the contract with the Karibib Mining Subcontractors came to an end. Figures for Navachab employees since 1990 are indicated in the table below.



At the end of 2007 the labour force at the mine comprised 267 employees, 188 contractors and 5 expatriates (Chamber of Mines of Namibia 2006-07:17). As the table below indicates, it was only in 1990 and 2003 that Navachab has employed a workforce of less than 250 since 1991. Furthermore, AngloGold Ashanti has a group policy that encourages the employment of locals and the replacement of expatriate employees over time through skills transfer programmes and the career development of local citizens (AngloGold Ashanti Namibia Country Report 2007: 13). Currently Navachab expatriates make up 1.7 percent of the workforce and the company plans to increase the employment of locals, especially in management. Understudies have been identified for all positions held by expatriates as required by legislation (Navachab Country Report, 2007). The company’s workforce, according to the human resource manager (Interview, 2 October 2008), has a very high literacy rate and the majority of people in management positions and administration have university degrees and diplomas.

According to the human resource manager the company has a 12 – 15 percent female and 85 percent male workforce. The company has submitted a three year plan for the advancement of women to the office of the equity commissioner.

Navachab’s wage bill, according to the Chamber of Mines of Namibia 2006 – 2007 Annual Review, stood at N\$ 49.3 million in 2007 (Chamber of Mines of Namibia 2006-07: 17).

Occupational safety, health and environment policies

Navachab recorded 2.677 918 fatality free shifts by the end of December 2007 though the mine's lost time frequency rate rose to 4.59 per million hours worked in 2007 from 4.09 in 2006. There were, however, no incidences of non-compliance with relevant health, explosives, public health and hardous regulations by Navachab during the period ending 2007. The company achieved OHSAA 18001 certification in November 2007 while achieving a 55 percent compliance with the Cyanide Code. It further got NOSA 4 Star and ISO 14001 ratings for its safety (Chamber of Mines of Namibia Annual Review 2006-07: 17).

Navachab's health and safety department coordinates safety programmes and advises and assists managers, supervisors and employees with this function. Heads of departments and supervisors manage health and safety on a daily basis, ensuring the correct personal protection equipment is issued, amongst other tasks:

Occupational health and safety is something that involves everybody and it is not only a management issue, we all need to get involved, including the union. That's why we introduced a policy on zero tolerance on alcohol and drug abuse at the mine, and ran random testing every day. Since that was introduced there was no causal accident at the mine (Interview with the human resource manager).

An occupational health and safety agreement with MUN has been in place for 11 years and includes issues such as the election, eligibility of safety representatives, their duties and responsibilities, amongst others, to promote health and safety at the workplace. The importance of health and safety is communicated to the workforce in a variety of ways such as meetings, weekly and quarterly newspapers, flash reports, presentation to the spouses of employees and internal safety competitions (ibid).

Navachab has an occupational health clinic on site where, during 2007, 56 pre-employment, 202 periodic, one transfer and 12 exit examinations were carried out (AngolGold Ashanti Namibia Country Report 2007: 10). There is an ambulance on site which is equipped to provide basic life support as well as an emergency response vehicle to back up the ambulance in case of an incident where several peo-

ple are injured. Drills to ensure preparedness in the event of a cyanide spill are held more than twice a quarter while fire drills take place twice a year in every section.

As the position stands at the moment, the major health challenges at Navachab relate to induced hearing loss and diseases related to dust. Navachab has not taken the necessary steps to deal with this problem. It was not possible for the research team to establish how many people have been affected. Further studies may be necessary.

Labour relations at Navachab

A recognition agreement is in place with MUN to which 68 percent of the workforce belongs. According to the Chamber of Mines (2006-07: 18) labour relations at the mine were stable and no disputes were registered and both management and the workers' representatives reported having a good relationship.

The MUN bargains with the company on behalf of all employees in the A 1 to C 3 Paterson bands which is effectively 97 percent of the workforce (AngloGold Ashanti Namibia Country Report 2006-07: 17). Workers at the mine indicated that they are free to join the union without fear of any discouragement and discrimination from management (interview 2009). The union and the mine entered into an agreement that allowed the workers to elect a permanent union representative at the mine. In February, 2008 the company and the union signed their most recent wage agreement that allows for a 9.5 percent wage increase.

Workers' representatives meet management on a monthly basis where issues affecting both parties are discussed. After these meetings, the workers' representatives meet with the workers to report back as well as giving workers a chance to raise new issues affecting them. Union representatives have access to the mine and have the freedom to distribute information to the workers as long as they have informed management prior to doing so.

Most workers reside in company housing while the rest receives housing allowances for rented accommodation.

All the permanent employees of the mine enjoy a variety of fringe benefits that include: a provident/pension fund; medical aid; interest-free loans; an employee

assistance fund; transportation; subsidy for school fees for employees' children; paid annual leave; paid sick leave; a housing subsidy or housing allowance; an incentives bonus; severance pay; and paid maternity leave.

The company has a staff loan scheme from which the workers can borrow an amount of N\$550 as well as accessing money from their pension fund. The mine offers boarding assistance to all their employees' children amounting to N\$240 per month per child; although this is limited to N\$ 3000 per family per annum.

The majority of the workers indicated that there were differences in benefits received by fulltime permanent employees and casual employees. This contradicted the statement from the company. Temporal workers who work more than 2 days do not receive medical aid or receive benefits such as pension fund, transportation or housing allowances. Casual workers receive their pension fund money directly from the company.

Conditions of employment

The company maintains that they adhere to the labour laws with regard to working hours. According to their officially pronounced policy, office workers work from eight in the morning to five in the afternoon and some of the shift workers work a nine-hour shift whilst others worked eight-hour shifts over a period of eight weeks. Workers at the mine from A2-C1 job grades get 34 calendar leave days whereas employees from C1 and above get 39 calendar days leave. No worker should work more than 10 hours of overtime per week and the overtime has to be authorised by the company and to be performed on a voluntary basis only. However, the study by the African Labour Resource Network (ALRN) (2007: 13) found that Navachab's workers worked three day and three night shifts of 12 hours per week, after which they got three days off. Thus miners worked about 240 hours each month, which was significantly more than the 45 hours per week that are legally set as the maximum normal working hours.

Occupational health and HIV and AIDS workplace programmes

Employees are entitled to private health care through membership of a medical scheme to which the company contributes 100 percent; all employees and their registered dependants are beneficiaries of this scheme. The company runs a clinic on the premises. The clinic provides both voluntary counselling and testing as well as antiretroviral

therapy as part of its HIV and Aids management campaign. In 2007, 69 employees underwent voluntary counselling and training while three employees were on anti retro-viral therapy. Navachab spent a total of N\$33, 036 on its HIV and AIDS programmes for 2007 (AngloGold Ashanti Namibia Country Report 2007; 11).

A saliva survey was conducted in November 2007 at Navachab to determine the HIV and AIDS prevalence rate amongst the employees and contractors. Overall 84 percent of permanent employees and 64 percent of contractors participated in the survey; 6.3 percent of the permanent employees tested positive while 11.9 percent of the contractors tested positive (Ibid).

Peer educators at Navachab confirmed that there is a draft policy on HIV and AIDS; other wellness initiatives deal with cancer and alcohol abuse. Peer educators concentrate on HIV and AIDS education, provide information of the dangers of smoking and alcohol abuse and also test the state of health of the workforce (Interviews, 2 October 2008).

Skills development

It is the group's policy to provide adult basic education and training (ABET) to ensure that all employees are literate and numerate. Navachab runs an ABET programme which was recently reviewed after it had been stopped for about two years. The first classes after the programme review were held in March 2007 where spouses of employees, and other community members, were invited to participate. The program currently has 55 learners who attend either the morning or evening classes at the local municipal facility (AngloGold Ashanti Namibia Country Report 2007: 15).

Four bursaries, worth N\$ 330 000, were awarded in 2007. The company generally offers bursaries in the fields of geology, mining engineering, metallurgical, mechanical and electrical engineering, human resource and accounting. The company also has a self-study assistance scheme and 15 employees are currently engaged in tertiary studies at different institutions of higher learning.

Training-for-life initiative are also in place to equip employees, as well as ex-employees with skills for alternative employment opportunities or self-employment in the

event of termination of employment as a result of ill health or mine closure (Ibid: 14). The Karibib Private School continued to be a major beneficiary, receiving N\$285,714 in subsidies during 2007 which enabled it to maintain its position as one of the top schools in the country. The company additionally paid for the repair of 500 desks and chairs at a local school where learners were sitting on the floor and a number of classrooms were also painted. Furthermore the mine donated computers to a number of schools in Karibib (Navachab Country Report 2007).

In 2007, Navachab spent N\$780,000 on training and development (excluding amounts spent on bursaries) while total corporate social investment expenditures reached an amount of N\$2.5 million spent on mainly, besides education; on health care, the environment, community development, arts and culture and heritage activities (AngloGold Ashanti Namibia Country Report 2007:22).

Relations with the community and procurement policies

Navachab maintains relations with the community in different ways. Their stakeholders include the local community, the business community and the local municipality. The mine is represented on the town council as well as on a number of local committees. In 2007, Navachab held two consultative meetings with these groups and held its annual meeting with interested and affected parties comprising of local residents, government officials and regional councillors. The event included a mine tour, presentations and discussions on topics such as the impact of mining on the environment, sustainable development and the closure of the mine (Ibid).

The company also has a job attachment scheme which gives apprentices / trainees at recognised institutions and some people from the community the opportunity to gain practical experience in their field of study. Navachab currently accommodates fitters and turners, boilermakers, electricians and instrumentation and diesel mechanics who totalled 12 in 2007.

It was useful to note that Navachab maintains that it has programmes in place to support local industries as more than 75 percent of Navachab's goods and services are procured within Namibia (AngloGold Ashanti Namibia Country Report 2007: 22)..

Navachab and the environment

The open-pit mining of Navachab will leave the environment deeply scarred. The less visible impacts of the mine are the waste rock dumps, which the mine rehabilitates. During the process of extracting the gold, the residue is pumped for a distance of 3.5 kilometers to a slimes dam. A floating return water station is employed at the mine to recover up to 50 percent of the water to the treatment plant. Despite these, Navachab achieved certification for the ISO 14001 management system which is valid for three years on 4 May 2007. The company has drawn up its own policy which has been briefed to all employees who were, as well, involved in the ISO 14001 awareness program that was conducted during 2006.

The company discusses environmental issues with the community of Karibib during the yearly meetings held with interested and affected parties. Primary topics raised at the 2007 gathering were the expansion of the mine and the commitment of the company to follow a proper closure and rehabilitation plan. Navachab also holds regular informal interaction with the regional authorities.

The mine has a closure plan in place that was drawn up with the involvement of external consultants, Golder Associates. According to Navachab the closure of the old tailings storage facility is nearly complete and rehabilitation of the waste rock dump is progressing well (AngloGold Ashanti Namibia Country Report 2007: 18). The mine manages 6152.6ha of which 493ha has been rehabilitated to date. There is a nursery on site and indigenous plants are used for rehabilitation purposes.

Obsolete infrastructure was dismantled and remnant pipes and cables sold to scrap dealers. Once the area was cleared of all water and rubbish, an earthmoving company was contracted to rehabilitate the walls and pond area. The dam walls were stabilised with waste rock and concreted drains were built to prevent erosion. Current estimated liabilities at Navachab are N\$22 million and half of this amount is for rehabilitation and half for decommissioning (Ibid: 18-19).

Navachab used 1.116.821 cubic metres of water during 2007 of which 40 percent was recycled, an improvement of the 35.1 percent that was recycled during 2006 (Navachab Country Report 2007).

Environmental statistics	Usage	Efficiency		
	2007	2006	2007	2006
Cyanide usage (kg)	1 022 000	908 000	10.56	12.78
Fresh water usage (Cubic meters)	1 116 821	938 000	10.91	13.96
Energy usage (GJ)	320 275	299 142	3.48	4.00
GHG emissions (Cubic meters)	13 267	12 244	0.14	0.17

Source: AngloGold Ashanti Namibia Country Report 2007: 18

During 2007, Navachab recorded three incidences of non-compliance with Namibian legislation (AngloGold Ashanti Namibia Country Report 2007: 17). Incidents are assessed on the basis of their severity. Those that fall into the first two categories are reported to corporate office within 24 hours and are subjected to a formal investigation. Those in the third category are reported to the on site environment coordinator. The three significant incidents of 2007 were:

Date	Nature of incident	Action taken
13 February	About 400 litres of hydraulic oil were spilled from a bulldozer after damage to the machine was caused by large boulders.	Namibian law requires that oil spills above 200 litres be reported to government. Oil contaminated soil was removed and placed in a hydrocarbon waste site and the formal notification papers were filed with the relevant authorities.
21 February	An excavator loading on a temporary ramp had its main supply pipe of hydraulic oil to the pump damaged by a rock resulting in 700 litres of hydraulic oil being spilled.	The spill was reported to the Namibian authorities. Oil-contaminated soil was removed and placed in a hydrocarbon waste site.
29 November	After refuelling, but without decoupling the filling nozzle, a heavy vehicle driver drove off, causing the coupling to be torn off the hose, resulting in about 700 litres of diesel being spilled over a distance of 2km.	The authorities were notified. Retraining has been done standard operating procedures.

Source: AngloGold Ashanti Namibia Country Report 2007: 17

Recommendations and conclusion

At the beginning of this report we indicated that Namibia as a country is endowed with a variety of natural resources. The expectation is therefore that the livelihoods of many Namibians would have improved drastically after so many foreign companies have been mining in Namibia for decades. Yet, despite the wealth of natural resources, many Namibians are mired in poverty. The main concern relates to why Namibia was not able to translate the investments in the exploitation of its natural resources into obvious natural wealth and improved standard of living for the majority. It is unfortunate that many communities, even in the community of Karibib where Navachab is operating, are not able to show much tangible results from the investments of the mine. So far, much of the corporate investments are directed towards education, health and training of the communities in which they operate. In addition, the majority of people in Karibib remain unemployed.

We are continuously reminded about the contributions that mining is making to Namibia's GDP. There is information about profits companies are making on an annual basis, but no information is provided on how much of these profits are expatriated. This is for us to be able to measure whether the profit sharing is really equal, especially in the case of Namdeb, a company which is partly government owned. Indeed, there is substantial reason to believe that the mineral wealth of the country is only benefiting a small group of foreign investors, shareholders and a small, but growing local (black) elite. It is also this unequal share and distribution of profits accruing from the country's natural resources that has contributed to Namibia holding the infamous title of being the most unequal society in the world. Unless this is addressed, there is danger of discontent translating into political unrest and instability. It is therefore important that the government involve the citizens, community members, community leaders, civil society in the negotiations of contracts. This is to avoid contracts and contents thereof being kept a secret.

Civil society in Namibia has not yet reached a stage where it is sufficiently equipped to demand participation in, and to actively participate in, decision-making about how the country's natural resources are exploited and shared. Namibians need to be sensitised about the fact that the resources belong to them and not to foreign company owners and the political elite. Community members are on occasion called upon to review draft impact assessment studies. But the studies do not often involve local expertise, and local people are not involved in the evaluation process. Often, a group of local community members are gathered to merely rubber stamp the reports that were drafted and concluded by foreign experts. The CSR policies of companies often lack depth and do not tend to go beyond building infrastructure such as roads that are designed to make things easier for their productive operations. For instance, the companies examined here talk a lot about having built houses and contributed to the development of for instance Oranjemund and Karibib, yet these towns were developed simply to serve the interest of the company. These arrangements lead to 'imaginary communities' which tend to crumble once a mine ceases to exist.

The mining industry has predominantly always been perceived as 'male domain'. Despite the fact that diamond mining has been ongoing in Namibia for over 100 years, it was only about 10 years ago that Namdeb employed its first females in for tasks that were previously reserved for male workers. It was also the same year when Namdeb appointed a female managing director / chief executive officer. But generally, gender equality in the mining sector is far from being satisfactory.

Navachab contributes to Namibia's economic development, albeit not to the extent of Namdeb. Their workforce has been around 250 since 1990 and only employs a limited number of expatriates. Occupational safety, health and environmental policies are also in place and the company seems to take note of the importance of these. Labour relations have also been found to be satisfactory as no labour unrest has been witnessed since 2007 while the majority of workers belong to trade unions. Workers receive housing allowances for rented accommodation and various other benefits including medical aid, transportation and subsidies for school fees.

The company has a policy to provide adult education and training as it aims to have a literate workforce. Besides that Navachab also provides bursaries to deserving students and also equips its workforce with training that enhances life initiatives.

Relations with the community are maintained in different ways. The mine is represented on the town council and holds various meetings as well as tours with interested community members and groups.

Navachab complied with international regulation such as ISO 14001 but recorded three incidences of non-compliance with Namibian legislations.

Overall, mining companies certainly contribute to the communities that are affected by their operations but the benefits tend to be short-term. After a company leaves, there is often little that a local community has to show for it. The only way Namibia can become one of the leaders in natural resource governance will require major investments in accountability and transparency and strong promotion of community involvement in the design, content of impact assessments and contractual agreements before they are signed off by government.

Bibliography

- AngloGold Ashanti (2007). Country Report Namibia 07
- AngloGold Ashanti Report to Society 2007 – Employment
- AngloGold Ashanti Report to Society 2007 – Environment
- Boer, M and Sherbourne, R (2004). *Managing Diamond Dependency: Should Namibia risk more to gain more?* Windhoek. Institute for Public Policy Research (IPPR).
- Chamber of Mines of Namibia (2007). Chamber of Mines Annual Review 2006 – 2007.
- Corbett, A (2002). *Diamond Beaches: A History of Oranjemund*. NAMDEB Diamond Corporation (Pty). Ltd. Windhoek
- Grobbelaar, N and Besada, H (eds) (2008). *Unlocking Africa's potential: The role of corporate South Africa in strengthening Africa's private sector*. Johannesburg. South African Institute of International Affairs.
- Hazleton, R (2002). *Diamonds: Forever of For Good*. Occasional Paper 3. Partnership Africa Canada. Ottawa
- Chamber of Mines of Namibia (2007). Chamber of Mines Annual Review 2006 – 2007
- Karuombe, (2002). *The history and achievements of the Mine Workers of Namibia*. Windhoek. Labour Resource and Research Institute.
- Lange, G – M (2003). *The contribution of minerals to sustainable economic development: Mineral resource accounts in Namibia*. Windhoek. Directorate of Environmental Affairs Research Discussion Paper No. 3.
- Ministry of Labour and Central Bureau of Statistics (2004). *The Namibia Labour Force Survey 2004*. Windhoek. MOL and CBS
- Ministry of Mines and Energy (2002). Minerals Policy of Namibia. Windhoek, Namibia
- Munnik, V (2005). Between a rock and a hard place: Gold mines are under growing pressure to deal with their environmental and social impacts. African Labour Research Network.
- Mwilima, N (2005). *Assessing labour and environmental standards, multinational companies in the mining industry in Africa: the case of the Navachab Gold Mine in Namibia*. African Labour Research Network.
- NAMDEB Annual Review 2007. Windhoek.
- Namibia Chamber of Mines (2007). Chamber of Mines Annual Review 2006 – 2007.
- Republic of Namibia (1999). Diamond Act
- NAVACHABavachab Gold Mine (2003). Navachab Mine Closure Plan. Prepared by Eagle Environmental. South Africa.
- NAVACHABavachab Gold Mine (2004). East and West African Region Environmental Incident Reporting Procedure.
- NAVACHABavachab Gold Mine (2003). Annual environmental Report. Namibia
- NAVACHABavachab Gold Mine (2003). Answer Prompt Sheet for Stakeholders Questions. Namibia

NAVACHABavachab Mine (Undated). Reporting on Navachab Mine activities in line with AngloGold's Business Principles relating to Environment.

Republic of Namibia (1992). Minerals Act

Sherbourne, R. 2009. *Guide to the Namibian economy 2009*. Institute for Public Policy Research (IPPR), Windhoek.

Simons Storms Securities (2006). Namibian Mining: The economic stronghold.

Warhurst, A. (2001). *Corporate citizenship and corporate social investment*. Warwick. Greenleaf Publishing.

Websites visited:

www.aga-reports.com

www.anglogoldashanti.com

www.mme.com.na

www.mme.gov.na/gsn/gold.htm

www.namdeb.com.na

South African Banks and the Corporate Governance of South African Mining Companies in Southern Africa

Andile Mngxitama and Zandi Radebe

South Africa is one of the foremost mining countries in the world. South African mining companies, big mining houses such as Anglo and DeBeers, have invested in Southern Africa's mines since the late Nineteenth Century. However, with the end of apartheid in 1994, the extent of activity of South African mining companies, especially junior mines, throughout South African increased markedly. Today, South African firms mine copper and gold in the Democratic Republic of Congo (DRC), copper in Zambia, platinum in Zimbabwe, gas in Mozambique, and diamonds in Botswana and Namibia. In this process of investing in the region, South African banks are expected to play a key role in financing the different projects.

Extractive Industries (EI) are by their very nature financially expensive, environmentally invasive and socially intrusive. Worldwide the financing of mining and oil projects is increasingly under scrutiny regardless whether it is funded by debt or equity (UNEP-FI, 2001-2002). In general, enterprises contribute around 30 percent of funding of given projects, while banks contribute the remaining 70 percent in the form of loans, and it is only with bank accreditation that projects can get loan funding and be implemented. All financial investment carries risk and it is the financial institution's skill in identifying and quantifying the different levels of risk that separates good decisions from bad ones. From a business perspective, all financial institutions start from a consideration of returns to be made on an investment. In most cases, benefits to be obtained and not the quality of investment seem to influence a bank's decision of whether to fund or not to fund a particular project. Environmental, social and increasingly reputational risks are just a few of the many risks to be assessed each time a financial institution gets involved in a business. Mining has big negative impacts where it occurs and as such, it must make a positive contribution to sustainable development. Consequently, financial institutions are required to take into account environmental and social issues when financing development projects overseas. They are also required to monitor the activities of the companies before, during and post mining. For this to happen, financial institutions must have systems and principles on which they base their decision to fund or not to fund mining projects.

The South African government is also expected to create a framework on how South African companies involved beyond its borders must behave (UNEP, 2002). This is the general ethical and policy environment within which investment in extractive industries is supposed to take place. However, in reality there many and concurrent challenges which emerge and at times subvert the most noble of commitments.

Objective of the study

The objective of this study is to provide an overview of and how South African banks adhere to international good practices when lending money to fund mining activities. A related objective is to identify if the South African government has regulations for South African mining companies investing outside its borders and how these are monitored.

Methodology

The study has a twin focus. On the one hand, it seeks to understand if and how financial institutions adhere to good practice and standards as articulated by benchmark making institutions; and on the other hand it examines the extent to which South African government monitors South African based companies doing extractive business outside the country. First, a basic literature review on norms, standards and corporate good governance on the issues under review was conducted. Second, a desktop review of banks policies and practices (self declared) was conducted via website searches. Third, several open ended interviews with relevant persons in the banks were conducted.

The following broad questions provided a guide to the open interviews:

For the financial institutions:

- *On the Environment:* Do companies submit environmental impact assessments of their investment before, during and after mining?
- *On labour:* in countries where labour laws are not properly implemented, do financial institutions oblige companies to apply the best standard possible? Which ones do they propose?
- *On safety, education and health:* are companies obliged by their funders to enforce safety and health regulations? Have the different banks adopted the Equator Principles?
- *On transparency:* do financial institutions oblige companies to pay taxes correctly and on time and avoid corrupt practices in the host country? Do banks or the

companies they fund adhere to the Extractive Industries Transparency Initiative (EITI)?

- *Monitoring and evaluation:* How do banks monitor the activities of companies in the region?

For the South Africa government, two main questions were asked:

- Does the South African government seek to ensure that South African mining companies which invest abroad, especially in countries of the SADC region where environmental standards and human rights protections might be lower than in South Africa, adhere to best practices as far as the protection of the environment, respect for human rights and transparency?
- What are the government's policies in this respect?

The across-the-board nature of the questions necessitated that different South African government departments had to be approached. The following departments were approached:

- Environmental Affairs and Tourism,
- Department of Foreign Affairs (now the Department of International Relations and Co-operation) as well as
- Mining and Energy
- DTI (website search).

As an additional safeguard and a mean of capturing the official regional position, the Southern African Development Community was also approached with these questions.

Limitations of the study: five major limitations

First, none of the banks' representatives who were interviewed allowed discussions to be audio recorded, and the researchers had to rely on hand taken notes. The main objection provided was that business confidentiality might be compromised if interviews were recorded. The banks argued that the sector is highly competitive and they could not afford to provide advantage to their rivals by inadvertently revealing their strategies regarding international protocols etc. The banks also refused to share hard copies of either the Environmental Impact Assessment (EIA) tool kits, reports or plans. As a consequence, what is reported here is only verbally self declared positions which are not corroborated by documentation or by field studies.

Secondly, most banks in South Africa have only recently signed the Equator Principles, and therefore do not have a track record against which good practice can be checked. Furthermore, even where banks have signed up to other protocols (such as Nebank signing up to the UN Global Compact principles, UNGC), there are not any reports on how they have complied, nor do the institutions concerned want to divulge any hard information about the extent of adherence. They prefer to offer only verbal assurances that indeed good practice has been adhered to.

Thirdly, banks refused to make available any EIA undertaken and what corrective measures applied where some shortcomings may have been detected. In fact, all the banks claimed that the borrowers by and large operate within strict good governance practice and that consequently, none of them has yet to find occasions to penalise any clients.

Fourthly the study could not corroborate the claims made by banks against what is happening at project implementation level. Therefore the study depends overwhelmingly on what the banks say and mostly bank generated self-promotional web material claims. Therefore, this study must be read as an impressionistic overview of the practices of the South African banks with regard to the mining sector outside South Africa.

Finally, there was major problem accessing information from the South African government. It became clear that there is a great deal of confusion and ignorance within the government machinery as to which department is actually responsible for monitoring business activities of South African companies. A decision was taken to focus on telephonic interviews. Therefore the findings regarding the position of the South African government remains tentative. However, as researchers we draw some inference from this lack of knowledge within the policy making arenas of government.

The importance of the banking industry in extractive industries

South African mining companies are competing to acquire mining rights across the Southern African region where ecological conditions are already fragile. Mining companies are being financed by international and national banks. Mining in general tends to have negative impacts on both humans and the environment around the area it takes place. This places a huge responsibility on the whole business chain from lending to final delivery of projects. Banks, therefore, are a strong influence on companies' behaviour since they are involved from an early stage in funding a project, and therefore have a chance to consider the social and environmental impact of the investment. Banks need to have the necessary capacity to undertake risk analysis, not only concerning financial but environmental and social risks. At this inception phase, banks have the potential to exercise a considerable amount of persuasive force to orient a project in a way that is in tune with best international standards. Indeed, banks have both the leverage and the responsibility to demand that their borrowers engage only in best business practices. Accordingly, in dealing with mining companies, financial institutions should be required to exercise caution to ensure that they fund companies and projects that adhere to international standards as they relate to mining in terms of labour laws, safety and health standards, protection of environment, human rights, corruption and transparency related issues amongst others. For this to happen, banks must have in place systems and principles on which they base their decision to fund or not to fund mining projects.

Banks around the world have been under fierce criticisms from environmental civil society groups for their role in providing funding to many environmentally damaging projects (Yu Xiaogan and Ding Pin, 2008:39). But South African banks have not really been monitored in terms of EI projects they fund both inside the country and outside. The funding of mining projects has also been a secret, for many banks make it difficult for NGOs to monitor their actions.

Overview of SA banks

South Africa's banks are regulated in accordance with the principles set by the Basel Committee on Banking Supervision. Consequently, banks are compelled to comply with international sound practice and to offer a sophisticated banking system to the public. The Basel Committee on Banking Supervision is an institution created by the central bank Governors of the Group of Ten nations, including South Africa. It was created in 1974 and meets regularly four times a year. Its role is to formulate broad supervisory standards and guidelines and to recommend statements of best practice in banking supervision by central banks, i.e. the South African Reserve Bank (SARB) (Falkena et al, 2001).

Currently, there are 38 registered banks in South Africa. This number consists of 15 South African controlled banks, 6 non-resident controlled banks (subsidiaries), 15 local branches of international banks, and two mutual banks. In addition, 44 international banks have authorised representative offices in South Africa. Representative offices, however, may not take deposits. There are five major groups which continue to dominate the South African banking sector. These groups are the Absa group, the Standard Bank group, the FirstRand Bank group, Investec and Nedcor.¹ These institutions are therefore required to act in accordance with good banking practice and to adhere to international standards in the course of their business.

International principles and standards

There exist an increasing number of voluntary international standards and protocols that guide the banking community when lending money for projects. These tools of corporate responsibility serve two primary purposes. First, they seek to promote corporate practice that is more responsible and accountable. Second, these tools strive to establish a clear and common understanding of central concepts such as “sustainable development” and “corporate social responsibility” (Goel, 2005).

In the South African context, there are four sets of frequently used international practices that govern the funding of projects. These are the Equator Principles, the UN Global Compact Principles (UNGC), the United Nations Environmental Programme: Financial Institutions (UNEP:FI) and the Global Report Initiative (GRI).

Equator Principles (EP- 2003): overview and operation

The Equator Principles comprise “a set of categorisation, assessment and management standards designed to identify and address any potential environmental and social risks that a proposed project may present” (Goel, 2005). Projects are assigned ratings of A, B or C (high, medium, low) depending on the potential environmental and social impact of the project which takes into account the type, location, sensitivity and scope of the project. For A and B projects, the borrower must undertake an Environmental Impact Assessment (EIA) to address issues that were identified in the screening process and through stakeholder consultation, an environmental plan is created. Category C projects require no further assessment beyond the initial screening.

The Equator Principles outline a range of issues that the EIA must take into account including: host country law, environmental impact, impact upon indigenous communities and the consideration of alternative environmental and social approaches. At

the heart of the EIA is compliance with standards of the World Bank and International Finance Corporation (IFC) for projects in developing countries. Banks must create an Environmental Management Plan (EMP) that flows from the conclusions of the EIA. To date over 35 banks have adopted the Equator Principles, accounting for approximately 90 percent of total global project finance. The Principles only apply to project financing involving projects of \$50 million and above. Participation is voluntary and is not subject to official implementation, review or enforcement requirements at this stage. In the South African context, all leading banks have recently adopted these principles, this includes, ABSA, Nedbank, Standard bank and First Rand Bank.

The UN Global Compact (UNGC 1999) overview and operation

The UNGC is a voluntary initiative rooted in issues of human rights, labour standards, and concerns about the environment and corruption. Participants pledge to abide by its ten principles, based on the Universal Declaration of Human Rights. The initiative calls on financial institutions to support and respect human rights within their sphere of influence in its first principle. The guidelines to the principles indicate that these rights are based on the Universal Declaration of Human Rights which was elaborated in the International Covenant on Economic and Social Rights and the International Covenant on Civil and Political Rights. This is a tool for human rights' compliance and the involvement of South African banks like Nedbank, First Rand Banks and Standard banks indicates a commitment to human rights. Yet, no evidence can be found to show how these tools are applied when financing mining activities.

United Nations Environmental Programme: Financial Institution (UNEP: FI) 1991

The idea of gathering financial institutions around environmental issues in the form of the Finance Initiative within UNEP materialised in 1991 when a small group of commercial banks joined forces with UNEP to catalyze the banking industry's awareness of the environmental agenda. Today, UNEP FI is the largest global voluntary partnership of its kind, with over 170 signatories to the UNEP FI Statements. UNEP FI members include banks, insurers, asset managers, pension funds, and other categories of financial institutions, all working together to understand the links between sustainable development considerations and financial services, in order to

maximise mutual positive impacts. Nedbank joined this initiative as early as February 2004, while Standard bank joined recently. However, there is little evidence available to show how either bank has adhered to the mechanism. On the other hand, ABSA and First Rand have not indicated whether they support the initiative at all. It must therefore be asked; if all the South African banks signed up to these standards, would that necessarily improve their lending practices?

Global Reporting Initiative: Sustainability and Reporting Guidelines (1997)

Launched in 1997, the Global Reporting Initiative (GRI) is a multi-stakeholder process and institution that has set out to develop and promote a globally applicable framework for reporting on sustainability issues. The GRI guidelines set out reporting principles and specific indicators to guide the development of sustainability reports for companies and other organizations. Evidence indicates that Nedbank, Standard, First Rand Bank and ABSA comply with the GRI reporting framework; all four banks have reported on their economic, environmental, social impacts and the bank's sustainability performance for the 2008 financial year.

Compliance and weaknesses

Overall, the declared compliance of the four major banks with these various initiatives is as follows:

SA Financial Industry	NEDBANK	STANDARD BANK	RAND BANK GROUP	ABSA BANK
International Practices				
UN Global Pact	✓	✓	✓	✓
Equator Principles	✓	✓	✓	✓
Global Reporting Initiative (GRI)	✓	✓	✓	✓
UN Environment Programme (Financing Initiative) (UNEP- FI)	✓	✓		

These banks lay claim to having incorporated environmental, social and environmental pollution and management of ecology damage into their risk assessment procedures used in loan approval. Some bank claims that they have adopted stricter environmental policies than those set out in the Equator Principles. However, some of the weaknesses of these international standards will include:

The regulatory framework: the Equator Principles

Literature reviews show that there are major gaps in the existing regulatory framework as expressed in existing international standards and protocols. The Equator Principles which have increasingly become the main instrument governing good lending practice have been found to be lacking in important respects. Evaluating their efficacy against the practices of South African financial institutions reveal the following weaknesses:

- The Equator Principles were primarily drafted by the institutions that must ultimately implement them and cover most project lending. This self regulatory framework and practice does not take into account the ingrained nature of profit seeking by lending institutions. It is based on “good faith” and a reliance that these lending institutions and borrowers will adhere to ethical practices. This flies against reality as the global financial crisis shows. Banks are not in their nature amenable to adopting practices that impinge on their profitability. It can therefore be said that the EP is based on wishful thinking.
- The Equator Principles lack strong mechanisms to ensure accountability and transparency: Banks are permitted to hold on to “non-disclosure” and “client confidentiality” codes, and thus they decline to reveal defaulting clients or the mechanisms they use to force compliance. As a result it becomes very difficult to determine the effect of the principle on mining companies, locally and in southern Africa.
- The Equator Principles only apply to project finance. Consequently socially and environmentally sensitive sectors may be not included because they are not project financed. Even under this circumstance, the principles apply only to projects valued at a certain price (above \$50m). All South African lending institutions claim to lend through the Off-Balance-sheet mechanism. This means

that in practice, where there is a dispute, clients can exploit a mechanism to actually avoid compliance.

- The Equator Principles use vague language: For example, it is said that projects need to be generally consistent with International Finance Corporation criteria. The question is how in the absence of mechanisms to compel public disclosure of EIA reports, and names of borrowers, can accountability be realised?

Hiding behind off-balance sheet lending

The most important finding from this over-view is that banks have a mechanism to side step compliance via “off-balance-sheet” lending. According to some banks, most of their projects are carried on off-balance lending which means the borrower does not have to comply with regulations such as the Equator Principles. This means that the banks cannot be held responsible for environmental and social risks that could come from the project. Off balance-lending also means that all risks are limited to the owner or borrower and the specialist consultants.

Banks can side-step the principles when lending money to mining companies depending on the type of funding used. According to Benning (2000), the availability of finance for mining projects is generally dependent on the economic robustness of a project, the requirements of the sponsor and the overall risk profile of the individual project or corporate entity. The finance will be classified either as a Corporate Loan, Project Finance or Venture Capital; and is characterised by the risk-reward relationship.

Venture capital is really the domain of shareholders’ equity and very few lenders are willing to consider providing funding for projects that fall into this category. This is often because the risks are too high for banks to only earn a debt return and such risks need to be borne by shareholders who stand to gain in any upside potential.

Project finance is a funding mechanism that relies on a future stream of cash flow from a project as the main source of repayment, and uses the project’s assets, contracts, rights and interests as security for the loan. Project finance loans are not reflected on a company’s balance sheet, and since these projects are normally isolated or ring-fenced from the ongoing business of the sponsors, they usually do not impinge on the organisation’s debt capacity.

In order to determine the certainty of the project cash flows, a detailed due diligence exercise must be undertaken to identify the risks that could potentially impact on the robustness of these cash flows. One of the main attractions of project finance is the ability to allocate the risks to the project participants (lender, contractor, technology providers, etc.) to avoid the sponsor sitting with all of these problems. Securing credit approval for this type of loan is considerably more difficult. The credit process is more complex because of the necessity of taking every risk issue and mitigating all of them satisfactorily. The understanding and allocation of risk is one of the underlying fundamentals in project finance and is one of the main reasons why the process is time consuming and arduous.

Moreover, the involvement of specialist consultants, legal advisors and other professional experts along with the significant amount of investigative work required, and risk that is assumed by the banks, are the main reasons why project finance is more expensive than a corporate loan. A key characteristic of project finance is that smaller lenders without deep pockets are likely to borrow in terms of this mechanism. As indicated the servicing of this type of debt is “expensive” and therefore is not particularly suited for larger corporations with healthy balance sheets.

Further off-balance sheet lending implications

As a result of the risks associated with project finance, most banks are more likely to carry-out Off-balance sheet lending. As noted, this refers to any form of funding that avoids placing owners’ equity, liabilities or assets on a firm’s balance sheet. This is generally accomplished by placing those items on some other entity’s balance sheet (Benning, 2000). This means that corporate creditors cannot account for a client’s non-compliance in sustainability issues.

Depending upon the structure of a project’s financing, the project sponsor may not be required to report any of the project debt on its balance sheet because such debt has no recourse or only limited recourse to the sponsor. Off-balance-sheet treatment can have the added practical benefit of helping the sponsor comply with covenants and restrictions relating to borrowing funds contained in other indentures and credit agreements to which the sponsor is a party without having to take any responsibility for, or to account for, their implementation.

Summary presentation: Off-Balance-Sheet and Project lending

Off Balance Sheet

- Lending that is NOT supported by capital
- Projects are normally isolated or 'ring-fenced' from the ongoing business of the sponsors
- Pushes projects off balance sheet into the 'shadow banking system'—beyond reach of regulators.
- Risks transferred to companies
- Cheaper to use evades regulations

Project Finance

- Non-recourse financing for single project (mine, etc).
- Projects are normally isolated or 'ring-fenced' from the ongoing business of the sponsors
- Financiers may encounter social and environmental issues
- Funding (more expensive)
- Packages are normally uniquely structured to suit particular characteristics of a specific project.
- Relies on a future stream of cash flow from a project as the main source of repayment.
- EPFI adopted this method

Thus off-balance-sheet lending has major consequences for lending practices and compliance with good practice protocols as discussed below.

Weak monitoring and evaluation

Responsible lending allows for greater control over potential environmental and social impacts. It also allows for a common framework for managing environmental and social risks in project finance. All banks employ a similar method as guided by the Equator Principles. All potential clients have to complete a Bankable Feasibility Study (BFS) and meet the requirement of the bank for project finance as espoused by the Equator Principles. A Bankable Feasibility Study refers to “a detailed presentation of the technical, financial and legal aspects of a viable project, on which the Bank will perform its due diligence exercise” (Benning, 2000.) This substantial document represents the data and facts gathered during the exhaustive investigations into the viability of a project. This is usually conducted before the banks are approached and may be carried out over many years. Such a document is considered 'bankable' when the content is sufficiently detailed and supported by underlying data so as to enable a potential lender to make a judgment on whether or not it will consider providing finance based on the risk-reward relationship. It follows therefore

that a completed BFS will not necessarily achieve the objective of securing the full funding required to develop a project. It is important to note that already this mechanism is slanted towards ensuring feasibility from the point of view of the lender. In practice it is clear that issues of EIA are of a secondary nature.

The Equator Principles categorise projects into high, medium and low environmental and social risk, based on the IFC's categorization process. Major risk issues may include environmental risks, political risks, operational risks and so forth. Borrowers need to demonstrate in their Social and Environmental Assessments, and in their Action Plans that they meet the applicable World Bank and IFC sector-specific EHS Guidelines and IFC Performance Standards. These are undertaken by independent engineers, in consultation with banks and entirely funded by the borrower. The bank will include the loan documentation covenants for borrowers to comply with the Action Plans. The process varies depending on the nature and size of the project the bank is financing. It is unlikely that the bank will fund the entire project from inception because of the financial risks involved and costs of the project. In addition, each element of the project must be investigated in detail to identify areas of risk against which they will then apply the requirements of international guidelines.

Normally, the Banks applying the EP will follow a four step process towards decision making:

- Step 1: The client and project are screened and categorised under low, medium or high risk project. This is done along with the Bankable Feasibility Study.
- Step 2: The bank will consider the Social and Environmental Review and Appraisal Document.
- Step 3: The bank will consider the Social and Environmental Action Plan.
- Step 4: The bank will consider the Social and Environmental Monitoring Report.

This process is part of the policy, but how it actually interfaces with reality is something which needs to be further investigated. This is what the Banks say they do in deciding whether to lend. In all these steps the independent consultants who are engineers play a key role. They undertake all the related studies and develop the reports and the plans.

Independent consultants

When starting on a new project, the client is required to hire engineers who are designated as independent; these are appointed by the bank in consultation with the borrows as required by the Equator Principles. It is the banks that drafts the Term of Reference for the Engineers and also appoints them. The engineers submit reports to the bank, which is then according to the principles required to demand correction of practice if there are any breaches discovered by the impact assessment engineers. However, there seems to be lack of transparency around this area as it is not clear how the process is conducted. The precise role of the engineers, and whether they follow international standards in conducting the surveys and reports remains unclear.

The main concern with regard to the “independent” consultants is actually their independence or lack of it. For example, most of the management in the Engineering companies have been funded through bursaries by mining companies who may also become their clients later. This raises the possibility that engineers and mining companies are bound together in “networks of mutual benefit”. It would appear that the distance between engineers and the companies whose project they assess needs to be more rigorously monitored and maintained. Right now there is no such safeguard.

The EIA of most projects, including the realisation of the four step decision making formula, is under taken by the five largest engineering companies in South Africa.

Tacmin Engineers²

Minxcon Mining and Exploration Consultants³

Ukwazi Solutions⁴

SRK Consulting Engineers & Scientists⁵

Minproc Engineers⁶

These engineering companies currently enjoy a virtual monopoly over large scale lending projects.

Transparency

All four banks – Absa, Nedbank, Standard and First Rand – have issued annual sustainability reports as guided by the GRI framework and have posted these on their

websites. Yet nothing in these sustainability reports focuses on mining companies and the latter's activities in relation to sustainable development. Most of the information contained in the reports is broad and does not allude to the type of business relations banks have with mining companies as far as responsible mining is concerned. Moreover, the code of client confidentiality employed by all banks makes it difficult to know which mining companies are funded by banks.

Human and labour rights: the UN global compact

Evidence indicates that Nedbank, First Rand Bank, Standard and ABSA continue to support the ten principles of the UNGC in respect of human rights, labour rights, environmental protection and anti-corruption. Yet, this evidence does not go further than the sustainability reports submitted by banks and made available on their WebPages. These reports are of limited use in understanding the actual practices and mechanisms applied to ensure that their mining clients comply with appropriate standards, and the suspicion remains that they are largely self-praise public relations exercises.

Environmental awareness (UNEP:FI)

Of the three banks interviewed, Nedbank is the one that can be said to be a leading in best practice. This bank has signed on to more than two sets of international guidelines which address different needs, as far as sustainability goes. This bank is the first South African commercial bank to commit to the UNEPFI initiative. It is also the first to adopt the Equator Principles and has the longest signatory status when compared to the other three banks. It is also the leading bank in environmental initiatives, especially inside the country. The bank equally has an impressive record with regard to human rights as it has been adhering to two different sets of principles. For example, the bank was the first to join the UNEPFI initiative, which addresses Human rights and sustainability issues within the financial sector. It also supports and has signed on to the UNGC principles, which promote human rights, labour rights, environmental protection and anti-corruption.

Nedbank is generally committed to the implementation of best practice standards. Several attempts have been made to put in place monitoring mechanisms for the principles and guidelines adopted. An example is the bank's "Green Mining Awards" where by the bank recognises significant achievements by mining companies in the promotion of environmental and social responsibility in the mining sector across

Africa. Involvement of the bank in efforts to stop deforestation in Africa and their concern with biodiversity issues suggest that it strives to be a good corporate citizen and an exemplary good practice bank.

The other two banks, Standard and First Rand, are also relatively committed to promoting good practice as indicated by their adoption of the Equator Principles. One of the banks signed on to the EP in 2009 and has been involved is assisting other banks to get acquainted with the EP on an advisory level. Yet, of all banks that have signed the Equator Principles, none of them seem to have a clear monitoring mechanism in place. Nonetheless, both banks can be reported to have maintained good sustainability standards. This is also supported by the online reports posted on their websites, although as indicated, these tend towards self promotion material and are not leavened by independent opinion on the claims made.

Safety, education and health

As with environmental awareness, there is lack of details as to what the responsibility of the bank is when it comes to safety and education in the mining projects they fund. As part a broader commitment to corporate responsibility, banks can appear to be promoting safety, education and health issues, but without external scrutiny or any monitoring mechanism, there is no way of knowing if this is indeed extended to the mining companies they fund. Hence the scope of this paper was limited to investigating governance and international practices that guide banks in funding mining projects and not necessarily on investigating the mining activities funded by these banks.

General observations: SA banks look good on paper!

In general the findings of this over-view indicate that a number of South African financial institutions have incorporated international guidelines and principles into their project finance initiatives. This suggests that there is reasonable awareness on the part of the banks about responsible lending with respect to human rights, labour rights and environmental sustainability, especially within the South African context. The banks in question have signed on to various protocols to promote best practice initiatives. These include, the Equator Principles (EP), the UN Global Compact Initiative (x10 Principles), the United Nations Environment Programme: Finance Initiative (UNEP: FI), as well as the Global Reporting Initiative (GRI). The objective of these guidelines is to create a framework for addressing environmental and social risks of project financing and thereby promote responsible lending from financial institutions.

Evidence suggests that all the banks interviewed have voluntarily adopted a set of internationally accepted policies or guidelines to promote human rights, labour rights, and environmental sustainability. These guidelines are applied when lending money to mining companies as due process but they are difficult to monitor properly so as to ensure responsible lending and sustainable mining. These standards and guidelines, as well as reports, are reflected in all of the bank's websites and are open to the public. Yet there is little evidence to suggest that they are best practice implementers.

The interviews conducted revealed that banks are more likely to be committed to the upholding good practice standards at home than they are abroad. Little evidence was provided to point that banks are undertaking the requirements of the principles in their missions in the SADC region.

By signing on to all these standards, it would seem that South African banks have adhered to strict investment standards. However, a closer look will suggest that these guidelines have not been sufficiently applied and implemented by banks to ensure good practice. There is no clear indication from banks that these instruments have been internalised in comprehensive environmental protection and human rights policies. It is also doubtful if banks have the necessary technical expertise to carry the work.

South African banks have only recently signed on to these principles and are relatively new to the culture of upholding and implementing these voluntary codes and practices. As these principles may have been adopted for public relations purposes rather than through concern to promote responsible lending, the principles are mired with several weaknesses.

The South African government

There key finding here is that South African government does not have policies to regulate and monitor South African companies doing business in the SADC region. There was a great deal of confusion from the government officials spoken to about whether there is a policy or not to govern South African businesses outside of the country, and the inference may accordingly be drawn that in fact there is no such a policy or practice. The closest corroboration of this assertion was derived from Marjory Murinda⁷ of the SADC office, who explained that as far as she knows “It will be the responsibility of the host country to ensure that companies operate within the laid down standards for that particular country, as these could be different from country to country”. Mr. Jeremy Michaels, Head of Communications and International Co-ordination, Department of Mineral Resources), indicated similarly in an email (September 30, 2009):

South African law doesn’t have extra-territorial jurisdiction. In other words, we cannot use local law to regulate the conduct of South African companies operating outside the boundaries of South Africa unless there is a specific internal law instrument.

From data which has been gathered hitherto there appears to be no existing South African government policy to regulate the conduct of lending institutions with regard to mining activities outside South Africa. The Policy Analyst in the Chamber of Mines, Ms Maria da Silva, confirmed this in a telephonic interview. She indicated that as far as she could tell there exist no such policy.

An adverse inference can be made about how mining companies behave in South Africa where policy and legislation exist to protect both the environment and vulnerable communities. Various research projects undertaken by organisations like

Action Aids, Jubilee 2000 and the South African Human Rights Commission show that rights are violated on the ground. This suggests that even where policy exists the South African government has been lax in asserting it in the interest of the poor and for environmental protection. This raises major questions about whether outside of the borders of the country the government is prepared to require South African companies to do better.

The Southern African Development Community (SADC)

The only existing commitment to good practice by the South African government is related to the SADC process. There is a SADC Protocol on Mining signed by 12 (including South Africa) out of 15 SADC member states. Relevant articles are: Article 2 – General Principles – which indicate that Member States should:

- Recognise that a thriving mining sector can contribute to economic development, alleviation of poverty and the improvement of the standard and quality of life throughout the Region;
- Promote economic empowerment of the historically disadvantaged in the mining sector.

The findings of a research report – *Breaking the Curse: How Transparent Taxation and Fair Taxes can turn Africa's mineral wealth into Development*⁸ – cast serious doubt on the extent to which African governments have regulated mining for the socio-economic development of their citizens. According to the report, African governments have interpreted Article 6 – Promotion of Private Sector Participation – of the SADC Protocol so loosely that the result has been lax mining regimes and unaccountable and corrupt governance. This article states that member states shall:

- Adopt policies that encourage exploration for and commercial exploitation of mineral resources by the private sector.
- Undertake to develop a mechanism that will enable the private sector's continued participation in the sector.
- Strive to create a conducive environment for attracting local and foreign investment to the region and to the mining sector in particular.

There is no evidence that the SADC protocol has been operationalised to give effect to either policy or good practice. But it is clear that the protocol itself is not being implemented, or where there is some implementation this has been weak. However, the protocols do give civil society some leverage to lobby or engage governments. However this requires a coordinated strategy.

Recommendations and conclusion

Recommendations Monitoring and evaluation

There is not enough monitoring and evaluation of guidelines and codes. What could be useful in this regards would be for the government in partnership with civil society and communities to be included in the monitoring and evaluation processes that banks undertake. There is no mechanism in place to ensure that banks comply with the principles. Banks simply use their own discretion. There is no secretariat to set and ensure minimum accountability systems (e.g. disclosure requirements). This lack of transparency undercuts any serious of the implementation of the Equator Principles.

Transparency

Lending institutions need to make public their lending practices, partners and the process of monitoring they follow. More importantly, the reports of EIA needs to be made public and correct measures undertaken where non compliance has been observed must be included in such reports.

Engineers and consultants

It is recommended that government develop policy to regulate the EIA companies, and that such a policy framework include civil society, government, affected communities. More importantly a policy provision must be made that compels lending institutions and mining companies to make public the findings of the EIA and mid terms reviews on projects funded, including what remedial actions undertaken.

A focused study need to be undertaken on the big five engineering firm to understand better how they are constituted, how they function and whether there is any conflict of interest between them and the banks for which they regularly consult.

Government

The South African government needs to articulate a policy to regulate South African mining companies doing business outside South Africa. At a minimum, the South African policy regime should be observed by South African companies outside South Africa.

It is also recommended that a detailed review of how South African government has to date influenced and been influenced by mining companies doing business outside South Africa.

Civil society

There is very limited civil society engagement with the protocols process and implementation. For governments, FI and mining companies to consistently adhere to good practice there is a need for much more coordinated civil society engagement with the process.

Encouraging good practice

It would be good to consider a very public process of rewarding good practice by financial institutions based on assessment by civil society and other independent actors.

Conclusion

Most South African financial institutions have now signed some of the key protocols for good practise such as the Equator Principles. However, there remain a great deal of “grey areas” in terms how over time these protocols will be well observed. The use of these tools is mostly voluntary; several could emerge as industry standards that could supply the legitimacy, consistency and comparability demanded by banks and its stakeholders. For many banking institutions, the question is no longer whether to use these tools, but which ones to use and how. There is much confusion and uncertainty regarding the role, function and quality of many corporate responsibility tools. The Equator Principles for example, apply only to projects with a total capital cost of \$50m or more. The ambit should extend across the board of financing activities. Responsible financing practices should in fact move beyond screening only massive projects.

The Equator Principles are the most popular guidelines as far as project finance is concerned. Whether this involves South African banks in practice that is an improvement compared with the past remains to be determined. Nonetheless, it would seem that there is a growing commitment to good practice standards overall. Nonetheless, there is still a gap between the implementation and monitoring of these protocols and good practice standards. All banks seem to lack the monitoring and evaluation tools for mining projects so as to ensure that the guideless, like the ones mentioned above, are thoroughly followed. Banks still need to develop their practices so as to formulate a system of guarding against human rights violations in parts of the world where the situation is already volatile. Banks generally do not have any enforcement strategy and are not being assisted by the South African government. They are basically undertaking all good practice standards according to their own discretion and motivation.

Endnotes

- 1 Former SARB Governor, Tito Mboweni. [http://www.sadcbankers.org/SADC/SADC.nsf/LADV/20A3E1ED24934CDF422575450048F2D0/\\$File/South+Africa.pdf](http://www.sadcbankers.org/SADC/SADC.nsf/LADV/20A3E1ED24934CDF422575450048F2D0/$File/South+Africa.pdf)
- 2 <http://www.tacmin.co.za/>
- 3 <http://www.minxcon.co.za/clients.html>
- 4 <http://www.ukwazi.com/ukwazigroup1.htm>
- 5 <http://www.srk.co.za/dservice.asp?servID=96>
- 6 <http://www.minproc.com.au/>
- 7 Anne, a Records Officer at SADC's registry office received the question initially and then she forwarded it to Marjory Murinda June 22 telephonic interview.
- 8 <http://www.actionaid.org/pages.aspx?pageID=34&ItemID=450>

References

- Benning, I. 2000., Banker's Perspective of Mining Project Finance, *The Journal of The South African Institute of Mining and Metallurgy* VOLUME AND NUMBER AND PAGES???145
- Falkela, H et al, 2001, Financial Regulation in South Africa.
- Goel, R., 2005. Guide to Instruments of Corporate Responsibility; An overview of 16 key tools for labour fund trustees.
- Mboweni, T., 2004, The South African Reserve Bank, Regulation and Litigation.
- UNEP 2002. *The Role of Financial Institutions in Sustainable Mineral Development*, UNEP/Standard Bank London: www.unep.com

International Guidelines

- <http://www.equator-principles.com/principles.shtml>
- <http://www.unglobalcompact.org/>
- <http://www.unep.org/>
- <http://www.globalreporting.org/>

Bank Reports

- www.nedbank.co.za
- www.standarbdbank.co.za
- www.absa.co.za
- www.fistrandbank.co.za
- www.rmb.co.za

Mining Engineers

<http://www.minxcon.co.za/clients.html>
<http://www.ukwazi.com/ukwazigroup1.htm>
<http://www.srk.co.za/dservice.asp?servID=96>
<http://www.minproc.com.au/>
<http://www.tacmin.co.za/>

Annex 1: List of people contacted: GOVERNMENT

Name of Person	Position/Department	E-mail Address
Alf Wills	Deputy Director: International Co-operation and Resources	awills@deat.gov.za
Liz McCourt	Chief Director: Environmental Impact Management	lmccourt@deat.gov.za
Faith Nzimande	Regional Energy Officer	Faith.Nzimande@dme.gov.za
Marjory Murinda	SADC House Registry	mmurinda@sadc.int
Anne	Records Officer: SADC House Registry	Registrya@sadc.int
Charles Phahlane	Communications and International Co-ordination	Charles.phahlane@dme.gov.za
Jeremy B Michaels	Head of Communications and International Co-ordination	jeremy.michaels@dme.gov.za

Annex 2: List of people contacted: BANKS

Name of Person	Position/Department	E-mail Address
Nivaash Singh	Mining Resources	nivaash@nedbank.co.za
Gayle Rodriguez	Mining & Resources	gayler@nedbank.co.za
Bridgette Burnett	Head Enterprise Government & Compliance-Sustainability	brigitbu@nedbank.co.za
Nigel Beck &	Environmental Manager	nigel.beck@standardbank.co.za
Caroline Donally	Resource Finance	caroline.donally@rmb.co.za
Mpho Mofokeng	Resource Finance	mpho.mofokeng@rmb.co.za
Neil Naidoo	Project Finance	neil.naidoo@absa.co.za

(Neil was not available for interview – all information obtained from: ABSA Website)

Conclusion

Corporate Governance and Social Responsibility in the African Context: Contemporary Reflections

Roger Southall

This collection of studies on the corporate social responsibility (CSR) of South African mining companies operating in the wider region serves a valuable purpose in supplementing earlier work (eg Fig 2008), and reminding us that the notion of accountability lies at the heart of CSR: accountability of mining companies, and notably their boards, not just to their shareholders, but to wider stakeholders: host governments, host communities, their employees and, in an impersonal sense, to the global community through their impact upon the environment. No longer can it be said that “the business of business is merely business”: if ever this aphorism ever embodied the whole truth (and Nineteenth Century slave trading companies who were to be confronted by the campaign for the trade’s abolition were amongst the first to find that it didn’t), it certainly cannot hold up in the early years of the Twenty-first Century. Even so, because CSR remains a highly contested concept, and not least in the South African and wider African context, it may be helpful to conclude this collection of studies by offering a series of reflections about its role, practice and implementation in the contemporary period. In particular, the focus here will be upon (1) CSR and the idea of “responsible capitalism” in Southern Africa; (2) CSR as an accompaniment of global economic (neo)liberalisation; and (3) the gap between policy and implementation.

CSR and responsible capitalism in Southern Africa

The term corporate social responsibility may have commonly employed only over the last two to three decades, but of course the general ideas lying behind it are nothing new. The most vigorous, early adherents of *laissez-faire* capitalism may well have truly believed that they were serving the ultimate collective welfare by maximising profit through a ruthless pursuit of short-term profit maximisation, yet it is worth recalling that Adam Smith (from whom many drew inspiration) was acutely aware that economics operated in a societal context, and warned of the dangers of capitalists ignoring morality and social justice. Furthermore, although during the long history of industrial capitalist expansion, capitalists were guided by the twin goals of cost minimisation and profit maximisation at the expense, in particular, of the conditions and demands

of labour, there was always what we might term an “in-house capitalist critique” arguing the wisdom as well as the rightness of companies’ wider obligations to society. As with the development of the campaign against the slave trade, this had its origins in religious belief. Max Weber was to argue the strong association between the protestant ethic and the development of capitalism, proposing that an ethic of hard work, modesty in consumption, and duty to God was to become secularised, so that capitalists were able to pronounce profit and wealth as evidence of God’s favour. Yet there was always a stratum of capitalists, many of them adherents of sects which had their roots in radical protest, who took their responsibility to society seriously. Amongst the most famous were the founders of the family firms of Cadbury, Fry and Rowntree, all of whom were Quakers, and who took to the industrial production of cocoa in part because they wished to encourage its consumption amongst the British working class as an alternative to cheap alcohol (then a massive problem amongst the poor). All three families went on to engage in ‘socially responsible capitalism’ in terms of establishment of, inter alia, trusts (Rowntree and Fry) which involved themselves in ‘good works’, and in the case of Cadbury, of the building of a model estate (Bournville) for its workers linked to its factory in Birmingham.¹ Such initiatives are correctly categorized as paternalist and condescending (in that they embodied the belief of ‘responsible capitalists’ that they knew what was good for their employees and the wider working class), yet they were not by that token hypocritical. Nonetheless, they can correctly be linked to a wider recognition amongst certain capitalist strata that ‘fair’ treatment of workers and their families was not only just, but that it was wise, and that the survival of industrial capitalism required a social accommodation with the working class if radical and socialist challenges were to be diverted. ‘Philanthropy’, therefore, was over time to assume many dimensions and shapes, whether it be provision of ‘model factories’ and working conditions through to the establishment of Foundations designed to ameliorate the social conditions of industrial capitalist society. In a word, the term ‘CSR’ might be relatively new, but the impetus behind it – a recognition of the wisdom as well as the inherent virtue of a devotion to social justice – is nothing new. Even so, times have changed radically.

In the first place, the state under modern capitalism was itself to assume much more social responsibility. At worst, this was done so grudgingly and parsimoniously, and usually under social pressure from below (and, after 1917, with clear intent of undercutting communism); at best, it was driven by commitment of working class politi-

cal parties and trade unions to social democracy, and to an acceptance by capital of the need to co-exist, if not to cooperate with, welfare states. Overall, whatever the particular national outcomes under industrial capitalism, capitalist firms were to find themselves subject to a much expanded set of obligations in terms of tax demands (to fund social programmes), pensions and of regulation of industrial relations. In turn, family capitalism gave way to monopoly capitalism and the steady growth and domination of multinationals.

Many social impositions upon capital in advanced industrial states remain (and their extent would horrify the capitalists of an earlier age). Nonetheless, it is notorious that, equally, many of the social gains struggle for and conceded to labour capital have been ruthlessly eroded under late capitalism. From the oil shock of the early 1970s onward, multinational capital has sought to restore profitability and pursue profit maximisation by variously, demanding that governments cut back social services (and hence reduce taxes) and by cutting back on labour costs, both by replacement by capital and by reduction of benefits. In sub-Saharan Africa, this was to take the form of structural adjustment plans imposed upon African governments which had run into debt as a result of two broad processes: first, an expansion of social programmes (in health, education, housing etc); and second, nationalisation of extensive sectors of the economy. As is noted in this collection, nationalisation was to prove an ironic triumph: the foreign exploiter might be driven out, but at the cost of substantial financial compensation paid by government and inability to continue (state) capitalist operations profitably. In turn, structural adjustment demanded a slashing of social expenditure and a privatization of key sectors of industry, this often involving an invitation to multinational capital to return. As globalisation proceeded into the 1990s, African governments were to become involved in what has been turned a “race to the bottom” as they sought to outcompete each other to attract foreign investment by offering favourable conditions to investors.

Inevitably, South Africa’s own trajectory had its own peculiarities. Whilst the post-1948 National Party government proceeded to erect a welfare state for whites, blacks were left out in the cold, and were subject to a ruthless regime of discriminatory living and working conditions which was backed up by a repressive state and industrial despotism. This was to culminate in a golden age (for whites) in the 1960s, following a period which had seen extensive inflows of foreign capital investment (albeit

subject to interruptions caused by fears of foreign investors about political instability), industrial expansion, technological advance, and not least, the outlawing and suppression of the liberation movements. But South Africa was not immune from international global crises which themselves impinged upon domestic political economy. By the early 1970s, white labour was not only becoming scarcer for employers (as it moved upward into managerial positions and sideways into government) but more expensive, while in turn, black labour was becoming more assertive; indeed, the oil shock of 1973 coincided with the first major strike wave since the late 1950s which was to herald the rapid growth of the modern trade union movement. In turn, black political quiescence turned into revolt in 1976, and this was thereafter never successfully contained by a government which, from the late 1970s onward, found itself driven by pressures internal and external on the road (via many twists and turns) to reform. For its part, multinational capital similarly came under increasingly extensive pressure internationally to disassociate itself from apartheid. While the standard argument of corporate capital was that the racial impositions of capital were irrational and raised the cost of production, the answer of 'revisionists' was that the major corporations had been central to the creation of the apartheid system and had long benefitted from it, not least because they had, historically, been responsible for the creation of the migrant labour system. Anti-apartheid protestors thus demanded disinvestment, a call to which numerous foreign firms were in time, to find themselves responding (to reduce international criticism and exposure). But other foreign firms sought to deflect criticism by pursuing what we now term corporate social responsibility.

Bezuidenhout et al. (2007) detail how the notion of CSR was first formally employed in South Africa in 1972, a Professor Meyer Feldburg arguing in his inaugural lecture at the University of Cape Town that while business was not responsible for the apartheid system, it was important for its own enlightened self interest that business take CSR seriously. Thereafter, large scale capital was to respond to the campaigns for disinvestment and economic sanctions against South Africa by setting up various voluntary initiatives. The most prominent of these were the various codes of corporate conduct: Sullivan (for US firms) and the European Community Code for European firms and so on. Signatory firms committed themselves to desegregation of facilities, development of black staff, equal and fair employment practices, and improvement of housing, health, transport and industrial conditions for employees.

Even though only a minority of corporations (reluctantly) embraced these principles, they were significant in the sense that they alerted capital generally to the need for social reform if a political and social revolution were to be averted. Whilst on the one hand, large scale capital pursued a series of wider initiatives, such as the establishment of the Urban Foundation to address critical urban development issues, on the other, it began to press upon the government the need to reform, and in time, was to play a significant role in establishing contacts with the exiled liberation movement which laid the ground for the political transition; and for a political accommodation between the liberation movement and large scale capital after 1994.

Detailed exploration of the relations between capital and the democratic state are beyond the scope of this short reflection. Nonetheless, a few basic points are in order. First, while the political transition embedded the rights of industrial labour in a comprehensive code (the Labour Relations Act of 1995 and its subsequent amendments), and large scale capital diverted the ANC away from its socially redistributionist commitments in the Redistribution and Development Programme (RDP) to the more market-oriented Growth, Employment and Redistribution (GEAR) programme. Broadly, via the latter, the government imposed its own structural adjustment plan upon South African society: “the government committed itself to implement more rigorously neo-liberal measures such as privatisation, deregulation and trade liberalisation, all of which had negative consequences for job creation, the maintenance of labour standards, provision of social welfare, and environmental protection” (Bezuidenhout et al. 2007: 24-25). Although, in time, the government was have to more somewhat in reverse (by notably, expanding social security protection), this was in considerable extent because the proposed outcomes of GEAR, notably increased employment, failed rather dismally. In turn, government was to look increasingly to business to assist with support in filling in the gaps, by helping to bank roll various forms of social investment such as inner city housing, the fight against crime, or the World Summit on Sustainable Development (1992) or whatever (ibid). Meanwhile, heightened political awareness amongst South Africa’s citizenry about the pervasive scope of unemployment and poverty combined with growing consciousness of the environmental costs of the particular form of South African industrial capitalism, which historically had developed around the (environmentally dirty) Minerals-Energy Complex. This was to result in increasing demands made upon large scale capital to display its social responsibility.

Today, no large scale corporation in South Africa can afford to ignore the wisdom and necessity of CSR, whether this be in the form of responding to government's demands for realization of Black economic empowerment or demands of social movements for implementation of environmental standards. However, in sum, it may be noted that, first, contemporary CSR has developed in the context of the latest phase of the globalization of capitalism, and the accompanying post 1970s assault upon the social responsibilities of the state; and second, that its development has simultaneously been an accompaniment of the liberalisation of labour conditions attendant upon that globalisation, and the shift to more flexible forms of employment.

Global work restructuring and CSR

The rapid pace of the internationalisation of capital and capitalist production since 1945 has seen the massive growth of the number and reach of multinational corporations and the creation of a new international division of labour. Broadly, huge advances in communications and production technology have enabled Northern based multinational corporations to shift many production operations to countries of the global South where the cost of labour is cheaper, this accompanying the general change within capitalist production towards greater capital intensity. Generally, this has been associated with a decline in manufacturing employment in the North, and the drawing into the employment market of hitherto untapped sources of labour in the South, (inclusive of the entry of more women on to the labour market). More recently, too, the collapse of Soviet and European communism and the shift of Chinese Communism to, in essence, state led capitalism has led to the creation, as never before, of a *world market for labour* characterised by a *world surplus of labour*. As argued previously (Southall 1988) this hugely erodes the capacity for trade unions to resist the impositions of capital globally. The "full employment" era of northern capitalism has long since disappeared, alongside the general assault led by governments upon social programmes; 'structural unemployment' has become a permanent feature of northern economies; while the social cost and conditions of labour in the south are generally far lower than in the North.

In these global conditions, there has been a general restructuring of conditions of work. Von Holdt and Webster (2005) have explored this restructuring in the case of South Africa, yet South African developments are largely mimicking develop-

ments internationally. They argue that today, South Africa's labour market is characterised by three zones. The first zone, the core, offers full time employment with many of the rights and social conditions of post-1945 northern labour, as extended to permanent black workers and as struggled for and negotiated by trade unions, relatively intact (although they also identify a shift towards what they term a restoration of managerial authoritarianism in post-apartheid conditions of domestic labour surplus). The second zone, the non-core, identifies trends in employment strategies of firms towards the casualisation and externalisation of labour. In casualisation, the employment relationship between core employer and employee is retained, but is rendered insecure and unstable through temporary and part-time terms. Under externalisation, the employment relationship is devolved to a third party or nominal employer, which renders employment even more insecure and worse off: employment is outsourced. Finally, the third zone is that of the periphery which refers to labour which has been excluded from the formal economy and which engages informally in forms of income generating employment at the margins. In general, therefore, there has been a move in post-apartheid South Africa towards an erosion of core jobs, the growth of insecure and low wage non-core jobs, and the expansion of the peripheral zone, and these have seen a widespread increase in poverty.

What goes for South Africa can be said, in broad terms, to apply internationally: it applies globally in the sense that employment conditions in the global core have been and are being eroded as jobs shift into the non-core and peripheral zones; and it applies within all regions and countries, not least in sub-Saharan Africa where structural adjustment strategies featured massive cut-backs in the public sector (which, contrary to much myth, never saw the staffing levels achieved in the public sectors of the West).

As noted by the studies in this collection, the post-apartheid era has seen a concerted move of South African capital into neighbouring countries. Yet this shift has been taking place in conditions whereby, first, structural adjustment has seen a general erosion of labour conditions and substantial increases in levels of unemployment; and second, individual governments have gone to enormous lengths to put in place attractive conditions for investment. In essence, this suggests that, to some extent, South African (and other international) capital is entering into something of a social vacuum, where governments are prepared to sacrifice the rights of labour to attract

multinational corporations. Where, as in the *Zambian mining sector*, there was once a powerful trade union movement, union presence and influence has been significantly eroded; where, as in the *DRC*, the social fabric has been torn apart by decades of war, trade unions have never had much salience. Given massively high levels of unemployment, trade unions have limited bargaining power, and in general, multinational corporations opt for none-core (casualised and externalised) terms of employment for the majority of employees.

In these conditions, the notion of CSR can play different roles. First, it can serve as a substitute for (the more expensive) extension of core conditions of employment to the majority of employees. Second, within this context, it can fill in some of the holes left by a withdrawal (or failure of) government social services, and provide for the wider social conditions of life (in terms of education and health etc) which are functional to overall profitability (as unhappy, uneducated and unhealthy workforces may prove as inefficient and unproductive as they are intractable). Third, CSR can fulfill a vital public relations role, persuading company executives themselves, shareholders and stakeholders that a firm is operating responsibly. Fourth, the notion of CSR can provide for an arena of contestation, whereby local employees and communities, sometimes in alliance with global supporters, can make demands and exert pressure upon multinational and other companies. But to what extent are such demands and pressures likely to be effective?

Policy and implementation

“Under the impact of global corporate restructuring it is becoming increasingly necessary for investment analysts, when assessing the prospects of a company, to go below the financial bottom line and examine the social and environmental policies and practices of the enterprise”. This, notes Webster (2007: 265) is referred to as “triple-bottom-line” accounting. But he goes on to note that contradictory forces confront company managements: on the one hand, they need to become more competitive in the context of increased global trade; and on the other, they are pressed to adhere to global labour, social and environmental standards while responding to local pressures from state and society. Suffice it to say here that there can be a considerable gap between the proclaimed commitments of a company and actual implementation; and between the goals set by head office and the difficulties of operational management balancing their achievement with profitability. Often such a gap

will lead to accusations of hypocrisy and deceit; but often it will reflect the difficulties which companies have in juggling multiple pressures.

The broad thrust of the case studies in this collection is that South African companies are falling short in both their commitment to CSR and to its implementation. Two conclusions would seem to follow.

The first is that companies can never hope to reap the rewards of CSR unless they are trusted – and gaining trust is likely to demand time, effort and expense. The overwhelming sense drawn from the studies here is that the implementation of CSR is top down, dreamed up by head offices and rarely involving extensive and adequate consultation with employees and local communities. Expatriate managers will only rarely have degrees in Sociology or Anthropology; they will be eager to conclude agreements quickly about where to locate new schools or dams; they will not want to spend long hours discussing issues, nor indeed to seek deep understanding or to resolve local conflicts; and they will, willy-nilly, fail to understand local social, economic and environmental conditions. They will want to see results, and often highly visible ones which skate over the surface of social need. Apart from anything else, like other human beings, they will also simply make mistakes and cause unintended offence. They will far rather spend their time dealing directly with matters of production and profit, and they will tend to devolve personnel and community matters to specialist (often less valued, junior) staff and will often regard social matters as the responsibility of the local authorities. No less than colonial officers of former time, they will tend to regard their role as to implement orders from above whilst keeping the peace below. Throw in the strong likelihood of instances of racism, arrogance and feelings of superiority, and there is every possibility that CSR will fall flat on its face, and be regarded with contempt by workers and local communities. There is strong evidence in the light of the reports offered here that this is already the case as far as some South African mining companies are concerned. In short, CSR cannot be expected to work if it is regarded by local management as a costly nuisance. Its successful implementation really does require major commitment and sensitivity to local conditions. Only this will provide for a basis of trust: an understanding, perhaps, of why companies cannot provide more employment to local people, of why cost wise it is necessary to place some employees on part-time or to employ casually, or why companies cannot meet all the demands for expansion of local facilities they encounter.

The second consideration is that as CSR is premised upon the notion of firms' *social accountability* there is a need for proper monitoring and evaluation. Each and every company in this study was able to provide broad outlines of their programmes of CSR, details being given on websites, in company material or in annual reports. None was prepared to give serious, if any, time to the researchers involved in trying to assess their programmes. Very probably, it was considered that the researchers were not of sufficiently high status, that the organisation upon behalf of which they were doing the work was insignificant, and that the political costs of brushing their efforts aside would be minimal. Yet, apart from the lack of courtesy and the evidence of arrogance that has been displayed, such an approach to external enquiry is likely in the long term to be counterproductive. At the very least, it distorts the methodology (and hence, likely, the findings) of any research completed and published, to the possible detriment of the company. In the present case, this has led to the views of local unions being heard without there having been much of a response by the companies themselves. It could be argued that if there is an anti-company bias in the reports offered here, that that is largely the fault of the companies. Additionally, it raises the issue of whether companies have something to hide, and whether they prioritise the Public Relations value of CSR over the reality of implementation.

The response must be that South African companies need to be prepared to open themselves up to rigorous monitoring and evaluation. It can be understood, perhaps, that companies will not have the inclination to respond positively to every request made upon them by the non-governmental sector for information and access, for yes, time is money in capitalist production.

However, refusal of access to research upon CSR can only be justified if the firms themselves are prepared to undergo some form of independent evaluation. This might, for instance, be undertaken by organizations of repute with social research expertise and a methodology and goals agreed by all stakeholders: shareholders, labour, communities and governments. It would also need to be undertaken at agreed regular intervals. And above all, reports would have to be open to public scrutiny. But until some such agreement is reached, companies must be prepared to field accusations that their programmes of CSR are, in essence, counterfeit.

Final word

Recent conditions and recent analysis argue that there is a new scramble for African resources brought about by massive demand for minerals generated by a concerted spurt for industrialisation by China and other emerging economies, notably Brazil, Russia and India. Indeed, it is this new scramble which is setting the African scene for the expansion of South African capital into Africa (Southall and Melber 2009). The debate about the consequences for African economies is extensive, extending from fears of a new phase of imperialism to hopes that African countries and peoples will be able to seize upon new opportunities. Yet one feature of the debate is worth particular comment in the context of the particular interest here. That is that it is widely alleged that Western companies are held to higher standards of behavior in Africa than those from their emerging country counterparts. In particular it is widely argued that Chinese firms, many of them state owned but many privately operated, are bringing with them a new labour despotism. Offering a package to governments that exchanges promises of non-intervention in domestic affairs for freedom to extract minerals, it is often said to result in employment relations and conditions for local employees that are dirty and exploitative. After all, it is said, Chinese firms come from a land in which labour has long been politically repressed and enjoys few rights. Why should Chinese employment practices outside China be more liberal?

Generality without serious empirical reference can be dangerous, and no position on this debate is taken here (although it may usefully be noted that Chinese labour practices have occasioned major controversy in Zambia, a country with a long memory of trade union struggle and rights). Nonetheless, two points can be made in conclusion. The first is that the ‘new scramble’ is very likely, in the short term at least, to place African labour conditions under further pressure, as governments compete wildly for new investment. The implication is that, feeling under threat, western – and South African – multinationals may well feel impelled to increase their competitiveness by lowering costs, and hence in turn, to lower the costs of their programmes of corporate social responsibility. The second is that it has to be the task of trade unions, non-governmental organisations and social movements to struggle to ensure that instead of companies ‘averaging down’ they ‘average up’: in short, that high standards of CSR be required of companies across the board, regardless of national origin.

Bibliography

Bezuidenhout A, Fig D, Hamann R and Omar R. (2007). Political Economy. In Fig, D. 2007. *Staking their Claims: Corporate Social and Environmental Responsibility in South Africa*. Pietermaritzburg, UKZN Press: 13-94.

Fig, D. 2007. *Staking their Claims: Corporate Social and Environmental Responsibility in South Africa*. Pietermaritzburg, UKZN Press.

Southall, R. (1988) (Ed). *Trade Unions and the New Industrialisation of the Third World*. London. Zed Press.

Southall, R. and Melber, H. (2009) (Eds). *A New Scramble for Africa? Imperialism, Investment and Development*. Pietermaritzburg, UKZN Press.

Webster, E. (2007) Afterword: Getting below the Bottom Line. In Fig, D. 2007. *Staking their Claims: Corporate Social and Environmental Responsibility in South Africa*. Pietermaritzburg, UKZN Press: 265-270.

Webster, E and Von Holdt, K. (2005). *Beyond the Apartheid Workplace: Studies in Transition*. Pietermaritzburg, UKZN Press.

Endnotes

- 1 Even today, when the suburb of Bournville has long ceased its formal association with the firm, it retains its own character and rules, and remains free of the contaminating influence of a public house!

