Rethinking the Management of Mineral Resources in Lesotho

Report of the National Conference on Extractive Resources

Maseru Sun Hotel
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Abbreviations

APRM	African Peer Review Mechanism
CBO	community based organisation
CCJP	Catholic Commission for Justice and Peace
CSI	corporate social investment
CSO	civil society organisation
CSR	corporate social responsibility
EESCRs	environmental, economic, social and cultural rights
EITI	Extractive Industry Transparency Initiative
GDP	Gross Domestic Product
GNI	Gross National Income
IMF	International Monetary Fund
JBCC	Joint Bilateral Commission of Cooperation
KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
LDC	Least Developed Country
LHDA	Lesotho Highlands Development Authority
LHWP	Lesotho Highlands Water Project
LMPS	Lesotho Mounted Police Services
LNDC	Lesotho National Development Corporation
LRA	Lesotho Revenue Authority
NGO	non-governmental organisation
OSISA	Open Society Initiative for Southern Africa
PAC	Public Account Committee
PWYP	Publish What You Pay
SARW	Southern African Resource Watch
SDM	Swissbrough Diamond Mining
UN	United Nations
UNDP	United Nations Development Programme
WB	World Bank

Introduction

The national conference on extractive resources in Lesotho was an initiative of the Southern African Resource Watch (SARW) to promote dialogue amongst stakeholders within the extractive industries in Lesotho. The conference was the first national dialogue on mining in Lesotho. Organised by Melupe Consultants, the project was an attempt to provide space for all stakeholders to make an input on how to ensure that mineral resources in Lesotho benefit Lesotho and its people. The current mineral laws are outdated and provide for minimum punishment of offenders. This is because the extractive industries have grown out of proportion in Lesotho, with state institutions not ready to absorb the demands of the industries. There is currently no mining policy in Lesotho to guide the management of the sector and to ensure that it contributes to the development of other sectors within the economy. The conference aimed to make concrete recommendations to decision-making bodies in Lesotho, in order to ensure proper management of the mineral resources. The two-day conference was the result of hard work that was done by researchers and practitioners within the extractive industries in Lesotho, conducting an assessment of the current regime and making proposals to improve its shortcomings.

The Department of Mining of the government of Lesotho presented a paper on the evolution of mining in Lesotho, providing a historical background of mining in the country. The presentation dealt with the minerals that are known to exist in Lesotho, the extent to which these minerals have been extracted thus far, the estimated reserves of minerals yet to be extracted, and the estimated period that this will take.

The Ministry of Finance and Development Planning made a presentation on the economic contribution of mining in Lesotho, including the contribution to gross domestic product (GDP), employment, and government revenue through taxes and royalties. The ministry gave an account of how the revenues accruing from the sector are managed, whether there is any future funding or reserves in order to enjoy the benefits of the proceeds after the minerals have been depleted, and how the communities affected by mining benefit (directly or indirectly) from the proceeds of the minerals.

There were presentations by two researchers, one on the mining laws and the regulatory framework in Lesotho, and the other on the socio-economic impact of mining in Lesotho. The conference introduced participants to global initiatives within the extractive industries, in order to identify ways in which Lesotho could improve the management of mineral resources using the existing frameworks. These include Publish What You Pay (PWYP), the Extractive Industries Transparency Initiative (EITI) and the Kimberley Process Certification Scheme (KPCS).

The experience of mining companies was presented by Letšeng Diamonds, and the Catholic Commission for Justice and Peace (CCJP) presented the experience of communities where diamonds are being mined. Presenters from neighbouring countries (Botswana, Namibia and Zimbabwe) were invited to share the experiences of mining in their countries, which may help Lesotho to avoid making mistakes that have already being made elsewhere.

Participants were drawn from a wide range of stakeholders, including government ministries, departments and parastatals responsible for mining and management of minerals in Lesotho, academic institutions, mining companies, the media, civil society organisations, youth groups, and representatives of churches.

Welcome Remarks by Claude Kabemba

The director of (Southern African Resources Watch) SARW indicated that he is happy to be in Lesotho, especially because it is the first time that his organisation has had a chance to implement a project in Lesotho. The theme of the conference (rethinking the management of mineral resources in Lesotho) should be a guiding tool for the deliberations in this important conference. The intention of the conference is not to humiliate or shame any individual or organisation, but rather to look objectively at the matter at hand, which is how we can together make extractive resources in Lesotho benefit the nation. The role of SARW research and advocay is important for is an important initiative for Southern African because of the resources that the region has been blessed with, and because over time these resources have often been found to become a curse in Southern Africa. When one looks at Southern African cities, one sees high levels of poverty, where ordinary citizens of the region are increasingly excluded from the benefits accruing from the minerals of their countries. It is as though we do not have enough resources to meet the needs of the populace. This raises the question of whether we are managing resources properly. It is important to understand the strengths and weaknesses of the rules and regulations governing the extraction of mineral resources in Lesotho, and to learn from the experiences of neighbouring countries like Zimbabwe which is in crisis over its mineral resources, Namibia, Zambia and Botswana. Community-based organisations (CBOs) have an important role in helping their governments to improve the livelihoods of the populace. The conference aimed to stimulate innovative thinking with regard to the existing initiatives, and to the management of mineral resources in Lesotho.

The Evolution of Mining in Lesotho by the Department of Mines

The director of (Southern African Resources Watch) SARW indicated that he is happy to be in Lesotho, especially because it is the first time that his organisation has had a chance to implement a project in Lesotho. The theme of the conference (rethinking the management of mineral resources in Lesotho) should be a guiding tool for the deliberations in this important conference. The intention of the conference is not to humiliate or shame any individual or organisation, but rather to look objectively at the matter at hand, which is how we can together make extractive resources in Lesotho benefit the nation. The role of SARW research and advocay is important for is an important initiative for Southern African because of the resources that the region has been blessed with, and because over time these resources have often been found to become a curse in Southern Africa. When one looks at Southern African cities, one sees high levels of poverty, where ordinary citizens of the region are increasingly excluded from the benefits accruing from the minerals of their countries. It is as though we do not have enough resources to meet the needs of the populace. This raises the question of whether we are managing resources properly. It is important to understand the strengths and weaknesses of the rules and regulations governing the extraction of mineral resources in Lesotho, and to learn from the experiences of neighbouring countries like Zimbabwe which is in crisis over its mineral resources, Namibia, Zambia and Botswana. Community-based organisations (CBOs) have an important role in helping their governments to improve the livelihoods of the populace. The conference aimed to stimulate innovative thinking with regard to the existing initiatives, and to the management of mineral resources in Lesotho.

In most countries, the history of mining is associated with ancient activities that have been evolving with civilisation, and with emerging technological trends. It is important to recognise that the contribution made by mining in previous years has played a much more significant role in the development of Lesotho than is generally conceded by historians or by ordinary citizens. In our country, the earliest miners date back perhaps to Nineteenth Century. Their quest was for diamonds, as evidenced by the existence of the Diamond Trade Act of 1885.

In 1905, the first geological study was undertaken by a missionary, Revd JS Dornan. About 34 years later, in 1939, the first geological map of Lesotho was published, a tribute to Mr Stockley's work. Up until 1966 detailed geological surveys were carried out by different mineral prospectors, resulting in the identification of 33 kimberlite pipes and 140 dykes, subsequently the well-known diamondiferous deposits of Hololo, Kao, Liqhobong, Kolo, Lemphane, Ngopetšoeu, Matsoku, Letšeng, Mothae, Kolo and Nqechane.

In 1959, Basutoland Diamonds, a company formed by the prominent Colonel Scott, was the first to be granted prospecting rights over Kao and Liqhobong pipes, and later worked jointly with Basutoland Factory Estates Development Corporation until mid-1967, when operations were stopped due to discouraging results.

In 1968, Lesotho changed government policy by granting prospecting and mining leases to Lesotho National Development Corporation (LNDC) only. Companies interested in obtaining mining rights were bound to enter into an agreement with the corporation, and when agreement was reached in principle LNDC would apply for a prospecting or mining lease over the area selected by the company concerned.

During 1968, agreements were signed by the government and LNDC with Rio Tinto Zinc Corporation to prospect the Letšeng diamond pipe. Another agreement was made with Lonrho Ltd for prospecting and mining a diamond pipe at Mothae.

Artisanal mining by licensed Basotho diggers commenced at Letšeng in 1961 and ended in June 1968. After Basutoland Company ceased mining operations at Kao and Liqhobong in 1967, a number of illegal diggers moved onto these pipes, and a huge influx of diamond diggers from Letšeng also moved there in 1968. Artisanal diamond mining also took place in Kolo, Nqechane and Hololo. This vast interest in diamond digging compelled the government to introduce a policy to regulate artisanal mining, the Department of Mines and Geology was therefore established in this year (1968) to manage and regulate mining operations, and to perform other related activities. Many illegal artisanal miners were then granted diamond diggers licences.

Prospecting operations continued at both Letšeng and Mothae by Rio Tinto and Lonrho respectively, but in 1971 Lonrho decided to terminate its operations which they considered not viable. Negotiations with various companies were initiated for exploitation of the Kao pipe, and for prospecting of Kolo and Sekameng diamond pipes. In 1970, the UN Governing Council approved a Special Fund Project for Lesotho to re-investigate kimberlite occurrences and other minerals employing the then latest technological methods and equipment. A UNDP project of minerals exploration commenced in early 1971, and continued until 1982. In 1971, agreements were reached with Maluti Diamond Corporation regarding the prospecting of the Kao kimberlite pipe, and the licensed Basotho diggers at Kao were removed, compensated and resettled at Lemphane.

In 1972 Rio Tinto announced its intention of terminating operations at Letšeng after four years of intensive prospecting. De Beers showed an interest in it, and made a feasibility study of the deposit. In 1973, the terms and conditions for re-opening of the mine were agreed. Maluti Diamonds, jointly owned by Newmont Mining Corporation and United States Steel, continued prospecting at Kao until 1973, and thereafter a request was submitted to UNDP for assistance to open the Kao diamond mine on a large scale under the Special Measures Scheme. Lemphane and Liqhobong diamond digging continued, with 200 and 250 persons on average respectively.

In 1981 Letšeng Diamond Mine continued operating under De Beers with an average labour force of 852, of which about 769 were nationals and the rest expatriates. The low grades and the 1980s diamond market recession led to a closure of Letšeng mine in 1982. Artisanal miners at Liqhobong and Lemphane increased significantly (to about 1200).

Diamond trading was regulated by the Diamond Trade Act of 1885 until the Precious Stones Order of 1970 became effective. Since its establishment, the Department of Mines and Geology awarded licences to various diamond dealers until 2004 when commercial mining commenced. A diamond cutting factory known as Lesotho Diamond Works was established in 1971. The diamond cutting and polishing industry continued working until early 1990s.

Diamonds and other minerals

Currently there is one commercial diamond mine at Letšeng. Liqhobong diamond mine is under care maintenance, Mothae and Kao are on trial mining or pre-production stage, and in Lemphane a prospecting licence has been awarded.

Dimension stone

For decades sandstone blocks have been used as building material for the construction of offices, churches and housing. There are currently four mechanised quarries at Lekokoaneng that produce excellent quality material that is exported regionally. Deposits are found almost everywhere in the lowlands with infrastructure nearby. There are also local masons operating on a small scale.

Aggregate materials

Dolerite intrusions are numerous in the country and are in two forms; horizontal (or inclined) sills and vertical dykes. The weathered surfaces of these intrusions have been used for surfacing gravel roads and other civil engineering works. These resources are suitable for the production of high-grade aggregate material. There are three commercial aggregate quarries in the country at Morija, Peka and Ha Ntsi.

Clays

Clay deposits (usually along gullies) have been worked locally for brick-making. The UNDP carried out countrywide investigations in 1974-1975. A number of main deposits were located, and altogether 7.3 million tonnes of clay were delineated at Tsikoane, Thetsane, Morija, Mafeteng, Mohale's Hoek and Qacha's Nek. The Thetsane deposit was worked by Loti Brick from 1980 to 2003 when the deposit was exhausted. The company is currently using clay from small nearby deposits. Two white-firing clay deposits were defined in the Mafeteng district at Phoqoane and Raseatla, and were found to be suitable for stoneware pottery.

Base Metals

Work on geochemical mapping to find potential economic minerals other than diamonds is ongoing. The project is undertaken by the Department of Mines and Geology with the assistance of the Council for Geosciences of South Africa under the Joint Bilateral Commission of Cooperation (JBCC).

Mining legislation

As for mining legislation, the Mining Rights Act of 1967 was enacted but the sections dealing with prospecting permits, mining licences and precious stones were not brought into operation. The Lesotho National Development Corporation (State Mining) Act No. 16 of 1968 (providing for the prospecting, mining and ancillary matters) came into operation in April 1968. The Precious Stones Order 1970 was also passed, and a Mine Safety Bill was drafted in 1981 but never enacted (it is currently being reviewed by the department). The Mining Rights Act of 1967 was subsequently repealed and replaced by the Mines and Minerals Act of 2005.

Discussion

The most important thing that came out of the discussion was that the Department of Mines and Geology does not have enough skilled personnel, and relies heavily on outsourcing in order to carry out its mandate. This poses a huge challenge for the department as it would prefer having skilled personnel in-house in order to effectively implement its programmes. It also emerged that the department has maps of the kimberlites in Lesotho that can be purchased by interested parties. Maps showing other mineral deposits will be made available upon completion of the ongoing assessment. On the question of how many small- and medium-scale miners are licensed ,the department responded that artisanal mining has been stopped due to lack monitoring, and because the process of mining has become more mechanised. Mining has been shifting away from alluvial (which is soft rock) to kimberlites which require machinery. Lack of skilled personnel makes the work of monitoring artisanal miners more challenging. In response to a proposal that people should be allowed to sieve diamonds from rivers in order to reduce the number of diamonds being eroded to the sea, the department said that this was not possible for safety reasons.

It was recommended that there should be some mechanism in place to facilitate artisanal mining in Lesotho, as it is an important way of generating income for scores of households. This should be largely in areas where it will not be economically viable to engage large mining companies.

The department was asked if it could verify that diamonds that are sold from Lesotho are truly extracted in Lesotho. The response was that there is a scientific way of verifying the origin of diamonds by geographical area. The question of whether there are prospects of mining other minerals depends on the conclusion of studies exploring other minerals.

The Contribution of Mining to the Economy of Lesotho by the Ministry of Finance and Development Planning

GDP and the contribution of mining and quarrying

The table below depicts the real contribution of mining and quarrying to real GDP. It can be seen that the contribution of mining and quarrying becomes significant from the 2002/03 fiscal year, when the sector experienced growth which is expected to continue up until the 2013/14 fiscal year (where current projections end). The growth of the contribution of mining and quarrying comes at a time when the economy is in dire need of diversification, as the textile industry which has been one of the most important players in the past decade is badly affected by the expiry of the multi-fibre agreement and the economic downturn. There was a slowdown in the rate of from 2008/09 which is expected to recover and grow significantly in 2011/12.

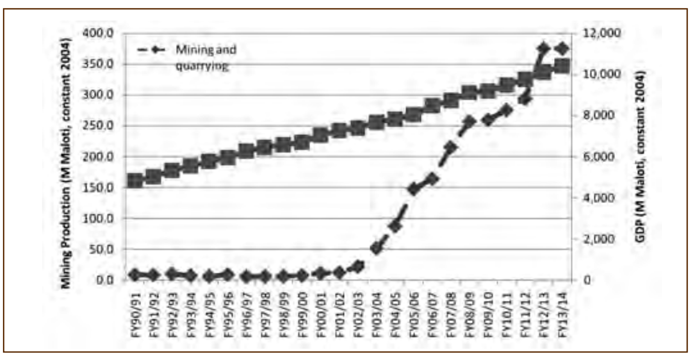
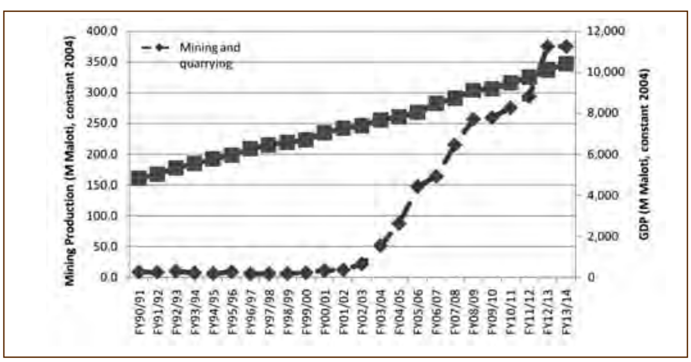


Table by Ministry of Finance



The next table is the estimated percentage contribution of mining towards the GDP of Lesotho between the fiscal years 1990/91 and 2013/14. The percentage of mining to GDP between 1990/91 and 2002/03 remained between 0 percent and 0.5 percent. This is largely due to the fact that during this period there were very few mining activities in Lesotho, and the work was mainly in the hands of artisanal miners (except in the case of Loti brick which continued to mine clay as well as quarrying).

Percentage contribution of mining to GDP

The sector contributed very little towards GDP between the 1990/91 and 2002/03 financial years as indicated above. During this period the contribution of mining to GDP was under 0.5 percent. A significant increase was realised from the 2003/04 financial year, and it is expected to continue growing until the 2012/13 financial year.

The next graph shows that the government decision to allow mining companies to invest in Lesotho was a very good policy, as it resulted in a positive percentage contribution to GDP.

GDP Growth with and without Diamonds

The solid line represents the contribution of mining to GDP without diamonds, and it can clearly be seen that the growth of GDP with diamonds is higher than that of GDP without from the financial year 2002/03. This trend has been maintained, and the gap is expected to be higher during the financial year 2012/13. This shows the importance of diamonds towards fuelling economic growth in Lesotho.

The importance of mining for the tax base

What is classified as taxes on exports is in fact almost 100 percent mining royalties. Revenue from company tax increases as mining royalties increase. Mining Royalties started to increase from the financial 2003/04, which is the year in which the mining of diamonds started to yield substantial results.

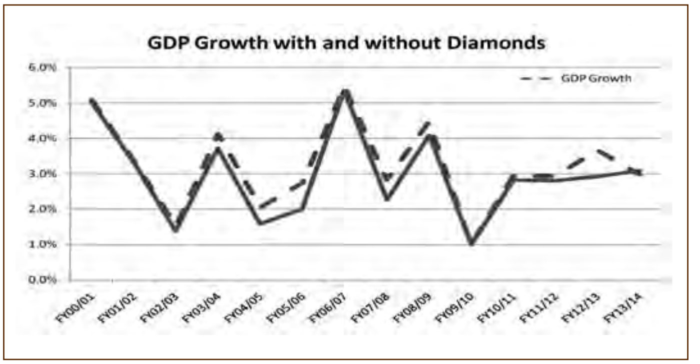
Company tax

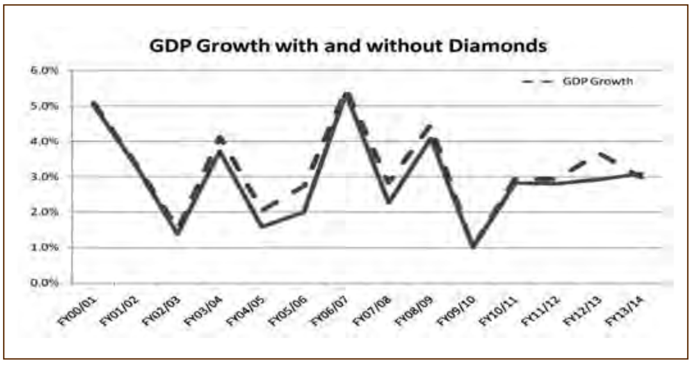
The above table represents all company taxes in Lesotho, and the ministry is currently unable to distinguish between company taxes paid by mining companies and those paid by other companies. The increase in company taxes coincides with the time of commencement of mining in Lesotho, which is also the time that Lesotho Revenue Authority was established. However it can be seen that company tax is expected to decline between 2009/10 and 2010/11, possibly due to the effects of the global economic downturn on luxury commodities markets, as this affects the revenues of mining companies, and hence the tax due to LRA. The general picture is that the resumption of mining is flanked with an increase in the tax paid by companies.

Discussion

Participants expressed their discontent at the lack of local banks' involvement in financing the development of the mining sector in Lesotho. The Ministry of Finance was requested to elaborate on how the government decides to finance block farming, which does not yield returns to government or reduce food insecurity in Lesotho. The ministry was also requested to elaborate on the measures being employed to ensure that people who borrowed money under the block farming scheme return the money to banks. The other concern of the participants was the fact that the presentation was made by World Bank consultants instead of civil servants. The role of World Bank and IMF consultants within government ministries was questioned by participants. The ministry requested that economics should be separated from the politics of who is presenting the government position as the presenter has been requested by the ministry to deliver the presentation.

The ministry was requested to explain the role of commercial or investment banks in the development of mining in Lesotho. The response was that there is minimal involvement of commercial banks in Lesotho in financing the development of the sector, and the only major contribution of banks was when they agreed to finance the supply of electricity in Liqhobong. That agreement could have ensured that there is electricity for both Liqhobong and Kao mines.





Another issue that emerged during the discussion was that mining contributes to the economy through foreign exchange, as mineral resources are normally traded in foreign currencies. Almost all minerals are exported and the diamond trade contributes positively to the balance of payments. Being a net importer, Lesotho faces a huge imbalance in the balance of trade. Minerals significantly increase the exports of Lesotho, which means that the country should increase its production capacities.

The presenters were asked how they think employment opportunities could be created in the sector in order to ensure that Basotho men (especially those retrenched by the South African mines) are absorbed. This was recognised to be a huge challenge, as the mines in Lesotho are increasingly employing capital rather than people. A question was raised about the government decision to curtail civil servants' study leave, given that the development of the mining sector depends heavily on further skills development. The response was that government does not exempt any department; rather it has priority areas that are financed through government support, and civil servants who wish to further their studies in mining and geology are free to do so. Lack of investment in the mining sector was one area that both the ministry and participants agreed will have an adverse effect on the sector. It was therefore concluded that there is a need for investment in human resource development, especially in mining and geology.

Another question that was poised to presenter was on whether there is a practical possibility of introducing mechanisms for politicians to declare their assets. If such a move should take place it would be up to politicians to introduce it, and the presenters refrained from responding to the question.

The ministry was asked about accountability mechanisms that have been put in place to ensure that the resources that have accrued from the sale of minerals are not misappropriated. It was also put to the ministry that by the look of things it is just interested in the revenue that accrues from minerals, as there is no investment in the areas where these minerals have been extracted. The presenters were also asked if they can confidently say that all mining companies are paying tax to the government of Lesotho. The ministry responded by saying that the responsibility of ensuring that companies pay taxes lies with the Lesotho Revenue Authority (LRA) and the ministry receives a lump sum of all revenues collected. The LRA is normally set targets that they are expected to meet in revenue collection, and they have been meeting these targets. A related question was whether mining companies enjoy tax holidays or other concessions in order to entice them to invest in Lesotho. The presenters responded by saying they are not aware of such incentives, except for concessions being granted to the manufacturing sector (particularly for textile exporting companies).

There is a need for investment in infrastructure development in affected areas to ensure that there is inter-sectoral flow, which in turn will result in economic diversification. An example of Mokhotlong was made. There are billions of Maloti worth of diamonds that have been extracted from the district, yet the road to Mokhotlong is in a very poor condition.

Mining Laws and Regulations; Promoting or Hindering Mining in Lesotho by Kuena Mophethe

Introduction

Lesotho obtained its independence in 1966. The country is ranked amongst the poorest countries in the world. The 2003 UNDP Human Development Report ranked Lesotho at 137 out of the 175 countries, with 43 percent of its population surviving on less than one dollar a day. Lesotho has a very high unemployment rate that is estimated at over 40 percent. The country has a very narrow industrial base and most of its able-bodied men who were previously employed in the mines in South Africa are now unemployed. In recent years, mining in Lesotho has shown some potential to contribute to the alleviation of poverty if Lesotho's minerals can be well managed.

The first law relating to mines and minerals that was passed by the Lesotho parliament was the Mining Rights Act of 1967, followed by the Precious Stones Order of 1970 and the regulations passed under these laws. The Mining Rights Act of 1967 has since been repealed by the Mines and Minerals Act of 2005, whereas the Precious Stones Order is still in force.

This paper focuses on the examination of existing laws governing mining and minerals in Lesotho, and whether or not such laws hinder or promote mining in Lesotho. The paper will examine the laws relating to mining and minerals and some of the pertinent provisions in the management of minerals. The paper will also make recommendations on how the mining laws can be improved.

Laws on Mining and Minerals

There are several laws that deal with (or to some degree touch on) aspects of mining and minerals. In Lesotho the paramount law is the constitution. All other laws are enacted by the parliament or those authorised by parliament to make subsidiary legislation.

The Constitution, as will be seen later, makes provision for the handling of minerals in Lesotho. Other than the Constitution, there are several laws that to some degree deal with mining and mineral rights, and these are:

- The Land Act 1979;
- The Mines and Minerals Act of 2005;
- The Precious Stones Order of 1970

Various regulations have been made under these laws, including the Kimberley Process Certification Regulations. There are also guidelines that have been developed by the Department of Mines and Geology on the information required to be furnished by investors who wish to acquire mineral rights in Lesotho.

The Constitution of Lesotho

The constitution of Lesotho provides under section 107 that all land in Lesotho is vested in the Basotho nation. The power to allocate the land is vested in the king in trust for the Basotho nation.

The constitution protects the rights over land and minerals under the chapter dealing with the protection of fundamental human rights and freedoms. Section 17 of the constitution provides that: "No property, moveable or immoveable, shall be taken possession of compulsorily, and no interest in or over such property shall be compulsorily acquired, except where the following conditions are satisfied…". The constitution then lists the conditions that have to be met in order for property to be taken or to be compulsorily acquired, and these include situations where there is an applicable law relating to that acquisition and subject to prompt and full compensation. The constitution therefore provides that, although all land in Lesotho belongs to the Basotho nation, where one has been granted rights over such land such right cannot be arbitrarily revoked and shall only be revoked after certain conditions have been met (including full compensation). The advantages of these provisions are that the Lesotho minerals and land cannot be inadvertently left and acquired permanently by any person. The Basotho nation always has a right to decide what happens to the land or the minerals. The other advantage is that the rights of title holders are protected because the constitution affords them adequate compensation. The disadvantage is that investors are always aware that the land and the minerals do not belong to them, and may be hesitant to invest fully in any operation on the land.

The Land Act of 1979

The Land Act reiterates the principle set out in the constitution that all land in Lesotho is vested absolutely and irrevocably in the Basotho nation. The power to allocate, as provided under the constitution, is held by the king as head of state, holding the land in trust for the Basotho nation. This concept of the inalienability of land in Lesotho is one that existed even under customary law. The 1979 Land Act further imposes restrictions and conditions under which non-Basotho citizens can hold land in Lesotho. Under the Act, foreigners are not allowed to hold land – only body corporates that have been incorporated in Lesotho and which have a minimum of 51 percent Basotho shareholding qualify to hold land. This provision has been severely criticised in a number of studies as discouraging foreign investors from making large investments in Lesotho. Consequently this provision has been modified under the 2009 Land Act, although not without controversy. This concept of land ownership being vested in Basotho nation has been maintained in the new law, although with slight relaxation.

The advantages and disadvantages of these provisions are similar to those stated under the constitutional provisions.

The Mines and Minerals Act of 2005

The Mines and Minerals Act is the major law that deals with mining and minerals and their management. Some salient provisions of this law will be discussed in an effort to assess whether those provisions are helpful or detrimental to the promotion of the mining industry in Lesotho.

The 2005 Mines and Minerals Act defines a mineral as:

> " any substance that is either liquid, gaseous or in solid form, occurring naturally in or on the earth, formed by or subject to geological processes".

The Act defines mining as:

> "intentionally carrying out operations to win minerals or a group of minerals and includes any operations directly or indirectly necessary thereto, and mining shall be construed accordingly".

The Act defines industrial minerals as:

> "may include dolerite, clay, dolomite, granite, gravel, ... limestone, marble, rock, sand and sandstone..."

There is no definition of what constitutes precious stones, but the repealed Mining Rights Act of 1967 defined precious stones as:

> "diamonds, rubies or other substances which the king has by proclamation declared to be precious stones'.

This definition was incorporated into the Precious Stones Order of 1970.

Lesotho's minerals under the Mines and Minerals Act have been categorised into two types: industrial minerals and other minerals. No mention is made of precious stones in the interpretation section. This is surprising because although Lesotho is not endowed with a wide range of minerals, precious stones (in the form of diamonds) constitute Lesotho's largest mining revenue.

For the purpose of the payment of royalties and other charges, the Act classifies minerals into two categories. These are precious stones, and other minerals and mineral products (with the precious stones attracting a higher percentage for the calculation of fees and royalties that have to be paid by the licence holder).

The definition of mineral is very wide and it includes precious stones, but the legislation does not say with succinct clarity what minerals are.

Ownership of minerals under the Act

The Mines and Minerals Act provides under section 3 that all rights of ownership in minerals are vested in the Basotho nation. Sub-section 3 (2) requires the minister to ensure that the mineral resources are investigated and exploited in the most efficient, beneficial and timely manner, and in the public interest. The advantages and disadvantages of the provision that in Lesotho all rights over land and minerals are vested in the Basotho nation have already been discussed, but the advantages of the principle of state ownership of minerals outweigh the disadvantages. This principle has been supported by the UN General Assembly resolution 1805 (xvii), where the UN supported the view that sovereignty over the state's natural resources and wealth is not to be impaired by any agreement between an investor and the state for the exploitation of such resources.[1] This view has further been supported and advocated for by the Extractive Industries Transparency Initiative (EITI), an initiative that was launched in South Africa at the World Summit for Sustainable Development (WSSD).

The provisions of sub section 3(2) provide a yardstick against which ministerial decisions can be judged, in that the decisions that the minister makes concerning the management of minerals must be taken in the public interest.

Who may hold mineral title

The Act does not stipulate who is entitled to acquire mineral rights and titles. Instead section 5 of the Act states the categories of people who are not entitled to acquire mineral rights. The Act stipulates that no mineral right maybe acquired by, amongst others, "an individual who is not a citizen of Lesotho" or by "a company which has not been established and registered in Lesotho".

The only people who may acquire mineral rights are citizens of Lesotho and companies that have been established and registered in Lesotho.

Another category of persons who are disqualified from holding mineral titles under the Act are the Commissioner of Mines and Geology and the Mining Board members and their spouses. They are prohibited from acquiring, whether directly or indirectly, any right or interest in any mineral right or share or interest in a company which is a holder of a mineral right.

The Act further makes a distinction between mineral permits and mining leases. When it comes to mineral permits, the Act stipulates that only an individual Mosotho may hold a mineral permit, and this permit shall be in relation to an area that does not exceed 100 square meters. This permit will not, however, be issued in respect of mining for diamonds.

It is a good provision in the law that certain concession titles are reserved for small-scale Basotho only. However that provision does not go far enough as it excludes these same small-scale holders from owning concession titles to diamond mining, and perhaps this situation should be reviewed and the pre-2005 position reinstated. Further the Act does not reserve any particular areas of mineral concessions for individual Basotho and it is suggested that this is something that the law should have included.

The mineral concessions to be reserved for Basotho could be in relation to the industrial and building minerals because they are found on the surface and they are not too difficult to mine. It has been reported that Botswana and Zambia make (or made, under the then existing laws) a distinction between building and industrial minerals on the one hand, and other minerals on the other, and that these two countries reserve the building and industrial minerals permits for their individual citizens or the companies or partnerships formed in those countries and with majority shareholding or decision-making in the hands of their citizens and at very low fees.

Again in Lesotho (unlike in Botswana and Zambia) the requirement for companies to be eligible is that they should be incorporated in Lesotho, and there is no requirement that the decision-making powers should be in the hands of Basotho. A foreign-controlled company may at times not make decisions that are in the best interest of Lesotho, either intentionally or because they lack local knowledge. This position is in contrast with the position in Botswana and Zambia, where a company in order to hold mineral rights in that country needs to be not only incorporated in that country, but must also have its decision-making and majority shareholding in the hands of the citizens.

It may be a worthwhile provision to have requirements (and even percentages) of local ownership in any company that is given mining concession rights.

The provision prohibiting the Commissioner of Mines and Geology and other Mining Board Members and their spouses from holding any mining rights titles or interests is a good governance provision, minimising conflict of interest issues and possibly corrupt acts.

Acquisition and qualification

The Act makes provision for a two- stage process in the acquisition of mining rights. These two stages are the prospecting stage and the mining stage. For these two stages a prospecting licence and a mining lease, respectively, are issued. The Act does not make the prospecting stage a condition precedent to the acquisition of a mining lease, although the expectation is that one would not go directly into mining before prospecting for the expected minerals because of stringent conditions that have to be met (and the attendant expense).

Prospecting licences

Prospecting licences are granted by the Mining Board established under the Mines and Minerals Act of 2005. The composition of the Board is stipulated under section 12 of the Act. What is of interest in that clause is that the interests of the affected communities have not been represented on the Board. There is however a provision for inviting a local authority representative to the meeting of the Board at the time that the Board is dealing with leases relating to their area of jurisdiction.

Sub-section 12(3) makes provision for the invitation (not consultation) of a representative of the local authority. This representative of a local authority does not have any voting rights. Furthermore, the use of the word "invitation" connotes that this representative has just to be invited or informed, but whether that invitation goes as far as consultation is a moot point. The probable reason for this provision can be traced back to some of the experiences of the past under the provisions of the 1967 Mining Rights Act. Under the 1967 Act, the principal chiefs under whose areas the mining lease was to be granted had power to be consulted and to refuse the granting of a mining lease. An example of where this power that the area chiefs had played a major role involved a case by one diamond mining company and the Lesotho Highlands Development Authority (LHDA) and the Lesotho government over the Lesotho Highlands Water Project. In that matter, the LHDA and the government had been sued by Swissbrough Diamonds Mining (SDM) (Pty) Ltd over (amongst other things) the Rampai mine, for compensation over what it alleged was an unlawful acquisition or expropriation of its mining area without proper procedures having been followed, and without it having been compensated (contrary to the Lesotho constitution). The LHDA brought a counterclaim against SDM alleging that the mining leases had not been properly granted because the principal chiefs of the areas concerned had not been consulted. The Court upheld the LHDA's counterclaim and the SDM claim was dismissed. Although this position has been changed under the current Mining Act, ironically it is that provision that saved the Lesotho Government and the LHDA from paying the mammoth compensation that SDM was claiming from the LHDA.

The 2005 Mining Act sets out some of the requirements that have to be met by an applicant for a prospecting licence. Under section 21, the Act provides that in considering an application for a prospecting licence, the Mining Board should amongst others, take into account the following:

- that the applicant has secured access to adequate financial resources, technical competence and experience to carry out effective prospecting operations;
- that the proposed work programme can be carried out during the licenced period, within the estimated costs;
- that the proposed programme of prospecting is adequate and makes proper provision for environmental protection;
- that the proposed prospecting area is not the same as or does not overlap with an existing title or interest; and
- that the applicant is not in default.

These requirements are important provisions that have been imposed by the Act, and are a way of exercising control over prospective prospectors and of ensuring that, to the extent possible, people who are granted prospecting licences have the financial, technical and other resources to do what they are applying for. It is a measure of control by the state (or those authorised by the state on its behalf) to ensure that the nation's treasures are not just hoarded or mismanaged by people who cannot put the land or minerals to good use. People without adequate resources are discouraged from applying for titles if they do not have a serious intention to continue with the exercise in an efficient and effective manner. The same provisions stringently apply to ordinary individual Basotho, making it difficult for them to hold any concession titles.

Mining leases and mineral permits

The requirements for applying for a mining lease are similar to the ones required for a prospecting licence. In addition, an applicant for a mining lease must show that it has obtained an environmental impact assessment certificate from the appropriate authorities (currently the Ministry of Tourism Environment and Culture). For a mineral permit, on the other hand, the requirement is that the applicant must be an individual Lesotho citizen and that the area of land to be prospected or mined should not be more than 100 square meters (section 48). The holder of a mineral permit is not allowed to dig deeper than 1.8 meters, and is prohibited from using any engine-propelled equipment in working the land. The advantages and disadvantages of this provision have already been discussed above.

Duration of concession rights

A prospecting licence is issued for a maximum period of two years, and is renewable for a further period of one year. A mining lease is issued for a maximum period of ten years, which is renewable for a further period of ten years. The duration of a mineral permit, on the other hand, is for one year and is renewable for further terms of one year each. Under the 1967 Act, the Mining Board had discretionary powers as to the duration of the mining lease, and in some cases leases were granted for very lengthy periods. The granting of shorter periods than was the case under the 1967 Act can be seen as an improvement in Lesotho law, giving the state further control over the mining leases. Where a lessee applies for a renewal of a term of the lease, the licensing authority has to request information to justify the need for a renewal, and in doing so it has to ascertain and verify that the reasons for requesting the renewal are not connected with default on the part of the lessee. The disadvantage is that the concession title holder may be hesitant to invest heavily where it is not sure whether or not the title will be renewed at the end of the initial period. However this is a good provision as it gives the state control over the country's resources.

Financial matters, royalties and other charges

The Act gives the state the right to negotiate with any mining investor, conditions for taking part in any mineral concession. In addition, the state retains the right to levy royalties, taxes and other charges on concession holders.

A mineral concession holder is required by section 59 of the Act to pay royalties to the state. Royalties payable by holders of precious stones concessions are at a rate of 10 percent of the gross market value, and for other holders of other mineral concessions it is 3 percent.

Other charges are as follows: a prospecting licence costs M5.00 per km^2 or part thereof, subject to a minimum of M100.00 for industrial minerals and M1000.00 for all other minerals. A mining lease costs M0.05 per square meter and a mineral permit M100.00. It is not clear why precious stones (for the purposes of paying prospecting charges) have been lumped together with other minerals. Overall the fees for prospecting seem very low, possibly because at that stage the prospector is still searching for minerals and spending a lot of money on the prospecting. In comparison to countries like Zambia (to be discussed later), Lesotho seems to be charging reasonable percentages for royalties

Transfer of mineral rights

Section 43 of the Mines and Minerals Act provides that a mining lease shall not be transferred, encumbered or assigned without the approval of the minister, and only after the minister has satisfied him or herself that the transfer, assignment or encumbrance will not in any way contravene the law. This is a very important provision, and is in keeping with the principle of the land and mineral rights in Lesotho being vested in the Basotho nation. By requiring that the minister should give approval to any assignment, transfer or encumbrance over the mining area, the state ensures that it does not lose control over who gets title over the mining area. This ministerial consent is also to be looked at in the light of Sub-section 3(2) which obliges the minister to act in the public interest.

Revocation of mineral rights

The Act gives the minister power under section 68 to suspend, revoke or cancel a mineral concession where the holder thereof has failed to comply with the provisions of the law or of the concession conditions. The Act further provides that even where the concession is cancelled, that is without prejudice to any liabilities that the concession holder would already have incurred prior to such cancellation. Again this is an important provision because the concession holder knows that it has to comply with the lease conditions throughout the duration of the lease, otherwise it may be revoked. It is also in keeping with the principle that minerals in Lesotho belong to the Basotho nation. The Act therefore seems to have covered most of the important issues that are often of concern when dealing with minerals.

The Precious Stones Order of 1970

The Precious Stones Order regulates trade in precious stones, and it also regulates other related and incidental matters. Section 6 of the Order prohibits any person from receiving or dealing in any manner in rough or uncut diamonds without a valid licence. Section 21 provides that any person who imports diamonds into Lesotho shall pay to the state 2.5 percent of the value of the diamonds, and that on exportation of any diamond the state has to get 15 percent of the value. The rationale for this is not clear, but what it discourages anybody from importing diamonds with the intention of further exporting them, with the possible effect of minimising illegal trade in diamonds.

The Kimberley Process Certification Regulations

The Kimberley Process Certification (according to the Kimberley Process Certification Regulations) is "a set of measures to be undertaken to eliminate the trade in conflict diamonds, as set out under the United Nations Resolution 1173".

Lesotho is a signatory to the Kimberley Process Certification Scheme. Pursuant to that, Lesotho has passed regulations that put into effect what has been agreed under the Kimberley Process. These regulations provide that the importation into Lesotho of rough diamonds, or the exportation from Lesotho of rough diamonds, shall be done in accordance with the Kimberley Process and shall be between Lesotho and another Kimberley Process participating country. Lesotho not only signed the Kimberley Process certification agreement, but it went further to pass regulations that make the provisions of the Kimberley Process part of municipal law. This ensures that Lesotho's diamonds will be sold in international markets.

The international community views the issue of illegal trade in diamonds as well as "blood diamonds" very gravely. In fact in a UN-backed Special Court for Sierra Leone in the Hague, former Liberian leader Charles Taylor stands accused of around 11 charges of war crimes stemming from his alleged involvement in the civil war in Sierra Leone. In return for his involvement, Charles Taylor is said to have received jars full of diamonds. In an article appearing in the *Saturday Star* of 22 May 2010 ("Why Diamonds are not this Girl's Best friend"), it was reported that supermodel and actress Naomi Campbell was one recipient of the blood diamonds from Charles Taylor, and that the Special Court is considering a subpoena forcing her to give evidence against Charles Taylor. By having measures like those prescribed by the Kimberley Process Certification, Lesotho is minimising its risk exposure to being used by illegal diamond dealers, to the detriment of Lesotho's own diamonds.

Mining laws: promoting or hindering the mining economy

In an article written on Zambia by Chola Mwitwa and Claude Kabemba entitled "Copper Boom in Zambia, Boom for Who", the authors point out that in Zambia the copper industry was the major provider of employment in Zambia, but that the Zambian government had not received an adequate share of the huge profits gained from copper mining. Consequently only small profits or benefits had been passed on to the people of Zambia. The article quotes from a certain study that had been done on Zambia in 2007, which concluded that Zambia needed to receive a larger share of the revenue from the copper if the copper was to contribute to the development of the country. The article said that the Zambian government had tied itself into 20-year agreements, whereby it received around 0.1 percent of its copper revenue, that the laws allowed Zambians to be engaged as casual workers, that taxes for these companies were lower than normal taxes by about 10 percent, and that the mineral royalties were 0.6 percent as opposed to the normal average of about 2.5 percent. The article reported that pollution from these mines was rife, threatening the health of residents of the areas.

The article raises issues of oversight and control, employment, environmental issues, benefits, revenue, profit-sharing and equity in mining agreements. These issues (raised as criticisms against the Zambian government) are the issues that will be used as yardsticks to examine how well Lesotho mining laws do in those areas of concern (in addition to the examination of the legal provisions already examined above).

Oversight and control

For the acquisition, transfer and cancellation of the mining leases, it has already been explained above how rights in minerals in Lesotho are vested in the Basotho nation, and how those who have been entrusted with the powers to grant and revoke the titles exercise such powers.

In addition, in Lesotho the Act gives supervisory powers to the Commissioner of Mines to ensure that work goes on as agreed, and that the operations do not jeopardise the environment or the revenue that has to accrue to the state.

Under section 11, the Act requires that the holder of a mineral right shall give preference to Basotho in employment where they possess the requisite qualifications, and that the holder of a mining right shall carry out training programmes intended to encourage and promote the development of Lesotho citizens in the holder's employment. This is an important provision that is intended to empower the Basotho to participate in the benefits that may accrue from the mining.

The Act recognises the importance of good governance principles in section 19 by requiring that those entrusted with the powers of oversight should disclose any interest in a matter under discussion, and to excuse themselves from taking part in Board discussions relating to a matter in which they have an interest.

The Act also requires that each mining lease area shall have a government representative who shall be responsible for overseeing mining operations. This provision ensures that the government is able to monitor what is going on in the mining lease areas.

Further, the government is authorised to take security from mining lease holders as guarantee that they will discharge their responsibilities under the law

Employment

The employment laws in Lesotho are very strict regarding the employment of labour, and the law stipulates the categories of employment that are legal, making it difficult for investors to make employees casual labourers on a perpetual basis (as is reported to be the position in Zambia). In addition the Mining Act requires that in procuring goods and services, concession title holders should give first preference to Lesotho goods and services where they qualify.

Environmental Issues

The mining laws make provision for the mining leaseholders to comply with Lesotho's environmental laws. In addition, section 40 of the Act requires that a mining leaseholder shall not engage in any wasteful mining or treatment practices, or conduct his operations otherwise than in accordance with good mining practice. Section 58 of the Act requires that the holder of a mining lease shall, in accordance with good mining practice, international standards and the law, preserve the environment, minimise and control waste or damage and prevent (and where unavoidable) promptly treat pollution and contamination of the environment.

Revenue

In Lesotho the percentage of royalties payable for precious stones is 10 percent of the gross market value of the mineral, and 3 percent of the gross market value in respect of other minerals or mineral products. Compared to Zambia, Lesotho charges higher royalties.

Profit-sharing and equity

In Lesotho, under section 34 of the Mines and Minerals Act, the government can decide to take a stake of not less than 20 percent in any mining concern other than a diamond mining operation. Concerning diamonds, section 44 of the same Act entitles the Lesotho Government to negotiate the terms of the Government's participation in that concession. As far as the law is concerned, the state has a right to take equity in any mining concern and the issue of how much to take is one that is determined by a lot of other factors unknown to the public. There are no clear guidelines on what should be taken into consideration in coming to that decision.

Mining Agreements

Again it is not clear what issues the state takes into account in negotiating the terms of a mining agreement. Suffice it to say that at least the Act authorises the state to negotiate and participate in any diamond concession, and that such participation is not limited by the law. The terms of such an agreement once agreed between the parties then become the terms of the lease. As noted above, there is no guidance on what the guidelines are within which the Board or the Minister should negotiate the terms of government's participation in these concession agreements.

When *Bloomberg news* reported in September, 2008 that Letšeng Mine had discovered the world's twentieth largest diamond, "the Lesotho promise", some people criticised the Lesotho government for having acquired a small stake in the Letšeng Diamond Mine, and said that a lot of the money that would be realised from the sale of that diamond (the 478 carat white diamond was valued at US$21Million) would go to the foreign investor company, largely South African.

Development of affected communities

Although the laws make provision for compensation where community, individual or investor's property is expropriated or acquired by the government, the law is silent on how the communities within which mining takes place should be developed, or how an investor should contribute to the developmental aspects of the affected communities.

In countries like South Africa (because of instruments such as the King Code on governance), companies are required to contribute to the development and social welfare of communities. In Lesotho issues of social responsibility are left entirely to the discretion of the investor or company concerned.

In conclusion, the mining laws in Lesotho make it clear that the ownership of minerals in Lesotho is vested in the Basotho nation. The law regulates how concession rights may be acquired, transferred and revoked. The law imposes supervisory and control measures over the concession title holders and gives the Commissioner of Mines powers to inspect and request information from the title holders to check on whether or not the law and concession title conditions are being complied with. In comparison with countries such as Zambia, Lesotho seems to be doing relatively well on the issues for which Zambia was criticised. However, there is room for the mining laws in Lesotho to be improved.

Actionable recommendations and legal reforms within the Industry

The following are some of the amendments that could be made to the mining laws in Lesotho:

a. The concession titles for individual Basotho to mine precious stones on a small scale should be reinstated, because not only was this some form of employment for people (something that the economy needs, job creation) but it will also contribute to poverty alleviation. Measures will have to be put in place to balance that provision with compliance with the provisions of the Kimberley Process Certification.

b. There should be cross referencing to the Precious Stones Order in the Minerals Act for clarity. For example the Minerals Act makes a distinction between minerals and industrial minerals under the interpretation section, and yet for financial purposes under section 59 the Act distinguishes between precious stones and other minerals. Precious stones, however, also fall under other minerals. Precious stones and precious minerals have not been defined under the Mines and Minerals Act.

c. The law should introduce the equivalent of the South African Black Economic Empowerment (BEE), and reserve industrial mineral concessions for individual Basotho only, or for Lesotho incorporated companies with a more than 51 percent Basotho shareholding, and then empower these concession title holders to adequately and profitably mine these minerals.

d. Clear demarcations of authority should be made between the powers of the Commissioner of Mines and the Mining Board on the one hand, and the local government authorities on the other, when it comes to mining of minerals such as sand and other related industrial minerals.

e. The composition of the Mining Board should be reflective of the views and interests of the people within whose area the operations are to be undertaken. While it is right that the minerals belong to all Basotho, the immediately affected communities should be represented in decision-making processes that affect them. The composition could even be such that the representation of communities changes according to which mining areas are under consideration.

f. It is worth noting that the Act (under section 12) currently makes provision for consultation with a representative of a local authority where deliberations of the Board relate to land within the jurisdiction of that local authority. This representative of a local authority does not have any voting rights, although they can attend the meetings of the Board. The Act has not been progressive in this regard. This representative should also be afforded the right to vote and influence the Board's decision.

g. Wider and more representative consultations are needed with stakeholders prior to the granting of prospecting or mining leases. The public should be allowed to make representations prior to the grant of the mining lease, especially if Lesotho minerals belong to the Basotho nation. There should be provision for public hearings prior to the licences being issued.

h. Section 32 of the Act makes provision for consideration of mining applications by the Board, but approval under section 33 is by the minister, leaving one to wonder whether the Board merely make recommendations to the minister. A very controversial proposition is that the power to grant the mining leases should actually be given to the Board and not to the minister.

i. The law should introduce public interest litigation (PIL). Under the common law (and Lesotho is a common law country), only persons who have a direct interest in a matter can institute litigation on it. This is premised on the view that the public or other bodies should not be allowed to champion the cause of others through the judicial process, *locus standi*. When it comes to mineral rights, the citizens' rights should be reinforced through the adoption of PIL principles, and the NGOs afforded the *locus standi* to represent such affected persons or classes of persons. Sometimes the rights of the affected communities are violated by the state or by giant multinational companies where matters often become too technical or expensive for ordinary citizens to handle.

Discussion

The discussion started with a question as to whether the presenter has looked into all laws that are related to mining in Lesotho. The response was that the paper focused on the laws that impact on mining industries, as they emanate from the constitution, where powers are entrusted to the king, who acts in the interest of the nation for Basotho. These laws include Land Act of 1979, the Minerals Act 1967, and the recent Acts of 2005 and 2009. It is from these laws only that relevant provisions are quoted (e.g. the definition of minerals, entitlements, who holds the rights to land, companies registration, board members their composition and their interests in shares and who attends board meetings, the position of local chiefs). These all seem to have changed over time, although community development is not stipulated in the legislation.

It was recommended that, given the loopholes in the legislative framework, there is an urgent need for CSOs to liaise with other networks in order to ensure that companies do not use different policies from those of their primary countries. This was seen as a short-term solution while there is a need to advocate for the enactment of laws that will protect the interests of Basotho in trade in mineral resources. The responsible government departments seem to be lenient or at least lacking capacity to ensure that companies comply with environmental standards. There is an urgent need to prevent the abuse of prospecting licences by companies and to ensure that they fully comply with the requirements of the laws, and where there is a need for reinforcement it should be done as soon as possible.

The question was raised whether there is any significance in excluding Board members and their spouses from having interests while ministers are not excluded. The general feeling was that ministers should declare their interests in order to avoid a conflict of interests. This would ensure that people who have business interests in the extraction of minerals are excluded from serving as ministers of natural resources, or at least that they declare their interests before serving in public office. An independent Mining Board is needed in order to avoid foul play.

It emerged in the discussion that the current legislative framework talks only about compensation and says nothing about community development. The law assumes that Basotho will benefit communally from the proceeds of minerals. The current legislation does not even cater for community involvement in decision-making, and communities cannot persuade government to adhere. The question was raised whether there is (or could be) a share allocated to communities from royalties, and the response was that as they are determined in percentages, it is up to the government to redistribute royalties back to communities. The current legislation has done away with small scale-mining by artisans. There is neither a policy present or in the making on management of mineral resources in Lesotho. This is very alarming as minerals make a huge contribution to the economy of Lesotho.

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The Socio-Economic and Political Impact of Mining in Lesotho by Sehoai Santho

Introduction and scope of the topic

This paper was commissioned by the Southern Africa Resource Watch (SARW) and Melupe Consultants to discuss the socio-economic and political impact of mining in Lesotho. Lesotho is well-known for its high-quality diamonds, and also for dimension sandstone and industrial minerals such as construction aggregate and clays for brick-making.

These are the products of a developing diamond mining, quarrying and construction materials sector. As a watershed for Southern Africa, Lesotho is a reliable source of fresh water for downstream riparian states, such as South Africa and its thirsty Gauteng province. That is why Lesotho and South Africa will be signing the protocols for phase two of the Lesotho Highlands Water Project in August 2010, which will be implemented from 2010 to 2020.

The major challenge is to harness these natural resources to ensure the sustainable growth and diversification of Lesotho's economy and to maximise the socio-economic benefits for citizens. This conference focuses on the role of extractive resources in Lesotho's medium- to long-term development. As part of this process, this paper focuses on the socio-economic and political dimensions of extractive resources in an effort to assess the challenges and opportunities facing Lesotho in harnessing its natural resources for sustainable growth and development. The scope of the paper is to assess the socio-economic impact of the mining and quarrying sector and its impact on the GDP of Lesotho. It will also assess challenges of implementing meaningful corporate social responsibility and investment (CSRI) strategies by the mining companies, outline some actionable recommendations to enhance the socio-economic and developmental impact of the extractive resources industries in Lesotho.

These issues will be discussed with a view to consolidating democratic governance and the accountability of government and business to citizens and affected communities. If this development agenda his to succeed, it should be based on an accountable, capable and efficient governance systems that can effectively regulate the mining sector and harness extractive resources for growth and development. The paper is divided into eight (8) sections which discuss the global and regional context as well as the regulatory framework and the socio-economic impact of the mining and quarrying sector in Lesotho.

The global framework for natural resources development

There is a well-established consensus that natural resources have the potential to bring about economic growth and poverty reduction if they are properly harnessed for development. A recent expression of this global consensus was the launching of the Global Natural Resource Charter in Oslo, Norway (May 2009) as a firm commitment to the establishment of a global framework for the development of natural resources that is linked to viable and sustainable development in resource-rich countries, especially those of sub-Saharan Africa.

According to its Website, the Natural Resource Charter is described as "a set of principles for governments and societies on how to use the opportunities created by natural resources for development effectively". Most of Africa's poor countries have large amounts of natural resources that can provide a basis for economic growth and poverty reduction. The Natural Resource Charter therefore seeks to provide guidelines and standards to inform and improve natural resource management. Accordingly, "it aims to ensure that opportunities provided by new mineral, oil and gas discoveries and commodity booms will never again be missed".

However, it has been observed that to realise the value chain from the discovery of natural resources through to their conversion into a productive and viable economy is a long and complex process. If this complex governance and economic development process is not well managed, then development opportunities for resource-abundant countries (especially those Africa) will not been realised.

The extractive sector and development in Botswana: lessons

In the SADC region, Botswana represents a good case study of harnessing the extractive sector for development. Hence at the launching of the Global Natural Resource Charter (Oslo, Norway, May 2009), the official keynote speech was given by the ex-President of Botswana, Mr Festus G Mogae on the topic ""The Importance of Good Economic Management of Natural Resources: The case of Botswana". In his speech, Mr Mogae shared the success story and lessons of Botswana as a resource-abundant African country that has harnessed its natural resources (particularly diamonds) to attain economic growth and poverty reduction since its independence in 1966.

In this speech, Mr Mogae indicated that some of the factors behind the mismanagement of natural resources in Africa are due to factors such as "unaccountable and corrupt governance systems, ignorance, lack of analytical capacity, and lack of technical competence on the part of the host country at the beginning, i.e. at the time of the decision to extract the natural resource. This critical imbalance in negotiating skill and bargaining power between the host country and the extraction investor, especially at the initial stages, admittedly often exacerbated by corruption, has contributed significantly to the unfair and unjust arrangements that have existed in African developing countries." Mr Mogae commended the Global Natural Resource Charter as an initiative that will enable the optimum utilisation of extractive resources and their integration into both short and long term planning objectives. The charter does this by objectively prescribing the respective roles of host country governments, the home governments of extractive companies and centres of capital, as well as the mining companies themselves.

This Global Natural Resource Charter process is relevant for Lesotho and other SADC countries as it seeks to develop good practices in conformity with global good practice through all-inclusive dialogue processes. These should be informed by relevant research on extractive resources and national development experiences, including corporate social responsibility (CSR) and corporate social investment (CSI) practices by mining companies.

The Lesotho national context

This section of the paper provides an overview of Lesotho in general and its current national development strategy. It outlines the major demographic and socio-economic trends at national and district levels and provides a context for discussing the role of extractive resources and development. The relevant legal provisions of the Mines and Minerals Act (2005) are also discussed, since it sets the legal parameters for Lesotho's established and emerging diamond mining and quarrying industry and establishes the legal compliance framework

According to the preliminary results of the 2006 Population Census undertaken by Lesotho's Bureau of Statistics, the country's population is estimated to be 1 880 661, of which males constitute 916 282 (48.7 percent) and female's 964 379 (51.3 percent). With regard to the age structure, about 36 percent of the population is less than 15 years old, 58 percent is aged 15-64 years, and 6 percent is 65 years and older. Hence, Lesotho faces major demographic challenges, given the fact that close to 40 percent of the population is 15 years old or younger.

Lesotho has three broad agro-ecological zones that determine population settlement and economic livelihood activities: the lowlands, the foothills, and the highlands. The lowlands have most of the arable land, but this has declined from 13 percent to about 10 percent of the total land area due to soil erosion and land degradation. The 87 percent remaining land area is classified as foothills and the mountainous highlands. While there is arable land in the foothills, it is easily erodible given unsustainable land practices. The highlands areas have always had high-quality rangeland for livestock, but this potential is undermined by overstocking.

In terms of rural/urban distribution of the population, it is estimated that around 76.2 percent are rural residents, while 23.8 percent are urban residents. There has been a clear urbanisation trend in the last 30 years. The percentage of the urban population increased from 10.5 percent in 1976 to almost 24 percent in 2006. Urban areas are growing by about 6 percent per year, due to increasingly difficult conditions and a lack of viable alternative economic opportunities in rural areas. The districts of Maseru, Leribe and Berea are the most populous, with more that 50 percent of the total population. In 2006, Maseru had 429 823 residents (22.9 percent of the total population).

Among the major push factors for this significant internal migration from the rural areas (particularly from the highlands districts, such as Mokhotlong, Thaba Tseka, Quthing and Qacha's Nek) are declining productivity of both crop and livestock agricultural economic activities, increasing population pressure on arable land, and the overstocking of rural rangelands beyond their carrying capacity for viable livestock-based economic activities.

According to the 2006 census survey (BOS, August, 2007) there is a declining trend in the population growth rate between the inter-censual years of 1996 to 2006, when the growth rate was 0.82 percent. This was substantially lower than past growth rates of 2.6 percent from 1976 to 1986, and 1.5 percent from 1986 to 1996. The Lesotho Bureau of Statistics attributes this decline to "changes in fertility, mortality and outward migration". This decline is also probably due to the demographic impact of HIV and AIDS in Lesotho given the current prevalence of 23.2 percent. The full demographic impact of HIV and AIDS is still being analysed.

Lesotho's poverty profile has been worsening. Recent estimates by the government and development agencies show widespread poverty, with the proportion of households living below the poverty line being around 55 percent, of which about 40 percent are extremely poor. The distribution of income is highly uneven, especially between rural and urban areas. The Gini-coefficient, which measures income inequality, is estimated at 0.66 out of a theoretical maximum of 1. All national household surveys in Lesotho show worsening poverty trends in relation to gender, household size, livelihood patterns, access to basic services and geographic location within the three agro-ecological zones.

One established feature of this poverty profile is that the population in the highland areas and Sengu River Valley are significantly poorer on almost all selected indicators. Extreme poverty is concentrated in the rural areas, not only as a proportion of the population but also in absolute numbers. An established feature of Lesotho's poverty profile is the feminisation of poverty and vulnerability. While poverty in Lesotho is very closely associated with the absence of wage employment and income, the worsening HIV/AIDS pandemic is undermining the economic resource base, especially of the weaker strata of the economy, and particularly in rural and agricultural areas. This generally leads to lack of labour for essential agricultural activities and even some fields being left idle, with the result that poverty and vulnerability get worse. The Government of Lesotho has therefore identified AIDS as the country's single most critical threat to economic growth and development. In declaring AIDS as a national disaster, the government has given HIV and AIDS the top priority in its development programmes, line ministries' plans, and sector strategies.

The national development strategy and framework for natural resources development

Lesotho has a gross national income (GNI) per capita of US$740 as per 2005 estimates, and is therefore classified as one of 49 Least Developed Countries (LDC). This LDC status enables Lesotho to have access to concessional funding from its international development partner countries or agencies in the implementation of its national development strategy. Lesotho was ranked 149 out of 177 countries on the UNDP Human Development Index for 2005.

Lesotho's Ministry of Finance and Development Planning (MoFDP) is the lead agency that is currently driving the transition from the Poverty Reduction Strategy (PRS) of 2004 – 2008/09 to the expected National Development Plan (NDP). The Lesotho cabinet considered and approved the proposal for the development of the NDP on 22 September 2009. This proposal provides for:

- the preparation of a National Development Plan (NDP) for the period 2011/12 to 2015/16;
- the approval of a draft Interim National Development Framework to be used to guide the budgeting and planning processes in the interim until the NDP comes into force.

The key principles that will guide this national development planning process are the following;

- The NDP will focus on realising the National Vision as thus: By the year 2020 Lesotho shall be a stable democracy, a united and prosperous nation at peace with itself and its neighbours. It shall have a healthy and well-developed human resource base. Its economy will be strong; its environment well managed and its technology well established.
- The NDP will be organised around the pillars of the National Vision document, and it will also indicate what more needs to be done.
- The NDP will be developed on a sectoral basis to improve coordination between ministries and other agencies.
- The NDP is intended to be more comprehensive than the PRS so that it can guide resource allocations across all sectors.

Lesotho's Ministry of Natural Resources (MoNR) is the lead agency that is both the custodian and the facilitator of the National Framework for Natural Resources Development. This encompasses all natural resources, inclusive of mineral resources such as diamonds and Lesotho's abundant water resources.

The ministry finalised its draft strategic plan with clear vision and mission statements in September 2009.

The MoNR's vision statement is as follows;

By the year 2015, Basotho nation shall have an improved quality of life through well-developed natural resources.

The MoNR's mission statement is as follows;

> We are dedicated to sustainable management and development of mineral, water, and energy resources; and provision of potable water, sanitation, hydrological and meteorological services through a competent workforce for the prosperity of the nation in partnership with our stakeholders.

Amongst the stated goals and strategic objectives of MoNR, the most relevant for this report are:

- to manage and strengthen the private sector for development of mineral resources;
- to increase contribution to GDP through royalties and levies;
- to promote the development of mineral resources.

The relevant strategic objectives are as follows;

- to promote the availability of up-to-date natural resources information by 2013;
- to improve the database on the available minerals to attract investors;
- to increase the contribution to GDP by 2 percent annually through mineral development, oil levies and water transfer.

These vision and mission statements and the goals and objectives of the MoNR express the commitment of this ministry and that of government towards the sustainable management and development of Lesotho's natural resources, within the context of the transition from the National Poverty Reduction Strategy (PRS) to the expected National Development Plan (NDP).

The legislative and regulatory framework for Lesotho's mining industry

The legislative and regulatory framework for Lesotho's mining industry is provided by four major legislative acts: the Precious Stones Order (1970), the Mine Safety Act (1981), the Environment Act (2001), and the Mines and Minerals (2005).

The Precious Stones Order (1970) regulates dealing in rough precious stones such as diamonds. It also provides for the conditions and penalties that govern the rough diamonds business. Since January 2003, with the coming into effect of the international Kimberley Process Certification Scheme (Kimberley Process, or KP), this law has now incorporated the KP process through the Precious Stones (Kimberley Process) Regulations which were approved to be applied in Lesotho in May 2003. The regulations that govern diamond dealers' licences, fees and forms were approved in August and November 2004.

The Mine Safety Act (1981) provides for conditions and procedures in safety, health and environment in the mining industry.

The Environment Act No. 15 of 2001 provides for the environment impact assessment (EIA) of new mining developments and control of pollution from existing operations in the mining industry. This act has been supplemented by the Environmental Supplement No.1 gazetted in December, 2008.

The Mines and Minerals Act No. 37 of 2005 sets the legal parameters and the legal compliance framework for Lesotho's established and emerging diamond mining industry. In part 2 of the Act, the ownership and acquisition of mineral rights are provided for. According to clause 3 (1), all rights of ownership in minerals are vested in the Basotho nation. Clause 3 (2) gives powers to the Minister of Natural Resources to act in the public interest by "investigating and exploiting these mineral resources in the most efficient, beneficial and timely manner".

In part 3 of the Act, the administration of these functions and the establishment of the office of the Commissioner of Mines and Geology is provided for. This office is an integral part of Lesotho's Ministry of Natural Resources (MoNR). The functional structure and staffing organogram of the mines and geology department are annexed to this report.

Clause 11 (1) specifically obliges the holder of a mineral right to give preference to Lesotho and Basotho Citizens in the provision of goods and services. The stipulated areas of preference for Basotho are in clause 11 (1) a, b, c and are in the following areas:

- employment of qualified Basotho in mining operations;
- training programmes for Basotho, including those in the employment of the holder of a mineral right;
- procurement of goods, products and equipment in Lesotho as well as the utilisation of services that are available in Lesotho.

In part 3 of the Act, clause 12, the establishment of the Mining Board is provided for, whose functions are outlined in clause 17, (a, b, c and d). The major functions of the Mining Board are to advise the minister with respect to the exercise of his powers under the Act, particularly to "investigate, negotiate, or consult in all mineral right concessions."

In part 5 of the Act, clauses 32, 33, 34, 35 and 36, the whole process of applying for a mining lease, its approval, the minimum shares or investment for government in a mining enterprise, the scope of a lease as well as its duration and renewal are provided for. Clause 44 of part 5 specifically provides for the functions and powers of the Mining Board with regard to considering applications for issuing, renewing, transferring or amending mining leases and mineral concessions for diamonds. "This covers all the technical, financial and commercial aspects of the proposed project, including the Government participation".

Lesotho's mineral deposits and commercial operations

Lesotho's mineral deposits include diamonds, semi-precious stones, dimension sandstone, clays and some uneconomic coal deposits. The diamonds are found mostly in kimberlite pipes that are concentrated in the northern districts, and sometimes in alluvial gravels. The kimberlite pipes in current diamond mining operations are in Letšeng, Mothae and Lemphane in Mokhotlong, and Kao and Liqhobong in Botha Bothe. Another kimberlite pipe is at Kolo in Mafeteng District. Sandstone deposits and clays are found in most of the lowlands, and can be worked where there is infrastructure and a market for these products. Dolerite deposits for aggregate materials are found in most parts of the country.

The commercial diamond mining industry

Since the initial discovery of diamonds at Letšeng in 1957, Lesotho's diamond mining industry has gone through various phases of prospecting, artisanal, small-scale and commercial operations up to the 1990s. In the current period, especially since the enactment of the Mines and Minerals Act in 2005, Lesotho has both an established and emerging commercial diamond mining industry that is formally regulated. These diamond mines operate within the framework of 10-year mining licences as provided in the Mines and Minerals Act. This current phase of commercial mining is based on systematic prospecting and mining of economically viable kimberlite deposits which can sustain diamond mining operations in the medium to long term period, depending on the global diamond market.

Table 1 **Lesotho Diamond Mining Companies with active licences – 2010**

Company	Place and District	No. of Employees
Letšeng Diamonds (Pty) Ltd	Letšeng, Mokhotlong	1100+
NamakwaBatla Diamonds (Pty) Ltd	Kao, Botha Bothe	108
Mothae Diamonds (Pty) Ltd	Mothae, Mokhotlong	98
Liqhobong Mining Development Co (Pty) Ltd	Liqhobong, Botha Bothe	20
Meso Diamonds (Pty) Ltd	Lemphane, Mokhotlong	20-

The case of Letšeng Diamonds

Letšeng Diamonds (Pty) Ltd has been the most well-established and successful mining operation for over ten years (since 1999). It mines kimberlite pipes in the district of Mokhotlong. The rights to mine are held by Letšeng Diamonds, a company registered in Lesotho and controlled by Gem Diamonds with 70 percent of equity, with the balance of 30 percent held by the government of Lesotho. Letšeng Diamonds was granted mining lease agreement in 1999 . The commercial operations of the mine began in 2004. Letšeng Diamonds currently has a processing capacity of over 5 million tonnes per year, which makes it the seventh largest kimberlite mine in the world. The mine produces approximately 100 000 carats per annum. 90 percent of the diamonds produced are of gem quality, with a significant proportion graded as "D" colour. The diamonds produced are sold for the highest per carat price of any kimberlite mine in the world. This mine is renowned for the production of large, high-quality gemstones, the most famous of which are amongst the highest in quality in the world. The Letšeng pipe has produced the 601 carat Lesotho Brown in 1967, the 603 carat Lesotho Promise in 2006 (ranked the 15th largest rough diamond in the world), the 493 carat Letšeng Legacy (ranked 18th in the world) in 2007, and the 478 carat Leseli la Letšeng (ranked 20th).

The past ten years have seen Letšeng Diamonds emerge as the flagship of Lesotho's maturing and regulated diamond mining sector. Letšeng Diamonds has accordingly complied with most of the mining lease agreement conditions, which include implementation of the human resource localisation policy, provision of scholarships to Basotho nationals, undertaking of the Environmental Impact Assessment and adherence to the Environmental Management Plan. The company and its sub-contractors provide employment to more than 1100 employees, of whom over 90 percent are Basotho nationals.

Challenges and opportunities facing Letšeng Diamonds

The key challenges that have to be addressed by Letšeng Diamonds include:

- The fall of prices of diamonds in the world market due to the economic recession during the 2008-2009 period and an unpredictable marketplace for diamonds in the short to medium term due to the sluggish global recovery.
- The need for Letšeng Diamond's Corporate Social Responsibility and Investment (CSRI) strategy to have a sustainable socio-economic impact beyond the beneficiaries of direct employment, and beyond the legal compliance framework. The focus of the CSRI strategy is on affected Mokhotlong District Communities and also on Lesotho citizens as a whole.

As an established diamond mining operation, Letšeng Diamonds has the following opportunities;

- It still has a lifespan of 30+ years at current price levels, and has an established global niche since 90 percent of the diamonds produced are of gem quality and are sold for the highest per carat price of any kimberlite mine in the world.

- It has a well-developed CSRI strategy, which sets high standards and makes Letšeng Diamonds a good practice leader in the mining sector in Lesotho. This leadership position also imposes a significant responsibility on the company. In this context, Letšeng Diamonds is committed to the implementation of a CSRI strategy that will have sustainable impact on the livelihoods of affected Mokhotlong communities and other targeted communities that will benefit from projects being implemented nationally.

Challenges facing other Lesotho's diamond mining companies

The key challenges facing the other emerging diamond mining companies are;

- The need to establish viable mining operations in remote locations which require infrastructure such as roads, electricity and water, etc. This infrastructure has to be self-financed or provided by the government.

- These emerging diamond mining companies are mining kimberlite pipes whose diamonds have much lower gem quality and are sold at lower per carat price globally. These operations are very sensitive to fluctuating diamond price levels.

- The fall of prices of diamonds in the world market due to the economic recession during the 2008-2009 period. The global market for diamonds in the short to medium period is still unpredictable due to the sluggish global recovery.

- The need for these emerging diamond mining companies to emulate Letšeng Diamonds and develop CSRI strategies, given the limited direct employment impact. The focus of their CSRI strategies should mainly be on the affected communities who live in the mining districts.

The commercial sandstone and industrial minerals (aggregate and clay) industry

Table 2 **Lesotho commercial sandstone and industrial minerals sector – 2010**

Company	Place and District	No. of Employees
Sandstone		
Lekokoaneng Sandstone (Pty) Ltd	Lekokoaneng, Berea	20
Lesotho Stone Enterprises (Pty) Ltd	Lekokoaneng, Berea	240
Setlekeng Sandstone (Pty) Ltd	Lekokoaneng, Berea	30
Smart Sandstone (Pty) Ltd	Lekokoaneng, Berea	120
Aggregate		
Southern Sky (Pty) Ltd	Ha Ntsi, Maseru	27
Moradi (Pty) Ltd	Morija, Maseru & Peka, Leribe	52 16
Clay		
Loti Brick (Pty) Ltd	Thetsane, Maseru	115
Majara Bricks (Pty) Ltd	Berea, Maseru	320

The socio-economic and political impact of mining: assessment at national and company levels in Lesotho

Development challenges and the National Development Plan (NDP)

In the 2010/12 period, Lesotho will prepare a National Development Plan (NDP) as a framework for an economic growth and poverty reduction that seeks to respond to the medium- to long-term socio-economic challenges outlined in sections above.

Among the development challenges that have to be addressed for the 2011/12 to 2015/16 period are the following;

1. The revenue to Lesotho's public finance system that is derived from the common Southern Africa Customs Union (SACU) revenue pool is projected to decline by 25 percent.

2. The down-scaling of the South African mining industry, and the consequent retrenchment of Basotho mineworkers and decline in wage remittances and adverse socio-economic consequences on affected households and communities in Lesotho.

3. Serious threats to Lesotho's export-oriented textiles and apparel sector given the current global economic downturn and the uncertain employment prospects within this sector.

4. The challenges of declining productivity in the agricultural sector and worsening poverty and vulnerability, which is also worsened by the impact of HIV and AIDS on affected households and communities.

Given the above challenges, the government aims to develop the NDP with a clear focus on the following priorities:

- Accelerating sustainable economic growth that will generate income and revenue to partially offset declines in SACU revenue and mineworkers' remittances.

- Ensuring that this growth is broad-based and shared to address vulnerability due to rising unemployment and food insecurity.

- Protecting and enabling those who are unable to benefit from economic growth through developing more comprehensive social protection policies.

- Fostering good governance to improve public service delivery and using the local government structures that were established from 2005 during the PRS, as a basis for planning and poverty reduction at the local level.

In order to develop a comprehensive but relevant National Development Plan, It is clear that hard choices and prioritisation of development activities, social welfare and social protection have to be made at national, sectoral and local levels.

Socio-economic impact assessment of the mining and quarrying sector at company level

In assessing the socio-economic impact of the mining and quarrying sector at company level, the key finding is that the overall employment impact is limited even though this is still a growing economic sub-sector. According to Tables 1 and 2 above, the total number of jobs created amounts to more than 2270. If a multiplier average number of 6 dependents per employee household is used, then about 13 620 individuals are overall beneficiaries of jobs created in this sector. This limited employment impact presents the context for corporate social responsibility (CSR) in the mining and quarrying sector at the company level.

Working definitions

Corporate social responsibility, (CSR) is defined in terms of how a company manages its operations such that it maximises positive impact and mitigates negative effects on internal and external stakeholders and the natural environment. It is about how business operates in a society and maintains its "licence to operate".

Corporate social investment, (CSI) consists of financial or in-kind contributions that a company makes towards charitable and developmental initiatives in a community where it operates. The effective management of these contributions is a crucial aspect of the practice of corporate social responsibility, since their impact depends on high levels of trust between corporations and communities to ensure accurate identification of needs and the efficiency and cost-effectiveness of development interventions. The sustainability of the CSI strategy is also determined by the ability of the company to link its own business imperatives and competencies with the identified community needs over the medium to long term.

Corporate citizenship considers all aspects of a company's operations, such as production, support services and human resource management practices, and determines whether there is commitment to social, economic and environmental responsibility on a consistent basis.

Assessing national CSR trends and practices in Lesotho

The most recent national assessment of CSR and CSI practice in Lesotho was undertaken in the process of preparing the NEPAD African Peer Review Mechanism (APRM) report for Lesotho in 2007/2008. The APRM objectives and standards that were applied in this exercise related to corporate accountability systems and corporate social responsibility, on the basis of the following considerations;

1. Ensuring that corporations act as good corporate citizens with regard to human rights, social responsibility and environmental sustainability.

2. Promoting the adoption of codes of good business ethics in achieving the objectives of the corporation.

3. Ensuring that corporations treat all their stakeholders (shareholders, employees, communities, suppliers and customers) in a fair and just manner.

4. Providing for accountability of corporations, directors and officers.

The overall goal of this APRM process in this context was therefore to assess corporate behaviour in general, including corporate social responsibility, responsiveness to the concerns and needs of the Lesotho community, as well as the treatment of labour, shareholders and customers.

Current national CSR and CSI trends

The main finding of the Lesotho APRM assessment indicates the lack of clear and established CSR and CSI practice that conforms to the standards that have been outlined in the working definitions of CSR, CSI and corporate citizenship in this section of the paper.

A review of current CSR and CSI practice in Lesotho reveals the usual examples of initiatives that consist of company contributions towards *ad hoc* and charitable activities. Among these are sporting events such as soccer, tennis, darts, athletics competitions, projects for people with disabilities, cultural activities (such as Morija arts and cultural festival), royal family festivities at Matsieng Royal Village, other recreational and leisure activities like choral music, traditional dances and youth music festivals. Many companies and donors are now beginning to respond to the magnitude of the orphaned and vulnerable children (OVC) crisis which is being driven mainly by HIV and AIDS. While they fund OVC programmes within particular communities, the overall magnitude of an estimated 180 000 OVC is very serious and can't be addressed piecemeal.

The key finding of this paper is that most of the current charitable and philanthropic CSR activities are implemented by companies on an *ad hoc basis* and are usually short- term since they are neither based on any comprehensive CSR needs assessments, nor on a commitment to long-term Corporate citizenship. These activities are also usually intended to enhance the profile, public relations and strategic marketing interests of the involved companies.

Given this important finding, Letšeng Diamonds commissioned a CSR needs assessment study in 2009. This study has informed the development and implementation of Letšeng Diamond's corporate social investment strategy from 2010 onwards. This is a pioneering approach within Lesotho's developing mining and quarrying sector.

The macro-economic impact of the mining and quarrying sector at national level

The macro-economic contribution of the mining and quarrying sector at national level is illustrated by reviewing the national accounts of Lesotho for the 1999-2008 periods. The re-emergence of diamond mining from 2004 saw this industry grow to 9 percent of GDP by 2008. Selected national accounts tables of GDP by activity are presented below with mining and quarrying economic activity highlighted. This developing sector is increasing its contribution to Lesotho public finances through royalties and taxes, which are then allocated annually through the national budget prepared by the Ministry of Finance. Selected national accounts of Lesotho are annexed to this paper below.

Annexures

National Accounts of Lesotho 1999-2008.

The revised national accounts prepared by Lesotho's Bureau of Statistics (BOS) are presented below in several tables and graphs. This BOS publication presents main tables for the years 1999-2008: gross domestic product (GDP) by activity:

Figure 1 **GDP growth rates**

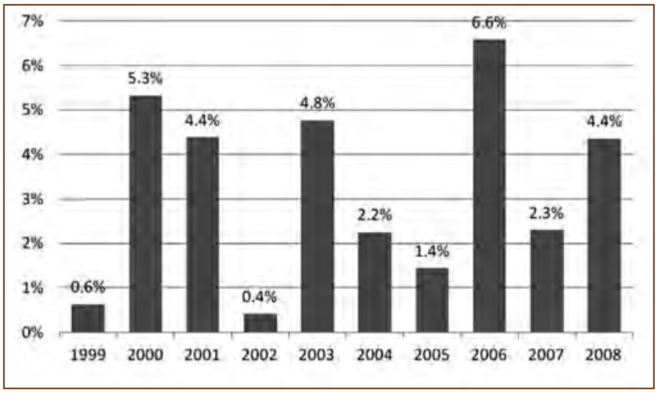
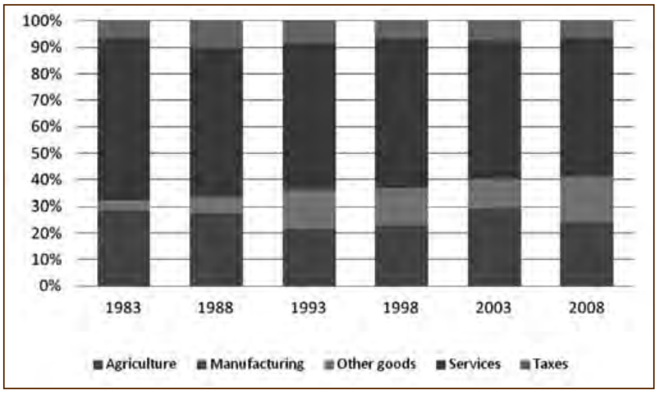


Figure 2 **Structure of GDP**



The average annual growth of GDP in the ten years since 1998 has been 3.2 percent. The insignificant growth rates in 1999 were partly due to the political unrest in 1998, while the equally insignificant growth rate in 2002 was due to a strong decline in agriculture. Since 1999, the expansion of the clothing industry has been an important contributor to the GDP growth, except in 2005, when the industry was adversely affected by the removal of textile quotas. However, the sector recovered in 2006. The opening of two diamond mines in 2004 and 2005 has made a strong contribution to the growth in the last six years.

The structure of GDP by activity has changed over the last twenty-five years with the contribution of agriculture decreasing from 20 to 7 percent and the contribution of manufacturing increasing significantly, from 7 to 17 percent. Other goods producing industries include mining, electricity, water and construction. The contribution of construction ranged between 10 and 15 percent in the nineties during the construction of the Lesotho Highlands Water Project. The resurgence of diamond mining from 2004 saw this industry grow to 9 percent of GDP by 2008. Finally, the contribution of the service industries has fluctuated between 55 and 60 percent.

Selected national accounts tables of GDP by activity compiled by Lesotho's Bureau of Statistics (BOS).

Mining and quarrying economic activity is highlighted:

Table 1a **GDP by activity, current prices, million Maloti: BOS**

Industry	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Agriculture, forestry and fishing	600	598	731	650	671	702	648	848	819	933
Growing of crops; horticulture	213	252	297	286	207	208	171	220	186	211
Farming of animals	311	272	347	269	366	386	366	508	513	566
Agricultural service activities	38	35	44	45	46	47	42	48	40	68
Forestry	37	40	43	49	52	62	69	72	79	87
Mining and quarrying	***5***	***8***	***10***	***13***	***44***	***68***	***301***	***419***	***820***	***1 198***
Manufacturing	529	679	1 068	1 446	1 425	1 595	1 533	1 873	2 014	2 258
Food products and beverages	158	179	187	231	231	223	226	250	306	381
Textiles, clothing, footwear	292	415	779	1 086	1 082	1 230	1 147	1 432	1 477	1 553
Other manufacturing	79	85	103	128	112	142	160	190	232	324
Electricity and water	244	244	256	304	316	337	414	460	478	502
Construction	502	598	527	419	437	364	383	410	460	532
Wholesale and retail trade, repairs	312	324	365	433	471	497	582	669	756	884
Hotels and restaurants	56	66	71	84	96	104	110	128	135	154
Transport, and communication	201	227	268	337	343	425	523	584	662	766
Transport and storage	118	138	158	184	199	227	282	297	323	364
Post and telecommunications	83	89	110	153	144	199	241	287	339	402
Financial intermediation	189	213	230	265	309	325	364	465	608	829
Real estate and business services	772	819	868	1 021	1 060	1 088	1 160	1 261	1 389	1 561
Real estate	489	528	575	677	725	766	813	881	970	1 094
Business services; renting	283	291	293	343	335	322	346	381	419	468
Public administration	509	534	591	690	760	866	936	1 014	1 128	1 335
Education	448	474	496	548	581	638	700	760	961	1 272
Health and social work	111	115	122	134	141	149	159	172	187	215
Community, social & personal services	63	68	73	83	90	96	100	109	120	136
Financial services indirectly measured	-36	-46	-66	-85	-90	-67	-59	-90	-170	-277
All industries at basic prices	**4 504**	**4 922**	**5 609**	**6 344**	**6 653**	**7 186**	**7 852**	**9 084**	**10 367**	**12 297**
Taxes on products	299	332	366	449	603	811	835	928	1 129	1 254
Subsidies on products					-61	-188	-272	-396	-368	-376
GDP at purchasers' prices	4 803	5 254	5 976	6 793	7 195	7 809	8 414	9 616	11 128	13 175

Table 1b **GDP by activity, current prices, contribution in percent: BOS**

Industry	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Agriculture, forestry and fishing	12.5	11.4	12.2	9.6	9.3	9.0	7.7	8.8	7.4	7.1
Growing of crops; horticulture	4.4	4.8	5.0	4.2	2.9	2.7	2.0	2.3	1.7	1.6
Farming of animals	6.5	5.2	5.8	4.0	5.1	4.9	4.3	5.3	4.6	4.3
Agricultural service activities	0.8	0.7	0.7	0.7	0.6	0.6	0.5	0.5	0.4	0.5
Forestry	0.8	0.8	0.7	0.7	0.7	0.8	0.8	0.8	0.7	0.7
Mining and quarrying	***0.1***	***0.2***	***0.2***	***0.2***	***0.6***	***0.9***	***3.6***	***4.4***	***7.4***	***9.1***
Manufacturing	11.0	12.9	17.9	21.3	19.8	20.4	18.2	19.5	18.1	17.1
Food products and beverages	3.3	3.4	3.1	3.4	3.2	2.9	2.7	2.6	2.7	2.9
Textiles, clothing, footwear	6.1	7.9	13.0	16.0	15.0	15.8	13.6	14.9	13.3	11.8
Other manufacturing	1.6	1.6	1.7	1.9	1.6	1.8	1.9	2.0	2.1	2.5
Electricity and water	5.1	4.6	4.3	4.5	4.4	4.3	4.9	4.8	4.3	3.8
Construction	10.5	11.4	8.8	6.2	6.1	4.7	4.5	4.3	4.1	4.0
Wholesale and retail trade, repairs	6.5	6.2	6.1	6.4	6.5	6.4	6.9	7.0	6.8	6.7
Hotels and restaurants	1.2	1.3	1.2	1.2	1.3	1.3	1.3	1.3	1.2	1.2
Transport, and communication	4.2	4.3	4.5	5.0	4.8	5.4	6.2	6.1	6.0	5.8
Transport and storage	2.5	2.6	2.7	2.7	2.8	2.9	3.3	3.1	2.9	2.8
Post and telecommunications	1.7	1.7	1.8	2.3	2.0	2.5	2.9	3.0	3.0	3.1
Financial intermediation	3.9	4.1	3.8	3.9	4.3	4.2	4.3	4.8	5.5	6.3
Real estate and business services	16.1	4.0	14.5	15.0	14.7	13.9	13.8	13.1	12.5	11.8
Real estate	10.2	10.0	9.6	10.0	10.1	9.8	9.7	9.2	8.7	8.3
Business services; renting	5.9	5.5	4.9	5.1	4.7	4.1	4.1	4.0	3.8	3.5
Public administration	10.6	10.2	9.9	10.2	10.6	11.1	11.1	10.5	10.1	10.1
Education	9.3	9.0	8.3	8.1	8.1	8.2	8.3	7.9	8.6	9.7
Health and social work	2.3	2.2	2.0	2.0	2.0	1.9	1.9	1.8	1.7	1.6
Community, social & personal services	1.3	1.3	1.2	1.2	1.2	1.2	1.2	1.1	1.1	1.0
Financial services indirectly measured	-0.8	-0.9	-1.1	-1.2	-1.2	-0.9	-0.7	-0.9	-1.5	-2.1
All industries at basic prices	**93.8**	**82.1**	**93.9**	**93.4**	**92.5**	**92.0**	**93.3**	**94.5**	**93.2**	**93.3**
Taxes on products	6.2	6.3	6.1	6.6	8.4	10.4	9.9	9.7	10.1	9.5
Subsidies on products					-0.8	-2.4	-3.2	-4.1	-3.3	-2.9
GDP at purchasers' prices	100.0	88.4	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Table 2a **GDP by activity, constant 2004 prices, million Maloti: BOS**

Industry	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Agriculture, forestry and fishing	899	859	970	685	708	702	641	758	653	694
Growing of crops; horticulture	310	357	397	248	218	208	196	193	131	151
Farming of animals	477	395	458	327	383	386	338	454	420	423
Agricultural service activities	58	53	62	56	53	47	39	44	33	48
Forestry	53	53	54	54	54	62	67	67	69	70
Mining and quarrying	***6***	***10***	***12***	***14***	***46***	***68***	***147***	***150***	***205***	***245***
Manufacturing	688	810	1 026	1 331	1 506	1 595	1 402	1 530	1 548	1 598
Food products and beverages	224	241	238	237	228	223	228	234	249	271
Textiles, clothing, footwear	357	460	662	957	1 164	1 230	1 018	1 120	1 099	1 076
Other manufacturing	107	110	126	137	114	142	155	176	200	251
Electricity and water	280	288	298	305	324	337	383	403	420	424
Construction	539	662	586	470	451	364	379	374	393	419
Wholesale and retail trade, repairs	454	438	451	468	493	497	554	584	605	614
Hotels and restaurants	83	93	93	92	99	104	106	115	110	112
Transport, and communication	296	306	337	375	392	425	484	538	601	673
Transport and storage	188	193	198	210	219	227	251	253	258	270
Post and telecommunications	108	113	139	165	173	199	234	285	343	404
Financial intermediation	195	244	255	262	280	325	334	410	425	473
Real estate and business services	1 092	1 088	1 070	1 101	1 091	1 088	1 122	1 155	1 184	1 218
Real estate	700	711	722	739	752	766	786	803	818	833
Business services; renting	392	376	348	362	339	322	336	352	366	385
Public administration	638	682	707	780	844	866	874	913	939	965
Education	589	649	659	669	646	638	640	663	642	649
Health and social work	141	148	152	151	153	149	151	155	154	154
Community, social & personal services	93	95	92	93	94	96	97	99	101	103
Financial services indirectly measured	-29	-48	-68	-80	-78	-67	-60	-87	-100	-115
All industries at basic prices	**5 964**	**6 324**	**6 639**	**6 715**	**7 049**	**7 186**	**7 253**	**7 760**	**7 878**	**8 225**
Taxes on products	682	690	713	715	762	811	821	845	912	934
Subsidies on products	-43	-59	-93	-140	-174	-188	-152	-163	-154	-146
GDP at purchasers' prices	6 603	6 955	7 259	7 290	7 637	7 809	7 921	8 443	8 636	9 013

Table 2b **GDP by activity, constant 2004 prices, percent annual changes: BOS**

Industry	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Agriculture, forestry and fishing	8.7	-4.4	12.9	-29.4	3.4	-0.9	-8.7	18.4	-14.0	6.3
Growing of crops; horticulture	5.8	15.1	11.1	-37.5	-12.2	-4.6	-5.4	-1.6	-32.2	15.5
Farming of animals	16.3	-17.1	15.9	-28.7	17.3	0.5	-12.2	34.2	-7.6	0.9
Agricultural service activities	-17.2	-9.2	16.2	-8.4	-5.2	-11.5	-17.4	12.7	-25.9	48.5
Forestry	0.7	0.6	0.5	0.4	0.3	13.9	8.4	0.5	3.1	1.7
Mining and quarrying	***6.4***	***61.4***	***13.2***	***16.5***	***235.2***	***48.1***	***115.6***	***2.6***	***36.2***	***19.5***
Manufacturing	-0.1	17.7	26.6	29.7	13.1	5.9	-12.1	9.1	1.2	3.2
Food products and beverages	-7.9	7.5	-1.2	-0.5	-3.9	-2.1	2.5	2.3	6.5	8.8
Textiles, clothing, footwear	4.7	28.7	44.0	44.5	21.6	5.7	-17.2	10.0	-1.9	-2.1
Other manufacturing	2.2	2.3	15.0	8.6	-16.6	24.5	8.9	13.8	13.7	25.4
Electricity and water	35.2	2.7	3.7	2.3	6.1	4.0	13.9	5.1	4.3	1.0
Construction	3.6	22.8	-11.4	-19.9	-3.9	-19.3	4.0	-1.3	5.1	6.5
Wholesale and retail trade, repairs	-4.5	-3.5	2.9	3.9	5.3	0.8	11.5	5.4	3.6	1.4
Hotels and restaurants	20.1	12.2	-0.7	-1.1	8.5	4.9	1.8	8.2	-4.5	2.4
Transport, and communication	-1.8	3.4	10.0	11.2	4.5	8.6	13.9	11.1	11.8	12.0
Transport and storage	-5.2	2.7	2.6	5.9	4.3	3.8	10.6	0.9	2.1	4.3
Post and telecommunications	4.6	4.6	22.7	18.7	4.7	14.8	17.7	21.9	20.4	17.7
Financial intermediation	40.5	24.9	4.3	2.9	6.7	16.3	2.7	22.9	3.5	11.4
Real estate and business services	-5.7	-0.4	-1.6	2.9	-0.9	-0.3	3.2	2.9	2.5	2.9
Real estate	1.2	1.7	1.5	2.3	1.8	1.9	2.7	2.1	1.9	1.8
Business services; renting	-15.8	-4.0	-7.6	4.1	-6.3	-5.2	4.4	4.9	3.9	5.3
Public administration	-14.7	7.0	3.7	10.3	8.3	2.6	0.9	4.5	2.8	2.8
Education	1.5	10.2	1.6	1.5	-3.4	-1.3	0.4	3.5	-3.2	1.1
Health and social work	-0.5	4.5	2.9	-0.4	1.5	-2.6	1.2	2.8	-1.0	0.0
Community, social & personal services	4.2	1.4	-2.7	0.9	1.1	1.8	1.1	2.7	1.6	2.2
Financial services indirectly measured	54.4	63.7	42.0	17.3	-2.2	-13.7	-10.3	44.7	14.7	14.9
All industries at basic prices	**0.6**	**6.0**	**5.0**	**1.1**	**5.0**	**1.9**	**0.9**	**7.0**	**1.5**	**4.4**
Taxes on products	1.9	1.1	3.4	0.2	6.6	6.4	1.2	3.0	7.9	2.4
Subsidies on products	12.2	34.9	59.3	50.0	24.5	8.2	-19.1	7.2	-5.8	-4.9
GDP at purchasers' prices	0.6	5.3	4.4	0.4	4.8	2.2	1.4	6.6	2.3	4.4

Discussion

It emerged that there is a need to fully assess the impact of mining on women, as they are likely to be more affected if extraction affects the way of living within communities. There should be a clear policy aimed at the emancipation of women in affected communities, given that they become targets of men who work far from their families and this may contribute to the spread of HIV and AIDS. The country should also work towards ensuring that all resources intended to reduce HIV prevalence in Lesotho are properly managed, as AIDS is one of the largest threats to any development in Lesotho.

Participants were very clear on the need for the country to consider investing in processing diamonds in Lesotho rather than selling them rough, which normally yields very low economic return for the economy. There was also a clarion call for companies to be seen enhancing skills transfer to Basotho in order for the economy to grow and for the country to develop.

Participants expressed their concern about the existing CSI programmes of mining companies. They urged companies to invest more in communities rather than targeting people in the higher echelons of power as beneficiaries of their CSI programmes. It was recommended that companies should do more in reaching to the communities as they are the ones who are directly affected by their operations (rather than the political leaders). The other challenge that was brought into the fore by participants was that more and more politicians are not willing to leave only with the salaries they get from holding public office, which is a huge threat towards reducing corruption.

The employment opportunities provided by the current mining companies are minimal, and the capital intensity of the extraction process requires a change in strategy, especially with regard to artisanal mining. Participants said that more people could benefit from mining of minerals if there was room for small- and medium-scale mining. It became evident that though there are currently no licensed diamond dealers, there are scores of diamond dealers in Lesotho who are doing their work and this is a huge challenge for the government of Lesotho. These dealers are people who have worked with diamonds for almost their entire adult years and they have no alternative way of making a living. Their livelihoods depend on it. There is a need to ensure that lack of capacity on the side of government does not become a hindrance to these businesses.

The development of the NDP should be an inclusive process in order for all stakeholders to have a say in the development of the country. There is no point in having a non-participatory process that it is intended to shape the long-term development of the country. It was emphasised that the NDP should include an appreciation of the importance of mining rather than other planning or strategies which have been developed in the past. In particular participants pointed out that the PRS highlighted the importance of mining in the development of the economy and in the creation of employment. However the proposed investments in training of people who are already engaged in mining activities and the provision of credit has not been realised. Although planning could be a problem for Lesotho, the main failure of government is in the implementation of programmes.

There is a need to look at the experiences of large projects (like the LHWP) in developing compensation policies for affected communities in order to avoid communities being left worse off by mining. The country should try to optimise the economic returns from the extraction of mineral resources in Lesotho, rather than adopting the models which were applied in signing the LHWP treaty which was mainly focusing on supplying South Africa with water rather than the economic benefits to Lesotho. The most important thing for Lesotho is to recognise that the minerals will soon be finished, and the population will still be here afterwards. This is well captured in the PRS recognition that there is a need to employ sustainable ways of expanding the economy beyond textiles. The need for agricultural products will still be there after mining, so it will always be important to put peoples empowerment at the centre.

The question was raised whether the country has anything to learn from the manner in which the LHWP is organised. The first concern is that the government of Lesotho seems not to be taking into account the fact that before water can be exported they need to ensure that the domestic demand is met. The participants argued that the government should change the neo-liberal approach to development, so that citizens benefit from any development work undertaken. It was recommended that the next big assignment for stakeholders in natural resources was for SARW and Melupe to organise another conference on water issues. This is critical in the light of the negotiations of phase two of LHWP. There is a real need for an assessment to be undertaken in order to identify the needs of Lesotho if the project is to have optimal benefits.

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A Company Perspective on Mining in Lesotho: Letšeng Diamonds by Manthethe Mazvi Maharasoa

The kimberlite in Letšeng was discovered in 1957 by Peter Nixon. The site was worked by artisanal miners from 1958 to 1968, during which time approximately 1.0 to 1.5 metric tons of alluvial gravel was treated. The surface and underground sampling in the area was conducted by RTZ. The mine operated by De Beers from 1973 to 1982, and over 272 000 carats were recovered at an average $400 per carat. The main pipe was mined to 120m in K6, while the satellite pipe was mined to 20m. The mine closed in 1982 due to a downturn in global diamond markets.

Reserves and resources

The mine is characterised by low diamond grade and high diamond value. It is unique because of a kimberlite deposit that is valued at around US$1700pc. The mine produces just over 2 carat per hundred tons.

Estimates indicate a possible 42-year mine life, of which 26 years would be mined as open pit (based on mid-2009 financial data and present production of 5.52Mt per annum indicated and inferred resources). 90 percent of revenue is derived from 10 percent of carats produced. The mine is said to have a unique size distribution for kimberlite deposits. Production is characterised by regular production of large diamonds (over 100 carats), including three of the world's top 20: Lesotho Promise (603ct), Letšeng Legacy (493ct) and Leseli la Letšeng (478ct).

Operational update

Letšeng Mine produces approximately 100 000 carats per annum. It processes over 5 million tonnes of ore and removes 15 million tonnes of waste per annum. The mining site employs over 1000 people, of whom over 90 percent are Basotho. Over 90 percent of value in goods and services are procured in Lesotho. The mine had a turnover of over a billion Maloti in 2009.

The company continues to grow, and has the following functions in-house: mine planning, recovery, HSSE, HR and finance and administration. The following functions are outsourced: blasting, load and haul, treatment, and security.

Challenges

The costs of running the mine are reported to be too high, given that the licence is only valid for 10 years (capital 100 million Dollars in 2010, and monthly operational costs 70 million Maloti, which varies with the Loti/Dollar exchange rate). The exchange rate is not always favourable as the company exports rough diamonds and appreciation of the Loti against major currencies affects the projections of the company. The company would appreciate if the tax regime could recognise commercial mining.

There is a serious shortage of skilled personnel in Lesotho, and the company faces stiff competition to retain the few people with the required skills. Another challenge is the lack of infrastructure: this includes power and water supplies, as well as access roads to mining areas which are in very remote areas.

Safety

The Company has developed the following motto when it comes to safety and security: "We care, We protect, We achieve". There were thirteen casualties in 2005, four in 2006, eight in 2007, nine in 2008, six in 2009, and there are currently no casualties in 2010. The company attributes the declining number of casualties to the new safety measures it has introduced. There have been only two fatalities, one in 2005 and the other in 2007 (shown by a black bar on the table).

Corporate social responsibility and investment (CSRI)

The company has commissioned the development of a CSRI to bolster its investments in different communities in Lesotho. Investments that the company has include the Lesotho high-altitude marathon, scholarship programmes, and investments within the community of Mokhotlong.

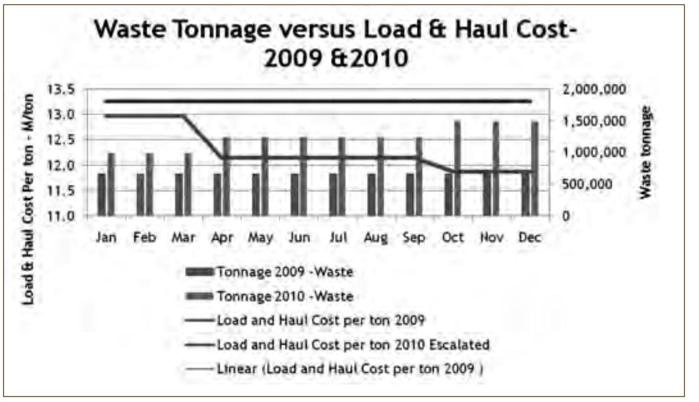
Discussion

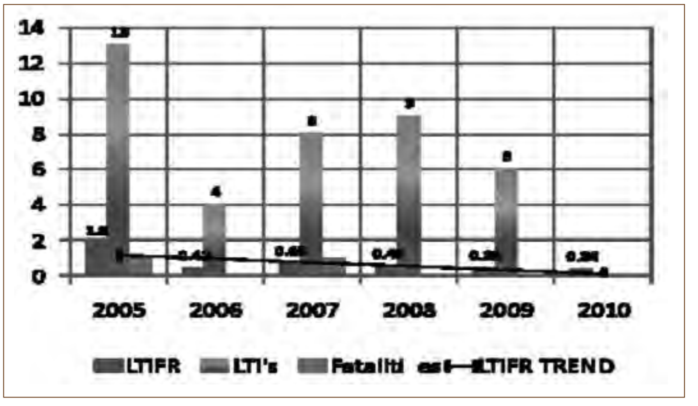
The discussion focused on whether the company will be able to realise returns, given that it continues to invest in the mine whereas the licence is valid for a medium term. The company showed that so far the returns are satisfactory, although the uncertainty of what will happen when the licence expires determines the level of investment in the company.

It was suggested that the government and mining companies need to make contracts that have been signed accessible to the public. This will make both government and companies transparent and accountable in the mining of minerals.

The company was commended for having invested in the development of a CSRI strategy, and was requested publish it in order for the public, government, CSOs and other companies to know what it intends to do in this regard.

The company was asked whether it has employed measures (or requested by government) to empower local people through subcontracting them in its operations. This raised a further question about whether there are plans to involve locals in the ownership of the company. The parent company (the majority shareholder) is listed on the London Stock Exchange, and people who are interested in buying shares are free to do so. But there is no requirement for the company to have locals as owners beyond the 30 percent equity that is currently held by the government of Lesotho. Local contractors are subcontracted in a number of its activities. Work such as blasting is left solely in the hands of local contractors.





The issue of security was reemphasised during the discussion, and the presenter made a comparison with countries like Botswana, where an individual cannot freely talk about smuggling diamond in public places without being arrested. This requires intensive training of intelligence officers, backed up by massive investment in order to ensure that they carry out their mandate as expected. The company expects the police service in Lesotho to be up to the challenges of the industry so that the diamonds extracted in Lesotho can be trusted.

Community perspectives on Mining in Lesotho by Lucia Leboto

The impact of mining on communities: the case of Kolo Ha Petlane

This presentation deals with tensions and challenges in the village of Ha Petlane Kolo, situated about 35kms from the town of Mafeteng, after Angel Diamond Company Pty (Ltd) started the prospecting process. The Catholic Commission for Justice and Peace (CCJP), was inclined to work with the Kolo community in conflict management following the villagers' grievances over the opening of the mine in 2007.

On 8 June 2007, the first meeting between CCJP, the chief of Ha Petlane and the committee selected to deal with the mine issue occurred, and it was clear that there was a lot of tension within the village. The village entrance itself was barricaded, and there was a huge sign expressing the villages' disapproval of the company operating at the mine. The village had a general sombre mood, and from that first meeting one could tell that the community did not trust the company due to several occurrences that had already taken place.

Background

Following endless complaints, CCJP provided a platform for villagers to table their grievances and compile them for reference. This was later done in conjunction with TRC. By January 2008, 30 out of 400 graves had already been destroyed, and five individual homes were taken without the owners' consent. Seven houses of different sizes were severely cracked and the families needed immediate relocation. Nine village water taps were damaged and villagers were complaining about the dust and mine residue being dumped all over the village, and even in neighbouring villages.

Community reaction

The community is reported to have responded to the government's decision to award a prospecting licence by the formation of steering committee which led the protests against the decision. There were conflict management workshops as well as study tours that were organised by CSOs in order to ensure that communities approached the matter in the best possible way, refraining from riots or acts of violence. The steering committee held public gatherings in order to mobilise the community, and gathered specific complaints about the operation of the company in their area. The committee's efforts resulted in an investigation by the police into how Angel acquired its license. There were multiple negotiations with the government prior to the relocation of the graveyard.

Protests

Despite efforts to negotiate, villagers claimed that the mine was not listening to them. Their houses were cracked as a result of the mine. Their graveyard was destroyed by the mine, and their chief was not forewarned of the operation of the mine. Because of these complaints, the villagers of Ha Petlane protested against the mining company, and barricaded the village entrance with boulders, posting a sign that stated their dissatisfaction with the company.

Conflict management workshops

CCJP has undertaken frequent workshops with the committee and the community council as a way of guiding them in dealing with the mine. The highlight of these meetings was when these two groups (the council and the committee), which previously had no communication whatsoever, agreed to form a constructive working relationship, which made their struggle less challenging.

Public gatherings

Since Angel Diamond Company set foot in Ha Petlane, there have been numerous public meetings, featuring delegates from different government ministries, civil society, chiefs, elected councillors, and people from all villages within Kolo.

Study tours

CCJP, TRC, the Kolo Committee and the Mamantšo Community Council undertook a trip in 2008 to study the situation in some mining villages in Limpopo (South Africa), and how the communities dealt with the difficulties brought about by the mining activities. Another study tour was taken by TRC and the Kolo delegates in May 2010.

The role of government

The government was slow to react to the people's objections against Angel, but pressure from the media, civil society and the community itself drove them into action. The government promised to relocate graves and houses.

Relocation of the graveyard

There were about 400 graves relocated from the old graveyard. This relocation was not sponsored by the mining company as one would expect, but by the government. Villagers later complained that more bones were being discovered at the old site. Bones discovered from the graveyard after the relocation have not yet been identified and buried in the new one.

The situation as we speak

The Kolo diamond mine is currently closed, and Angel has vacated the area subsequent to the expiry of their licence. This has left the site without any activity, and all prospecting has stopped. The company has left all the challenges of the Ha Petlane community unresolved and if it happens to be granted a licence again (or if a new company comes) it will inherit the burden.

Following the latest study tour, another committee is in the process of formation. It is to be made up of one member from each of the individual villages within Kolo. This committee is seen as necessary as the mining activities, when the mine finally opens, will not only affect the village of Ha Petlane within which it is found, but the whole of Kolo.

The Perspective of the Kolo community by Mamahlape Hlapane

The extraction of diamonds by artisanal miners started in 1992. The process stopped in 2002 when the government is reported to have told all diggers to cease mining. In 2004, the District Administrator of Mafeteng, flanked by the Commissioner of Mines, LMPS Mafeteng, and the principle chief approached the community about the prospects of mining investments in the area. The community of Kolo claims that these officials informed them that the process of awarding the contract would involve the community, and that companies were expected to meet with the community to discuss how they intended to invest in the area.

Angel Diamond was subsequently awarded the prospecting lease, although the community was informed that companies would have to conduct EIAs prior to the awarding of contracts. To the knowledge of the community, the company was awarded the contract without having conducted any EIA. The police then undertook an investigation which found that the procedure was not followed in awarding the contract. The company started prospecting without taking into account the police recommendation that the process should start afresh. It later emerged that government had sanctioned the prospecting process.

The community representative thanked both TRC and CCJP for their guidance throughout the tribulations, as this guidance enhanced their capacity to engage with government. The community had initially thought of closing access roads to the village so that there could be no movement in and out of the area.

The community met the Principal Secretary and the Minister of the Ministry of Natural Resources and the Commissioner of Mines. After this meeting, the mining company started prospecting, which led to houses cracking, noise, and the relocation of the graveyard in a disrespectful manner.

The community representative mentioned that as she was speaking the remains of the dead are still being discovered in the old graveyard. This is because the digging was not properly carried out.

After about three years, the company ceased to operate in the area. This is when an EIA was finally conducted in the area, and the community was consulted. The community has never been informed of whether the cessation of prospecting is temporary or permanent.

There is a need to assess the environmental impact of the mine. The water has been polluted by residuals from the mine, and crime rates have increased since the mine started.

Discussion

The discussion centred on whether communities were involved in the planning, or were at least consulted before prospecting could begin at Kolo. The question is whether communities could have been better engaged. The community think that government should have involved the community leadership in deciding which company would be awarded the licence. There is a real need to engage communities, especially when there is a need for resettlement, in order to avoid what has happened in Kolo.

Participants agreed that there is a need for the mining laws to cater for the involvement of communities in the management of mineral resources. The 2005 Mining Act was singled out as one of the laws that do not empower people, or that disregard the importance of involving citizens. There is a need to develop programmes that will empower affected communities. The regulatory bodies should take action against mining companies. Participants called on community representatives to approach the National Environmental Secretariat about the alleged pollution that resulted from the prospecting at Kolo. CCJP and other CSOs were also encouraged to do more to raise awareness of the issues that emerge from mines, especially where they affect peoples' livelihoods.

The manner in which mining is being managed in Lesotho is neo-liberal, and it does not recognise the importance of empowering and engaging citizens. An example was that Letšeng Diamonds reported revenue of M1bn in 2009, yet the economic benefit has not "trickled down" to the Basotho people.

The role of companies in compensating communities was questioned, and government was said to be bearing too much load in taking on the responsibilities of profit-motivated companies. Participants emphasised the need for government to ensure that mining companies be held responsible for their actions rather than using public resources to redress the mistakes of companies that may run into millions of Dollars.

The facilitator requested if there was anybody who would like to clarify any of the issues raised by the community or to present the perspective of government or the company, but there was no-one who was prepared to contradict the version of vents presented by the community.

Regional Experiences by Nico Horn

Namibia and the Nationalisation of Mines

Namdeb controls around 83 percent of the Namibian diamond industry, which means that the Namibian government controls more than 40 percent of the diamond industry. However, De Beers Marine Namibia, with its technological expertise, runs the operations on the ground. One needs to ask if the agreement with De Beers amounts to nationalisation.

Nationalisation defined

Nationalisation refers to the process of seizing something that was previously privately owned into state ownership. This definition sets out two cardinal requirements. The first is that the thing being nationalised must previously have been owned privately, and secondly it must then have been appropriated by the state and brought under the effective control thereof.

While the Namibian state became a major role player in the mining industry after 1994, this cannot be seen as nationalisation as such. While the South African colonial forces allowed De Beers to operate without government intervention, in terms of the colonial laws dating back to German colonisation at the turn of the century the minerals never belonged to the owners of the land. Consequently, even in colonial times, the big mining houses could only obtain underground rights and never sole property rights of the underground mineral deposits.

Ownership of mines in Namibia

The Constitution of the Republic of Namibia is the Supreme law of the land and provides that "...natural resources below and above the surface of the land and in the continental shelf and within the waters... of Namibia shall belong to the state if they are not otherwise lawfully owned". To this end, it can be inferred that unless otherwise lawfully owned, the minerals in the Republic of Namibia vest in the state, and ultimately belong to the people of the Republic of Namibia in light of the fact that the state is accountable to the people[4]. Against this background, it is difficult (if not impossible) to discount the interest of the government in the mineral sector.

Over the years, most of the activity in the mining sector has been carried out by foreign entities (multinational companies) that have no doubt invested substantial amounts of money in the development of the Namibian mining industry. However, with the continued development of the Namibian economy, to which mining makes a significant contribution, and the advent of laws and policies aimed at reversing the imbalances that exist as a stark reminder of the colonial era (BEE/TESEF), the need arose to introduce more Namibian players into mining. The drive towards the Namibianisation of the mining industry is in line with national development goals such as those set out in Vision 2030, in terms of which Namibia is to attain the status of a developed nation by the year 2030. In order to achieve this, it is imperative that maximum benefit is extracted from Namibian resources for the benefit of the Namibian people. In order to create wealth for Namibians, the benefits and proceeds generated from Namibian mineral resources must be kept within the country as far as possible. It is for this reason that intervention became necessary to ensure that the ownership of Namibian resources by Namibians (whether through the state or through private entities) is reflected in the distribution of the wealth created from them.

Some mines in Namibia

A look at the corporate structures of mining companies in Namibia reveals that the Namibian government has only a marginal presence in the mining sector, with a 50 percent shareholding in Namdeb. Debeers holds the remaining 50 percent. Debeers also holds 70 percent of Debeers Marine, with the Namibian government holding only 30 percent. The government further holds just over 3 percent of the shares in Rossing Uranium – the remaining shares are held as follows: Rio Tinto plc 69 percent, government of Iran 15 percent, IDC South Africa 10 percent, and the remaining 3 percent is held by local individual shareholders. Other mines such as the Rosh Pinah Zinc Corporation, Navachab and the Scorpion Zinc mine are some of the largest mines in Namibia, and are owned to the total exclusion of the Namibian government.

Despite government's limited presence in mining, there has been no evidence thus far of state action in the form of proclamations or legislation that has moved to seize active control over any mining interest in Namibia. There has likewise been an absence of takeovers by government in the form of buyouts where private investors were forced to sell their mining interests to the state. To this end, therefore, it has to be found that there has been no nationalisation of any mine in Namibia to date. Moreover, the establishment of Epangelo Mining Company cannot be seen as nationalisation, given that it does not entail the takeover of any existing mine. It is merely an initiative on the part of government to increase its presence in the mineral sector. It is aimed more at ensuring local value addition rather than nationalisation, as Epangelo is designated to be a vehicle through which Namibian mineral interests can be explored by the state. In this light, it would appear as though Epangelo will be a competitor in the mining sector just like other mining companies that currently exist in Namibia, a situation that is truly reflective of Namibia's mixed economy as contemplated in Articles 98(1) and 98(2)(c) of our constitution.

A valid question at this point would be whether nationalisation of mines in Namibia would be constitutional given the potential impact on the promotion of foreign investment within the context of Article 99 of the constitution (which provides that foreign investment shall be encouraged within Namibia subject to the provisions of an investment code to be adopted by parliament). This question follows on the adverse effects brought by the continued nationalisation of mineral and other sectors in Venezuela, with the latest indications being a consideration of privatising gold mines in that country with suggestions from President Hugo Chavez to revoke mining concessions. This is expected to adversely affect that country's transport and freight sectors with an expected rapid decline in activities in the said sectors, and concerns that "the move poses a threat to Venezuela's freight transport sector, which will have a knock-on effect on exports. The effects of nationalisation on other transport network components have been less than positive. In March 2010, stevedores went on strike at Venezuela's largest port, Puerto Cabello, claiming not to have been paid by the port authority, which was one of several regionally-managed ports and airports to have been centralised in 2009."

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Zimbabwe: Challenges of Protecting and Promoting the Environmental, Economic, Social and Cultural Rights of Mining Communities by Mutuso Dlhiwayo

The moral justification for communities to benefit from mining activities

Mining has profound impacts on people's lives all over the world. The mines are very destructive of the environment, and there is a need for communities to be thoroughly involved in order to minimise the impact of mining to their environment. The mines normally take away valuable agricultural land, and the fact that most people rely on arable land for their livelihood makes the involvement of communities even more crucial. Mining degrades the quality of land and causes deforestation, which has implications on the lives of millions of people, especially at the time when global warming is a major concern. Enormous water and air pollution has resulted from mining in areas where mines are located. Soil erosion and saltation of rivers sometimes accompany mining activities. Communities may need to be evicted and relocated, and it is of utmost importance to involve them in these processes as they could be adversely affected. Natural resources are source of wealth and power hence the communities should not be denied as it is mainly the poor who are negatively affected by mining activities.

Zimbabwean legal and policy framework

Zimbabwean legislation that affects mining includes:

- Indigenisation and Economic Empowerment Act: 51 percent of the majority of business in Zimbabwe to be owned by indigenous Zimbabweans;
- Environmental Management Act: the right of everyone to participate in justifiable economic development (s.4) – mining sector;
- Proposed Amendments to the Mines and Minerals Act: Indigenisation and economic empowerment of indigenous Zimbabweans in the mining sector (s.411);
- National Environmental Policy and Strategies, 2009 Guiding Principle 31 on Mining.

Problems and challenges

Difficulties include:

- the Mines and Minerals Act (Chapter 21:05);
- security of tenure to mining title;
- miners are required to pay a royalty on all minerals mined in Zimbabwe (s.244);
- S.245 provides a mechanism of calculating the royalty;
- royalty funds are placed in the Central Treasury or the Consolidated Revenue Fund;
- royalty Funds are used in accordance with the national budget that is developed by the Ministry of Finance;
- the minister is under no obligation to give consideration to the origins of the money;
- communities miss out on benefiting from the proceeds of minerals that are mined within their area;
- the current constitution does not recognise EESCRs (unlike the South African constitution)
- employment, CSR, food handouts etc.;
- pittances and smokescreens hide obscene wealth;
- no equity in terms of the costs that communities incur compared to the benefits;
- some companies are doing a lot of good work on CSR (e.g. Rio Tinto, Murowa Diamond Mining and ZimPlats).

What ZELA is doing

In this context, the Zimbabwe Environment Law Association (ZELA) is doing the following:

- awareness raising on EESCRs (amongst communities and parliamentarians);
- capacity enhancement of communities and parliamentarians;
- litigation;
- forming of coalitions;
- EITI in collaboration with SARW (which has the buy-in from civil society, mining companies, and government).

Recommendations

- The constitution should recognise EESCRs as human rights.
- The CAMPFIRE model should be applicable in mining areas – national environmental policies and strategies.
- Amendment to the Mines and Minerals Act so that a certain percentage of royalties is paid directly to the affected communities for the upliftment of their lives (there are arguments for and against direct payment of royalties).
- Indigenisation and economic empowerment in the mining sector should include local communities and not elites only.
- There is a need to replicate the model of the Royal Bafokeng community in Rustenburg (South Africa) where the community that owns the land benefits directly from the revenue of their resources.
- There is a need for compulsory beneficial and meaningful social obligations in communities by mining companies – CSR should be made a strict legal requirement.
- There is a need to establish environmental funds and comprehensive rehabilitation programmes by mining companies.
- There should be fair and equitable compensation for communities affected by mining activities.

Botswana: Turning Resources into Equitable Results for People by Dr Emmanuel Botlhale

Conversation in Cleveland, OH (16 December 2006)

John: Dr, congratulations on your PhD!

Emma: Thanks for your felicitations!

John: Coming from a poor developing country, how did you pay for your graduate education?

Emma: The government paid for everything 100 percent; tuition, air ticket and a monthly stipend of $1200.

John: How so!? Graduate education is expensive!

Emma: Diamonds made it possible for me to come to Cleveland to do my PhD.

John: Are you staying in the US now that you are a PhD?

Emma: No! I am leaving next week; I must go and participate in the development of my country.

John; OK. Mail me a diamond when you are back home.

The presentation will argue thusly:

1. that in 1966, Botswana was an economic backwater.;
2. that the 1970s exploitation of minerals grew the economy of Botswana;
3. that through the "Diamonds for Development" policy, diamond revenues are productively invested in the economy;
4. that there is no resource curse (blood diamonds; conflict diamonds) and Dutch Disease in Botswana;
5. that diamonds-led growth has challenges: income inequality, poverty, unemployment and skewed distribution of social services and infrastructure;
6. that, overall, mineral revenues benefit a majority of the population;
7. that the mineral benefits are not equitably shared;
8. that to ensure the equitable sharing of mineral benefits demands some interventions; e.g. budget reforms.

Peering into 1966 Botswana

As a result of the British government's deliberate decision to minimally invest in the economy, the country was poor upon attaining independence on 30 September 1966. It was one of the poorest countries in the world (Tsie 1998; Edge 1998; Acemoglu et al. 2001). Its gross domestic product (GDP) was estimated at US$60 million, and consisted mainly of beef exports to Britain and South Africa. Consequently, a deliberate decision was taken that the new Botswana would be a developmental state. Mineral revenues later on delivered the developmental state.

The extractive industry in Botswana

Botswana, like a majority of African countries, is blessed with natural resources, including:

- diamonds;
- copper nickel;
- coal, manganese and soda ash.

These natural resources have resulted in a substantial extractive industry in Botswana. Extractive industry is an industry that involves mining to obtain valuable minerals found in the ground. Overall, the mining industry confers both benefits and costs.

The mining industry confers the following benefits;

1. it provides foreign exchange earnings;

2. it generates additional government revenue through taxes and royalties;

3. it provides some employment and creates a skilled labour force;

4. it fosters the emergence of technical and managerial skills (Sideri & Johns 1980:7).

On the negative side, the mining industry exacts some of the following costs:

1. it is mostly an enclave industry, having little or no link to the rest of the economy;
2. it has little backward integration with the economy of the producing country;

3. it experiences wide fluctuations in both foreign exchange earnings and government revenues;

4. it tends to create environmental damage and is often operated under poor working and living conditions; and

5. it involves the exploitation of non-renewable resources; once the ore bodies are mined out, or the market disappears, there is nothing left (ibid).

Table 1 **Botswana Diamonds**

Year	Production (mcts)	Total Sales ($b) share	Botswana (percent)	percent of GDP	Mineral Revenues/ total gov revenue
1976	2.36	1.55	3	13.2	19
1977	2.69	2.07	3	15.0	20
1978	2.80	2.55	4	23.0	23
1979	4.39	2.59	9	31.1	31
1980	5.10	2.72	11	27.6	33
1981	4.96	1.47	11	22.4	24
1982	7.77	1.26	19	31.8	25
1983	10.73	1.60	26	33.5	34
1984	12.91	1.61	30	41.2	47
1985	12.64	1.82	30	46.8	51
1986	13.09	2.56	26	43.8	55
1987	13.21	2.56	44	44.9	57
1988	15.23	4.09	26	50.9	58
1989	15.25	4.09	35	44.3	59
1990	17.35	3.93	34	40.3	54
1991	16.51	3.42	37	37.3	46
1992	15.95		40	33.3	40
1993	14.73	4.37	32	35.4	42
1994	15.50	4.25	33	32.6	43

Mining activity did not begin with the discovery of the first diamond deposit in 1967, and mining activity is not confined to the diamonds sector. The discovery of the Orapa kimberlitic pipe marked the beginning of the diamond mining industry (Jefferis (1998:301). Debswana, a joint venture between the De Beers and the government of Botswana, was created in 1969 to develop the diamond deposit. It should be noted at this point that there are other mineral that were being exploited (e.g., copper, nickel, and coal). However, in terms of revenues that were generated, diamond mines have no competitor. Thus, diamond mining favourably disposes Botswana to realise substantial amounts of diamond revenues.

At this juncture, it is important to examine the government's positions regarding the diamond projects when diamonds were first discovered; firstly it wanted an expansion of the mines and a larger share of the net revenue; secondly it wanted much more control and influence over the operating company;... and thirdly it wished to increase what linkages to the local economy there were from diamond projects (Cobbe 1979:207).

Overall, the first and second objectives have been achieved through re-negotiation of the government's holding in Debswana (currently 50 percent) and the revenue-sharing formula (currently 85 percent). The last objective (linkages) has been problematic, until 2008 saw the creation of the Diamond Trading Company where diamonds are beneficiated locally.

Thus, due to delivering on the first two objectives, the government raises substantial revenues from the mining sector (see table 1).

Diamonds for Development Policy

Overnight Botswana found itself swimming in diamond revenues. What was it to do with this

Table 2 **GDP by Type of Economic Activity (Constant 1993/94 Prices)**

Economic Activity	1974/75	1975/76	1985/86	2000/01	2004/05	2006/07	2007/08	2008/09
Agriculture	42.7	20.7	5.6	2.6	1.9	1.7	1.8	1.7
Mining	-	17.5	48.9	40.5	42.9	41.7	39.2	36.7
Manufacturing	5.7	7.6	3.9	3.7	3.3	3.7	3.9	3.9
Water & Electricity	0.6	2.3	2.0	2.2	2.1	2.2	2.2	2.3
Government General	9.8	14.6	12.8	13.3	15.7	16.4	15.6	16.3

new-found wealth? In pursuit of the developmental state policy, it decided on a "Diamonds for Development" policy. The policy was based on the Mines Act (1967); hence, the vesting of mineral rights in the state is the foundation on which development of minerals has been premised. It is does not matter that a certain community sits on top of substantial mineral deposits because the deposits are a public resource. The enabling statute, section 3, as amended in the Mines and Minerals Act (1999) reads: "Subject to the provision of the Mineral Rights in Tribal Territories Act, all rights of ownership in minerals are vested in the Republic and the Minister shall ensure, in the public interest, that the mineral resources of the Republic are investigated and exploited in the most efficient, beneficial and timely manner" (ROB 1999:A.121). The basic tenet of our development philosophy has been to optimise the benefits of revenues from natural resources by re-investing them into developing further productive capacity of the economy, such as education and training, health and infrastructure (Mogae 2006:1). It must be point out that this is not an antithesis of free market policies, but a recognition of the development imperatives that we face as a small developing nation... (ibid). Batswana know that diamonds plus development equals democracy (ibid 2001).

Diamonds and the economy

Botswana's economic success is largely attributed to the exploitation of natural resources, more especially diamonds. Botswana graduated from the list of 24 least developed countries in 1992. Standard and Poor's and Moody's Investors Service assigned Botswana investment grade sovereign credit ratings from 2001 to 2005. Between independence (in 1966) and 2005, real GDP grew on average by more than 7 percent per annum. GDP per capita in 2005 was over US$4 000 and the national budget has grown from under US$3 million to US$4 billion in 2006 (Mmegi 2006). Further proof of the diamond-led growth can be gleaned from the 2009 UNDP Human Development Report. It should be noted that the Human Development Index (HDI) looks beyond GDP to a broader definition of well-being.

Between 1980 and 2007, Botswana's HDI rose by 0.94 percent annually from 0.539 to 0.694 (UNDP 2009). Notably, HDI scores in all regions have increased progressively over the years although all have experienced periods of slower growth or even reversals (ibid). It is not possible to discuss all the sectors that were favoured by expanded budgetary allocations, so we will confine ourselves to two: education and health. One of the problems that faced the newly independent country was the shortage of trained personnel (Chiepe 1973:320). Thus, the education sector has had favourable budgetary allocations (Meyer *et al*. 1993). The government invests massively in education as sufficiently exemplified by the construction of schools and the introduction of a bursaries scheme for post-secondary school education in 1973. Besides human capital investments, the government spends lots of monies financing the health sector to keep the citizens healthy. This has been exemplified by the expansion of health facilities and technical agreements with Cuba and others. The advent of the HIV/AIDS pandemic in the 1980s has meant that substantial resources are earmarked to fight the pandemic (e.g., free ARVs, routine HIV testing, prevention of Mother-To-Child Transmission etc.). HIV is not exclusively a health issue; it is also a developmental issue.

Development challenges

Despite Botswana's phenomenal economic growth (see Good 1992) and impressive development indicators (for example, 83 percent literacy levels, easy access to health facilities and massive expansion in infrastructure), the country is faced with some development challenges.

The key challenges are: income inequality (47 percent are officially poor); unemployment (17 percent are officially unemployed); the HIV/AIDS pandemic (17 percent prevalence rate); and slowness in diversifying the economy away from diamonds.

While Botswana has made commendable development strides, many challenges remain such as poverty reduction, employment generation, HIV/AIDS pandemic and extending the coverage of social services as well as physical and social infrastructure (Mogae 2006).

Who benefits from the Diamonds for Development Policy?

So far, we have made the argument that the exploitation of minerals (particularly diamonds) has helped the country graduate from a low-income to a middle-income country. Development indicators are impressive if one employs mainstream measures such as the UNDP's Human Development Index (HDI). Thus, at a macro-level, it appears the country is doing well.

Having said this, what is the situation at a micro-level? Do people at a micro-level relate to these impressive statistics? To this end, when Mogae undertook the 'Diamonds for Development' tour in 2006, he answered the question as follows: "Our natural resource wealth has thus been a source of broad based economic progress to the vast majority of our nationals..." (Mmegi 2006:1). Mogae's answer notwithstanding, and due to lack of empirical research on the sharing of mineral revenues, the answer is not as straightforward as one would wish. Troublingly, Botswana is faced with serious development challenges which pose difficulties for justice in the sharing of mineral revenues. It is not easy to answer the question, "who benefits from the Diamonds for Development initiative?" There is a need for empirical research. However, an argument can be made that, overall, the country and citizens have benefited from mineral revenues (as instanced by investments in social and physical infrastructure). At the same time, it is not in question that the benefits have not been equitably shared. Therefore, what can be done to turn resources into equitable results for people?

Turning resources into equitable results for people

We start from a premise that the "Diamonds for Development" policy has benefited a majority of citizens. However, the benefits do not seem to be equitably shared. Proposals to achieve economic justice include:

1. budget reforms (participation, transparency and gender-responsive budgeting);

2. capacitating NGOs;

3. strengthening the Directorate on Corruption and Economic Crime (DCEC);

4. strengthening the oversight role of parliament; and

5. reducing the secrecy that surrounds the Debswana-government dealings.

Mainstream literature on budget participation (Phirinyane 2005; Kerapeletswe & Shilimela 2008; Kaunda 2009) holds that public participation in the process is minimal. Botswana could make its budget process more open by increasing opportunities for public participation. For instance, the legislature does not hold hearings on the budget in which testimony from the public is heard (Sunday Standard Reporter 2009:4). Recently, the Minister of Minerals, Energy and Water Affairs, told the nation that "mining deals are too sensitive for MPs" (Kavahematui 2010:3).

The Open Budget Index report (2008), gave Botswana favourable ratings in regard to budget transparency (62 percent). Despite IBP's favourable ratings, it is beyond contestation that the budget preparation process is largely closed to pertinent stakeholders – the public, NGOs and MPs. To enhance budget transparency, the following processes and documents are important: a Budget Act, a pre-budget statement, monthly budget reports, public hearings, meaningful participation of MPs in budget formulation, and the enactment of a Freedom of Information Act and Gender Budgets.

The executive wields a lot of power, and the legislature does not effectively exercise power over the public purse. There is need to capacitate the MPs by training them on budget work.
NGOs lack budget work knowledge, and they need capacitating.

Conclusion

This paper has argued that Botswana, like the rest of Africa, is blessed with abundant natural resources. Through the "Diamonds for Development" policy, mineral revenues are being ploughed into the economy (chiefly education, health, infrastructure, and more recently HIV/AIDS interventions). Unfortunately, the mineral-led growth is associated with serious challenges, including income inequality, poverty and unemployment. This means that while the mineral revenues have, overall, benefited all, it is not in doubt that the benefits have not been equitably shared. This raises the question: "How do we turn resources into equitable results for people?"

Discussion

The presenter from Zimbabwe was asked if there is any likelihood that the situation in Marange will improve in the near future. The response was that the possibility of that happening is very small given the militarisation of the area. The government should open the area for civilians to mine, involving the ordinary citizens of Zimbabwe. Participants expressed their concern at the manner in which mineral resources in Zimbabwe are being managed and expressed a strong feeling that Lesotho should not take that direction. There is a need to demilitarise the management of mineral resources and allow democratic governance structures and institutions to reallocate the resources to the populace.

The participants asked if it is true that Namibian mines are found within the Senqu River basin. The response to the question was that is true that most mining activities in Namibia are within the Senqu basin. The concern was expressed by participants that Namibia seems to have done what Lesotho could not do, as some of the diamonds might have been eroded from Lesotho. The participants therefore suggested that the government of Lesotho should look into how the possible erosion of diamonds through rivers could be minimised. Another question on Namibia was whether the model is not better than that of Lesotho, even if the country does not have the technical expertise to run the mines. The response was that Namibia is far ahead of Lesotho given the percentage of government ownership of the mines. Lesotho should at least increase local ownership of the mines.

In Botswana affected communities are not benefiting directly from the proceeds of mineral resources, although there is massive investment into the educational and health services for the people of Botswana as a whole. The proceeds from the minerals go into the government revenue. The presenter from Botswana mentioned that, given the size of the population and resources allocated to benefit the people, it is a reasonable investment in the affected communities. The participants suggested that the same model of putting all resources into the national coffers is not practical in Lesotho, given the fact that the government has lesser shares in the companies (unlike the arrangement in Botswana). Proposals that emerged from this discussion were that Lesotho should increase the share of government in the mines, as well as increasing the communities' involvement in the management of minerals. The other significant difference between Lesotho and Botswana is the size of the country relative to the size of its population, which means that more communities are likely to be affected by mining in Lesotho than in Botswana.

The last question raised was whether the probability of diamonds from Zimbabwe being blood diamonds is higher than 1/2. The general feeling was that it is highly possible that diamonds from neighbouring countries and those extracted in Zimbabwe could include blood diamonds given that the state is condoning the practice by allowing the military to take over the management of minerals. This shows the significance of diamonds in promoting and advancing democratic governance if well managed; failure to do so may result in disasters like Marange.

International Initiatives in the Extractive Industries by Lehlohonolo Chefa

The Kimberley Process Certification Scheme in Lesotho: Challenges and Opportunities

This paper is assesses the impact of the Kimberley Process on the diamond industry in Lesotho. The Kimberley process, like any other multilateral initiative, is not a one-size-fits-all formula that will work effectively in all of its members. This paper will attempt to assess the capacity of the audit trail to implement the Kimberley Process. A commitment to the process does not guarantee that all necessary infrastructures are in placed to ensure compliance.

The paper will also serve to educate stakeholders in the diamond industry about the Kimberley Process, and will be used to mobilise their support and involvement in the process. Most importantly, the paper is intended to propose actionable recommendations to decision making bodies on how to ensure that the Kimberley Process enhances the diamond industry in Lesotho rather than being seen or used as an impediment.

The Kimberley Process Certification Scheme is a product of long and challenging advocacy by civil society, which was intended to ensure that the proceeds from diamond sales do not only benefit a few. It emerged towards the end of the 1980s and the beginning of the 1990s that diamonds were used to impoverish communities. Rebels and dictatorial governments used the proceeds to finance their hunger for in power. Participation in the Kimberley Process is voluntary, and there are annual meetings where both participants and observers meet to review compliance and make adjustments in the process where necessary.

Background to the Kimberley Process

the Kimberley Process Certificate is defined as a forgery-resistant document with a particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the certification scheme.

The first major development was the June 1998 resolution 1173 by the UN Security Council (UNSC), placing an embargo on diamonds from Angola which was in a civil war at the time. The UN General Assembly (UNGAss) went further in the reinforcement of measures to prevent blood diamonds from making it to consumers through Resolution 55/56 of December 2000. This was followed by the UNSC through UNSC Resolution 1459 (2003).

The government of Lesotho domesticated the Kimberley Process with the Legal Notice number 66 of 2003. The regulation is known as the Precious Stones (Kimberley Process) Regulations. According to the regulation, Kimberley Process Certification means a set of measures to be undertaken to eliminate the trade in conflict diamonds, as defined under UN Resolution 1173. It also defines the Kimberley Process Certificate as a certificate issued by the Lesotho Government in respect of dealing in rough diamonds, and issued by the Commissioner of Mines and Geology.

The certificate is valid for a period of five years and the holder should keep it for the duration and present it to an employee of the Department of Mines and Geology whenever requested to do so. The five years is above the three-year minimum requirement which is in the UN Resolution 1173. According to KPCS the following countries are currently participating in the scheme Angola, Armenia, Australia, Bangladesh, Belarus, Botswana, Brazil, Canada, Central African Republic, China, Cote d'Ivoire, Croatia, Democratic Republic of the Congo, European Commission, Ghana, Guinea, Guyana, India, Indonesia Israel, Japan, Laos, Lebanon, Lesotho, Liberia, Malaysia, Mauritius, Namibia, New Zealand, Norway, Republic of Korea, Russian Federation, Sierra Leone, Singapore, South Africa, Sri Lanka, Switzerland, Tanzania, Thailand, Togo, Turkey, Ukraine, United Arab Emirates, United States, Venezuela, Vietnam and Zimbabwe.

The Kimberley Process

The following are the minimum requirements that should met:

- each certificate should bear the title "Kimberley Process Certificate" and the following statement: "The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds"
- country of origin for shipment of parcels of unmixed origin (i.e. from the same place)
- certificates may be issued in any language, provided that an English translation is included
- unique numbering with the Alpha 2 country code, according to ISO 3166-1
- tamper and forgery resistant
- date of issuance
- date of expiry
- issuing authority
- identification of exporter and importer
- carat weight/mass
- value in US$
- number of parcels in shipment
- relevant harmonised commodity description and coding system
- validation of certificate by the exporting authority.

Challenges

The Kimberley Process has been blamed for the criminalisation of artisanal mining and diamond cutting and polishing in Lesotho. The diamond industry has been characterised by many small-scale miners, cutters and traders since its early days in Lesotho. The advent of the Kimberley Process has resulted in the licences of these small-scale miners being revoked. This has been a major cause of protests by many local people, because the industry seems to have been taken out of their hands and given to wealthy foreign investors. The Department of Mines has made numerous attempts to organise small-scale diggers in secure places which could be monitored for compliance to the process, but there has not been any tangible progress in this regard. Suspended licences have not been renewed or new ones issues to Basotho diggers who have tried to meet the requirements which will facilitate monitoring. There are currently no licensed diamond dealers in Lesotho, and this poses a huge challenge to people who have relied on diamond dealing and digging for their livelihoods. This does not encourage development of the economy or the processing rough diamonds into cut or polished diamond which would be a way of optimising benefits from the industry.

Weak institutions do not help in the implementation of the Kimberley Process, and instead of ensuring growth within the diamond industry has been seen as discouraging it. The Lesotho Mounted Police Services (LMPS) is ill-equipped to police the execution of mining laws and other important conventions within the diamond industry. There is a need for the Diamond Unit to be bolstered with more specialised personnel, and for the current officers to be further trained in dealing with this industry. The government needs to increase the financial muscle of the LMPS in order for it to augment this important unit that will protect the diamond industry from the hands of felons. The Department of Mines is also in need of specialists in mining and geology, and currently the country needs geological specialists who are likely to be attracted by better payment in the private sector.

Opportunities

Lesotho's participation in the KPCS is an opportunity that should be used by all stakeholders to ensure that the proceeds from the sale of diamonds go to where they are needed most which is to advance the wellbeing of the citizens of Lesotho.

The Kimberley Process limits the possibility of diamonds fuelling conflicts in Lesotho, which could be a huge setback to an ailing economy that is struggling to get back on track after years of mismanagement of resources, a decline in SACU revenues, and the recent economic slump.

The fact that the government of Lesotho has representatives stationed in all mining sites is a huge opportunity to ensure that the process is fully observed. This move by government has to be maintained to ensure that there are no diamonds that leak either into or out of the legal trade.

The shortage of geological specialists should be seen as a great opportunity by institutions of higher learning and students. It is of utmost importance that institutions of higher learning introduce geological studies in order to meet this demand from the extractive industries in Lesotho.

This conference is an opportunity for stakeholders to engage the Kimberley Process and ensure that the recommendations that are made at the end of the conference have a lasting impact in the management of mineral resources in Lesotho. The fact that the conference includes a discussion on the Kimberley Process is also an opportunity for stakeholders to familiarise themselves with the process. There is a need for all stakeholders to engage with the process in a broad way after the conference.

Recommendations

Transparency is most important. Public office bearers (including politicians, senior civil servants, and government representatives in the mining sites) should declare their business interests. There is a need to develop a mechanism for the declaration of business interests, and this should be free of manipulations and corruption.

Civil society needs to be involved in the monitoring of the KPCS. There are currently very few organisations working on mining issues, and their work is minimal. Issues such as monitoring compliance with the KPCS are beyond the reach of the current engagement. There is a need to enhance civil society's work in order to ensure that the KPCS is not only in the hands of government officials and mining companies.

There is a need to increase government oversight of the diamond industry, which will in turn result in strong audit trails. This will only be achieved if the government increases the resources allocated to the relevant government departments, to ensure that the flow of diamonds is under strict supervision.

There is a constant need for government to publish the details of how many carats have been either exported from or imported into Lesotho. This will enable stakeholders to monitor the process and ensure that there is compliance.

The time for Lesotho to make access to public information a right rather than a privilege is long overdue. There is a lot of information that is not shared with the public under the pretext of public interest. There is no reason to make information about the minerals of the country confidential. This encourages politicians and bureaucrats to engage in corruption, as the public will not know what happened to their resources.

Institutions of higher learning in Lesotho should introduce mining and geological programmes. This will not only ensure that the country has enough skilled personnel, but it will also gain these institutions resources. The country spends millions of Maloti to train its people in these disciplines abroad.

Reinstate the National Planning Board: the country cannot afford to go without an institution that oversees the planning of activities and their implementation. Most of the current challenges to the country are due to lack of proper planning. The planning board should be reinstated as per the constitution together with terms of reference for the board, and ensuring that people who serve in the board are credible people with expertise, and represent different sectors of society.

The laws need to be amended, especially the fines charged to offenders. Many stakeholders believe that there is an ongoing illegal trade of diamonds in Lesotho. This could be minimised by ensuring that the laws are tough on offenders.

There is a need for a mining policy that will promote and support Basotho, giving them a role in the extraction of minerals. This will discourage Basotho from opting for illegal means of getting into the extractive industries. Basotho should have a stake in all mines, both for transfer of skills and so that the benefits reach ordinary citizens.

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PWYP and EITI in Zambia by Fuvya Nyirongo

Publish What You Pay (PWYP)

Publish What You Pay is a global campaign for transparency in the extractive industries, involving:

- advocating for transparency and accountability in the extractive sector
- tracking revenue to alleviate poverty reduction.

The objective of PWYP is to generate public pressure for greater public oversight over the management of natural revenues. It also advocates for transparency in contract awarding. PWYP plays a pivotal role in monitoring the implementation of the EITI. The most important thing with PWYP is that it raises awareness among citizens about revenue transparency, asking whether the incentives given to the extractive sector match the benefits we derive from it? It also seeks answers to the question of which sectors natural resource revenue support.

PWYP focuses on the following questions and tries to give answers to all of them:

- What do extracting companies pay in terms of tax to the government?
- What does government earn from the extractive industries?
- Where does government spend its earnings from natural resources
- Is there a fair and equitable allocation of resource wealth?
- What did companies not pay that should have been paid – i.e. how much natural resource revenue is being lost to the country?

The value-chain approach

As the transparency movement has evolved, there has been growing recognition that extraction is a process comprised of a series of decisions. This has been dubbed the "value-chain". This value-chain is comprised of seven links:

Link 1: the decision to extract or not to extract

Link 2: contracting and concessions

Link 3: fiscal terms

Link 4: revenue collection

Link 5: savings and revenue management

Link 6: spending EI revenues well

Link 7: impacts

The PWYP mandate has expanded to include various moments or links in the value-chain. PWYP has initially campaigned around links 3 and 4. As the campaign has evolved, PWYP has mobilised the civil society transparency movement on the outer links in the value-chain (2, 5 and 6) as illustrated below.

Link 2: Make licenses and contracts public → publish what should be paid and what is not paid.

Link 3: Transparency on company payments to governments → publish what you pay.

Link 4: Governments to disclose revenues → publish what you earn.

Link 5/6: Governments to be transparent on expenditures → publish what you spend.

PWTP's approach is to support voluntary measures as a first step, and then to encourage use of mandatory measures. It views mandatory mechanisms as vital in order to ensure maximum disclosure, to avoid dependence on a moment of political will, and to entrench transparency in the long-term.

Some advocacy approaches

To achieve its objectives, PWYP adopts the following advocacy approaches:

- support for the Extractive Industries Transparency Initiative (EITI)

- company regulations
- supra-national, national and sub-national legislation in host and home governments IFIs, regional development banks, multi-nationals, private banks and export credit agencies
- IFIs, regional development banks, multinationals, private banks, and export credit agencies
- stock market exchange listings
- inclusion in international accounting standards.

The Extractive Industries Transparency Initiative (EITI)

The EITI is a World Bank initiative based on PWP's value-chain links 3 and 4. The initiative was launched in September 2002 as a response to PWYP. It is a voluntary publication of company payments made and government revenues received from the extractive sector (currently limited to the oil, mining, and gas sectors).

The requirements of the EITI are as follows:

- reporting of payments and revenues, or where this is unavailable an independent audit of accounts
- reports reconciled by independent administrator, final report with any discrepancies reported
- process managed by multi-stakeholder group of civil society, company, government representatives and state-owned enterprises (SOEs)
- government manages this through a public, financially sustainable work plan.

The strengths of the EITI include:

- it builds trust amongst stakeholders
- it provides useful information as basis for advocacy platform
- it is a unique forum that allows civil society often unprecedented access to engage in policy with corporate and government decision-makers
- "core" EITI can be a point of departure for a more robust EITI process
- it can lead to laws at the national level.

The weaknesses of the EITI include:

- it only covers payments and revenues, and does not include licensing, contracts and expenditures
- it does not address accountability
- it cannot account for non-legal transactions
- it is currently neutral on the issue of disaggregation.

Often governments in the global north are reticent to implement the EITI (Norway recently became the first northern state to implement the EITI, and with the help of PWYP Norway's advocacy, coalitions in Canada and the USA are now pushing for implementation).

The fourth EITI Global Conference was held in Doha, Qatar 16-18 February. The following issues emerged as very important and formed part of the declaration of the conference. There is no EITI implementation without the involvement of civil society. The conference showed serious concern on the slow implementation of EITI and the emphasis has been on that rules must be respected at all the time. EITI is a start but complementary measures are needed in order for it to be more effective. At national levels PWYP serves as a local watchdog of the EITI, while at an international level EITI civil society members try to influence the development of the EITI.

In addition to work around EITI, PWYP platforms have had significant successes in international advocacy. PWYP USA put forth the Extractive Industries Transparency Disclosure Act (EITDA). PWYP was successful in getting the European Parliament to endorse mandatory transparency for extractive industries in international accounting standards.

Mining presents special difficulties to transparency. Because of the local impact of mining, and difficulties of measuring transparency as it gets further away from source of extraction, sub-national transparency is a priority in mining countries. There are difficulties in balancing transparency against social and environmental impacts. There are other coalitions (including Ghana and PNG) who are developing means to deal with these concerns. There is a need to bring on board two major players in today's economy (Russia and China). If these two countries and other countries remain out of the transparency initiatives it will be very difficult to hold government and companies accountable.

Conclusion

PWYP is most effective when locally owned and based on local realities. It is very import that PWYP is viewed as a vehicle for broader development goals – transparency is only a first step towards true accountability where citizens can make informed decisions about their country's natural resource wealth.

Discussion

The Kimberley Process, EITI and PWYP were presented together, and the discussion included all three initiatives. Participants were appreciative of the initiatives and what they serve to promote, which is transparency and accountability in the trading and management of mineral resources. The general view was that the government of Lesotho should ensure that the KPCS is fully implemented and that it should not only be used to criminalise artisanal mining. The presenters were asked if they genuinely think that the government of Lesotho could commit to anything that promotes accountability and transparency given the trends in block farming. The response to this question came from members of parliament who also happened to be chair of their select committees. The conclusion to this matter was that parliament is determined to ensure that all public office holders declare their business interests. The missing link seems to be the implementation of existing transparency and accountability mechanisms. Members of parliament requested all stakeholders to support their efforts at ensuring that there are tools and systems that can be employed in the execution of the programme.

Participants asked whether all diamond dealers who continue to operate in Lesotho are doing so illegally, and the response was a bold yes. This is because there is no diamond dealer that is currently licensed by the government of Lesotho. Another issue that came out clearly was that the department of mines should be encouraged to participate in the KPCS and to attend the annual meetings. The government should continue to send representatives to these platforms as the extractive resources generate huge revenues for Lesotho, and any activity or programme that contributes to the development of the industry should be supported.

On the EITI, participants agreed that all stakeholders should come together to facilitate Lesotho's participation in the initiative. The participants called upon companies, CSOs and government to work towards the establishment of an EITI chapter in Lesotho. CSOs were encouraged to play a watchdog role immediately, to ensure that the EITI is works according to the expectations. Participants challenged CSOs to have PWYP in place as their first move after the conference.

On the question of why Zambia is not a member of KPCS the response was that Zambia does not trade in diamonds.

Other information which emerged from the discussion is that the World Bank supports the establishment of EITI chapters within countries that are willing to participate, so Lesotho should contact the World Bank for full details. The information is also available online for those who would like to read further about the EITI.

A question was raised concerning the alleged involvement of political parties in business, as recently reported in the newspapers. The response to this question was that there is a need for political parties to strengthen their ability to become democratic institutions as they are custodians of democracy. It will be a huge challenge for a political party that is involved in business (especially where the possibility exists of conflicts of interest) to stick to the principles of democracy. This culture of parties being involved in business was said to be cancerous, leading to greedy politicians who will not be accountable to citizens. There is a need for political parties to be supported by public funds in order to avoid them resorting to ownership of corporations in order to finance their activities. This calls for even greater transparency from politicians, especially those holding public offices.

Recommendations for Lesotho

The participants were divided into three groups (governance, accountability and transparency, and corporate social investment) in other to formulate recommendations on how the management of mineral resources could be bolstered in Lesotho. The following recommendations are the aggregation of the views of the participants from the groups.

Regulatory Framework

The government of Lesotho must address the issue of outdated laws; there is an urgent need to revise these laws and formulate mining policy in Lesotho. This is a necessary precondition for the mineral resources to benefit Lesotho and Basotho. Further research is needed into the possibilities of developing the industry to ensure that the extractive industries in Lesotho become transparent and fair. The policy should clearly state how Basotho are to benefit from the extraction of mineral resources. There is a need to address the question of ownership of mining companies by local people through buying of shares or through acquiring them by the virtue of being affected communities. The current arrangements where the affected communities are treated like the rest of the populace ignores the realities of how mines affect communities. There is a need to draw lessons from the Lesotho Highlands Water Project, where affected communities were not only compensated of their resettled households, fields, grazing lands and graveyards, but there were also development funds that were made available to ensure that the communities are able to cope with the realities of having being affected by the project. The same logic should be used in the management of mineral resources. The water sources of these communities are now being shared with the mining companies, and there are other socio-economic implications of having large projects within a community.

The mining board should be reinstated according to the provision of the 2005 mining act, and there should be given the capacity to carry out its mandate effectively. The board should comprise of people with integrity, representing a wide range of stakeholders (including civil society organisations and mining companies). The manner in which the board is appointed should be changed, and the portfolio committee on natural resources should be given an opportunity to approve board members who have been recommended by their different constituencies (stakeholders represented in the board).

The mining laws should ensure that there are harsh punishments for companies and individuals who decide to be on the wrong side of the law. Companies that are granted mining licences should meet all requirements, especially legal, safety and environmental standards. There is also a need to ensure that companies do not default and leave communities and the government of Lesotho without any investment or revenues. There is currently the potential for a company to be sold in its principal country while it has made a large shipment of minerals. The review of laws should ensure that companies cannot shut down their activities leaving behind liabilities in Lesotho (as was common in the textile industry during the expiry of the multi-fibre agreement).

Capacity Enhancement

The enhancement of institutional capacity is crucial to the better management of mineral resources. Participants were in agreement that all government institutions that work with the management of mineral resources should be bolstered in order to ensure that no resources leak out of the system. LMPS, the Department of Mines and Geology, the Office of the Auditor General and the DCEO should all be capacitated to represent the interests of Lesotho and Basotho in the mining sector. The fact that the extraction of minerals involves experienced multi-national corporations means that government must ensure that its institutions are equipped to monitor and enforce compliance in the sector. LMPS should have the resources and specialised personnel that will enable it to enforce compliance by individuals and companies throughout the country. The independence of these institutions should be encouraged and enhanced in order to ensure that the minerals of Lesotho do not end up in the hands of corrupt officials or criminals. The needs of the Department of Mines and Geology should be addressed in order to ensure that the department is able to drive the development of mining in Lesotho.

Accountability and Transparency

The secrecy around the management of mineral resources should be the thing of the past, as it encourages corruption. There is a need for details of the revenue collected from the minerals of Lesotho to be published separately, and for all revenue-sharing formulas to be accessible to all stakeholders. This should include the disaggregated publication of data related to minerals, so that all stakeholders are able to track the resources from source.

Lesotho has not yet joined the Extractive Industries Transparency initiative (EITI) and the country's ability to account for revenues accruing from the extractive industries is minimal. Participants unanimously agreed that EITI, the Kimberley Process and Publish What You Pay are good initiatives which should be supported by all stakeholders so that the country can get optimum benefits from its extractive resources. These initiatives will enhance proper management of mineral resources, as Lesotho will join scores of other countries who have decided to open the extractive industries in order for the populace and partners to monitor whether resources go to the government coffers rather than being shipped offshore to personal bank accounts. The country has taken a bold move through participating in the KPCS, and now needs to complete the move by participating in other transparency initiatives. The conference called on the drivers of these noble ideas to come to Lesotho to help the country to fully engage in transparency initiatives. The responsibility for ensuring that Lesotho becomes party to all these initiatives does not lie solely with the government, although it has to play a leading role towards full participation.

Participants indicated the significance of clearly differentiating between all the sources of revenue from the extraction of minerals to ensure that every Loti is accounted for. There should be a mechanism for tracing the financial resources accruing from the sale of minerals in Lesotho, rather than the current arrangement where the resources accruing from the extractive industries cannot be linked to how they were spent. This will enable the country to establish funds which will be used to diversify the economy, as well as ensuring that future generations benefit from the extraction of resources. The reality of the extractive industry is that there will come a time when the ground will no longer have diamonds, and there will be substantial environmental degradation to deal with.

There is a need ensure that people who hold public office declare their business interests. The most urgent action is to find mechanisms by which MPs will be able to declare their business interests. The representatives of two select committees have shown that the only challenge is the mechanism, and the willingness is there among members of parliament. All stakeholders with expertise or technical knowledge should work together with parliament to fast-track the implementation of this long-overdue process. This will enable parliament to play its legislative oversight role in the management of mineral resources in Lesotho. In order to make all stakeholders accountable there is an urgent need to enact the access to information law in order to avoid important accountability information being declared confidential when it could inform the public about mismanagement of resources.

The only way to ensure meaningful revenue accountability and transparency is through capacity enhancement of all stakeholders. This should be supported by proper participatory processes of making laws and policies in order to ensure that they promote the interests of all stakeholders, more especially the public. The media should play an important role in monitoring the management of mineral resources and promoting accountable and transparent institutions. The need to strengthen anti-corruption agencies cannot be over-emphasised, so there should be more investment in the LMPS, the Office of the Auditor General, the Office of the Ombudsman and DCEO and others. Senior government officials should declare their business interests in order to curb corruption in the civil service.

Ownership

There is a need to involve communities and local people in the management and ownership of mines. There is a need to copy successful models which have been tried and tested in the involvement of locals in the ownership of mines in other parts of the world. A good example nearer to home is the involvement of the Bafokeng community in the ownership of mines operating in Phokeng in South Africa. This ensures that affected communities are not only left with degraded land, but that attention is given to development that will sustain these communities.

There is a need for government to increase its share in the ownership of mines in order to ensure that the country does not only benefit through royalties and taxes. The proceeds that accrue from the minerals should go to Basotho who are the owners of these minerals. This calls for renegotiation of contracts between government and the mining companies in order for the two parties to agree on the terms of the new contracts. The government should use the opportunity provided by the fact that licences are valid for ten years, and the proposal is that all the existing licences should be reviewed now so that companies that are allocated new licences should appreciate the importance of sharing the proceeds with the nation.

Governance

The need for mining policy is long overdue, and the government of Lesotho should embark on the formulation of the policy as a matter of urgency. The reinstatement of the Mining Board to oversee the management of mining activities in Lesotho should be fast-tracked. There is a need for mining companies to establish a chamber of mines in order to have a platform that will represent their interests in all forums (including the Mining Board). There is a need for parliament to play an oversight role in order to ensure that the mineral resources are properly managed for the benefit of Lesotho and Basotho.

Community councils should also be involved in the governance of minerals as the central government cannot oversee all the activities of the mining companies on daily basis. There is a need to establish community rehabilitation funds that will be used to finance the development needs of communities after the minerals have run out. Companies should build reserves for communities, and if a company decides to default these reserves should be used to compensate the communities and continue the development programmes that could have already been started. Participants agreed on the need to bring back principal chiefs into the governance of mineral resources, as this will ensure that the decisions to award the licences include all stakeholders and are done in the best interest of the communities and the nation. There was a very strong feeling that the management of mineral resources is too serious a matter to be left in the hands of politicians alone, as they are likely to use the resources to advance their political interests. The principal chiefs have always been part of the amendment to the mining law in 2005, which is said to give the minister too much unguarded power.

Investment in geological studies

The country should not expect to reap the benefits from natural resources if there is no investment in geological studies. There is currently no institution training the geological professionals who are most needed for the development of extractive industries in Lesotho. The extractive industries have a very significant economic return to the economy of Lesotho, and the likelihood that they may generate even greater returns is high if there could be suitable investment in geological studies.

Lack of national human resource planning increases the burden of lack of skilled labour in geology. The government of Lesotho is moving to reduce the number of students being sent abroad, which has a direct bearing on geologists as there is no institution of higher learning providing geological studies within Lesotho. The Department of Mines and Geology as well as LMPS are already in serious need of specialised personnel in the field of mining and geology. These two institutions are facing serious challenges given the government directive that civil servants should not be granted study leave. Employees who wish to develop their careers will opt to join the private sector that will not only provide better packages, but also training and career development.

Introducing geological studies in Lesotho will be economical to the country and the opportunity cost of financing geological studies (as opposed to the conventional programmes which have been designed for graduates who are intended to join the civil service) will yield more returns for the country.

Corporate social investment

Corporate social investment should not be a philanthropic act, but rather an obligation on companies to invest in communities they operate in. There is a need for this process to be guided by government policies in order to ensure that all the investments in communities are monitored and supported for the benefit of the communities, companies and government. The companies should use the resources they have generated in Lesotho to benefit Lesotho and Basotho. The companies should also practice business ethics and comply with all laws and policies in order to make Lesotho better. The companies should employ the CSI strategies they employ in their primary countries as the minimum, rather employing philanthropic strategies which have a minimal impact on the affected communities.

Closing remarks by Mr Lehlohonolo Chefa

Mr Chefa thanked all the participants for having apportioned time in their busy schedules to come to deliberate on how best the minerals of Lesotho could be managed. He indicated that the significance of proper management mechanisms with regard to mineral resources is that they will determine whether the country achieves the *Melupe* scenario, where it is envisioned that the country will be at peace with itself and its neighbours, and all citizens will have access to the benefits from minerals. Lack of proper management may lead the country to other scenarios which are not at all desirable, where citizens might end up fighting for the control of minerals if the resources accruing from their sales benefit only the few. Change will not happen overnight, and this conference is only the beginning. All stakeholders now have to go back to rethink their role in the management of mineral resources.

Lesotho has the potential to surpass all development expectations if it invests in this very important sector of the economy. These resources belong to Basotho and should benefit Basotho. Other scenarios have the potential to rob the citizens of this beautiful country of what is rightfully theirs. The *Khobo-ha-li-kae-batho-re-bangata* scenario is not good enough, as the oligarchs will be the only ones benefiting from the resources of the country. The *Metse-e-metle-liotloana* scenario is likewise unacceptable, for the management of mineral resources to be window-dressed with good laws and policies which do not benefit the entire population, and especially the affected communities.

The *Lesupi* scenario may result if there is a continuation of the practice of not updating laws and policies that will ensure that the resources reach the citizens. The moment people realise that their country is making a lot of money, yet proceeds are enjoyed only by the few, that may trigger riots that have never been seen in this country. It is therefore of paramount importance for all stakeholders to work hand in hand for the achievement of the *Melupe* scenario. The involvement of all stakeholders in all processes of managing the mineral resources of Lesotho will ensure that Lesotho does not become another African state endowed with mineral resources but not benefitting from them. *Lesupi* is an equivalent of what happened in our sister countries that have experienced civil wars and riots the over control of mineral resources, and it is important for government to open space for civil society to have a say in the mining sector in Lesotho.

He specifically thanked senior government representatives who were part of the conference and said this shows the commitment from the side of the government of Lesotho. He also thanked the members of parliament who were present, and highlighted the need for the two portfolio committees represented to pick up issues that were tabled by stakeholders. He requested all stakeholders to make use of the parliamentary select committees in order to enhance democratic governance in Lesotho. The mining companies which were represented in the conference were also singled out by Mr Chefa in his closing remarks; he said that the companies play a pivotal role in the development of the country, and they should continue the good work through bringing the best practices they have gathered from their years of experience in this industry. Companies should at all times be seen to be paying their dues and respecting the laws of the country, especially ensuring that labour rights are respected in the workplace. He challenged civil society to engage both government and companies to ensure that the notion that the resources belong to the people of Lesotho should not just be a political slogan, but rather a reality that will forever shape the wellbeing of Basotho.

The importance of having had neighbours from fellow SADC countries was an important gesture from fellow Africans, and this should be the way towards full regional integration. He ended by saying on behalf of SARW and Melupe Consultants that he wished to thank all other people who had not been singled out, and especially the organisers who worked tirelessly to make this conference a reality. He requested that all stakeholders should show this level of commitment in future endeavours that SARW and Melupe Consultants either individually or collectively undertake.

List of Participants

Name	Ministry/Organisation
ATAL J	UNDP
BEN VAN TONDER	LEJAC
BERENG MPAKI	Lesotho Monitor Newspaper
CLAUDE KABEMBA	Southern African Resource Watch (SARW)
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EMMANUEL BOTLHALE	University of Botswana
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LETUKA MOLATI	Molati Chambers
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LINEO WAMUSSI	Lesotho News Agency (LENA)
LITLHARE M. POLAKI	Economic Justice Network Lesotho (EJNL)
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M JACOB	Mololi Newspaper
M KHOANYANE	Ministry of Finance
M MASOETSA	MCC
M MOSITO	Ministry of Finance
M SELEBALO	Lesotho Times
MABATHO LITHEBE	Radio Lesotho – Seboping
MAMAHLAPE HLAPANE	Kolo Community
MAMOTSIBA MAKARA	Catholic Commission for Justice and Peace (CCJP)
MANTHETHE MAHARASOA	Letšeng Diamond
MARAFAELE MOHLOBOLI	Freelancer
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MOEKETSI CHEFA	Melupe Consultants
MOEKETSI LETELE	Melupe Consultants
MOKHELE MOLETSANE	Ministry of Natural Resources (MNR)
MOLEMO MPETA	Mountain Giant Diamond
MOLIBELI TAELE	National University of Lesotho (NUL)
MONAHENG MAHLAKENG	Survivors of Lesotho Dams (SOLD)
MOSALA MOKUTLULO	Development for Peace Education (DPE)
MUTUSO DHLIWAYO	Zimbabwe Environment Law Association (ZELA)
N MOTHIBI	PCFM
NEPHTALI MAKOKO	Lekokoaneng Sandstone
NICO HORN	University of Namibia
NTATO THABISO	Morning star construction
NTŠEKHE TLABA	Lesotho Youth Federation (LYFE)
P THENE	Law Society of Lesotho
PALESA KHABELE	Mophethe Chambers
PALESA MOSOEU	LEJAC
PALO POKOTHOANE	Lerotholi Polytechnic
PETER RATILO	Blasters Society
PHEPHETHO MOKETE	Lesotho Mounted Police Services (LMPS)
PHOKOJOE	Radio Lesotho
PULANE MAHASE	Public Eye Newspaper
PULE KHIBA	Young Christian Students (YCS)
QAMAKO NTŠENE	LEJAC
R ELIAS	African Alliance
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T MONAMANE	Lesotho Times
T SELLO MAFATLE	Law Society of Lesotho
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THABO THELINGOANE	CAWULE
TOMARK	Ministry of Finance
TSEBO MATŠASA	MISA Lesotho
TŠEPO HLOJENG	Letšeng Diamond
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VINCENT MOEKETSE MALEBO	National Assembly