



BENEFIT SHARING IN THE MINING SECTOR IN AFRICA



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ABBREVIATIONS

CDAs	– Community development agreements
CGMS	– Complaints and grievance management system
CMCA	– Community mine continuation agreement
CSR	– Corporate social responsibility
CWP	– Coal worker’s pneumoconiosis
DDMI	– Diavik Diamond Mines Incorporated
DMF	– District mineral foundation
DMR	– Department of Mineral Resources
DRC	– Democratic Republic of Congo
EMAB	– Environmental Management Advisory Board
FPIC	– Free, prior and informed consent
GDP	– Gross domestic product
HDSAs	– Historically disadvantaged South Africans
IBA	– Impact and benefit agreement
MDF	– Mine development forum
MMDR	– Mines and Minerals (Development and Regulation) Act
MNEs	– Multinational enterprises
MNMCs	– Multinational mining companies
MPRDA	– Mineral and Petroleum Resources Development Act, 2010
NTA	– Native Title Act
OTML	– Ok Tedi Mining Limited
PMKKKY	– Pradhan Mantri Khanij Kshetra Kalyan Yojana
PNG	– Papua New Guinea
R&R	– Rehabilitation and resettlement
SADC	– Southern African Development Community
SIA	– Social impact assessment
UNDP	– United Nations Development Programme

EXECUTIVE SUMMARY

Africa is a resource-rich continent, holding 30 per cent of the world's mineral reserves. Broadly speaking, these reserves are underexploited. Only about 5.4 per cent of the total global mineral raw material production takes place in Africa.¹ However, the level of exploitation differs from country to country and mineral to mineral.

After countries on the continent gained their freedom, and with advancements in prospecting, exploration and extraction techniques, mining has picked up in recent decades. In many countries, it has become an important component of and contributor to the economy. Mining activities have spread to hitherto unexploited areas or expanded exponentially in traditional mining areas. This has, inevitably, led to environmental degradation, and eviction and migration of people from their homes, as access to natural resources is cut off, or it becomes untenable for them to stay in an area where environment has been degraded substantially, or government or private mining companies force them to leave. The consequences are severe for vulnerable, marginalized and landless communities that are majorly dependent on forests, agriculture and land-related activities.

Government agencies receive funds from mining companies in the form of royalties, rents, taxes, etc. These funds are not necessarily shared with the affected communities. In some cases, compensations are provided to people who have been evicted. There is less recognition of the first right of the people over the resources buried under their homes, or the notion of compensating them for degrading the environment of their homelands. The subject of landlessness is also vital here as, even in cases where compensation is provided, only owners of land benefit. This is recipe for discord.

As per a 2018 United Nations Development Programme (UNDP) report, the number of conflicts between mining companies and communities has increased exponentially.² Environmental, economic, and health and safety matters were found to be the most common cause or trigger of these conflicts. Disputes delay or stop mining operations and can incur substantial costs for mining companies. Available figures suggest that, on an average (and without accounting for indirect costs), delays cost mining companies US \$10,000–50,000 per day during exploration and around US \$750,000 per day during mining.³

Earlier, the focus of policy makers was pollution control and compliance. Over the last decade or so, integration of socio-economic problems of local communities has gained prominence. For instance, South Africa has reserved 26 per cent of the unit of mining production for historically disadvantaged communities. In 2017, Tanzania mandated 'local content plans' for development of local capacities by way of education, skill transfer and guaranteeing a minimum local employment. Kenya has mandated the implementation of community development agreements and directs payments of mining royalties (10 per cent) to affected communities. Democratic Republic of Congo (DRC) establishes entities and committees for development purposes, with due representation of affected communities.

This report summarizes the various policy initiatives in Africa meant to improve the socio-economic status of mining-affected communities and to mitigate environmental degradation by way of sharing the wealth generated from mining. It attempts to demonstrate the relevance of mining in Africa and its contributions, actual and potential, to local, national and global human development.

Benefit sharing practices and notions vary from country to country; by and large the practices identify, prioritize and attempt to mitigate the losses faced by mining communities. Some of the benefit-sharing mechanisms are sharing mineral royalties with communities, establishing trusts and funds, and creating development and affirmative action plans. Based on this analysis, the report makes a case for defining and delineating benefit-sharing practices. The report also underlines the importance of South–South experience sharing and learning regarding benefit sharing.

1. WHAT IS BENEFIT SHARING?



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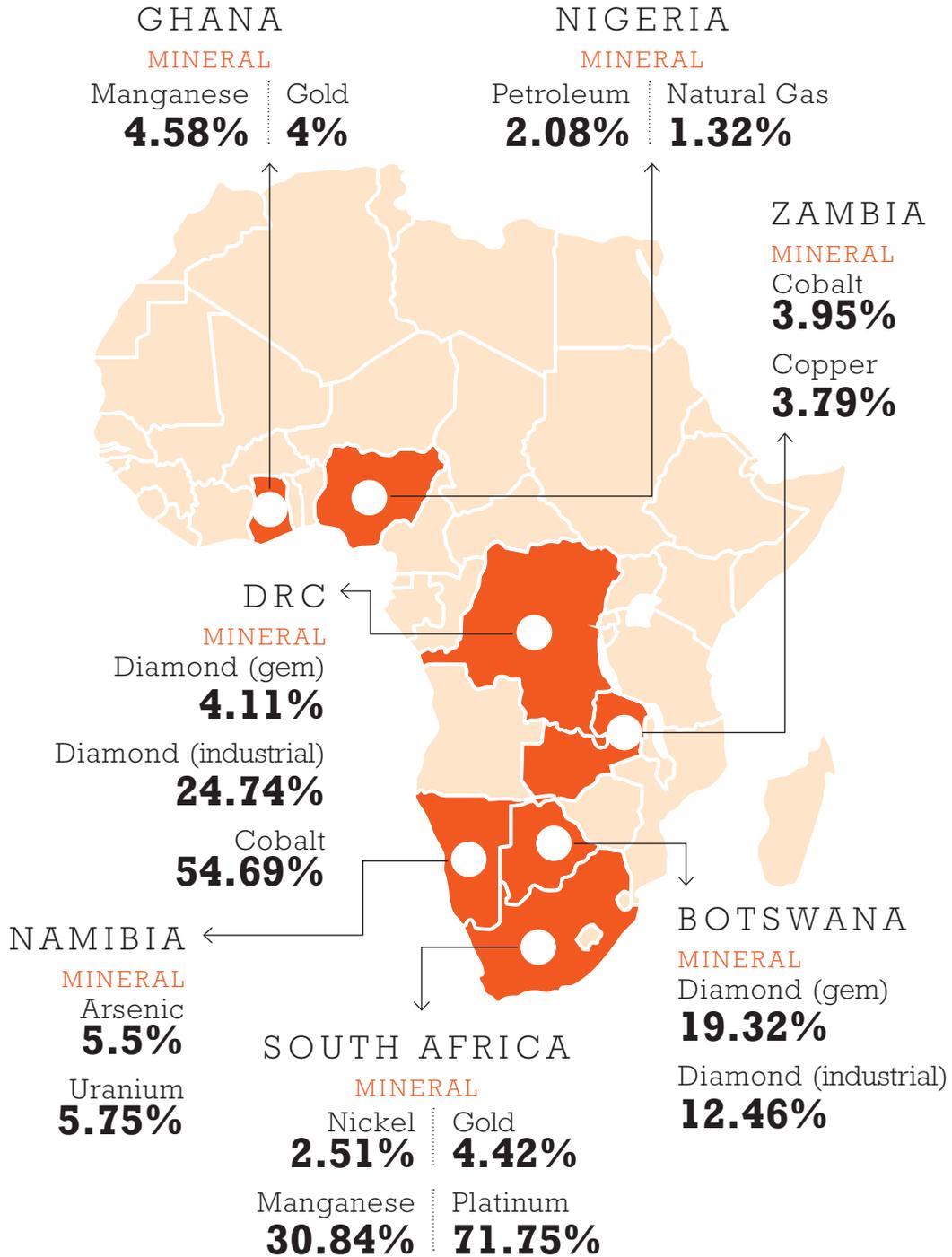
In essence, the notion of benefit sharing is recognition of the natural rights of affected communities over mineral resources in their traditional and historical homelands. Communities have a right to benefit first—culturally, economically and politically. These rights can be seen from the prism of both immediate as well as long-term benefits. Sharing of benefits accruing from the exploitation of the mineral wealth of a region with the affected communities not only improves their social and economic status, but also helps in the development of local infrastructure, mobility, health facilities, etc. around mining areas, thus reducing long-term conflicts. Benefit sharing is particularly relevant to the mining sector because these resources are depleted over time and may not be available to future generations.

MINING IN AFRICA

Mining in Africa is substantial and diverse. Of particular significance are mineral fuels, for their strategic importance, and precious minerals, for their immense wealth potential (see *Graph 1: Mineral production in Africa*). Africa produces around 22 per cent of the world's gold.⁴ Botswana and DRC, both members of the Southern African Development Community (SADC), produce significant amounts of diamonds for gemstones and industrial uses. Globally, the share of Botswana's diamond production is 19.32 per cent (gem) and 12.46 per cent (industrial).⁵ Similarly, DRC produces 4.11 percent (gem) and 24.74 per cent (industrial).⁶ DRC provides 54.69 per cent of the world's cobalt.⁷ South Africa contributes 30.84 per cent and 71.75 per cent to the global manganese and platinum production respectively.⁸ Zambia's share in the world production of copper is 3.79 per cent.⁹ Tanzania has deposits of gold, tanzanite, diamonds, coal, uranium, gemstones, nickel and copper. Namibia has huge reserves of uranium, copper, diamond, coal and rare earth minerals. It currently produces around 8 per cent of the world's uranium and the Etango mine is considered to have the largest unexploited uranium reserves in the world.¹⁰

AFRICA'S CONTRIBUTION TO GLOBAL MINERAL PRODUCTION

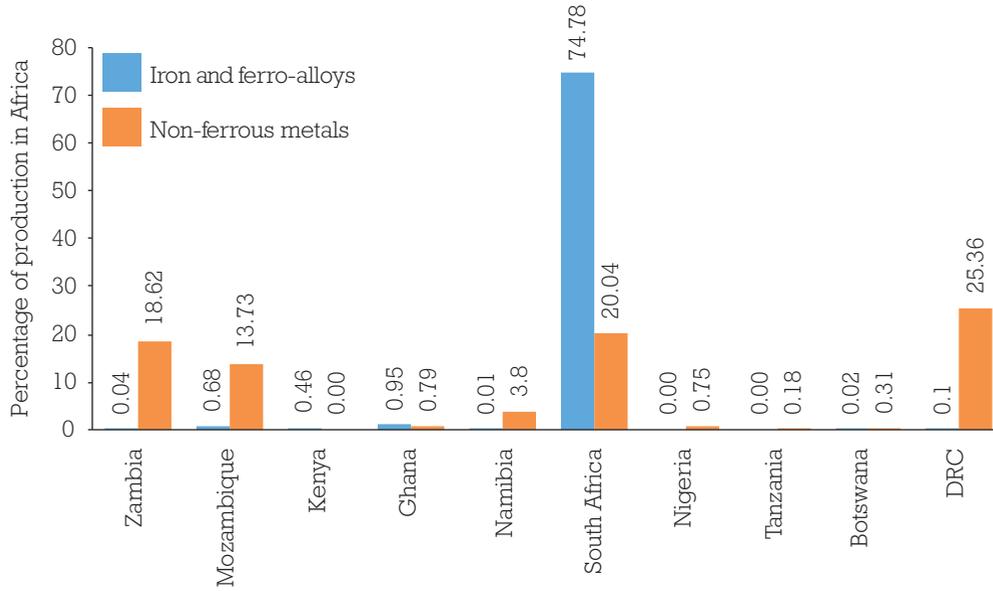
The continent of Africa has been bestowed with vast and valuable mineral wealth



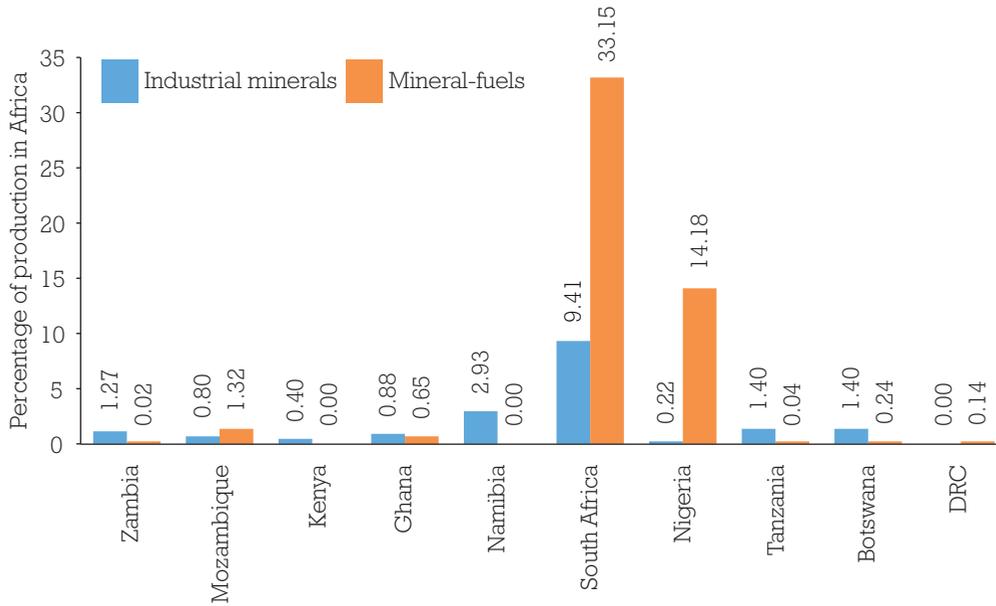
Source: World Mining Data, Volume 33, 2018

Graph 1: Mineral production in Africa

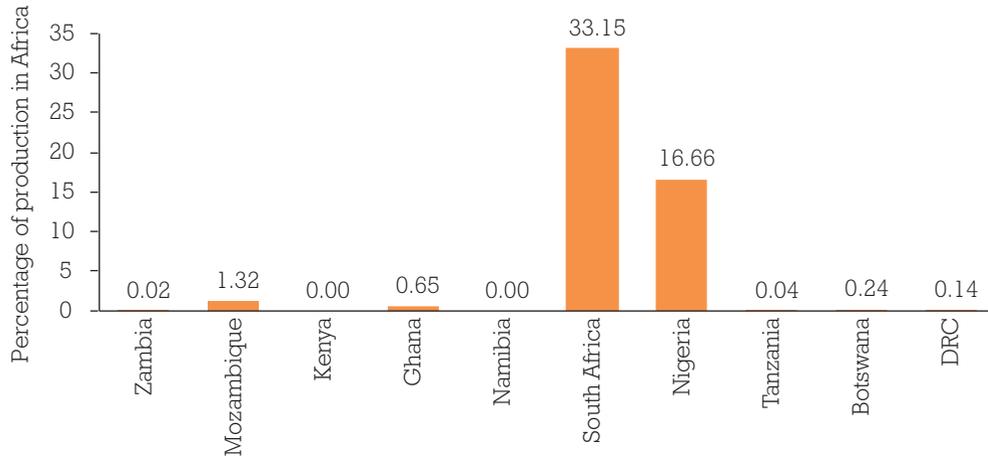
a) Iron-ferro-alloy and non-ferrous metal production in select African countries



b) Industrial mineral and mineral fuel production in select African countries



c) Precious mineral production in select African countries

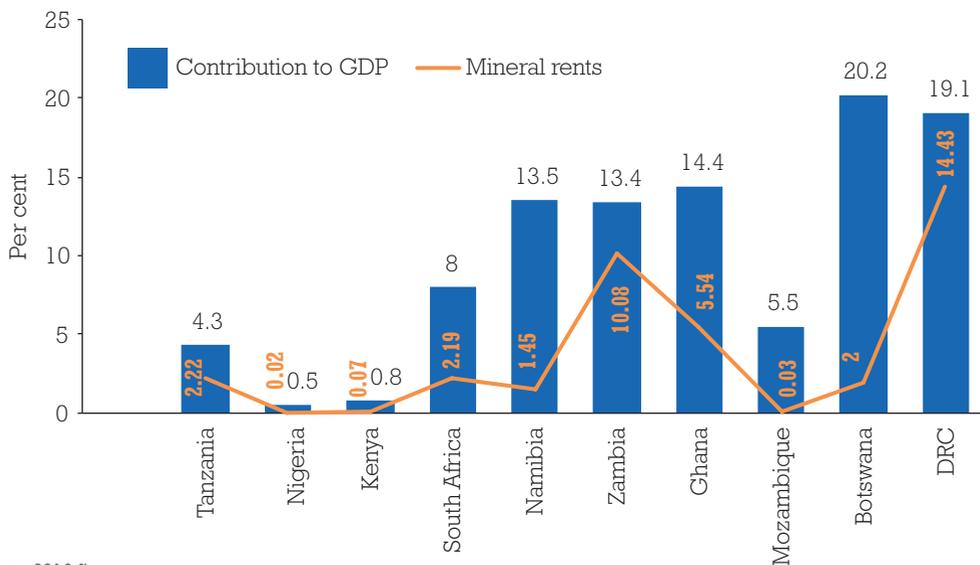


NOTE: Percentages are calculated based on total production from 43 mineral-producing African countries
 * 2016 figures
 Source: *World Mining Data, Volume 33, 2018*

IMPACT OF THE EXTRACTIVE INDUSTRY

The mining sector is a significant bulwark of the national economies in Africa. It contributes to the Gross Domestic Product (GDP) of the countries while also providing mineral rent to the governments (see *Graph 2: Economic contribution of the mining industry in select African countries*). A large number of people work in the sector, and many countries depend on mineral exports for their foreign exchange earnings

GRAPH 2: ECONOMIC CONTRIBUTION OF THE MINING INDUSTRY IN SELECT AFRICAN COUNTRIES



Note: 2016 figures.
 Please refer to annexure for mineral classification.
 Source: *Southern African Development Community Year Book, 2015* and *The Changing Wealth of Nations: Measuring Sustainable Development in the New Millennium, World Bank, 2011*

Overall, the extractive industry plays a vital role in expanding developing economies through:

- Procurement of goods and services
- Product distribution and sales
- Employment
- Social and community investment¹¹

On the other hand, large-scale extraction also has tremendous implications for the communities dependent on land and the attached natural resources for their livelihoods and survival. This 'attachment' with land also includes cultural and religious sensibilities. Damage to traditional settlements resulting in community separation and disruption is a major impact. Mining is also responsible for environmental damage since it depletes groundwater resources; disturbs the water table; diverts forests; emits fugitive dust; generates overburden dumps and tailing ponds; causes noise pollution due to blasting and drilling; and causes pollution and land degradation when mines are closed.

Deaths and accidents are also common during mining operation. Mine workers are prone to hearing impairment, skin and eye diseases, metal and radiation poisoning, silicosis, pneumoconiosis, asbestosis, etc. Silicosis is caused by inhalation of silica dust and is associated with mining of sandstone, stone and granite quarrying, and grinding of metals. Continuous and long-term exposure to silica results in lung cancer. Asbestosis is caused by inhalation of asbestos released during its mining. Coal worker's pneumoconiosis (CWP) is caused due to inhalation of coal dust from coal mines.¹²

No amount of compensation can replace socio-economic and cultural losses due to mining. While it is impossible to prevent some damage due to mining, benefit sharing practices,



VIKRANT WANKHEDE / CSE

starting with free and prior informed consent of communities, can provide legitimacy to mining projects. At the same time, the consent thus obtained reiterates community trust and confidence in projects and is proof of the belief that community members stand to benefit from mineral gains. For this to happen, governments must formulate and embed inclusive practices into laws and regulations. Compensations can only provide some solace to affected communities; therefore regular consultations can help understand community demands better.

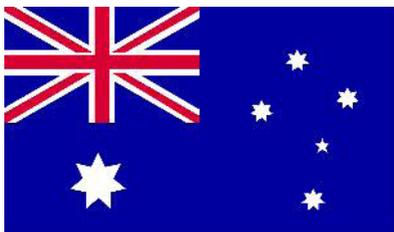
Since affected communities are owners of land and resources, it is their prerogative to benefit from mining first; therefore, they must get to decide how they ought to benefit. This prerogative must be baked into formal agreements, committed development plans, trusts and mechanisms for addressing grievances. The initiatives should, therefore, be representative of community members who are not only land owners, but also members who are marginalized and vulnerable. Dedicated funds and investments accrued from mining must fuel programmes for skill enhancement, and provide alternate employment, in addition to improving health and educational indicators. Benefit sharing should mitigate the negative social and environmental impacts of mining, assist in avoiding discord, and be economically beneficially to all.

That said, many traditional and cultural practices may be discriminatory and exclusionary towards particular genders, religions, ethnicities, etc. Benefit sharing practices are, thus, as much social projects as they are economic one. These projects must help move communities towards equality and justice for all. For example, in Australia, agencies paid five times for welfare of teenage girls based on the demands raised by affected communities.

With regard to the environment, mining communities have local knowledge and are well versed with the local ecosystems. They can optimally utilize resources accruing from benefit sharing for their welfare while also providing inputs to projects to mitigate environmental damage. There have been instances where communities have used funds accrued from mining to hire environmental officers for conservation of forests.

2. BENEFIT SHARING IN PRACTICE—GLOBAL

AUSTRALIA



The Commonwealth Native Title Act, 1993 (NTA) recognizes and protects native title rights against future negotiations on the land, including all mining operations. NTA gives registered native title claimants (or native title holders) the right to negotiate with project developers regarding certain operations, including the grant of exploration and mining permits. Aboriginal culture and heritage can also exist on land which is not tied to

native titles. Mining companies must obtain an Aboriginal heritage clearance before starting mining operations on such land. When negotiations take place between mining companies and the title holders, miners may earn access to traditional land in return for compensation for the Aborigines, which can include training and employment opportunities, royalties, or cash payments.

These title rights have been granted to allow indigenous people to live according to their laws and customs, so that they can keep their relationship with the land. However, if agreements cannot be reached between indigenous people and the mining company after six months, a party can apply to the National Native Title Tribunal for a determination, which decides whether or not mining operations can start and exist on a particular piece of land. A determination usually favours the native residents, placing conditions on the mining party. In some instances, native title holders can apply to the Commonwealth Court to request compensation from mining companies if they have lost or experienced damage to their title rights resulting from the government grants. These legally binding agreements between Aboriginal groups and mining companies are now negotiated in almost all new major mining projects.

TOP DOLLAR DIAMOND

In 2005, Argyle Diamonds Ltd signed an agreement with the Aboriginal owners of the Argyle diamond mine in Western Australia to enhance services like health, education, literacy, sports and other youth initiatives, and support cultural initiatives.¹³ The Argyle Aboriginal owners fund their service delivery initiatives from a 'Partnership Fund', which receives a portion of royalty payments. Traditional owners can fund initiatives only if the government or the private sector contributes at least an equal amount. In 2008, for every dollar the traditional owners committed to a business development programme, the Australian and Western Australian governments matched it with 1.5 dollar, and for every dollar committed by traditional owners, five dollars were contributed by the government and private groups for a teenage girls' development initiative.¹⁴

KNOWLEDGE—OBTAINED USING MINING INCOME—IS POWER

Access to mining income can provide Aboriginal groups a level of autonomy from the state, allowing them to create their own priorities instead of accepting the state's priorities as a condition for access to public funding. This access also adds to their negotiating power when dealing with the state with regard to service delivery, land title management and governance. For instance, the Gagudju Association used part of its royalty income to hire an environmental officer who helped its members to manage the Kakadu National Park, which holds their traditional lands. This expertise, unobtainable through standard government funding programmes, helped Gagudju people question federal decisions and retain their ability to take autonomous decisions.¹⁵

LONG-TERM INVESTMENT

In the long-term, income from mining can give Aboriginal communities the opportunity to found capital funds that have the potential to generate future income after the terms of mining have ended. In 2001, Aboriginal signatories agreement in Cape York, Queensland, decided to invest more than 50 per cent of their revenues in a long-term investment fund. Income was reinvested for 20 years, after which the capital base was preserved and interest was available to fund current spending. By 2011, the capital fund had grown to US \$40 million and by 2021 it will have the capacity to generate even more income.

CANADA



Section 35 of the Canadian Constitution Act, 1982 recognizes existing 'Aboriginal and treaty rights'. The courts in the country have affirmed multiple times that the governments have a duty to consult and accommodate indigenous peoples in decisions that could violate their rights, such as recording a mineral claim, allowing mineral exploration, or granting mining

leases. Moreover, Free Prior Informed Consent (FPIC), which provides rights to potentially affected communities to be a part of the decision-making process, as well as the right to refuse, is also endorsed by Canada. Mining companies are required to provide appropriate and sufficient information to communities so that they understand the consequences of potential mining developments. Further, indigenous property rights are protected under Canadian law. Under land claim agreements, indigenous land titles are also recognized.

Aboriginal communities are given preferential access to contracts to provide goods and services to mining projects, thus creating economic opportunities for them. Aboriginal groups in Canada have been successful in winning major contracts, first with joint ventures with non-Aboriginal businesses, and later, as their business skills developed, as 'sole operators'.

NICKEL MINING IN VOISEY'S BAY

At Voisey's Bay, Labrador, Inuu and Inuit businesses were contracted to provide site services, catering, housekeeping, security, etc. at a nickel mining project.

The Impact and Benefit Agreement (IBA) for the project has helped Inuit communities that are signatories to the pact to allocate a share of the revenues to a sustainability trust, which will ensure regular income after the end of the project. Under the IBA, fixed guaranteed annual payments ensure that money will always flow into the trust, with additional payments occurring when nickel prices exceed a certain level. The mine commenced production in 2005, after which nickel prices rose rapidly, and revenue flowing into the trusts was considerably higher than anticipated.

Contractually binding environmental agreements between Aboriginal groups, and territorial and federal governments also allow the former's involvement in environmental permits, designing and conducting environmental monitoring systems, development of remediation measures, and mine closure planning.

EMAB, NORTHWEST TERRITORIES

The Diavik diamond mine in the Northwest Territories spent over C \$1 billion (US \$0.75 billion) on aboriginal businesses during the first six years after its construction started in 2000. An Environmental Management Advisory Board (EMAB) was created pursuant to an environmental agreement between Diavik Diamond Mines Incorporated (DDMI), five aboriginal groups, and the governments of Canada and the Northwest Territories. The agreement's purposes are to 'ensure that environmental mitigation measures are appropriately implemented; to undertake additional monitoring to verify the accuracy of environmental assessment and the effectiveness of mitigation measures; and to facilitate effective participation of the Aboriginal peoples in the achievement of these purposes.' One representative of each of the five aboriginal groups, the governments of Canada and the Northwest Territories, and DDMI comprises the board. Since 2002, the board has been engaged in improving DDMI's wildlife and aquatic monitoring, its contribution to cumulative effects monitoring, and the participation of Aboriginal elders in environmental monitoring and remediation. The board also plays a role in influencing government regulators to sustain sufficient inspection of Diavik's operations and to provide adequate opportunity for the Aboriginal communities to include input on licence applications. The board places the foundation in helping to ensure that negative environmental impacts are minimized and that aboriginal people can always have a say in the land's environmental management.¹⁶

INDIA

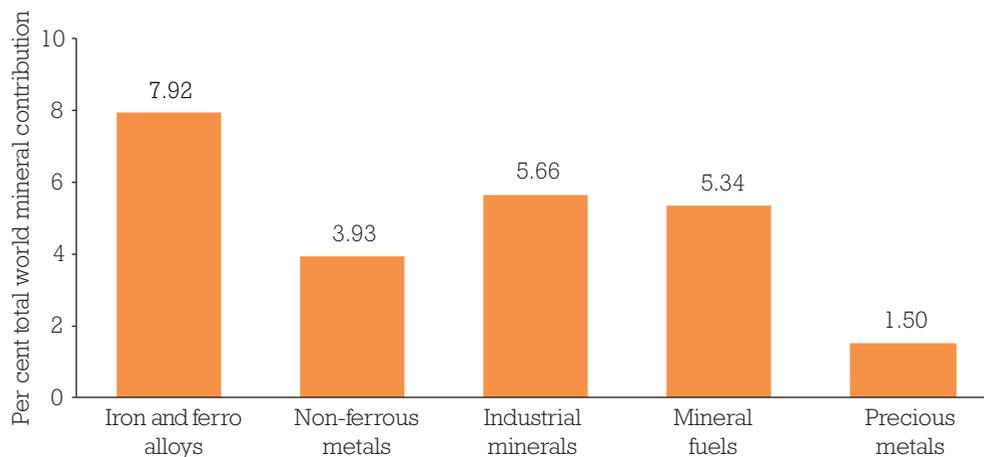


In India, minerals are found where forests are found, where the poorest of the poor live. Most of these regions are conflict-prone and developmental indicators are nothing to write home about. The country has seen a long history of people's protests in mineral-rich areas.

In the last decade or so, the government of India has formulated numerous policy measures to address the issue of communities who stand to lose their land, traditional and cultural rights, and livelihoods. In 2013, the government amended the old Companies Act, 1956 substantially. One of the salient features of the new Act is corporate social responsibility (CSR). It has been made mandatory for all companies above a certain size.

In the same year, the government substituted the old Land Acquisition Act, 1894 with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. In 2015, the government amended the Mines and Minerals (Development and Regulation) Act (MMDR), 1957 (regulating the mining industry in India) and established the District Mineral Foundation (DMF).

Graph 3: India's mineral contribution to the world



Note: 2016 figures.
Please refer to annexure for mineral classification.
Source: *World Mining Data, Volume 33, 2018*

District Mineral Foundation (DMF)

In 2015, the District Mineral Foundation (DMF)—non-profit trusts to be established in every region affected by mining—was mandated. The trusts are funded by way of contributions equivalent of the royalty amounts made by mining companies; for major minerals, 10 per cent for leases granted on or after January 2015, and 30 per cent for leases granted before January 2015; state governments decide the quantum of payment for minor minerals. By May 2018, the total cumulative accrual under DMF was US \$2.64 billion.¹⁷

PRIME MINISTER’S MINING WELFARE SCHEME

Under the MMDR Amendment Act, mining companies are required to pay a sum to the DMF trust of an affected region. The quantum of payment is determined on the basis of their royalty payment. To make DMF more impactful, it has been aligned with a scheme of the government of India, the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) (under Section 20A, MMDR Act), that was launched in September 2015. The scheme intends to implement various developmental projects and welfare programmes in mining-affected areas with DMF funds.¹⁸

The scheme’s objectives include:¹⁹

- (a) To implement various developmental and welfare projects or programmes in mining affected areas in tandem with ongoing schemes or projects of state and Central government.
- (b) To minimize or mitigate the adverse impact on the environment, and the health and socio-economic conditions of the people in the mining districts, during and after mining.
- (c) To ensure long-term sustainable livelihoods of the affected people in mining areas.

DMF thrusts greater responsibility on the extractive industry towards communities. It explicitly conceptualizes that the rights of community members over natural resources are primary. The MMDR Amendment Act clearly states that the objective of DMF is ‘to work for the interest and benefit of persons and areas affected by mining related operations’.²⁰

The funds received by DMF are over and above the royalty paid by the mining companies to the government and beyond any other expenditure like CSR. These funds accrue upon the local exchequer and local authorities that are authorized to disburse the amount in a manner specified by the government.

To ensure proper utilization of funds, the government developed guidelines to identify the affected areas and people, while also defining key areas on which the funds would be utilized—60 per cent of the funds must be spent on providing clean drinking water and sanitation; environment preservation; healthcare; welfare of women, children, the aged and differently-abled; and education and skill development. The rest (40 per cent) is to be utilized in the development of the district’s infrastructure, irrigation, energy and watershed and any other measure for enhancing environmental quality in the mining districts. Per se, there is no time limit on spending DMF funds on welfare activities. This provides enough leeway to affected communities to participate and put forth their demands as per their needs.

As the policy is relatively new, the progress and on-field impact of DMF needs to be monitored progressively, but the initial signs are positive.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

This Act gave recognition to the principles of people's participation, established consent mechanisms, and proffered higher compensations and better rehabilitation and resettlement (R&R). For the first time in Indian history, the rights of non-title holders were recognized and they became eligible for compensation and R&R packages. The Act made Social Impact Assessment (SIA) studies compulsory in acquisition of land. The Act put forward provisions for a five year development plan in constitutionally protected (Fifth²¹ and Sixth²² Schedule) areas.

PAPUA NEW GUINEA



Papua New Guinea (PNG) regulates its mining industry via the Mining Act, 1992 and Environment Act, 2000, and regulations thereof. All proposals for resource development have to take into account issues of resource development. Developers must ensure that proposed developments are supported by landowners alongside appropriately negotiated compensation and benefit packages.

Three key players, the multinational mining companies (MNNMCs), government, and local communities, collaborate under the 'Mine Development Forum' (MDF), under which all viewpoints are taken into consideration and have equal influence in the compromise between resource extraction and sustainable development. Since affected communities bear the risk of environmental, social, and cultural impacts, the MDF binds the parties to commit to the conditions set in agreements between the mining developer and the local community to guarantee that all parties have a share of benefits from mining operations. The Forum legitimizes participation of the local communities because of their exposure to these risks.

Multinational mining companies (MNNMCs) have also adopted an approach that incorporates CSR into their daily operations because it has developed into a primary goal in their business operations. The corporations are pressured to hold up their end of the bargain in commitments with local communities and the government.

PORGERA MINE LEADS BY EXAMPLE

Porgera Mine, a large gold and silver mining operation in the Enga province, created policies based on anticipated distribution of benefits with representatives from the stakeholders in the area (the Porgera landowners), the provincial government and the national government. These policies would be applicable to other mining projects in PNG. The forum guaranteed benefits such as royalty distribution, infrastructure development, social improvement, and preference in employment or business opportunities to local people. The Porgera Joint Venture spends up to 2 per cent of its profits towards infrastructure development— building schools and medical centers within the area. The percentage equates to millions of dollars and the company is entitled to a tax rebate. In the period of operation in PNG, the Porgera Mine has committed US \$3 million on projects to improve healthcare, education and infrastructure.

OK TEDI MINING LIMITED GIVES ONE-THIRD OF ITS EARNINGS

Ok Tedi Mining Limited (OTML) has embraced sustainable development in the company's area of operation and incorporated it into its CSR. One-third of the company's earnings are diverted to a long-term fund for annual (community development) projects. Under this scheme, local communities and governments decide on which projects to pursue while OTML designs and constructs the projects. At the end of 2005, the company had US \$175.5 million in its long-term fund for post-mine closure activities and US \$81.8 million for a development fund, which was used to fund projects locally as well as nationally.²³ OTML's 2018 annual review report details out its community engagement initiatives called the 'Community Mine Continuation Agreement' (CMCA), involving communities located in areas extending from the mine in the north to the Fly River delta in the south.

OTML has identified nine CMCA regions, out of which 158 communities in six landowner villages are paid annual compensations alongside investments and development payments. Moreover, each region is represented by four elected representatives (with at least one woman representative from each region). Annual compensations, investments and development payments are made to beneficiaries. Over 21,600 families have been paid through family and clan accounts. OTML has also created other community initiatives such as routine formal and informal consultation meets as well as a 'complaints and grievance management system' (CGMS).

3. BENEFIT SHARING IN PRACTICE—AFRICA

BOTSWANA

The mining industry in Botswana is regulated and has to adhere to paying mineral rents to the 'Tribal Land Boards' established under the Tribal Land Act, 1970. These Boards are established in every tribal area listed in the schedules provided in the Act. The functions of the Boards have been provided in Part III, Section 13 of the Act, as follows:

- Granting of rights to use any land
- Cancellation of the grant of any rights to use any land
- Imposition of restrictions on the use of tribal land
- Authorizing any change of user of tribal land
- Authorizing any transfer of tribal land

On the other hand, Part X, Section 66(1) of the Mines and Minerals Act, 1999 lays down the provisions of royalties that a holder of a mineral enterprise is liable to pay to the government on any mineral obtained.

The royalty percentages are based on the 'gross market value'.²⁴ Every mining right seeker has to pay rents to the Tribal Land Board of the area for acquiring these rights.²⁵ To obtain prospecting licences and for retention of licences over the land in tribal areas, half the money received is to be directed to the local Tribal Land Board.²⁶

The mining right holder is also mandated to pay fair and reasonable compensations for disturbances of rights of local residents and environmental damage caused by mining activities.

There is no provision for involvement of traditional and mining-affected communities. Tribal Land Boards accrue rent from multiple sources, and all rights and titles to land in each tribal area have been vested in them for promotion of social and economic development of all people of Botswana.²⁷

DEMOCRATIC REPUBLIC OF CONGO (DRC)

Article 242 of the Mining Code, 2002 governs the distribution of mining royalty that is paid by holders of mining titles as follows:

- 50 per cent is acquired by the Central authority
- 25 per cent is paid into an account designated by the administration of the province where the exploitation takes place
- 15 per cent in the account designated by the decentralized territorial system in the area where the exploitation takes place
- 10 per cent to the 'mining fund' for future generations



A 2018 amendment to the Mining Code mandates payment of compensation to communities affected by mining activities. The Code also provides for allocation of at least 0.3 per cent of a mining company's turnover to a committee established for the development of affected communities. This is similar to the CSR policy in India. However, in DRC, representation of affected communities is a must, unlike in India.

Moreover, the Code also specifies that mining rights holders are bound to develop concrete frameworks of social responsibility towards affected communities six months or more prior to extraction. These frameworks need to be approved by the provincial government.

GHANA



Ghana has created the Mineral Development Fund (under the Mineral Development Fund Act, 2016), the objective of which is to provide financial resources for the benefit of mining communities.

Of the total royalties received by Ghana's revenue authority from holders of mining leases, 20 per cent are deposited in this fund. From this fund, about 20 per cent is utilized in the promotion of local economy, development of alternative livelihood projects, and to redress the harmful effects of mining on affected communities. This is done by way of a 'Mining Community Development Scheme'. The rest is utilized in administrative control and promoting the mining sector in general.

The governing board of the fund is tasked to manage, disburse and allocate money from the fund in the following manner:

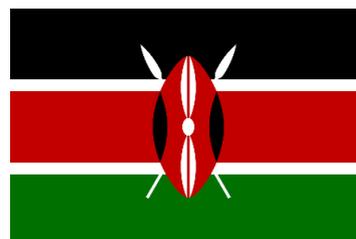
- (a) 50 per cent to the office of administration of the administration of stool lands²⁸
- (b) 20 per cent to the Mining Community Development Scheme
- (c) 4 per cent to supplement the mining operations of the Ministry
- (d) 13 per cent to supplement mining operations of the mineral commission
- (e) 8 per cent to supplement the mining operations of the geological survey department
- (f) 5 per cent for research, training and projects aimed at the promotion of sustainable development through mining of which at least 40 per cent shall be allocated to the geological survey department

The Act mandates that the governing board managing the fund establish a 'local management committee' for every mining-affected community and requires representation of traditional rulers of the affected (mining) community, one representative of an identified women's group and one representative of an identified youth group from the community (along with other officials).

KENYA

Under the Mining Act, 2016 mineral right holders are required to pay royalties to the state. Of these, 10 per cent are paid to communities in mining-affected areas.

In addition, it is the responsibility of holders of mineral rights to give affected communities preference in employment in mining-related activities. Likewise, as per Section 47 of the Mining Act, 2016 mineral right holders also have to:



- A. Provide linkages with universities for purposes of research and environmental management
- B. Wherever applicable and necessary, facilitate and carry out socially responsible investment for local communities
- C. Implement a community development agreement as may be prescribed²⁹

Holders of mineral rights are also obligated to give preference to products and services offered by members of the affected communities.

Lastly, wherever the proposed investment exceeds US \$500 million, the Cabinet Secretary has to enter into an agreement with the holder of the mining licence where, among other conditions, the terms should involve community development plans and insurance arrangements.

MOZAMBIQUE



The Mining Law, 2014 mandates the use of state revenue for local development of mining areas. The exact percentages are fixed under state budget law, channelized through the annual budget.

Moreover, it is mandatory for mining lease holders to provide compensation to communities and families who have to resettle as a result of mining activities. The salient feature of this decree is that the value of the compensation is fixed on the basis of a tripartite memorandum of the affected communities, government and the involved company. Any of the three parties can demand for a community-based organization to be a witness to the entire process. It is the responsibility of the government to ensure that the terms and conditions of the memorandum are favourable to the affected communities.

The government is also required to consult communities prior to any kind of mining exploration and develop mechanisms to allow and promote the engagement of communities in mining projects.

Holders of mining rights have to ensure social, economic and sustainable development, and to protect the culture of local communities.

NAMIBIA

The Minerals (Prospecting and Mining) Act, 1992 fixes royalty percentages payable on minerals. The Minerals Development Fund of Namibia, 1996 requires the funds to be used to regulate, streamline and, thus, strengthen the mining sector in the country. The Act mandates the establishment of a 'Mineral Development Fund', the objectives of which are:



1. To safeguard the production and earning of the mining sector
2. To broaden, through diversification and horizontal and vertical integration, the production base of the mining sector into the national economy
3. To support the mining sector by:
 - (i) Improving the national geological, geophysical and mineral data base
 - (ii) Expanding national training facilities and programmes³⁰

In Namibia, mines are classified into two categories—small-scale and other mines. Small-scale

mines are an important source of employment and income for local communities, while most other mines are run by multinational enterprises (MNEs). Mining claims of small-scale mines have, therefore, been reserved for Namibian citizens. As per the Minerals (Prospecting and Mining) Act, 1992, Namibian citizens who are holders of non-exclusive prospecting licences (or who can obtain the mining minister's permission) can 'peg claims' for an exclusive prospecting licence.³¹ Roughly, around 836 mining claims have been issued exclusively to Namibian citizens, with a registered area ranging up to 20 hectares.³²

The statutes do not lay out any benefit sharing mechanism. Compensation is paid to owners of land. Since land owners are entitled to compensations, the Act restricts mineral licence holders from implementing mining related activities, unless a written agreement pertaining to payments of compensation has been entered with the land owners.³³

The Access to Biological and Genetic Resources and Associated Traditional Knowledge Act, 2017 covers a wide range of environmental, ecological and socio-cultural issues, laying down provisions for informed consent, benefit sharing, rights of local communities, etc. If the blueprint of the Act is extended to mineral resources, their exploration, development, extraction and closure, it could prove very beneficial.

NIGERIA



Until recently, multi-national enterprises (MNEs) operating in Nigeria had a reputation of not doing enough for communities affected by industrial activities. Community demands for sharing benefits of oil, gas, and mineral wealth became widespread progressively. For example, oil companies in Nigeria have long faced 'local unrest and criticism from the communities within the oil-producing areas, and drawn increasing condemnation from abroad'.³⁴ The people of the Niger Delta, who lived in polluted environments, have received little in return for living with the oil companies and have disputed both the quantity and quality of community assistance.

Companies realized that they were expected to create social services and welfare programmes for local communities. The Minerals and Mining Act, 2007 provides a valuable framework for the exploration and exploitation of solid minerals. Sections 97–120 of the Act enumerate environmental protection and the rights of host communities.

These provisions include:

1. Compensating host communities in areas covered by mining leases for salt, soda, potash and galena
2. Reservation of the rights of landowners or land occupiers by retaining the right to graze livestock or cultivate the land while not interfering with the mining operations in the area
3. Assessment of compensation and payment
4. Land reclamation,
5. Community development agreements (CDAs)
6. Establishing miners' and community members' participation in environmental protection and rehabilitation programmes

Community development agreements

Under the Minerals and Mining Act, mining lease holders have to establish agreements with concerned stakeholders and communities affected by mining activities. The Act directs that these CDAs must be designed in a way which ensures the transfer of social and economic benefits to local communities.

However, to be effective, CDAs must be adapted to the local context. This means that no single model of agreement or process will be appropriate in every situation given that every region has its own unique geography and socio-economic conditions.³⁵

Moreover, the mining ministry establishes an 'Environmental Protection and Rehabilitation Fund' that guarantees the environmental obligations that holders of mineral titles have to fulfill. Trustees appointed by the mining minister operate the fund in accordance with the provisions of the Trustees Investment Act, 1957.

However, on-ground implementation of CDAs is far from desirable. An assessment report on extractive host companies by Global Rights: Advocates for Sustainable Justice, a Nigeria-based human rights group, draws attention to the fact that most companies have not signed formal CDAs with communities despite operating on community lands for years. Even CDAs that have been signed are marred by malpractices. The report explains this with the example of a CDA signed by a salt mining company in the Ebonyi state. The CDA was negotiated by the commissioner of industry on behalf of the Ishiagu community. But it was denounced on two grounds—one, community members were not a part of the agreement process and two, the agreements were signed by only the respective land owners involved in the process. Another issue highlighted by the traditional ruler of Ishiagu was that all members of the 20 villages that make up the community were not involved in negotiations with the company. This agreement was negotiated in 2011, yet the company involved hasn't fulfilled its obligations to the community, which involved grading of a community road and a donation of N 500,000 (US \$1,379) to a secondary school.³⁶

This case highlights some of the problems with an instrument like CDAs. Since the CDA policy does not explicitly mention the required representation of community members, it becomes easier for companies to sideline actual affected parties. Moreover, a select few landowners can dominate the narrative. Diversity of representation is, therefore, crucial, as is the need to bake in the precise requirements of community representation into such policies.

SOUTH AFRICA



South Africa's mining industry is regulated by the Mineral and Petroleum Resources Development Act, 2010 (MPRDA). Various other regulatory and statutory provisions that affect the sector are the Employment Equity Act and the Skills Development Act, both enacted in 1998, and the Broad-Based Black Economic Empowerment Act, 2003 and the Mining Charter, 2004.³⁷

While the Mining Charter is not a statute, its objectives are drawn from the aforementioned legislations. The charter was strengthened considerably in 2004 by the formulation of the mining scorecard. The scorecard seeks to promote transformation in the mining sector by achieving the following six objectives:

1. Promotion of equitable access to the nation's mineral resources to all the people of South Africa
2. Substantial and meaningful expansion opportunities for historically disadvantaged South Africans (HDSAs) including women, to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources
3. Utilization of the existing skills base for the empowerment of HDSAs
4. Expansion of the skills base of HDSAs in order to serve the community
5. Promotion of employment and advancement of social and economic welfare of mining communities and major labour providing areas
6. Promotion of beneficiation of South Africa's mineral commodities

The charter further introduced nine elements incorporating the following relevant legislations aimed at redressing past racially discriminatory practices that were perpetuated during the apartheid era to exclude the HDSAs from actively participating in the ownership and management of the mining sector:³⁸

- a. Human resource development (Skills Development Act 97 of 1998)
- b. Employment equity (Employment Equity Act 55 of 1998)
- c. Migrant labour (Immigration Act 13 of 2002)
- d. Mine community development
- e. Housing and living conditions
- f. Procurement (Preferential Procurement Policy Framework Act of 2000)
- g. Ownership and joint venture (Competition Act of 1998)
- h. Beneficiation
- i. Reporting

Based on the above, one of the elements specifies that mining companies must report on the representation of historically disadvantaged South Africans in management positions to ensure that due course correction is carried out. Another element lays down provisions for mining communities through developing integrated development plans and their implementation by companies. Mining companies are required to demonstrate patterns of consultations, indicate money expenditures and clear plans of action. With regards to ownerships and joint ventures, another element provides for transfer of at least 26 per cent of mining production to historically disadvantaged South Africans. Land-owning communities are given preference in applying for rights to prospect or mine. If mining rights applications involve land occupied by a community, the minister of mines can impose conditions to promote the rights and interests of the community. Lastly, the scorecard also accounts for commitments made by companies towards achieving progress for the welfare of HDSAs.

In South Africa, most social programmes are government-run. However, oil and mining companies are required to supplement such initiatives. Companies are increasingly becoming more responsible. They now identify themselves as partners in providing welfare services rather than as donors of services. The government and companies joining hands to help meet the needs of affected communities is a positive approach. But a word of caution would not be amiss here. Taking a lesson from the Indian experience, companies should not be allowed to get too involved in supplementing programmes because it can seduce the government to devolve all responsibility and become a mere spectator.

Compliance status

The Department of Mineral Resources (DMR) routinely assesses the status of compliance of the mining companies to the Mining Charter. Information available in DMR's assessment reveals that mining companies have made steady progress towards employment equity, participation of disadvantaged groups in companies' management, community development and ownership, and joint ventures. In terms of employment equity, the mining industry exceeded the 40 per cent target for 2014.

However, the industry is dominated by white males who hold all key management and strategic level posts. A similar trend is observed with representation of women (which has improved to 14.7 per cent). Only 36 per cent of mining rights holders have met their targets of community development. Only 44.5 per cent have met environmental protection targets.

With respect to ownership, DMR's assessment states that even though a sizeable number of mining rights holders have reported to have met or exceeded the 26 per cent ownership threshold, the meaningfulness of economic participation remains largely questionable.³⁹

Recently, DMR published the *Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry (Mining Charter, 2018)* for implementation. South Africa, presents an excellent example of policy-level interventions and their regular revision to make mining inclusive of the vulnerable and mining-affected communities.

TANZANIA



In 2017, the Tanzanian government passed the Written Laws (Miscellaneous Amendments) Acts, which has to be read in the context of the Mining Act, 2010. Under the Act, it is now mandatory for every mineral right holder to prepare a credible CSR plan which shall be agreed to by the local government. The CSR plan should take into account environmental, social, economic and cultural activities.

Further, a mining right holder is also required to undertake a pledge of integrity under Section 106 of the Mining Act. This requires the maintenance 'of satisfactory and effective insurance coverage against losses, injuries or damage to environment, communities, individuals and properties that may be occasioned in the course of carrying out mining operations or activities.'

Earlier, lack of other substantial provisions for benefit sharing gave rise to discontent among the affected communities and distrust of the mining companies. The Bomani Commission report, produced under the chairmanship of Judge Mark Bomani in 2008, highlighted several such issues. The report also mentioned that 'lack of being paid the correct compensation and allocation to new settlements has led to misunderstandings, which have caused tension and

insecurity in mining sites.' Emphasizing the need to share mining benefits to improve the socio-economic conditions of local people, the committee also pointed out that 'people believe that these minerals can play a big role in changing their life'.

In 2018, the government took a proactive step and introduced the Mining (Local Content) Regulations. Under these regulations, local content plans have been mandated for the development of local capacities in the industry value chain by way of education, skills transfer and expertise development, etc. The regulations also make achieving 'minimum local employment' mandatory.

UGANDA

Article 244 of the Constitution of Uganda, directs the Parliament to put in place laws that regulate:

- (a) The exploitation of minerals and petroleum
- (b) The sharing of royalties arising from mineral and petroleum exploitation
- (c) The conditions for payment of indemnities arising out of exploitation of minerals and petroleum
- (d) The conditions regarding the restoration of derelict lands



In this regard, the Mineral Act, 2003 has provided for 'royalties' in Section 98. The royalties are to be paid by companies and have to be shared with the Central government, local government and owners or lawful occupiers of land in the proportion 80 per cent, 17 per cent and 3 per cent respectively.⁴⁰ The Act also empowers the Commissioner for Geological Survey and Mines department to prohibit the holder from disposing of any mined mineral in case of failure to pay the royalty within one month of the assessed royalty.

Other provisions include paying of compensation to the owners of land, giving preference to Ugandan products and employment of citizens and also providing employment to women in underground work in any mine, regardless of provisions given under any other law to the contrary.

But the Act also grants the mining minister the power to waive off royalty if he or she is of the opinion that it is advantageous for the production of the mineral.⁴¹ This provision creates a risk of misuse, which could defeat the purpose of benefit sharing and rent payments, since the desire to increase mineral production is ever-present.

ZAMBIA



The Mines and Minerals Development Act, 2015 has provisions mandating the use of minerals in a sustainable manner, keeping in mind the needs of present and future generations. The Act also provides for compensating land owners for damage caused by mining activities. It lays down provisions for mines and minerals to be explored and developed in a way that adheres to international conventions on socio-economic development of which Zambia is a part.

It mandates development of local communities in mining areas based on their needs, and health and safety.

However, the Act does not specify percentages or amount regarding any benefit sharing, other than provisions for royalties. An exclusive fund or process to share monetary benefits directly with communities is absent in the Act.

Recently, the Ministry of Mines and Minerals Development has entered into an agreement with the World Bank on a project titled 'Zambia Mining Environmental Remediation and Improvement Project' (ZMERIP). The objective of ZMERIP is to reduce environmental health risks, including lead exposure, to the local population in critically polluted mining areas in Chingola, Kabwe, Kitwe and Mufulira municipalities while strengthening the environmental management in the mining sector through improvements in the following components of the regulatory framework:

1. Remediation of contaminated hotspots and improvement of environmental infrastructure
2. Enhancing institutional capacity for environmental governance and compliance
3. Reducing environmental health risks through localized interventions⁴²

4. CONCLUSION AND RECOMMENDATIONS

In addition to providing affected communities the means to deal with the fallout, both socio-economic as well as environmental, of mining exploitation, benefit sharing also promotes a sense of ownership and belongingness among them. This helps maintain long-term bonhomie between the government, mining companies and the people in mining areas. Concurrently, benefit sharing practices provide communities a platform to voice and have a say on the utility of resources.

From the information we have collated, a bulk of it from secondary sources, it is clear that most countries in Africa have benefit sharing agreements in one form or the other. However, the concept is not clearly defined and the countries could learn from one another. There are many emulation-worthy practices. Community Development Agreements (CDAs) adapted in Nigeria take a nuanced position and take into account local social, economic, cultural and environmental conditions. Similarly, South Africa promotes affirmative action in the mining sector. Tanzania has Local Content Plans, mandating local human resource development through mining activities. Zambia and Mozambique mandate the use of revenue for local development of mining areas. They also mandate the use of minerals in a sustainable manner, and holding of public consultations to ensure sustainable social and economic development. Ghana has established a Mineral Development Fund to provide financial resources to affected communities, whereas Kenya directs royalties to communities and mandates implementation of CDAs. Uganda grants royalties directly to communities and gives preference to owners of land in employment. DRC provides a small percentage of the turnover of the mining companies to the affected people. Botswana has established Tribal Land Boards.

Through information collected and the supporting case studies, it can be concluded that concrete policy measures are needed to ensure the full and active involvement of the affected communities. Some recommendations are as follows:

- Mandate policy-level interventions defining 'benefit sharing'. This definition must take into account the regional social, economic and cultural practices of local communities as well as the geographical and environmental context of the region.
- Establish institutions, committees and trusts to support and structure benefit sharing practices, and streamline the spending. Such institutions can have local chapters in every region.
- Mandate affected people's or community members' participation and representation at every level of such institutions, committees and trusts.
- Mandate the inclusion and representation of non-title holders, and landless community members affected directly or indirectly by mining and related activities at every level of such institutions, committees and trusts.
- Mandate gender representation and representation of members of vulnerable groups and any other relevant group from within the affected communities at every level of such institutions, committees and trusts.
- Draft policy measures for providing proportionate representation to community members, government and any other relevant party in benefit sharing agreements.
- Draft policy measures for identification of beneficiaries.
- Draft policy measures for identification of community issues by listing:
 - Issues caused due to mining and related activities

- Issues existing prior to commencement of mining related activities
- Issues cause at the time of mine closure
- Establish concrete grievance redressal mechanisms for affected communities.
- Develop appropriate reporting standards that adhere and overlap with relevant policies meant for development of communities. Set clear targets for companies (for example, as provided under the South African Mining Charter).
- Create insurance schemes for affected communities, to be paid for by mining companies.

ANNEXURES

ANNEXURE 1

OVERVIEW OF PRACTICES IN INDIA AND AFRICA

Country	Policy measures
Botswana	<ul style="list-style-type: none"> Establishment of Tribal Land Boards
Democratic Republic of Congo	<ul style="list-style-type: none"> 10 per cent of the total royalty to the Mining Fund for future generations Establishment of an entity or committee which includes representatives from local communities—0.3 per cent of the total turnover allocated to the entity for development of affected communities Mining rights holder to develop a concrete framework of social responsibility towards affected communities
Ghana	<ul style="list-style-type: none"> Mineral Development Fund: Provisioning of 20 per cent of mineral royalty in the fund to provide financial resources for the benefit of a mining community Establishment of the Mining Development Scheme for each mining community Establishment of local management committees with representation of traditional community members, representatives from women's group and youth groups
India	<ul style="list-style-type: none"> District Mineral Foundation: Trusts to be established in every mining district of India for development and welfare projects and programmes, to mitigate adverse impacts on health, environment, socio-economic issues, etc., and ensure livelihoods Five Year Development Plan: Entail programmes (within a period of five years) for development of communities for sourcing of alternate fuel, fodder, non-timber forest produce resources, etc., in cases where land is being acquired in constitutionally protected areas
Kenya	<ul style="list-style-type: none"> Implementation of community development agreements Requirement of socially responsible investment for local communities Preference to employment of communities and to local products and services

Country	Policy measures
Mozambique	<ul style="list-style-type: none"> • Use of state revenues generated from mining activities • Holder of mining rights to carry out social economic and sustainable development in areas where mining is taking place
Namibia	<ul style="list-style-type: none"> • No express provisions
Nigeria	<ul style="list-style-type: none"> • Community Development Agreements for transfer of social and economic benefits to the community
South Africa	<ul style="list-style-type: none"> • Affirmative action: At least 26 per cent of the units of production of prospecting or mining projects should be held by historically disadvantaged South Africans • Existence of a Mining Charter (2018, draft) under the act for entrance of historically disadvantaged South Africans in the minerals and mining industry (amended in 2010)
Tanzania	<ul style="list-style-type: none"> • Local content plan: Developing local capacities by way of education, skills transfer, etc., and achieving minimum local employment • Corporate social responsibility (for mining companies): For the environmental, social, economic and cultural activities based on local government authority priorities of host communities; which refers to the inhabitants of the local area where the mining activity takes place
Uganda	<ul style="list-style-type: none"> • 3 per cent royalty to lawful occupiers of land
Zambia	<ul style="list-style-type: none"> • No express provisions apart from some principles that apply to socio-economic development, equitable access and benefit of citizens of mineral resources development

Source: CSE compilation

ANNEXURE 2

MINERAL CLASSIFICATION

1. **Iron and ferro-alloy metals** include chromium, cobalt, iron, manganese, molybdenum, nickel, niobium, tantalum, titanium, tungsten and vanadium.
2. **Non-ferrous metals** include aluminium, antimony, arsenic, bauxite, bismuth, cadmium, copper, gallium, germanium, lead, lithium, mercury, rare earth minerals, rhenium, selenium, tellurium, tin and zinc.
3. **Industrial minerals** include asbestos, baryte, bentonite, boron minerals, diamond (gem or industrial), diatomite, feldspar, fluorspar, graphite, gypsum and anhydrite, kaolin (China clay), magnesite, perlite, phosphates (including guano), potash, salt, sulphur, talc (including steatite and pyrophyllite), vermiculite and zircon.
4. **Mineral fuels** include steam coal (including anthracite and sub-bituminous coal), coking coal, lignite, natural gas, crude petroleum, oil sands, oil shales, uranium
5. **Precious metals** include gold, platinum-group metals (palladium, platinum, and rhodium), and silver.

Source: *WORLD MINING DATA, VOLUME 33, 2018*

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21. The Fifth Schedule of the Indian Constitution deals with administration and control of scheduled areas and Scheduled Tribes in all states except Assam, Meghalaya, Tripura and Mizoram
22. The Sixth Schedule of the Constitution of India makes special provisions for the administration of the tribal dominated areas in four states. These are Assam, Meghalaya, Tripura and Mizoram
23. *PNG SDP Information Booklet*, 2005
24. As per Section 66 (3), Mines and Minerals Act, 1999, the term 'gross market value' shall for the purposes of calculation of royalties be defined as the sale value receivable at the mine gate in an arms-length transaction without discounts, commissions or deductions for the mineral or mineral product on disposal
25. Section 62 (1) (ii), Mines and Minerals Act, 1999
26. Section 70 (3), Mines and Minerals Act, 1999
27. Section 10, Tribal Land Act (commenced in 1970)
28. Stool lands are held by communities or traditional occupants, in trust for them by their 'traditional rulers'. However, as per Article 267 of the Constitution of the Republic of Ghana, stool lands are administered by the 'Office of the Administration of Stool Lands', which controls the revenues, and collects revenues, rents, etc.
29. Section 47, Mining Act No. 12 of 2016
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Benefit sharing in the mining sector has ethical as well as expedient dimensions. Ethically, it is recognition of ownership and the right of first use of those for whom mining areas have traditionally been homelands. It is also expedient to share benefits accruing from mining, to prevent conflicts between affected communities and mining companies and governments, and to help affected communities transition into a new paradigm.

This report provides an overview of benefit sharing in the mining sector in Africa, and compares it with practices around the globe.



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