Annual State of Corruption Report 2012
A look at the mining sector in Zimbabwe
- Gold, Diamonds and Platinum
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The Annual State of Corruption Report (ASCR) is a comprehensive sector specific research study by Transparency International Zimbabwe (TI Z). The main objective of the ASCR is to document and provide qualitative and quantitative insights into specific sectors that are pivotal to the transitional process of Zimbabwe. As such the series looks at social economic and political transition in the context of the political economy of a nation in transition. The sector focus of the 2012 ASCR is “Corruption in the Mining Sector with a particular focus on gold, diamond and platinum mining in Kwekwe, Gwanda, Mhondoro-Ngezi and Marange areas.” TI Z took a keen interest to understand the state of corruption in the mining sector because the sector has been touted to possess the potential to be the central driver of economic growth and recovery in light of the near collapse of both the manufacturing and agricultural sector.

Reputable studies have documented that some of the contributing factors explaining why the fullest potential of the mining sector has not been unleashed implicate the political instability that has manifested in contradictory policy and institutional arrangements. Tony Hawkins (2009) reports that “Everything being equal, Zimbabwe’s precious mineral resources have the potential to generate export earnings in the region of US$2 billion annually over the medium term and upwards of US$5 billion a year within 15 years. By far making mining both the largest exporter and earner of revenue” Notwithstanding the anxiety over unfavourable policy and institutional challenges to mining, corruption has remained the greatest factor of concern to potential international investors. The rent seeking and bribe-seeking behaviour of politicians and senior public officials has been reported as the greatest risk facing FDI in the sector. The ASCR study focused on six key thematic areas that broadly represent the World Bank Mining value chain. The WB value-chain approach suits TI Z’s research methodology because it is holistic, going beyond revenue monitoring to sustainable development. TI Z’s anti-corruption strategies aim at protecting poor and vulnerable communities from corruption. Hence our study, using the WB value chain as a broad guide looked at the cost of corruption to the political economy of mining and its impact on Zimbabwe’s poor and vulnerable including women and the youth in artisanal mining.

Mary Jane Ncube
Executive Director
Transparency International Zimbabwe
One of the greatest paradoxes of our time is how a nation so endowed with vast natural resources has some of the poorest citizens in the world. It also remains an enigma how a government that sits on the largest deposit of alluvial diamonds in the world, constituting 20-25% of the world’s deposits and the second largest platinum deposits in the world, continues to struggle with adequately resourcing its national fiscus to finance all aspects of government expenditure. Whilst it is abundantly clear that communities and the nation at large are not benefiting from the extraction of natural resources, it remains a mystery as to who is benefiting from the massive expansion of Zimbabwe’s extractive sector in the past decade.

The practice of corruption is the single biggest cause of poverty and the ever widening gap between the rich and the poor. Corruption is difficult to investigate because those who practice it will do everything possible to cover it up by destroying evidence. They protect themselves with institutions, legislations and policies that undermine transparency and good governance, thereby making it difficult for the public to know. Investigating corruption is a herculean task that can attract all sorts of threats, harassment and resentment, especially in countries where corruption is endemic and pathological.

Through this report, Transparency International Zimbabwe (TIZ) has shown that corruption can be investigated, exposed and mitigated. TIZ has also demonstrated that the battle against corruption in the mining sector is not a lost cause, but rather it’s an ongoing struggle that requires all actors to play their part in ensuring that profits from the extractive sector are evenly distributed for the benefit of all Zimbabweans.

This report takes a rights based approach to fighting corruption. Corruption is presented as a human rights violation as it takes away the rights of others to live in dignity by diverting public resources to personal use. The negative effects of opaque mining deals on present and future generations are thoroughly investigated and well-articulated in the report. The report bemoans the lack of respect for the social, economic, environmental and cultural rights of communities surrounding extractive industries.

The report also makes recommendations for the overhaul of the institutional, legal and policy frameworks governing the extractive sector in Zimbabwe. These instruments have criminalized artisanal mining, made it difficult for women to participate in mining and thereby undermining government empowerment policies. The criminalization of artisanal miners has not stopped the practice, but rather has ensured that government does not obtain revenues from artisanal miners as they can’t sell their products to designated government agencies for fear of arrest. Instead they survive in the sector by bribing law enforcement agents when arrested or they are subjected to human rights abuses and degrading treatment by their captors.

Human rights abuses against artisanal miners, especially in Marange, has negatively affected the image of Zimbabwe’s diamonds as consumers do not want to buy products associated with human rights abuses. In the past few years Zimbabwe has had to undervalue its diamonds as traditional markets stayed away due to human rights concerns. This report recommends a paradigm shift in dealing with artisanal miners, calling on government to create a conducive environment for artisanal miners to be regulated, both for their own safety and for the economic interests of the state to be realized.
This is a must read for all those desiring to understand how corruption is undermining the performance of the extractive sector in Zimbabwe.

Farai Maguwu
Director
Centre for Natural Resource Governance
Acknowledgements

The work on the 2012 Annual State of Corruption report in the mining sector could not have seen the light of the day had it not been for the support of funding partners and our management here at Transparency International Zimbabwe. We are indebted to the ideas that we got from Dr Mabel Hungwe, Dr Patience Mutopo, Dr Manase Chiweshe, Dr Gideon Zhou and Mr Godwin Chitereka. These individuals helped us in refining the concepts and setting the parameters for this research project. They added value to this project through their intellectual thoughts and ideas.

Our appreciation goes to the various institutions, community members and individuals whom we consulted during the course of this project. Our heartfelt gratitude goes the Chiadzwa Community Development Trust, Zimbabwe Environment Law Association, Zimbabwe Mining Revenue Transparency Initiative, officials in the Ministry of Mines and Mining Development and the Ministry of Finance, community members in Gwanda, Kwekwe and Mhondoro Ngezi.

We are appreciative of the support we got from the authors of this publication, Dr Gideon Zhou, Dr Sunungurai Chingarande, Mr Isaac Kwesu, Mr Godwin Chitereka and Mr Farai Mutondoro. Their expertise in various areas opened room for an elevated policy oriented research and added great value to the final product which is the report.

Transparency International Zimbabwe acknowledges the meticulous effort of the reviewer of this report Dr Phineas Kadenge.

Thanks are due to the TI Z Research Unit which led in the design and implementation of this research project on the State of Corruption in the Mining sector. Many thanks goes to the research team: Farai Mutondoro the Lead Researcher, Fadzai Jekemu, Shingai Madhaka, Frank Mpahlo and Vivian Zamba. These individuals demonstrated great courage in collecting data in a sector which is regarded highly sensitive and dangerous. They risked their lives in trying to uncover corruption in the mining sector.

Mary Jane Ncube contributed invaluably to this project. She nurtured the idea of doing an analysis on the state of corruption in the mining sector in Zimbabwe. She was key in reviewing and analysing this report to its final production.

Itai Andrew Chikowore
Programmes Manager
Transparency International Zimbabwe
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<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>ASI</td>
<td>Alex Stewart International</td>
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<td>ASCR</td>
<td>Annual State of Corruption Report</td>
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<td>ATP</td>
<td>Additional Tax on Profits</td>
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<td>CCDT</td>
<td>Chiadzwa Community Development Trust</td>
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<td>CRD</td>
<td>Centre for Research and Development</td>
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<td>CSOT</td>
<td>Community Share Ownership Trust</td>
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<td>DAZ</td>
<td>Diamond Association of Zimbabwe</td>
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<td>EESCR</td>
<td>Environmental, Economic, Social and Cultural Rights</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EITI</td>
<td>Extractive Industries Transparency Initiative</td>
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<td>EMA</td>
<td>Environmental Management Agency</td>
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<td>EPO</td>
<td>Exclusive prospective Order</td>
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<td>FDI</td>
<td>Foreign Domestic Investment</td>
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<td>GDP</td>
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<td>GNU</td>
<td>Government of National Unity</td>
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<td>GPA</td>
<td>Global Political Agreement</td>
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<td>HMZ</td>
<td>Hartley Minerals Zimbabwe</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>KPCS</td>
<td>Kimberly Process Certification Scheme</td>
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<td>MDC</td>
<td>Movement for Democratic Change</td>
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<td>MoMMD</td>
<td>Ministry of Mines and Mining Development</td>
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<td>MMCZ</td>
<td>Minerals Marketing Corporation of Zimbabwe</td>
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<td>MRDU</td>
<td>Mining Research and Development Unit</td>
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<td>MWAGCD</td>
<td>Ministry of Women Affairs Gender and Community Development</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>NIEEB</td>
<td>National Indigenisation and Economic Empowerment Board</td>
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<td>PGM</td>
<td>Platinum Group Metals</td>
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<td>PEA</td>
<td>Political Economy Analysis</td>
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<td>PWYP</td>
<td>Publish What You Pay</td>
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<td>RBA</td>
<td>Rights Based Approach</td>
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<td>RDCC</td>
<td>Rural District Development Committees</td>
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<td>SSM</td>
<td>Small Scale Mining</td>
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<td>Sovereign Wealth Fund</td>
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Foreword

UDHR : Universal Declaration of Human Rights
WB : World Bank
ZANU-PF : Zimbabwe African National Union- Patriotic Front
ZELA : Zimbabwe Environmental Law Association
ZIMRA : Zimbabwe Revenue Authority
ZMDC : Zimbabwe Mining Development Corporation
ZMF : Zimbabwe Miners Federation
ZRP : Zimbabwe Republic Police
The ASCR 2012 findings were a documentation of factors driving mineral corruption in Zimbabwe. The questions posed by the study interrogated the impact of mineral related corruption on the economy, the socio-cultural issues affecting artisanal and large scale mining, and policies for environmental protection and rights of artisanal miners and the mining communities vis-à-vis big corporations. While this study was largely qualitative in nature it also generated reasonable quantitative data in the interpretation of findings on the impact of mineral related corruption on the economy, communities and livelihoods.

Findings from this show that mining policies appear to be partisan and made for political expediency rather than growth and development of a sustainable mining industry. The institutions are opaque and require more skills and competencies than is currently available. The Precious Trade Act for instance which has been in place since 1903 is too narrow to regulate unfolding dynamics in the diamond industry because it is restricted to trade issues. It is silent on issues of licensing, security, exploration, social responsibility to local communities, value addition and beneficiation. In fact, the Act does not cover all forms of precious minerals, including industrial diamonds in the Chiadzwa area. The Mines and Minerals Act which has also been in place since colonial times has lost relevance over years and not adequately crafted to provide an effective regulatory framework. The State’s response to the infiltration of high volumes of artisanal miners in the Chiadzwa-Marange diamond field in search of alluvial diamonds; the ensuing chaos leading to 200 artisanal miners killed by the military, and events that unfolded since have revealed the inadequacy of the current legislative and regulatory frameworks and their overall impact on the political economy of Zimbabwe.

The legislation and regulatory frameworks do not adequately address issues that have become of paramount global concern such as open contracting, transparency in revenue collection, the role of the state in regulating a burgeoning artisanal mining sector estimated between 300,000 and 500,000 countrywide. Nor does the legislation address adequately the situation where the stake of the state and military in mining investments, especially, in high value minerals has risen astronomically and unexpectedly in the last decade. This in light of the report’s finding that there are large numbers of artisanal miners representing women and the youth seeking opportunities and support in order to run small scale to medium mining operations. Finally the regulations and legislation do not sufficiently cater for local stakeholder monitoring of contract awards, collection of tax and royalties and revenue distribution and management. To the contrary the study found the mining operating environment to be quite opaque, if not closed to scrutiny. This is made worse by the government’s reluctance to participate in globally accepted monitoring mechanisms such as Revenue Watch, EITI and PWYP.

The study also analyzed the transmission channels of mining sector corruption and its direct or indirect impact on economic growth and social development. In this analysis, the crowding out effect on the growth and development of the country by corruption and other illegal activities in the mining sector was measured on its relationship with gross domestic product (GDP), Foreign Direct Investment (FDI) and domestic capital formation, export earnings, government revenue, employment creation and poverty levels. In terms of the effects of illicit activities and corruption on the GDP, the analysis noted that while the mining sector is contributing about 16.5% of GDP, gold
Weighs around 30% of this amount implying gold is officially contributing around 5% of the national GDP. There are high chances that this figure can be understated by as much as 10-20% as a result of leakages and corruption. If incorporated the gold contribution could be as high as 8% of GDP while the mining sector contribution could be as high as 20%. The main findings of the research therefore show that illicit activities and corruption tendencies are weighing down on macroeconomic fundamentals. Thus the long term costs of illicit activities and corruption on the economy and social development are by far above the short term micro-gains that purport to arise in the form of quick incomes and employment specific to those who engage in corrupt activities. Therefore if challenges currently affecting the artisanal miners are addressed by formalizing and legalizing the sub sector the contribution can be significantly different and the growth prospect of the country will be realized.

The study also looked at the link between mineral related corruption, human rights and sustainable development. Mineral related corruption has a disproportionate impact on people that belong to groups that are exposed to particular risks, such as rural communities which are characterized by high degrees of poverty and the highest number of poor people. The study has noted that the rights of mining communities in Zimbabwe are not protected by the law. The Mines and Minerals Act which is the principal law governing the mining sector in Zimbabwe does not protect the economic, social and cultural rights of the people and communities living in areas where mining is taking place. In fact the Act has glaring loopholes which lead to the disempowerment of people and communities living in mineral rich areas. In areas such as Gwanda and Kwekwe the people suffer more social and economic exclusion. While in Chiadzwa and Marange communities have suffered violent human rights abuses. Lack of consistent and transparent regulation of artisanal miners is found at the root of economic, social and cultural rights abuses of these communities. A further highlight from this chapter is the finding that confirms anecdotal evidence that illegal gold miners and mining companies were bribing the police and Ministry of Mines officials to facilitate their unlawful mining activities. Additionally, these illegal gold miners do not follow mining regulations and their mining activities have largely resulted in environmental degradation, water pollution and loss of land. In order to extract the gold these illegal miners dig huge pits that have endangered livestock and become a health hazard. The companies and illegal gold miners are not paying royalties to the government and local authorities in Kwekwe and Gwanda. Rather what they pay in the form of bribes is expropriated by the state officials for their own personal benefit. This uncollected revenue could assist the capacity of local authorities, rural district councils and the central government to offer basic services such as education, health care, water and sanitation facilities. When communities are deprived of essential services
Executive Summary

such as education, health, water and sanitation this obviously is a violation of their economic, social and cultural rights. The most affected groups are the vulnerable and poor women, men, youth and children in Gwanda and Kwekwe who lack a strong voice to defend themselves from the destructive actions of the illegal gold miners and mining companies as well as mineral related corruption by state officials.

The analysis also looked at mineral related corruption using gender lenses. This analysis looked at the participation by men and women in both legal and illicit mining activities. The main finding from the analysis was that the mining sector systematically marginalized women and is highly gender insensitive. Men dominate high value mining activities while women dominate low value activities owing to gendered roles and socialization stereotypes, as well as the lack of capital and equipment. Formal employment in the mining sector is also dominated by men as it tends to require science subjects and related qualifications which are traditionally shunned by women. Due to marginalization in both formal employment and legal mining, women tend to be found concentrated in illicit mining sector activities such as commercial sex and illegal drug trade.

The study noted that approximately 50 000 women undertake artisanal and small scale mining which is usually outside the legal and regulatory framework using simple tools and equipment such as picks and shovels, wheel barrows, homemade processors and the odd compressor for drilling. Participation by women in artisanal and small scale mining has great potential to generate sustainable livelihoods that empower women. For example, on average small scale miners produce roughly 100-300 grams of gold per month using manual production methods supported by minimal machinery (MWAGCD forthcoming). Taking into consideration that there are approximately 3 750 women with mining claims it can be assumed that women have the potential to produce 375 kilograms of gold per month. This translates into US$ 15 million dollars per month. To this can be added, approximately 50 kilograms of gold from artisanal women miners who produce an average of one gram of gold per month. At the average spot prices of US$ 42 per gram this comes to US$ 2 000 000 per month thus giving a projected total of US$ 17 million per month. This calls for the need to come up with a specific quota or affirmative measures that promote women’s participation in the mining sector especially as artisanal small-scale miners.

Lastly the study focused on Zimbabwe’s discourse and implementation of Community Share Ownerships Trust (CSOTs). CSOTs have gained currency in the commercial exploitation of mineral resources in Zimbabwe. These schemes are seen as conduits for community participation in shareholding in various businesses which are involved in the extraction of natural resources. The assessment on community share ownership schemes noted that the Trusts are prone to corruption. In interviews conducted in the course of the study it was revealed that CSOTs do not have a clearly laid down operational framework or legal instrument to safeguard funds and enhance the quality transparency of community participation. Hence this has left many communities where the schemes have been introduced feeling vulnerable to abuse by the state, the companies or community leaders involved in these negotiations. The CSOTs do not guarantee that communities will benefit from mining projects, as there is excessive central government control and the funds are entrusted for development to local Chiefs, with few checks and balances.

Farai Mutondoro
Lead Researcher
Transparency International Zimbabwe
The world over there is recognition that the extractive sector is heavily exposed to corruption risks. A study by Leite and Weidman (1999) substantiated that natural resources are often associated with increased corruption. The Transparency International Bribe Payers Index of 2011 also confirmed that the mining sector is perceived to be the most likely to pay bribes, after oil and gas, real estate, utilities and public works and construction. In Zimbabwe while the mining sector has grown to be a key economic driver with a lot of potential to turn around the economy, there has been growing concern that the sector has become synonymous with corruption, lack of transparency and accountability along the whole mining value chain. Realising this problem of corruption in the mining sector, Transparency International Zimbabwe (TI Z), a local chapter of the global movement against corruption, through its Research Unit undertook an action oriented policy research on the State of Corruption in the mining sector. The intended purpose of this study is therefore CSOTs to strengthen policy making and practice in the mining sector which can lead to equitable benefits from mineral resources.

Background and Context the Study

Over the past years the mining sector in Zimbabwe has grown to be a key economic driver with a lot of potential to turn around the economy and improving the livelihoods of the populace ahead of the agriculture and manufacturing sector. The contribution of the mining sector takes several forms inclusive of direct contribution to the Gross Domestic Product (GDP), employment creation, foreign exchange generation, gross national investment, social infrastructure development and direct revenues to the government revenue. While most mining countries in Africa depend on single or possibly two or three minerals, Zimbabwe has more than 40 minerals that are mined. The mining sector has rebounded dramatically from the hyperinflation economic crisis of the 2006-2008 period with the advent of “dollarization” in 2009. While traditionally the agriculture and manufacturing sector dominated centre stage of the economy, the mining sector has taken over this dominance. Platinum has replaced tobacco as the top export revenue earner. The diagram below highlights how the mining sector has grown over the years in comparison to agriculture and manufacturing in terms of national exports:

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1 Jourdan, P, 2012, Mining Policy Study, ZEPARU
2 Madhunguyo, C and Ndaona A. (2012)
Not only has the mining sector grown in terms of exports and in comparison to other key economic sectors such as agriculture and manufacturing. Instead, the sector has also grown in terms of mineral value production since the independence period. The value of mineral production has increased six-fold to about $3 billion in 2011.³ The table below reflects how mineral production value has increased significantly in Zimbabwe.

The table above reveals the extent to which the mining sector has grown in terms of mineral value production. Taking the year 2011 as a unit of analysis, the mining sector experienced a growth rate of about 25.8% with mining exports growing by about 38.7%, contributing about half of the exports in 2011. The leading exports were platinum, contributing 45%, gold contributing 24% of the exports, and thirdly diamonds, contributing 10%. In 2011 alone the mining sector contributed US$2, 1 billion to national exports, representing 50% of the country’s total foreign exchange earnings. Overall tax paid by the mining sector is estimated around US$311 million, representing about 12% of the US$2.6 billion revenue collected in 2011. The sector accounted for more than 50% of total fixed investment and more than 75% of the total private sector investment. If the multiplier effect is taken into account, the mining sector has helped generate about 80% of total investment in the economy.

However, notwithstanding its centrality to the economy and socio economic development, the sector has also been characterised by massive corruption and resource leakages. Through media monitoring and intelligence gathering in 2011 and 2012, TI Z realised that media and research reports detailing fraud, corruption, theft, non-compliance and resource leakage in the mining sector had become the norm rather the exception in Zimbabwe. For instance in February of 2011, the Standard newspaper reported that USD 1 million which was realised from the auction of the Marange diamonds vanished without any trace. In March 2011 the Minister of Finance told Parliament that “there is no transparency in diamond mining and management of revenues”⁴. On 13 June 2011, The Zimbabwe Daily Newspaper published a story online that “US$300 million worth of diamonds disappeared without any trace and no-one knows what happened to them”. In March of 2012 an Israeli pilot was nabbed at the Harare International Airport and charged for trying to smuggle 1 300 diamond pieces worth $2 million out of Zimbabwe⁵. The Financial Gazette of 12 April 2012 also reported a story of a gold scam in Kwekwe involving high ranking public officials.

Research reports have also documented that the mining sector has been characterised by an “emergence of some mining companies that have just sprung up and act like get rich quick outfits, paying bribes and offering kickbacks to horn their way into the lucrative mining sector such as alluvial diamond mining”⁶. Research literature also suggests that government officials sign mining contracts with foreign and local investors in secret from the public eye resulting in a rising level of corrupt practices concerning allocation of mining rights to opportunists and

³ Ibid, P.....


⁶ (Extractive Industries Legal and Policy Handbook, 2011)
undeserving people\textsuperscript{7}. As a result communities living in mining areas are not realising enough benefits and are just saddled with the negative costs of mining, while mining companies and other connected individuals and government officials internalise the profits\textsuperscript{8}. All these media and research reports and others not captured in this narration are only a tip of the iceberg which convinced TIZ that the mining sector in Zimbabwe has become a haven for corruption, prejudicing the country of the much needed revenue. It is against this background that TIZ saw the need for undertaking an action oriented policy research on the State of Corruption in the mining sector.

**Scope of the Study**

As a result of the breath of the mining sector in Zimbabwe, the study only focused on corruption relating to the mining of gold, diamonds and platinum in the mining areas of Kwekwe, Gwanda, Mhondoro-Ngezi and Marange. This investigative study sought to document factors fuelling corruption in the mining sector, identify gaps fuelling this corruption and assessing the impact of mineral related corruption on the economy and the socio-economic rights of communities living in mining areas. The study employed a methodological triangulation of qualitative and quantitative research approaches. Quantitative research approaches were suitable in giving the study a descriptive edge in describing trends and patterns of corruption in the mining sector as well as quantifying the impact of corruption on the economy and the socio-economic rights of communities living in mining areas. Qualitative research methods on the other hand gave the study an explanatory edge in explaining how and why corruption is so rife in the mining sector.

**Analytical Framework**

The 2012 State of Corruption study was guided by two main analytical frameworks namely the Political Economy Analysis and the World Bank (WB) mining value chain.

**The Political Economy Analysis**

The inquiry on the State of Corruption in the Mining sector is underpinned by the Political Economy Analysis (PEA). Political Economy Analysis is concerned with the interaction of political and economic processes in a society: the distribution of power and wealth between different groups and individuals, and the processes that create, sustain and transform these relationships over time\textsuperscript{9}. Political economy is the study of the social relations, particularly the power relations that mutually constitute the production, distribution, and consumption of resources. When applied in the context of mineral corruption, Political Economy Analysis seeks to understand the interplay between the political and economic process in the management of mineral resources and how this fuels corruption. Mineral resources are both a political and an economic resource. Political in the sense that, the management of mineral resources often involves those who have power (political, bureaucratic and financial) and authority to decide how mineral resources should be managed and who should benefit from these mineral resources. The manifestation of politics in mineral resource management and governance is best seen by the policies and legal frameworks governing the mining sector. These frameworks are crafted by politicians and they reflect the dictates of their political authors. Mineral resources are also economic resources especially in Zimbabwe where the mining sector is a key economic driver. The performance of the mining sector is affected by the political environment and the policy and legal frameworks governing it. It is this interlink between the political and economic processes in the context of mineral related corruption which TIZ sought to understand in the study. The political economy approach therefore allowed TIZ to explore the following thematic areas:

1. The policy, legal and Institutional framework governing...
mining in Zimbabwe
2. The impact of corruption tendencies and illicit activities in the gold mining sector on the Zimbabwean Economy
3. The power dimensions to mineral related corruption
4. The human rights dimension to mineral related corruption
5. Gender and mining in the context of mineral related corruption
6. An understanding of Community Share Ownership Trusts in gold and platinum mining in the context of transparency, accountability and beneficiation

**World Bank Mining Value Chain**

In trying to get an in depth understanding of the above mentioned 6 thematic areas, the 2012 State of Corruption study borrowed from the WB Mining Value Chain. The diagram below reveals the WB Mining Value Chain:

The World Bank Mining Value Chain provides a framework for understanding all key stages in the mining sector from the award of contracts and licenses to the implementation of sustainable development policies and projects. The 2012 State of Corruption study focussed on each of the 5 stages of the mining value chain. The thematic areas of this study were situated in either one area or all stages of the WB mining value chain. For instance the thematic area on the Policy, Legal and Institutional Framework governing the mining sector cuts across the six stages of the Study on Power Dimension to mineral related corruption cuts across the 5 chains of the WB mining value chain in identifying the different players involved at each stage and analysing their level of influence. Thus, the World Bank mining value chain was the analytical framework through which the key thematic areas of this study were explored.

**Structure of the Report**

This report presents findings of the State of Corruption study in the mining sector. The report is divided into 6 chapters. This chapter gave the introduction to the study and laid the groundwork through contextualising the study, defining its scope, objectives and analytical framework. Chapter 2 presents findings from the assessment of the Policy, Legal and Institutional Framework governing the mining of gold, diamond and platinum in Zimbabwe. Chapter 3 focuses on the impact of corruption tendencies and illicit activities in the gold mining sector in the Zimbabwean economy. Chapter 4 on the Power Dimension to Mineral Related Corruption brings to the fore corruption involving those entrusted with power and authority in Zimbabwe, the politicians, military leadership, bureaucrats and influential business people. Chapter 5 documents how mineral related corruption is impacting on the social, cultural and economic rights of communities living in mining areas. Chapter 6 looks at mineral related corruption from a gender perspective. Chapter 7, which is the last chapter, presents findings based on an assessment of Community Share Ownership Schemes in Mhondoro-Ngezi and Gwanda in light of transparency, accountability and beneficiation concerns.
CHAPTER TWO: An Assessment of the Policy, Legal and Institutional Framework Governing the Mining of Gold, Diamonds and Platinum in Zimbabwe
CHAPTER TWO:
An Assessment of the Policy, Legal and Institutional Framework Governing the Mining of Gold, Diamonds and Platinum in Zimbabwe

by Gideon Zhou

Introduction
There is need to institutionalize transparency and best practices in the extraction and use of finite mineral resources for the sake of intergenerational equity. Entrenched best practices act as a bulwark against corruption-induced revenue leakage. Literature is also replete with ‘resource curse’ experiences where countries richly endowed with precious minerals ironically have less economic growth and development potential than countries with fewer natural resources.\(^\text{10}\) In place of stability are incessant wars for the control of precious minerals and squandering of national resources for self-seeking pursuits. African countries such as Sierra Leone, Angola, Nigeria, Libya, Liberia and Democratic Republic of Congo have gone through these traumatic experiences. In other countries, the discovery of precious minerals set in motion the ‘Dutch disease’ syndrome, cases in which sudden huge foreign currency inflows induce the neglect of other critical sectors of the economy.\(^\text{11}\) In fact the problems associated with the discovery and mismanagement of precious minerals are so widespread that one Venezuelan politician, Juan Pablo Perez Alfonzo, likened them to the “devil’s excrement”.\(^\text{12}\) Notwithstanding this, cases abound where prudent policy management of mineral revenues led to socioeconomic development, with Botswana among the commonly cited cases.

Scope of Work
Against this background, this chapter examines the policy, legal and institutional frameworks governing the mining of gold, diamonds and platinum in Zimbabwe in a bid to locate deficits likely to fuel corruption-induced revenue losses. Issues to be addressed include analysis of the strengths and weaknesses of the new diamond policy, proffering recommendations for the proposed Diamond Act in Zimbabwe, questioning why the Mines and Minerals Act has not been repealed despite being old and archaic, examining how mining contracts and mining concessions are negotiated as well as identifying the soft spots for corruption in the negotiation of mining contracts and concessions. This framework translates into the following four objectives:

- To present critical appraisal of the policy, legal and institutional framework governing gold, diamond and platinum mining in Zimbabwe.
- To identify loopholes and gaps in the policy, legal and institutional frameworks contributing to non-compliance, theft and corruption in gold and diamond mining in Zimbabwe.

\(^{10}\) Auty, 1993; Ross, 1999; Collier, 2003

\(^{11}\) Mmegi, 2011, 15

\(^{12}\) Fortune Magazine, 2 March, 2003
To explain how flaws in the policy, legal and institutional frameworks induce corruption-related revenue losses in the gold and diamond mining sector in Zimbabwe.

To proffer recommendations on how the legal and policy framework can be improved to ensure improved transparency and accountability in gold and diamond mining in Zimbabwe.

In pursuit of these four chapter objectives, research question formulation was structured along thematic areas, the first slot interrogating ‘policy framework’ issues:

- What are the enunciated goals, targets and instruments of the policy framework?
- How are mining contracts and mining concessions negotiated?
- What are the major perceived gaps in this policy framework?
- How do these policy gaps fuel corruption and revenue leakage?
- What is currently being done to strengthen the policy framework?
- What measures should be adopted to strengthen the policy framework?

The second slot focused on ‘legal frameworks’:

- What is the specific legislation regulating the mining of gold and diamonds in Zimbabwe?
- What are the observed gaps in this legislation and how do these create space for corruption-induced revenue leakage?
- What is currently being done to amend the legislation? What accounts for delays in amending redundant legislation?
- What measures should be adopted to strengthen these frameworks?

The third slot interrogated ‘institutional frameworks’:

- What are the key state and non-state institutional players in the diamond, gold and platinum sectors?
- What are the observed gaps in the institutional framework and how do they open avenues for revenue-leakage through corruption?
- What should be done to strengthen the institutional framework?

Data Gathering and Analysis

Data gathering had a strong desk-research bent, augmented by data from informal discussions and interviews with members from relevant institutions such as the responsible government Ministry, Ministry of Finance, academics, and advocacy civil society organizations. Desk research entailed extensive review of literature on extraction and use of precious minerals, government documents such as Mines and Minerals Act, The Precious Minerals Trade Act, Gold Act, Mines and Minerals Amendment Bill (H.B.14, 2007), Incomes Tax, Civil Society Research Reports, Statutory Instruments, Zimbabwe Medium Term Plan 2011-2015, Ministerial Statements on diamond policy and revenue remittance, among others. In reviewing documented sources, considerable effort was made to ensure objectivity by making reference to both official and un-official sources. Issues relating to mining in the Chiadzwa diamond fields are topical and very delicate hence the observed cagey tendencies during data gathering. Data analysis is largely qualitative, content analysis as the chapter is mainly dealing with macro frameworks.

The Diamond, Gold and Platinum Sectors

The Diamond Sector

The diamond sector (the 7th largest producer in the world with a potential to supply 25% of global diamond) mainly covers mining operations in the Marange area of eastern Manicaland province, Murowa in the Zvishavane area of the Midlands province and River Ranch along the Limpopo area of South Matebeleland. The diamond sector is governed by the Precious Stones Trade Act which has been in force since the first discovery of diamonds in
1903 at Somabula in the Midlands province. Diamonds are used in jewellery making, precision cutting tools, microelectronics and microchips. Prior to 2004, diamond mining in Zimbabwe was mainly limited to accidental finds in alluvial gold diggings, with only pronounced mining activities in the River Ranch kimberlite mine near the South African border. The Murowa kimberlite cluster was discovered between 1997 and 1998 although mining operations began in 2004, producing “typical African kimberlite diamonds with an average value of US$65 per carat”. It was only after the discovery of diamonds in 2006 (covering an estimated 123,000 hectares) in the Chiadzwa area of Marange in Manicaland (about 90 km south-west of the city of Mutare) that diamond mining in Zimbabwe attracted international attention. Marange is the name of the chief of the area under which the diamond fields were discovered while Chiadzwa is the name of the Headman of the municipal ward in which the alluvial diamond fields are located. The Chiadzwa diamond fields are now regarded as “the biggest find of alluvial diamonds in the history of mankind”; According to a UK-based consultancy firm, Charles Stanley Securities, they are the “largest alluvial discovery in history with the potential to produce two to three million carats per month at peak for around 20 years”.

Until 2010, Zimbabwe did not have certification clearance from the Kimberley Process Certification Scheme (KPCS), a global diamond trade watchdog that was formed in 2004 with a mandate to track the origins of all rough diamonds, attempting to put a stop to blood diamonds sales from conflict areas. Diamond producing countries have to be cleared by the KPCS in order to freely market their gems on the international markets. Zimbabwe had its first public sale of diamonds from Marange on 11 August 2010, selling 900,000 carats of diamonds from which $72 million was realized; with buyers coming from as far afield as India, Lebanon, the US, Israel and Russia.

The Gold Sector
Gold mining is mainly located in Bindura district, Kadoma, Mudzi district, Mvuma and Kwekwe districts. There is a profile of around 14 large-scale mining companies, Metallon Gold is the largest with five local gold mines under its portfolio. The gold sector is directly regulated by the Gold Act (Chapter 21:03) which has provisions for trade, licensing, issuance of permits, and, possession and dealing in gold. Prior to liberalization in 2009, the central bank was the sole buyer of gold in the country through its subsidiary Fidelity Printers and Refineries. Liberalization allowed gold miners to market their gold offshore, initially retaining 85% and later 92.5% of their earnings from sale proceeds; policy measures that were received with optimism in a mining industry whose capacity utilization had declined to 30% in the post 2000 era, due, among other factors, to informal gold trading and prevalence of illicit trading in the gold mining industry. The bulk of gold was now channelled to the informal sector as small-scale gold producers preferred to sell their gold to middle-men who paid at more competitive prices than those offered by the Reserve Bank of Zimbabwe. This had seen Metallon Gold, Zimbabwe’s largest gold miner, closing all its mines in 2008. The Zimbabwe Fidelity Printers and Refineries were de-listed from the London Bullion Market after a myriad of problems affected gold production and the entire mining sector. Gold production had nose-dived from 10,960 kg in 2006 to 3,072 kg in 2008. To date, the gold sector remains home to illegal gold panning, crippling power shortages and desperately in need of recapitalization. Currently illegal gold panning in the Midlands province is threatening the Gweru-Zvishavane highway as well as contaminating water sources downstream with mercury used in separating the gold from the soil.

13 The Standard, 11-17 September, 2011
15 http://www.herald.co.zw, http://www.dailynews.co.zw
16 http://www.kimberleyprocess.com
CHAPTER TWO: An Assessment of the Policy, Legal and Institutional Framework Governing the Mining of Gold, Diamonds and Platinum in Zimbabwe

The Platinum Sector
Platinum is one of the key mineral resources in the country. Zimbabwe has the second largest deposits of platinum in the world after South Africa, which accounts for 90% of the world’s known platinum reserves. Platinum is one of the major export earners with an estimated value of 2.8 billion tones. The platinum mining sector is dominated by leading global platinum firms such as Impala Platinum, Aquarius (a South African platinum-mining giant and a major shareholder in Mimosa Mines in Zvishavane) and Anglo Platinum (Amplats, the largest platinum producer and sole shareholder in Shurugwi’s Unki Mine).

The Policy Frameworks
Policy frameworks set the overall climate within which national policies are implemented. They provide a blueprint of courses of action to be undertaken. However, policy frameworks operate within specific legal and institutional frameworks. Policy frameworks derive their authority and legitimacy from legislation and are also enforced within specific institutional structures. In fact, policy frameworks are only valid to the extent that they are consistent with national legal systems.

As outlined in the Zimbabwe Medium Term Plan (2012-2015, 135-142), the main thrust of mining policy in Zimbabwe is to ensure that national resources and minerals are profitably exploited for socio-economic development. It views minerals resource extraction as a means to national development. To this end, there is emphasis on amending the Mines and Minerals Act, royalty payments, transparency in mineral resource management, minerals value addition, ‘use it or lose it’ principle, skills development and retention, environment management and small scale mining. It envisages adoption of Zimbabwe Minerals Policy, finalization of the amendment of the Mines and Minerals Act and adoption of the Extractive Industries Transparency Initiative.

Its emphasis on royalty payments is premised on the policy philosophy that countries hosting minerals should be compensated for the exploitation and utilization of their resources. They should derive direct benefits from the wealth produced from the exploitation of their mineral riches. Royalties are therefore compensatory fees levied for the exploitation of finite resources. Through royalty payments, companies operating in the extractive industries are forced to plough back into the countries they are operating in and in this way contribute to national socioeconomic development.

Its prioritization of mineral resource management is based on the assumption that revenue inflows to the Treasury are best maximized when transparency underpins the operations of extractive industries. There is growing realization across the world that due to poor policy governance, many resource rich countries are trapped in vicious circles of poverty regardless of the high value of their extractive resources on the global markets. Underpinning mineral resource management is growing concern for considerations of intergenerational equity in the extraction of finite resources. Transparent mineral resource management generates benefit spinoffs that include improving the investment climate, strengthening accountability and good governance, preventing conflicts in the mining sector, improving revenue remittances to the Treasury as well as flow of information to the public domain.

Policy emphasis on Minerals Value Addition draws from observations that over the years, the bulk of the products of the extractive industry in Zimbabwe have been exported in their raw state, resulting in low revenue generation. Mineral Value Addition policy measures should promote mineral beneficiation, creation of new jobs and downstream returns arising from diamond cutting, polishing and processing of diamonds to produce

\(^{17}\) http://thinkafricapr..new-gold

\(^{18}\) Ibid, 137
The “use it or lose it” policy principle seeks to curb speculative holding of claims mainly linked to some provisions in the Mines and Minerals Act which had allowed companies to hold claims and titles simply by paying fees, scenarios that had led to widespread holding of claims without developing them. To this end, the ‘use it or lose it’ principle, which is administered by the Mining Affairs Board, seeks to charge fees that discourage holding claims for speculative purposes.

The ‘skills development and retention’ policy measures envisage establishment of training institutions and retaining skilled geologists, engineers, technicians and managers as part of the mining turnaround strategy. This prioritization arises from observed dearth of local expertise in matters relating to diamond cutting, polishing, valuation and marketing, among others.

By emphasizing issues of environmental management, the policy frameworks, endeavor to promote best environmental protection and management practices within the extractive industry. With expected growth in the scale of mining operations, policy framers project a corresponding increase in social costs. To avert this, policy enforcement entails adopting procedures whereby licenses are only issued to companies that have clearly defined environmental management programmes as espoused in the Environmental Management Act, imposing stiff penalties on defaulting companies, mounting advocacy on the adoption of environmentally-friendly technology and use of less toxic chemicals.

**The Approved Diamond Policy**

In line with this broad policy framework, a Diamond Policy was approved by Cabinet in June 2012. The policy, among other key considerations, seeks to promote the contribution of the diamond industry to economic development through prioritization of beneficiation, value addition and accountability and strict monitoring of the entire value chain from mining, marketing, distribution and collection of dues to Government. By May 2012, 19 companies had been licensed for diamond cutting and polishing in line with policy intents to enhance beneficiation and value addition, although the processes by which they were selected has been a closely-guarded secret. The value addition thrust is meant to create employment for locals in the diamond industry. In countries such as India, the diamond market created around 60 000 jobs through establishing industries specializing in cutting and polishing of rough diamonds from Zimbabwe.19 The Diamond Policy also obliges government to come up with incentives for companies to invest in diamond cutting and polishing. If fully enforced, it will go a long way in plugging loopholes in the mining of Chiadzwa diamonds, increase diamond revenue remittances to the Treasury, and enforce stringent monitoring of the value chain as well as ensuring transparency in the valuation and marketing of diamonds in line with international best practices.

**Gaps in the Policy Framework**

- There is a yawning gap between policy espousal and practice. The three cardinal policy targets relating to conclusion of the Zimbabwe Minerals Policy, finalization of the Mines and Minerals Act and adoption and implementation of the Extractive Industries Transparency Initiative by 2011 are largely to be met.
- Commitment by the responsible ministry to enforce full accountability as espoused in the new diamond policy framework appears weak. Addressing the Centre for Public Accountability Annual Conference on 11 June 2012, the responsible minister was quoted saying that: "Zimbabwe is under illegal sanctions and the same countries".

19 [http://allafrica.com](http://allafrica.com)
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that gave us sanctions are clamoring for transparency (and) to us the plot is very clear that they want to know our sanctions busting strategies. We cannot speak of full disclosure of critical information (when there is) selective demand for transparency and accountability with focus on the booming sector which has in a short space of time transformed the economy.\textsuperscript{20}

These sentiments were also manifest in his address to guests at the official opening of the 2012 Mine Entra held in Bulawayo on 26 July 2012 where he reportedly warned “Cabinet ministers who have not contributed a penny to the diamond sector to stop demanding accountability in the mining and marketing of the gems from Chiadzwa”.\textsuperscript{21} Reading through these remarks one gets the impression that the ‘sanctions busting’ argument is used as a ruse to prevent coalition partners and civil society from scrutinizing the mining operations.

- While the approval of the Diamond Policy by Cabinet in June 2012 is in the positive direction, a Diamond Act from which it derives legal authority is yet to be legislated and gazetted. The Precious Stones Trade Act which has been in force since 1903 is still to be replaced. The Act is too narrow to regulate unfolding dynamics in the diamond industry because it is restricted to trade issues. It is silent on issues of licensing, security, exploration, social responsibility to local communities, value addition and beneficiation. In fact, the Act does not cover all forms of precious minerals, including industrial diamonds in the Chiadzwa area.

- There is secrecy in the negotiation of mining contracts/concessions. Compliance with national tender procedures is highly questionable. It is not clear how the four companies currently operating in the Chiadzwa diamond fields (Diamond Mining Corporation, Anjin Investments, Marange Resources and Mbada Diamonds) were awarded mining contracts. A clearly enunciated policy statement on their shareholding is yet to emerge. Secrecy also surrounds how Grandwell Holdings (New Reclamation’s Mauritius registered subsidiary) was awarded the right to oversee Mbada’s day-to-day operations and the right to market all diamonds produced.\textsuperscript{22}

- Research by local civil society organizations such as the Centre for Research and Development (which has been monitoring mining activities in the Chiadzwa diamond fields since 2006) refer to a thriving market in the town of Villa De Manica in Mozambique for diamonds that are smuggled from Marange. On 17 March 2012 an Israel pilot was arrested at the Harare International Airport whilst trying to smuggle 1,300 pieces of diamonds (estimated to be worth $2.43 million) out of Zimbabwe.\textsuperscript{23} As captured in the Herald of 18 March 2012, “The diamonds in question were taken to the Minerals Marketing Corporation of Zimbabwe for assay and weighed 1.7 kilograms with a caratage of 8486, 66 valued at $2,437,708.24”.

- A coherent framework for determining the extent of the country’s mineral wealth is not yet in place. Registration of all known minerals in Zimbabwe is not up to date due to lack of extensive exploration work over the years. The actual hactarage of the Marange diamonds fields is contested, some putting it at 23 000 hectares while others place it between 60 000 and 70 000 hectares. Scenarios over the years suggest that government became aware of the existence of precious minerals after illegal miners rushed into the area, with the Chiadzwa finds as the latest glaring case. This situation does not augur well for the mining

\textsuperscript{20} http://dailynews.co.zw
\textsuperscript{21} The Standard, 29 July-4 August 2012
\textsuperscript{22} Mail & Guardian Reporters, 7 September 2012, http://mg.co.za
\textsuperscript{23} Centre for Research and Development, 2010; http://pambazuka.org
sector. It fuels illegal mining operations as there are no systems in place to monitor operations in the mining sector across the country. However, the approval of the draft framework in August 2012 for establishing the Minerals Exploration Company is a welcome development as it will enable government to know the extent of the country's mineral wealth.

- The framework for valuating and pricing the newly discovered Marange diamonds is not clearly enunciated. A clearly defined price of a carat of diamond is yet to be established. There are conflicting statements on the price of a diamond carat. This, not only clouds fiscal planning but also raises the risk of carat prices that are charged below international prices.

- Stakeholder consultation in the determination of mining fees and royalties is low weak, a scenario that lends a predatory edge to the current mining fee policy. In January 2012, the ministry of Mines and Mining Development raised registration charges for platinum and diamond claims to US$2.5 million and US$5 million, respectively while miners are now required to pay annual ground rentals ranging from US$3,000 per hectare for diamonds. The exploration fee for diamonds increased twenty-fold to $1 million. Review of responses from key stakeholders such as the Zimbabwe Chamber of Mines suggests that consultation was inadequate.

- Despite policy intents to promote value addition and beneficiation, reality on the ground tells a different story. There are no clearly formulated policy measures/strategies for promoting value addition and beneficiation. All precious minerals (including diamonds) continue to be exported in their raw form while a small percentage of gold is locally manufactured into jewellery. There are also no clearly-spelt out strategies for attracting investors into the value addition and beneficiation sector. The enforcement of penalties to defaulting companies is compromised by lack of well-developed local refineries and jewellery industries.

- Despite policy emphasis on skills development, local knowledge of the diamond industry, especially skills relating to diamond exploration, extraction, cutting and polishing is poor. Policy implementation is fragmentary and private sector-driven. This may expose the industry to revenue losses through exorbitant consultancy fee charges.

- There is a veil of secrecy over mining operations in the Chiadzwa fields. Little is known about the actual size of the diamond fields, how many carats of diamond are produced per months/yearly, the price of a carat of diamond, how much is generated from sales and how much is remitted to the state. Such lack of accountability in diamond mining heightens the corruption risk. Review of statements by the Minister of Finance and the Minister of Mines and Mineral Development shows a discrepancy between revenue figures. The Treasury seems to have little information about companies such as Anjin, despite its having been in operation since 2010. A report “Financing a Parallel Government” that was released in June 2012 by Global Witness provides detail on off-budget financing for the military and secret service. The minister is quoted saying that in August 2012, Zimbabwe sold diamonds worth about US$456 million from which Treasury only received 9% (US$41 million) from the proceeds. The source further claims that although Mbada Diamond Company sold diamonds worth US$200 million and Anjin Investments about US$125 million, nothing was

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24 http://www.sokwanele.com 8 July 2012
25 http://www.newzimbabwe.com
remitted to the Treasury. A Parliamentary Report (2011) revealed that at least US$200 million in diamond revenues was being milked out of Zimbabwe by each of the three companies per month.\textsuperscript{26} In Zimbabwe, mining companies are obliged to pay at least half of their revenue to the state while in Botswana, the state is in joint venture with De Beers Ltd which pays an average of 73\% of gross revenue from raw diamond sales to the Botswana government.

- There are loose areas in tax policy. Provisions for multiple tax rebates, concessions and exemptions place most major mining companies on tax holidays and in this way exempting them from paying duty as they can technically declare losses and carry over until they close. The Treasury is losing revenue from tax evasion by companies involved in the mining of strategic minerals such as platinum, gold and diamond. In 2010, the central bank instructed the Zimbabwe Revenue Authority to collect millions of United States dollars allegedly owed to the Treasury by the Zimbabwe Platinum Mines (Zimplats) in unpaid taxes (The Financial Gazette, February 19-25, 2009). An international accounting firm, Alex Stewart International (ASI) which was contracted by the Reserve Bank of Zimbabwe to conduct the audit, claimed to have found a non-interest liability of US$115 million owed by Zimplats from Additional Tax on Profits (ATPs). This tax scam was unearthed at Hartley Minerals Zimbabwe (HMZ) and the Zimbabwe Platinum Mines, the two companies that are owned by the world’s second largest platinum producer, Impala Platinum. Arguments by Zimplats that under the agreement it signed with government, ATPs were not payable is a pointer to the possibility that mining companies are beneficiaries of agreements entered by several mines where tax credits would be earned taking into consideration its social responsibility programmes. While the law requires that mining companies submit details of output and the mining commissioner to inspect financial books of mining companies, compliance with these provisions is questionable. Thus, while the mining sector is estimated to be contributing around 23\% of the country’s GDP, tax evasion and mineral smuggling are estimated to cost the country at least US$1.2 billion per annum in potential revenues (Financial Gazette, December 16-23, 2010). As further claimed in this paper, out of the US$1 billion worth of minerals exported in 2009, only US$44, 8 million was generated through corporate tax, Value Added Tax, Pay As You Earn and royalties.

The Legal Framework


\textsuperscript{26} http://www.financialgazette.co.zw, accessed 28 June 2012

Notwithstanding this legislative web, this chapter is restricted to the Mines and Minerals Act (Chapter 21:05) and the Precious Stones Trade Act (Chapter 21:06).

**The Mines and Minerals Act Chapter 21:05**
The Mines and Minerals Act is the principal law governing the mining sector in Zimbabwe, with provisions for tenure, acquisition, maintenance and relinquishing of mining title. Its origin and enforcement dates back to 1923 and has over the years gone through a series of amendments aimed at improving its suitability. The Act is in twenty seven parts that cover, among others, issues relating to mining rights, establishment and functions of the Mining Affairs Board, registration of approved prospectors, acquisition and registration of mining rights; prospecting and pegging; exclusive prospecting reservations; mining leases; special mining leases; rights of claim holders; preservation of mining rights; royalty payments to local authorities; special grants; and administration of the Act, among others. However, this chapter will restrict coverage to those viewed as potential soft spots for corruption-induced revenue leakage.

**Salient Provisions of the Act**
The Act vests the rights to minerals in the President. The power to dispose of mining rights is thus the sole responsibility of the President. The President can issue special grants for the mining of minerals.

All state, communal and private land (either owned by a private company or person) is open to prospecting (section 26). Any person may apply to the Mining Affairs Board for authority to prospect on reserved ground.

Part 11 of the Act provides for the creation of a Mining Affairs Board to exercise and perform the powers, functions and duties conferred and imposed upon it by the Mines and Minerals Act. This Board is chaired by the Permanent Secretary of the Ministry of Mines and Mining Development, with members selected for their expertise in mining, legal, and environmental affairs. In the exercise of its powers the Board can require any area of ground or mining location or person to be investigated or appear before it to provide evidence, explanation, records, etc.

Registration of approved prospectors (Part 111) is the responsibility of the Secretary. The Office of the Secretary is authorized to establish a register of all Approved Prospectors. All permanent residents of Zimbabwe above 18 years are eligible to apply to a Mining Commissioner (the approving authority) who after assessing the eligibility of the application, forwards the application to the Secretary who may either approve or reject the application.

Acquisition of Mining Rights is free for all. Any person of 18 years of age or older who is a permanent resident of Zimbabwe or any duly appointed agent of such a person is eligible to apply for one or more prospecting licenses to the mining commissioner. Where the mining commissioner refuses to grant the license, the basis of refusal is reported to the Secretary, who in turn refers the report to the minister who may either endorse or reverse the decision.

Prospecting license holders are entitled to peg and register a claim as a mining claim. A mining claim confers on the holder the exclusive right to mine the mineral resource for which the claim was registered as well as prospecting for other minerals on the claim. Holders of prospecting licenses are allowed to appoint an
approved prospector to act as representatives.

Under Part 1V of the Act, any person can apply to the Mining Affairs Board for an Exclusive Prospecting Order (EPO). An EPO confers the exclusive right to prospect for specified minerals in any defined area in Zimbabwe, including any area reserved from prospecting. Applicants submit details on proposed works programmed, area description, certificate of incorporation, details of directors, company shareholding structure and also pay a fee. The approving authority is the President of the country. The maximum possible period for operating an EPO is six years. License/concession holders are obliged to submit to the Mining Affairs Board a programme of work carried during the period covered by the programme, upon failure, the Order may be revoked by the Board.

Under Part V111 of the Act, holders of mining claims may apply to the mining commissioner for mining leases which give them exclusive right to mine deposits or minerals that occur within the vertical limits of their leases. Application for leases should have the name and address of land owner, list of minerals to be mined, sketch plan of area, details of reef blocks in the area, list of mining locations contained. The approving authority is the Mining Affairs Board.

Part IX provides for Special Mining Leases. The holder of a mining claim who intends to develop a mine with wholly foreign investment and whose output is primarily for export may apply to the Mines Affairs Board (who after making recommendations), forwards it to the Minister (who also after making own recommendations) forwards it to the President. The approval authority therefore lies with the Mining Affairs Board. Details to be submitted include name and address of land owners, list of minerals to be mined, sketch plan of area, details of reef blocks in the area, and list of mining locations contained.

Part XIX provides for a Special Grant. Under these provisions, any person can apply for a special grant to carry out prospecting operations or to carry out mining operations or any other operations for mining purposes. The approval authority is the President. Details needed include full information of financial status, full information of technical expertise, particulars of guarantees, mineral to be mined, sketch plan of area, full names and nationalities of directors and work programme.

Gaps in Legal Frameworks

While the Mines and Minerals Act has over the years generally been viewed as hospitable to both local and international investors because it has provisions that make it simple for investors to acquire and relinquish mining titles,27 the following are some of the observed gaps

- Part 1 which vests mineral rights in the President rather than in the State may create space for spoils. National Presidents as presidents of political parties are always under mounting pressure to appease their constituencies. This risk is extremely high in polarized political environments.

- Review of most provisions in the Act suggests that the responsible minister has sweeping powers in many areas, raising the risk of unilateralism and patronage. It is the responsible minister rather than the Board who decides whether or not to issue an exclusive exploration license. In the case of mining leases, while the Act empowers the Board to issue mining licenses, the Minister has the authority to cancel them. This effectively transfers approval authority from the Board. The responsible minister, shielded by these excessive powers may be less inclined to disclose information relating to the award of tenders, production levels and proceeds from diamond sales.

- The Mining Affairs Board is compromised in terms of

27 [http://www.chamberofminesofzimbabwe.com](http://www.chamberofminesofzimbabwe.com)
composition, powers and operational framework. The Act is silent on the frequency of its meetings; a serious omission that denies the Board timely scrutiny of controversial mining agreements/concessions. The responsible minister also wields extensive appointive powers. The majority of board members are appointed by the minister. It is the responsible minister who appoints the chairman of the Board. This skews the composition of the Board to his advantage and in this way compromises the oversight management functions of the Board.

- Provisions give EPO holders powers to prospect over too extensive areas in Zimbabwe and also preserving mining titles by simply paying annual fees. This encourages hoarding and speculative tendencies. Individuals and companies take advantage of these legal loopholes to buy and hold on to several mining claims which they later simply transfer undeveloped, making huge profits at the expense of full exploitation of mineral resources. Mining claims were secured cheaply during the hyperinflationary environment (before dollarization) by individuals with no interest or background in mining. For instance, De Beers held extensive exclusive prospecting orders for diamond exploration stretching as far back as 1993, holding a total of 47 EPOs in Chipinge and Chimanimani districts. There are even fears that government could have been prejudiced of millions of dollars through abuse of these EPO provisions.

- The role of parliament is rather muted. While exclusive prospecting orders are laid before Parliament, Parliament has no power to disapprove them.

- The Act is too detailed in the areas relating to beaconing, pegging and registration of mining companies. While the need for specificity is indeed critical to ensure that deserving applicants are awarded, complicated procedures and requirements tend to attract high compliance costs. They also create space for bribes.

- The Act is not clear on issues of corporate social responsibility. It does not explicitly oblige social development obligations on mining companies. The increase in activity within the mining sector and the relocations and widespread environmental degradation that accompany them make it mandatory to have explicit provisions that ensure that mining companies meet the cost of restoring the environment.

- There are also several sections that are not consistent with other sections. Inconsistencies create space for non-compliance. The Mines and Minerals Act needs to be synchronized with the new Diamond Policy and the Precious Minerals Act.

- Provisions relating to the issuance of mining licenses do not allow much transparency and space for appeal to the Administrative Court against decisions which affect their rights. The Act (Section 89(3) does not provide applicants the right of appeal to the Administrative Court against the Board's refusal to recommend the issue of a license.

- While the Act has appeals provisions in which grievances may be referred from the Commissioner to the Secretary of Mines up to the responsible Minister, these appeals frameworks need tightening, especially in the wake of increased frequency of boundary-related disputes since the discovery of diamonds in the Marange area. The discretionary power given to mining commissioners also needs review to curb the risk of abuse of discretionary powers.

The Act is not explicit enough on issue of auditing of the operations of mining companies. The Office of the Comptroller
and Auditor General is yet to release audit statements on the four companies operating in the Chiadzwa diamond fields.

**The Institutional Framework**

There is an intimate relationship between policy, legal and institutional frameworks. Institutions are the administrative structures through which government policies and legislations are enforced. The way institutional frameworks are structured has important consequences for the content and enforcement of national policies and legislation. As aptly captured by Dye (2011, 12) “a policy does not become a public policy until it is adopted, implemented and enforced by some government institutions”. Government institutions lend legitimacy, universality and coercion to national policies. Notwithstanding this, policy and legislative enforcement is not entirely dependent on institutional structure. Socioeconomic factors also come into play.

Mining activities in Zimbabwe directly fall under the jurisdiction of the Ministry of Mines and Mining Development. The ministry executes its mandates through an array of departments and parastatals such as the Monitoring and Surveillance Unit, the Mining Research and Development Unit (MRDU), the Department of Geological Survey, the Department of Metallurgy, the Zimbabwe Mining Development Corporation (ZMDC), the Minerals Marketing Corporation of Zimbabwe (MMCZ) and the Mining Affairs Board.

The ZMDC was formed in 1982 under the Zimbabwe Minerals Development Corporation Act (Chapter 21:08) which spells out its functions, powers, duties and reporting structures. Its functions, as outlined in Part 111, include investing in the mining industry of Zimbabwe on behalf of the state, planning, coordinating and implementing mining development projects on behalf of the state, advise the minister on all matters concerned with corporate investments in the mining industry, reviewing annually the economic conditions and prospects of the mining industry. In executing its mandate, the ZMDC is expected to ensure that all applications or proposals are in accordance with Government economic policy and also that all matters relating to the mining industry are carefully reviewed in the national interest. It executes these functions through a 5 to 9 member board whose members are appointed by the minister in consultation with the President. The chairman of the board is appointed by the minister while board members hold office for periods not exceeding 3 years. Since the 2006 Marange diamond finds, ZMDC has entered into joint venture operations with all the four companies operating in this mining sector on behalf of the state. It has also been exercising due diligence on all approved companies in the Marange diamond fields.

The MMCZ was formed in 1992 on the basis of the Minerals Marketing Company of Zimbabwe (Chapter 21:04). The Act outlines its functions, powers and duties, which include acting as the sole marketing and selling agent for all minerals, investigating marketing conditions for all minerals, purchasing and acquiring any minerals for its own use account and to sell and dispose them, advising the minister on all matters relating to marketing of minerals, encouraging local beneficiation and utilization of minerals. In executing its mandates, MMCZ is expected to be guided by considerations of national interests of Zimbabwe and the common interests of all producers of minerals. The corporate entity is expected to produce an annual report of its operations which is submitted to the responsible minister in terms of the Audit and Exchequer Act. The MMCZ is part of the institutional structures currently responsible for the selling of the Marange diamonds. Other bodies include the Zimbabwe Republic Police Minerals Unit and Ministry of Mines and Mining Development. This triad should be informed whenever a diamond action is to take place.

The Mining Affairs Board is a body created through Part II of the Mines and Minerals Act to exercise and perform the powers, functions and duties conferred and imposed by the enabling Act. Its functions and duties are to advise the Minister and to exercise the oversight in the management of mining titles and
CHAPTER TWO: An Assessment of the Policy, Legal and Institutional Framework Governing the Mining of Gold, Diamonds and Platinum in Zimbabwe

administration of the Mines and Minerals Act. It is chaired by the Permanent Secretary of the Ministry of Mines and Mining Development, board members selected for their expertise in mining, legal, and environmental affairs. Members of the board hold office at the pleasure of the Minister on such terms and conditions as the minister may fix.

Other key institutional stakeholders include the Ministry of Finance, the Zimbabwe Revenue Authority (ZIMRA), the Parliament, the Office of the Comptroller and Auditor General. The Ministry of Finance is the guardian of public funds. It is the Treasury (national purse) to which all state funds (including diamond revenues) are remitted. The ZIMRA is the sole revenue collection authority. It is mandated to collect revenue from all business operations in the country. The Office of the Comptroller and Auditor general provides audit functions. It has a right to audit all financial activities by state bodies. They thus help to identify at regular intervals, deviations which might require corrective action. Audits are thus watchdogs against corruption, resource wastage and inefficient decision making.

In the Marange diamond fields, mining is undertaken by four diamond mining companies, namely, Diamond Mining Corporation, Anjin Investments, Marange Resources and Mbada Diamonds. They were all formed as joint venture partnerships with the Zimbabwe Mining Development Corporation (ZMDC).

In 2011, all the four companies were certified compliant by the Kimberley Processing Certification Scheme (KPCS) and thus authorized to auction and export their diamonds. By May 2012, 19 companies had been licensed for diamond cutting and polishing as part of moves to enhance beneficiation and value addition although there is little publicly known about how they were awarded these licenses. With value addition, the diamond industry is expected to create employment for locals. India, one of Zimbabwe’s major diamond markets, is estimated to create around 60 000 jobs to cut and polish rough diamonds from Zimbabwe. The Government is also working with the School of Mines of Zimbabwe and other tertiary institutions in skills development. It is also expected to benefit from diamond institutes from South Africa, Botswana, Namibia and Angola.

Local and international non state organizations also form part of the institutional framework. They, through monitoring, advocacy, lobbying, consultancy, research, activism, among others, influence activities in the mining sector. Among these is the Diamond Association of Zimbabwe (DAZ) which was established in 2009 with a mandate to promote and support the beneficiation of precious stones in the country. It has done research on the challenges facing the beneficiation industry, citing absence of a diamond Act and the establishment of a regulatory authority for the diamond sector.

Gaps in the Institutional Framework

- In practice, institutional role boundaries are not clearly delineated and in many respects seem to go beyond espousals in enabling Acts. The Minister of Mines and Mining Development, notwithstanding his being the responsible minister, seems to have usurped the powers of other key institutional stakeholders. In the Marange diamond fields, the minister appears to be unilaterally running the show. This lack of clarity in the delineation of boundaries is a recipe for mismanagement, unilateralism and cronyism in the conduct of mining business.

- In practice, it is not clear which institution makes decisions on matters relating to awarding of mining contracts, licensing and marketing rights. While the enabling Acts clearly designate the Minerals Marketing Corporation of Zimbabwe as the sole marketing and selling agent for all minerals, scenarios especially in the diamond fields raise

28 http://allafrica.com
questions on which institution between the Ministry of Mines and Mining Development and the Minerals Marketing Corporation of Zimbabwe is in practice granting marketing rights to mining companies. Some of the cases reviewed in this chapter point to the responsible minister as the granting authority.

- While the ZMDC is mandated to invest in the mining industry of Zimbabwe on behalf of the state, the secrecy prevailing around most of its joint venture partnerships and shareholding structures (especially in the Marange diamonds) does not augur well for national interests. Its capacity, independence and impartiality in exercising due diligence on approved companies in the Marange diamond fields looks questionable especially in view of what are perceived to be questionable award of mining concessions to companies without the requisite mining expertise and experience.

- A fully fledged diamond industry with specialized bodies and incorporating all the diamond players in the country is yet to be established. Such specialized bodies would enhance transparency, merit and effective management of diamonds by accounting for all the gems from the mines, communicating with investors, appraising the government of the diamond stocks, negotiating with buyers and also ensuring that the nation knows how much has been sold and what revenue the state should get.

- The responsible ministry is not transparently sharing information relating to the Chiadzwa diamond fields with other institutional stakeholders such as the Ministry of Finance, ZIMRA, Reserve Bank of Zimbabwe, Parliament and Offices of the Comptroller and Auditor General. Information on mining activities appears the preserve of the responsible ministry, which is disclosed at its own discretion. This seems to account for the frequently released conflicting official statements on information relating to the production, sale and remittance of proceeds to the Treasury.

- Auction procedures governing Marange diamonds need to be looked into. The current set up involves the MMCZ, the Zimbabwe Republic Police Minerals Unit and the Ministry of Mines and Mining Development. This review is pertinent given experiences in which Mbada Diamonds, one of the four companies mining diamonds in Marange, was accused of seeking to clandestinely auction diamonds without involving other partners.

- While the legislation governing revenue collection clearly designates the Zimbabwe Revenue Authority (ZIMRA) as the revenue collection authority, scenarios aground suggest that its access to the financial records of the four companies that are in operation has been restricted. The impression is that the Zimbabwe Revenue Authority is not in control of the diamond revenue collection processes. Diamond mining companies seem to remit revenue as they see fit. Its role appears restricted to receipting remittances of royalties collected by the MMCZ from the sale of minerals.

- Negotiations for mining contracts and mining concessions are shrouded in secrecy. Compliance with competitive bidding procedures and involvement of key institutional stakeholders such as parliament, Cabinet, Mining Affairs Board and other professional bodies is highly questionable. The impression is that information filters to the public through the independent press. To date, little is known about why De Beers lost its Marange mining claims in 2006, how mining rights were then awarded to a UK-based Africa
Consolidated Resources Ltd and later cancelled in 2009 before being divided between Mbada Mining Private Ltd and Canadile Mining Private Ltd. De Beers had been granted extensive exclusive prospecting orders (EPOs) for diamond exploration stretching as far back as 1993, holding a total of 47 EPOs in Chipinge and Chimanimani districts. When its exploration certificate expired in 2006, it was refused renewal by government, the mining conglomerate being accused of having prejudiced the Treasury of millions of dollars by taking long to declare the discovery of alluvial diamonds which it had discovered way back in 2002 (The Sunday Mail, July 8-14, 2012). The Africa Consolidated Resources which had been involved in mineral explorations in the area over the years had its license cancelled in 2009, accused of having been inappropriately awarded a mining concession. This was after a three year legal ownership battle, in which a 2009 High Court ruling had declared the Africa Consolidated Resources as the legal Chiadzwa claim holder (The Zimbabwean, 2 July, 2010). A Botswana company which had been prospecting in the Chimanimani area since 2009 and trading as Africa Diamonds (in partnership with one local company) had its special grant to explore and mine diamonds “withdrawn without explanation” in 2011. A Russian company OZGEO (which operated as a joint venture with local partner Development Trust of Zimbabwe) was granted a special grant to explore and mine diamonds. The origin and shareholding structure of Anjin, one of the four companies operating in the Chiadzwa diamond fields since 2010 as a joint agreement between Zimbabwe and China, has remained a closely guarded secret.

- State institutional capacity to run the diamond industry is currently stressed. Local expertise in precious stones such as diamonds is visibly weak. State institutions offering training to locals in related matters of diamond exploration, extraction, marketing, selling, cutting, and polishing are yet to be established. While the Zimbabwe Diamond Education College and the Core Mining and Mineral Resources are currently involved in the training of locals in the management of the gold and diamond industry as well as diamond processing (cutting and polishing) are positive efforts towards building capacity in the diamond and gold industry, matters of this importance are too dear and delicate to be left to the volition of private sector players. Current efforts directed at establishing a Minerals Exploration Company are also steps in the right direction. So are efforts taken by government to work closely with the School of Mines of Zimbabwe and other tertiary institutions from diamond institutes from South Africa, Botswana, Namibia, and Angola. Zimbabwe has to tap from gold and diamond mining experiences from the region.

- There should be a regulatory authority governing matters relating to strategic and precious minerals like diamonds, gold and platinum.

- There are no clear-cut valuation and pricing processes for gold and diamond in place. Government is currently relying on diamond price lists produced by global diamond trade watchdogs such as Rapapart Group, scenarios that carry high risk of revenue losses through underpricing of diamond gems. Some international groups could be taking advantage of this dearth of skills in valuation.

Conclusions
Review of frameworks governing the gold, diamond and platinum sectors point to frameworks that are stressed at both the structural and practice levels. Mines and Minerals Act and the Precious Trade Act which have been in force since the 1920s...
have lost relevance over the years and are not adequately constituted to provide effective regulatory contexts, especially in the wake of the Chiadzwa diamond finds in the Marange area of Manicaland province. While by 2006 efforts towards amending the Mines and Minerals Act had been initiated, they are to this date to be legislated into an Act. These delays and absence of a properly constituted framework are not only generating uncertainty in the policy environment but are also creating space for illicit trade in precious minerals.

Monitoring of the extent to which institutions involved in the mining sector are operating within the context of their defined mandates is weak, scenarios that have seen some institutions usurping the roles of other stakeholder players. There is secrecy over the negotiation of mining contracts and concessions, scenarios that in turn create challenges in terms of disclosure of information relating to the operations and shareholding structures of companies that are in joint venture partnership with the state through the ZMDC. There are also questions on the extent to which competitive bidding processes are complied with.

Mining operations, especially in the Chiadzwa diamond fields, typify blind mining. A clearly stated official position on the actual hectarage covered by the Chiadzwa diamond finds is yet to emerge. Full scale exploration of the area is yet to be done. A clear framework for valuating and pricing of diamonds and determining the price of a carat of diamond is also yet to be put in place. This state of affairs is a recipe for revenue losses through illegal mining, illicit trade and underpricing of diamonds. An up to date registration of the state of mining activities across the country, the small scale miners included, is not yet in place. Revenue remittance processes are not transparent enough. While the legislation governing revenue collection clearly designates the Zimbabwe Revenue Authority (ZIMRA) as the revenue collection authority, scenarios on the ground suggest that it is not in control of the diamond revenue collection processes. Contrary to traditional practices where business entities remit payments directly to ZIMRA, diamond mining companies are remitting revenue payments directly to MMCZ instead of ZIMRA. ZIMRA’s activities appear restricted to receipting remittances of royalties collected by the MMCZ from the sale of minerals. This arrangement hardly augurs well for effective revenue remittance to the Treasury. It in a way accounts for the current untenable situation where the finance ministry claims nonreceipt of revenues while the Ministry of Mines and Mining Development and diamond mining companies claim having paid.

Recommendations
Against this background, it is recommended that:

Public Interest Driven Policy Management
Considerations of national interest (rather than partisanship) inform and guide the formulation and enforcement of policies and legislation governing the mining sector. The responsible ministry and departments directly entrusted with the management of these sectors should ensure that mining contracts and concessions are negotiated in a transparent manner following laid down national tendering processes. Involvement of all relevant institutional structures such as parliament, cabinet and civil society is also critical for breathing transparency, accountability and legitimacy in their operations.

Independent Audit
There should be an independent audit of the operations of the four joint venture mining companies in the Marange diamond fields. This audit should interrogate how mining contracts and commissions were awarded, compliance with competitive bidding, shareholding structures, monthly production levels,
proceeds from diamond sales and how much has been remitted to the Treasury.

**Thorough Scrutiny of Mining Deals by Cabinet**

The Cabinet as the apex decision making authority has a mandate to ensure that all diamond mining deals are in the national interest. It has to ensure that all mining contracts and concessions bear its stamp of approval. Approval powers relating to such strategic finite resources should be a collective responsibility.

**Thorough Scrutiny of all Mining Contracts and Concessions by Parliament**

- Parliament, especially through the Parliamentary Portfolio Committee on Mines and Energy should remain proactive in executing its oversight functions to ensure that all draft agreements relating to mining contracts and concessions are thoroughly scrutinized before being granted. Parliament should be empowered to make binding recommendations before all mining deals are concluded. Parliament should also ensure that the three institutions (MMCZ, Ministry of Mines and Mining Development and the Zimbabwe Republic Police Minerals Unit) which are currently responsible for the selling of the Marange diamonds are executing their mandates transparently. There is also need to scrutinize if this triad structural framework is well constituted in terms of capacity, independence, reporting and disclosure requirements. Parliament should ensure that due process for selling diamonds is complied with and that diamond receipts are released to relevant authorities.

**Proactive Role of the Office of the Comptroller and Auditor General**

- The Office of the Comptroller and Auditor General should also be more visible and proactive in executing its audit mandates in the diamond sector. The Office is mandated to audit the books/financial activities of all state companies. The four diamond mining companies which are in joint-venture partnerships with the state through ZMDC have a mandate to avail their books for audit by the Comptroller and Auditor General. The Comptroller and Auditor General also has a mandate to ensure that Annual Audit Reports are availed to relevant parliamentary committees for scrutiny.

**Review Diamond Remittance Processes**

- Diamond receipting and revenue remittance processes need to be reviewed. While the legislation governing revenue collection clearly designates the Zimbabwe Revenue Authority (ZIMRA) as the revenue collection authority, scenarios suggest that it is not in control of the diamond revenue collection processes. Diamond mining companies are remitting revenue directly to MMZC instead of ZIMRA as is the traditional procedure. ZIMRA’s role appears restricted to receipting remittances of royalties collected by the MMCZ from the sale of minerals. ZIMRA as the sole revenue collection authority in the country should exercise its authority verifying throughput of extracted minerals. It should station its officers at selected mining locations in order to ensure transparency and accountability of extracted resources. However, effectiveness of these proposed measures largely depends on the extent to which ZIMRA and the Ministry of Mines and Mining Development will timeously share information relating to mineral exports. ZIMRA officials stationed at various border posts have also been implicated in cases of corruption. The Ministry of
Mines and Mining Development should transparently share information with ZIMRA.

**Review Income Tax Frameworks**

- There is need to tighten loose areas in Income Tax Act (Chapter 23:06). There are multiple tax rebates, concessions, exemptions which place most major mining companies on tax holidays, exempting them from paying duty. Companies can declare losses and carry over until they close. Companies may be exempted from paying royalties when ore is extracted for experimental purposes. The Treasury is losing revenue from tax evasion by companies involved in the mining of strategic minerals such as platinum, gold and diamonds. Notwithstanding the need to plug revenue leakage in corporate tax systems, a delicate balance should be struck between increased revenue inflows and long-term viability of the mining industry. Equally critical is the need to avoid predatory and unfriendly policies. Policy formulation should be well thought out and based on broad-based consultation.

**Provide for Value Addition and Beneficiation**

- A robust, nationally-driven process should be put in place to ensure value addition and local beneficiation. Minerals are finite resources. The Diamond Act should ensure that benefits accruing from minerals benefit the Zimbabwe economy. Currently ore is exported for processing in other countries. For instance, matte from the country’s platinum mines is being processed in South Africa. These arrangements prejudice the national economy in terms of revenue and employment creation. There should be minimum requirements compelling all companies that seek to invest in the mining sector to have clearly formulated beneficiation and value addition policies. The Minister of Finance should introduce punitive penalties for producers who avoid using local refineries. The US $1 billion platinum base metal refinery that was proposed in 2005 (but collapsed due the socioeconomic meltdown) should be resumed with vigor as government had already secured strategic partners to establish the plant. Companies that are currently mining in the gold, platinum and diamond sectors should also support these initiatives by providing additional infrastructure. There should be heavy penalties for those companies that avoid local processing infrastructures. Platinum, gold and diamond producers should enter into local tolling arrangements for smelting, converting and refining.

**Establish State-run Training Colleges**

- There is also dearth of expertise in precious stones among locals. The establishment of the diamond industry should therefore be complemented by a vigorous training of locals in matters relating to diamond exploration, extraction and cutting. The locals should also be trained to run the industry. This would also go a long way in curbing revenue losses arising from cases where precious metals are processed outside the country. While the initiative by a private local college to train Zimbabweans in diamond processing is a step in the right direction, such critical matters should not be left to the whims of private players. There is need for state-run institutions.

**Disclosure of Sale Proceeds**

- While agreements by companies operating in the diamond industries oblige them to pay at least half of the gross revenue to the state, revenue inflow to the Treasury has not been transparent enough. Official figures of how much diamonds have been extracted over the past six years remain sketchy. Information relating to diamond production, grading and sales is not sufficiently availed to the Treasury
CHAPTER TWO: An Assessment of the Policy, Legal and Institutional Framework Governing the Mining of Gold, Diamonds and Platinum in Zimbabwe

and the Zimbabwe Revenue Authority. Companies must be forced to accept full state supervision and control of all raw diamond production, grading and sales. The Zimbabwe Revenue Authority must ensure that payments are made to the Treasury before the balance of proceeds is paid to the mine operators.

**Penalties**
- The Act should also be more specific on penalties. Across the world, stiff penalties have acted as effective deterrent mechanisms. The severity of penalties should graduate with the value of precious stones stolen. Amendments should also pay particular attention to issues of valuation of the precious minerals.

**Sovereign Wealth Fund**
- Proposals to create a Sovereign Wealth Fund or Inter-Generational Fund, is a positive move. Diamonds are non-renewable resources. A Sovereign Wealth Fund, an inter-generational fund is needed as back up when diamonds have been exhausted. A Sovereign Fund is a pool of money that is generated from the extractive industries. They are created to manage natural resource rents such as royalties by ensuring that a specified percent is transferred to the fund.31 African countries such as Nigeria, Libya and Botswana have made use of sovereign funds to reconfigure development through harnessing financial resources from non-renewable sectors to strategic investments or holdings. However, in establishing such a national fund, considerable effort should be made to ensure that values of transparency, broad-based consultation and prudent management are provided for in the Diamond Act. Equally critical is to ensure that the Board overseeing such a Fund involves Government, mining industry and civil society. Literature is replete with cases where such national funds end up being diverted to fund issues that are not in the national interest.

**Establish a Diamond Regulatory Authority**
- The Diamond Act should also provide for diamond regulatory authority to be responsible for licensing issues, reviewing current tender systems, reviewing licensing fees, licensing timeframes, trading in diamonds, compliance and implementation of the KPCs. The proposed Diamond Act should also clearly define the rules of investor identification and contract negotiations, clearly define frameworks for marketing diamonds, clearly delineate the roles of institutions that are directly dealing with diamonds, provide for eligible appointments to mining boards, emphasize the social obligations of mining companies to local communities, provide for penalties that vary with the value of diamonds involved, provide penalties for avoiding local refineries, provide a clear legal framework for small scale miners as a way of controlling illegal diamond mining and trading, provide for the use it or lose it principle on mining claims, among others.

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31 Sunday Mail, 22-28 August, 2012
CHAPTER THREE:
The Economic Impact of Illicit Activities and Corruption Tendencies in the Gold Mining Sector on the Zimbabwean Economy
by Isaac Kwesu

Introduction and Background
Modern mining began in Zimbabwe in 1892 and by 1990 over 40 minerals were being exploited. Over the first 100 years of modern mining activity, the two most valuable products by far were gold and asbestos but this changed with the emergence of nickel and ferrochrome as major exports and, more recently, the exploitation of platinum group metals (PGM) – platinum, palladium and rhodium. In addition, gold has recovered in value due to the large increases in prices. Finally in the last five years, diamonds have emerged as a major mineral, perhaps the most important by value, although, as discussed further below, there is some difficulty in determining both how important it has become today and how long known resources are expected to last. Excluding diamonds from the Marange area, about 70% of the value of total mining production in 2010 was from either gold or PGM and another 20% was chrome and ferrochrome. These amounts fall to 57% and 16%, respectively, when a roughly estimated $320 million of mostly industrial diamonds from the Marange fields are included.

Illicit and Corrupt Dealings in the Mining Sector
The illegal mining activity is largely common with the artisanal and small scale sector. In Zimbabwe this sector is dominated by gold mining. The increase in small-scale gold mining activities can be attributed to their profitable income generating potential, which provides a ready means of survival to local communities, more so with the country’s erratic rain patterns, which makes reliance on agriculture uncertain. About 15% of gold exports from Zimbabwe in 1999 were estimated to come from small-scale mining (MMSD, 2001). Globally, nearly 15-20% of the value of non-fuel minerals comes from Small Scale Mining (SSM) operations. It is also a well-known fact that artisanal “barefoot explorers” discovered many deposits mined by large-scale mining companies. In addition, marginal reserves that would otherwise be classified as uneconomical can be mined using SSM methods.
The Problem and the Objectives

This chapter is based on a study that examines the extent and the magnitude of the impact of illicit activities and corruption tendencies in the illegal gold mining sector on the growth and development of Zimbabwean economy. It also draws policy recommendations for the eradication of illegal and corrupt activities in the informal gold sector in Zimbabwe. The chapter provides answers to the following questions: (i) What types of illicit and corrupt practices are noticeable in the informal gold sector? (ii) What is the economic basis for these corrupt practices? (iii) What is the extent and the magnitude of its impact on the growth and development of the Zimbabwean economy?

Scope of the Study

The study was based on the illicit dealings and corruption in predominantly manifested illegal small scale and artisanal miners (makorokoza) in Kwekwe.

Review of Literature and Conceptual Framework

According to Ngouo (2000) and the World Bank, corruption is the exploiting of public positions for private benefits. She also states that the lack of any civil spirit among all categories of civil servants leads to corruption and misappropriation of public funds. To Tanzi et al (2006), corruption is not only found in the public sector; it is equally prominent in the private sectors; Akindele (2005) sees corruption as behaviour which deviates from the formal rules of governing the actions of someone in a position of authority. According to Osunyinkanmi (2009), the term corruption is a synonym with such terms as fraud, bribery, and settlement.

Empirical research on corruption has commonly found that corruption impedes economic growth, it has been noted that ‘it is a common finding in the literature that corruption hinders economic growth.’

Svensson (2005: 39) adds that most, although not all, of the theoretical literature, as well as micro evidence, appear to suggest that corruption severely hampers development. At the firm level, Fisman and Svensson (2007) and Kimuyu (2007) both find corruption to have a negative effect on firm growth in Uganda and Kenya, respectively.

Corrupt practices inherently introduce distortions in the economic system and it has the capacity to impair hard work, diligence and efficiency. It is capable of diverting resources from the societal to private or personal use. They maintain that it subverts honest selection processes and distort prices; whereas Tanzi (1995), and Rose Ackerman (1998) re-affirm that corruption weakens institutions, hampers investment and retards economic development.

Some early authors argued that corruption has the potential to improve efficiency and help growth. Corruption has been viewed as the necessary “grease” to lubricate the stiff wheels of rigid government administration. Myrdal (1968), however points out that instead of speeding up procedures, corrupt officials actually have an incentive to cause greater administrative delays in order to attract more bribes. Thus, “efficient corruption” arguments ignore the enormous degree of discretion that bureaucrats have. Bureaucrats are able (and willing) to create, proliferate and reinterpret regulations in order to extract the maximum amount of corruption available. Recent literature therefore views corruption as much more than a price mechanism. Corruption

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34 Ekpo and Egenedo (1985) and Obadan (2001)
35 Leff (1964) and Huntington (1968)
36 Kaufmann, 1997: 115
has been argued to cause the reallocation of talent away from entrepreneurial activities towards unproductive rent-seeking activities, as the most talented people compete for the greatest payoffs available within the economy.\(^{37}\) Accordingly, the effects of corruption are multifaceted and not as straightforward as many of the early authors portrayed.

A second strand of economics literature has sought to determine the determinants of corruption.\(^{38}\) The most comprehensive econometric analysis of the sources of corruption is a cross-sectional study from Treisman (2000). This study tested a wide range of theoretical explanations of corruption and finds mostly factors that are difficult to change in the short to medium run as determinants of corruption. Specifically, Treisman found countries with long exposure to democracy, Protestant traditions, histories of British rule, more developed economies, and higher import were less corrupt (although the effect of imports was considerably small), while countries with a free press, a high share of women in government, and a long record of trade openness are also found to be associated with less corruption.

**Methodology**

The research design adopted for this work is a mixed approach with greater bias towards the experimental research design. The reason is that the experimental research design combines the theoretical consideration with empirical observation. The methods to collect data and results presented in this chapter included:

- Interviews with a sample of miners guided by questionnaires with 97 informal artisanal miners and semi-structured interviews conducted with stakeholders on general perceptions on the types, trends of mining processes and other income portfolios, perceptions on environmental degradation, benefit flows, characteristics of mining and its governance;
- Consultation meetings and focus group discussions with local administrations, park officials, village chiefs, counsellors and other local stakeholders;
- Documentary analysis or desk reviews of literature of published mining permits, national laws and regulations, documents produced by support and mining organisations.
- Consultation of unpublished reports from government ministries and local NGOs;
- Informal discussions with staff of stakeholder organisations on the social and environmental impacts of small-scale mining
- Field visits to current mines for observation, mapping and photographic documentation.

To elicit relevant information from respondents on the extent that revenues from mining activities were used to meet basic household needs, respondents were asked to score individual uses of mining revenues on a scale ranging from zero to ten (0-10), with 10 implying that mining income was used to meet just one basic need while zero implied that a specified need was not met using mining income. The scores were converted into percentages by the interviewer.

**Data Entry and Analysis**

Data analysis was done in three phases: data entry, checking and correcting; the calculation of descriptive statistics and finally performing the logistic regression analysis. Field data entry was done using SPSS Program for analysis. STATA was used for the logistic regression analysis. Information provided by partners and field organisations was recorded as their perceptions and later used to cross-check data provided by artisanal miners.

**Measurement Variables**

The research measured the effects of corruption on the
economy based on the following variables:

- GDP
- Export and foreign exchange earnings
- Fiscal revenue
- Foreign direct investment
- Employment
- Environment
- MDGS; health; and education

**Limitations**

Originally this study was intended to investigate the impact of illicit activities and corruption in the gold and diamond sectors in Zimbabwe. It was not easy to ascertain the amount of diamonds produced by illegal operations as most respondents provide conflicting and unreliable figures due to sensitivity, fear of victimization and security issues surrounding diamond mining in Zimbabwe. Most of the diamond operators refused to respond to questions surrounding production and sales. It is against this background that the production and figures surrounding the loss of revenues are a sole reflection of the illegal gold mining operations.

Due to the small/unique sample available for the study, results may not be generalizable beyond the specific population from which the sample was drawn. More so, due to the failure of sample respondents to answer with candour, results might not accurately reflect the opinions of all members of the included population.

**MAIN FINDINGS**

**Response Rate**

Of the 97 questionnaires administered by the researcher 78% managed to respond successfully. The respondents were predominantly male (82%) ranging between the age of 21 and 40 years. In terms of gender, the respondents were as follows:

<table>
<thead>
<tr>
<th>MEN</th>
<th>WOMEN</th>
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<tbody>
<tr>
<td>82%</td>
<td>18%</td>
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</tbody>
</table>

**Participation by age**

**Level of education**

Most of the illegal miners have acquired secondary education. A significant percentage of them have also attained diamond and university degrees. This is a reflection that literacy levels in the areas are good.
**Occupation/Source of Income**

The majority of the respondents were full time miners. The part-time miners also engage in farming during the rainy season when it is not conducive to mine due to the filling up of shafts with water and related high incidences of shaft collapses due to wetness of the earth.

**Claim Ownership**

Most people interviewed (61%) were operating illegally and had no formal documents to justify their activities or dealings. 12% of the interviewees were claim owners and most of them indicated that they were paying an inspection fee of US$400 per year. Most of them complained that the fees were extremely high considering that they were paying US$20. 17% and 10% were renting or operating as cooperatives respectively.
## Major Reasons Cited for Operating Illegally

<table>
<thead>
<tr>
<th>Reason Cited</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Lack of knowledge about legal requirements;</td>
<td>high</td>
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<tr>
<td>2. Little incentives from the government to operate legally;</td>
<td>high</td>
</tr>
<tr>
<td>3. High tax burden</td>
<td>high</td>
</tr>
<tr>
<td>4. No alternative source of subsistence income</td>
<td>high</td>
</tr>
<tr>
<td>5. Limited access to mining titles;</td>
<td>moderate</td>
</tr>
<tr>
<td>6. High ground and mining charges</td>
<td>high</td>
</tr>
<tr>
<td>7. Complex bureaucratic procedures to gain and remain a formal operation;</td>
<td>moderate</td>
</tr>
<tr>
<td>8. Weak legal and compliance enforcements</td>
<td>high</td>
</tr>
<tr>
<td>9. Lack of capital and technology to engage formally;</td>
<td>high</td>
</tr>
</tbody>
</table>
CHAPTER THREE: The Economic Impact of Illicit Activities and Corruption Tendencies in the Gold Mining Sector on the Zimbabwean Economy

Gold Output Produced by Illegal Miners

Most miners indicated that they produce as high as 6 tons of raw ore per month. The majority of the illegal operators who are predominantly artisanal miners produce around 2 tonnes of raw ore per month. Miners obtain roughly 6-20g of gold per raw tonne of gold.

Marketing and Selling of Gold
Most of the respondents (87%) indicated that they sell their gold to private buyers who can either be illegal buyers or intermediaries.
All illegal gold miners sell their output at a huge discount with the majority (38%) of the respondents receiving a net price ranging between 40-50% discounts of the prevailing market price.

**Growth Prospects for the Illegal Miners**

Most operators interviewed (67%) are short sighted and have no plans for future growth. Most of these have been operating for many years but still living from hand to mouth and hardly afford the modern equipment and sophisticated technology. The room for potential transition from purely manual artisanal activities to more advanced operations that employ mechanical equipment and basic technology for underground operations is slim.
### Table 3: Typical Problems Experienced by Illegal Artisanal Small-Scale Mining

The table below shows some of the most common problems faced by the illegal artisanal small scale miners in Zimbabwe.

<table>
<thead>
<tr>
<th>Area</th>
<th>Problems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geology</td>
<td>• lack of appropriate ore bodies</td>
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<tr>
<td></td>
<td>• lack of information about these ore bodies</td>
</tr>
<tr>
<td>Technology</td>
<td>• use of labour-intensive technology</td>
</tr>
<tr>
<td></td>
<td>• high losses of values and time</td>
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<tr>
<td>Law</td>
<td>• discouraging investment climate</td>
</tr>
<tr>
<td></td>
<td>• illegality of mining operations</td>
</tr>
<tr>
<td></td>
<td>• lack of social security</td>
</tr>
<tr>
<td></td>
<td>• difficulties of legalizing mines</td>
</tr>
<tr>
<td></td>
<td>• contradictions between different Acts</td>
</tr>
<tr>
<td>Finance</td>
<td>• difficulties in low-cost preparation of feasibility studies</td>
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<tr>
<td></td>
<td>• uneconomical investment decisions</td>
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<td></td>
<td>• lack of bookkeeping and cost calculation</td>
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<td></td>
<td>• lack of capital</td>
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<td></td>
<td>• high tax and royalty burden</td>
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<td>• limited access to foreign currency</td>
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<td>• limited access to investors and equity capital</td>
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<tr>
<td>Marketing</td>
<td>• access to the market predominantly via intermediaries</td>
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<td></td>
<td>• market barriers</td>
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<td>• market regulations</td>
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<tr>
<td>Human Resources</td>
<td>• unskilled labour force</td>
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<td>• bad social image of mining</td>
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<td></td>
<td>• subsistence economy</td>
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<td>• lack of knowledge about</td>
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<td>* economic principles</td>
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<td>* credit and finance aspects</td>
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<td>• gambler mentality</td>
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Economic Effects of Illicit and Corrupt Activities in Gold Mining

The study predominantly analysed the artisanal informal gold miners and hence we should be cautious in generalizing the findings to the overall illicit and corruption activities in the mining sector. Nevertheless the findings can provide a useful beginning of understanding the consequences of corruption and illegal dealings in the mining sector to the economy.

Effects to the Sub-sector Output

According to the latest government figures small scale miners are contributing as much as 15% of the total official gold production. In this figure the artisanal mining which is predominantly constituted by the illegal and informal miners contributes about 4% of the total gold sector output. Based on the research findings this amount can be substantially wide off the mark as it is estimated that between 10% and 20% of the total gold output leaks through illegal activities. The downside effects of rent seeking in the mining sector are currently costing the economy a fortune. If legalized and formalized to curb corruption the contribution of the artisanal mining sector to the economy can be huge.

Effects to GDP

Currently the mining sector is contributing about 16.5% of GDP of which gold contributes around 30% of this amount implying gold is officially contributing around 5% of the national GDP. There are high chances that this figure can be understated by as much as 10-20% as a result of leakages and corruption. If incorporated the gold contribution could be as high as 8% of GDP while the mining sector contribution could be as huge as 20%. If challenges currently affecting the artisanal miners are addressed by formalizing and legalizing the sub sector the contribution can be significantly different and the growth prospect of the country will be realized.
Effects on Exports and Foreign Exchange Earnings

Mining has traditionally been one of the leading sources of foreign exchange earnings. Since the dollarization in 2009, the sector has contributed more than 50% of export earnings with the export contribution for 2012 targeted above 65%. Despite its contribution to exports mining sector is viewed as the sector mostly affected by leakages resulting from illicit and corrupt tendencies. The sector may be losing hundreds of millions of dollars annually from leakages while artisanal gold sector can lose as much as 20 million dollars annually. If we incorporate the above losses the potential contribution of the gold output to official export earnings can increase from the current 28% to as high as 33% while the total sector contribution can rise to as high as 70%.
CHAPTER THREE: The Economic Impact of Illicit Activities and Corruption Tendencies in the Gold Mining Sector on the Zimbabwean Economy

Current Mining Contribution to Exports by Mineral Category

<table>
<thead>
<tr>
<th>Mineral Category</th>
<th>Major Contribution to Total Mineral Exports</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1993-2003 (%)</td>
</tr>
<tr>
<td>Gold</td>
<td>57.3</td>
</tr>
<tr>
<td>HCF</td>
<td>20</td>
</tr>
<tr>
<td>Nickel</td>
<td>15.1</td>
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<tr>
<td>PGMS*</td>
<td>2.3</td>
</tr>
<tr>
<td>Diamonds</td>
<td>0.8</td>
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</tbody>
</table>

Effects on Government Revenue

The mining sector is one of the key sources of government income in the form of royalties, direct and indirect taxes. The sector is officially contributing more than 15% of government revenue. Leakages through illicit dealings results in the government losing significant revenues in the form of underpayments and no payment of taxes and other related government charges by illegal miners. If properly accounted for the lost government revenue from the mining sector can contribute more than 20% to government fiscus.

Effects on Employment

The sector directly employed around 45,000 workers. It is estimated that another 15 000 workers are employed in associated industries that either supply products to, or use products from the mining industry. Around 500,000 people are directly dependent for their daily subsistence on mine employees. All the above figures are way lower than the true employment figures when more than 350,000 jobs reportedly prevalent in the small scale and artisanal sector are included. The number of people directly dependent on small-scale mining surged to over two million in 2002.\(^\text{39}\) The greater percentage was related to gold panning.

\(^\text{39}\) Dreschler, 2002
**Effects on Investments**

The mining sector has become the main magnet for investment in Zimbabwe, directly accounting for more than 50% of total fixed investment and more than 75% of the total private sector investment. Insignificant amounts of the above figures have been flowing into the small and artisanal sectors. The large official sector has not been paying dividends with the majority of their net income reinvested into operations. This is diametrically opposite to the informal small sector infested by illegal mining. Virtually all earnings are consumed as received leaving little or nothing for reinvestment. This explains why the sector to a certain extent remains small and illegal as there is no organic growth opportunity.
CHAPTER THREE: The Economic Impact of Illicit Activities and Corruption Tendencies in the Gold Mining Sector on the Zimbabwean Economy

Environment Issues
Most (97%) of the respondents are not sensitive or wary of the consequences of their operations to the environment which include:

- Heavy metal pollution
- Siltation
- Deforestation
- Scarification
- Unprotected pits and trenches

Environmental degradation at disused mine sites remains unchecked. Moreover, most miners do not know the health and environmental dangers of improper mercury use.

Links between Environmental and Livelihood Impacts of Informal Artisanal Mining

![Artisanal Mining Poverty Trap Diagram]

Adapted from UNESC 2003
CHAPTER FOUR:
The Power Dimension to Mineral Related Corruption in Zimbabwe
by Farai Mutondoro and Godwin Chitereka

Introduction
The power dimension to mineral related corruption brings to the fore corruption involving those entrusted with power and authority in Zimbabwe, the politicians, military leadership, bureaucrats and influential business people. Zimbabwe, like many African countries, is bountifully endowed with precious mineral resources. These precious mineral resources include significant gold deposits scattered across the country, huge platinum deposits on the Great Dyke and the recently discovered diamonds in Marange. Everything being equal Zimbabwe’s precious mineral resources have the potential to generate export earnings in the region of US$2 billion annually over the medium term and upwards of $5 billion a year within 15 years, by far making mining both the largest exporter and earner of revenue.\(^4\) The staggering potential revenues that can be generated from Zimbabwe’s precious minerals can place the country on a solid path of economic recovery and general socioeconomic development that benefits Zimbabweans as a whole. Despite Zimbabwe’s abundant mineral wealth, there are no tangible benefits accruing to the ordinary people in terms of socio-economic development. An estimated $500 million of potential mineral revenues are believed to be lost annually through corruption.\(^4\) The majority of Zimbabwe’s population is still trapped in poverty, with over 80% of the population classified as living in poverty, unemployment remains high and service delivery in areas such as education, health, water and sanitation is atrocious.\(^4\)

Rather than benefiting the majority poor trapped in poverty an elite group of people deriving direct benefit from the mineral resources has emerged. The high levels of affluence enjoyed by this elite group of people not only reveals the extent to which the gap has widened between the rich and poor in Zimbabwe but also the extent to which corruption has unjustly enriched a few at the expense of the poor majority.

Objectives of the Study
This chapter is based on a study that examines the power dimension to mineral related corruption in Zimbabwe. To understand the exact nature of the power dimension to mineral related corruption the study seeks to identify the different players in gold, diamond and platinum mining and their levels of influence. The study also examines gaps in the existing regulatory mechanism which opens gold, diamond and platinum mining to manipulation by the power elites. To promote transparency and


\(^4\) Saunders, R (2007) Mining and the Crisis in Zimbabwe Cape Town Fatal Transactions
accountability in gold, platinum and diamond mining the study proffers recommendations on how to tame the influence of the power elite.

**Research Questions**
The study was guided by the following key questions: Who are the power elites involved in gold, diamond and platinum mining? How do the power relationships among the different players in gold, diamond and platinum mining fuel corruption? What are the loopholes in the existing legal and institutional framework that promote corruption in the gold, diamond and platinum mining? What can be done to tame the power of the elites so that corruption in gold, diamond and platinum mining can be curtailed?

**Study Methodology**
Data gathering in this study mainly relied on qualitative methodologies. Qualitative methodologies were preferred as they tend to give an empirical and nuanced understanding of the power dimension to mineral related corruption in Zimbabwe as understood by the respondents. Interviews were held with respondents in pertinent institutions such as the Ministry of Mines, Ministry of Justice, community-based organisations, academics and community members in Gwanda, Kwekwe and Mhondoro-Ngezi where the fieldwork was conducted. Documentary study was also an essential component of data gathering in this research. Documents reviewed included, inter alia, The Precious Minerals Trade Act, Gold Act, Mines and Minerals Amendment Bill (H.B.14, 2007), press reports, Statutory Instruments, ministerial pronouncements/statements on gold, platinum and diamond mining.

**Conceptual Issues and Framework**

**Corruption and Corrupt Practices**
In this study corruption is defined as behaviour which deviates from the normal duties of a public role because of private-regarding (family, close clique), pecuniary or status gain; or violates rules against the exercise of certain types of private-regarding influence. It is corruption when those entrusted with public office abuse that office for private benefit. Thus corruption occurs when politicians and bureaucrats enrich themselves through extorting bribes from those seeking government favours for performing those very services that they are employed to do.

There is no denying that the biggest loser from corruption is society at large as corruption causes resource leakages, discourages honest entrepreneurship, and retards economic growth.

Corrupt practices include bribes and fraud. A bribe is the payment, in money or kind, given to or taken by the state official in a corrupt relationship. It could be in the form of a kickback, sweetener or grease money. By greasing the palms of politicians and government officials many rich individuals, corporations and business interests are for instance able to buy political favours to acquire lucrative mining contracts, escape the full burden of taxation and trade illegally in highly regulated precious minerals. Fraud is a crime that involves some kind of trickery, swindle or deceit used by the power elite to make more benefits for themselves, and as such the concept is also known as extractive corruption.

It is fraud when for instance state agencies and state representatives are engaged in the black market, and

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46 ibid
CHAPTER FOUR: The Power Dimension to Mineral Related Corruption in Zimbabwe

Politics, Power, Power Elites and Corruption

It must be noted that the power dimension to mineral related corruption operates within the characterizations of politics defined as who gets what, when and how.\(^{47}\) Politics is also defined as the authoritative allocation of goods valued in society.\(^{48}\) From the foregoing definitions of politics it is those who possess and exercise political power (the policy makers, military leaders and the rich) who have the capacity to decide or determine who gets what, when and how of a country’s resources, in this case mineral resources. In fact they have unfettered say in the allocation of resources including mineral resources in accordance with their preferences. That allocation of resources can be done through corrupt means as is manifesting in Zimbabwe’s mining sector.

At the heart of politics is power. This is because politics is to all intents and purposes about power; its capture, maintenance and loss.\(^{49}\) Power can be defined as the chance that an individual in a social relationship can achieve his or her own will even against the resistance of others. Thus power is the ability to achieve a desired outcome, through whatever means. The ‘whatever means’ in the definition of power alerts us to the fact that power has also a dark side which manifests itself in the form of corruption. Therefore, political power can be taken to mean authority held by a group within a society that allows for the administration of public resources and implementation of policies for the benefit of society. As it were, political power is open to abuse and can be used manipulatively to unfairly enrich those who possess it.

Those who wield power determine and decide the allocation of resources in society are referred to as the power elites.\(^{50}\) The power elites, though a relatively small group, comprises the politicians, members of the military class and influential business leaders.\(^{51}\) Through the exercise of political power, the power elites can administer public resources including mineral resources in a self-serving manner that excludes the majority who are supposed to be the joint beneficiaries of these resources. The power elites in mineral rich countries in Africa, Zimbabwe included, have reportedly corruptly used political power vested in them to plunder the mineral resources for personal benefit.

Political Corruption

Political corruption is any transaction between private and public sector actors through which collective goods are illegitimately converted into private-regarding payoffs. In a more narrow definition, political corruption involves political decision makers. Power elites are usually associated with political corruption. Political or grand corruption takes place at the highest levels of the political system. It is when the politicians and state agents, who are entitled to make and enforce the laws in the name of the people, are themselves corrupt. Political corruption not only leads to the misallocation of resources, but it also affects the manner in which decisions are made.

Bureaucratic Corruption

Bureaucratic or petty corruption is corruption in the public administration, at the implementation end of politics. This form of corruption occurs in the government ministries, departments and parastatals that are owned by the government.\(^{52}\) The main culprits are the civil servants who abuse offices and positions of

\(^{47}\) Laswell 1965

\(^{48}\) David Easton 1953


\(^{50}\) Wright Mills, C The Power Elite Oxford Oxford University Press, 1956

\(^{51}\) ibid

\(^{52}\) Mbaku, J,M (1996) Bureaucratic Corruption in Africa: The Futility of Cleanups Vol. 16 No. 1
authority they occupy for self-enrichment. A corrupt bureaucrat regards his or her office as a business from which he is able to extract extra-legal income. Bureaucrats are heavily involved in corruption in Zimbabwe’s mining sector.

**Research Findings**

**The power elites involved in mineral related corruption: Politicians and political corruption**

The study established that politicians, notably senior government ministers were implicated in most corrupt activities concerning the extraction, sale and exportation of gold and diamonds in Zimbabwe. Government ministers command power and often abuse that power to engage in political corruption. It emerged that the politicians, particularly government ministers, use their influence to derive personal gains from gold and diamond mining through forming syndicates with illegal panners and agents (runners or front men) who act on their behalf. To escape attention and public scrutiny the politicians use agents or runners who act on their behalf in the mining and trade of gold and diamonds. The runners are responsible for mining and even the illegal buying and selling of gold and diamonds on behalf of the politicians. Runners of politicians enjoy immense protection from the law such that their illegal activities are not usually investigated by the police. Where they are investigated the cases usually go cold as the police cease investigations with no plausible reason or they fail to secure a conviction ostensibly on the grounds that there was no sufficient evidence. One respondent in Kwekwe stated that:

marunners emachef anongoonekwa nekaupenyu kemari kavanorarama (the runners or front men of the power elites are identifiable by the lavish styles they live)⁵³

The study also established that certain areas where there is illegal gold or diamond mining are not raided by the police, because they are protected by influential politicians. One such area is in Kwekwe. In Kwekwe there is an area known as Sherwood, popularly known by the locals as Kuhasha where politicians have formed syndicates with police officers and the illegal gold panners to engage in an organized and complex chain of hidden corruption. The gold that is mined at Sherwood is not sold directly to the Reserve Bank of Zimbabwe as required by the law but finds its way out of the country through murky transactions. The Sherwood gold belt is not raided often giving credence to the widely held claim that the area is protected by senior politicians who directly benefit from the illegal gold mining activities taking place there. Whenever there are impending raids the illegal gold miners seem to be well informed of the raids, their timing and how they will be carried out. An illegal gold panner interviewed in Kwekwe told the researcher that:

Kana chakachaya kuHasha tinotoziva kuti kwakatsva nekuti mapurisa anotidza kuti kune operation nguva ichipo (We are informed by the police well in advance before they raid Sherwood)⁵⁴

This clearly shows that the politicians in cahoots with the police as well as the illegal miners are working to deprive the country of gold and attendant revenues which should contribute to the national fiscus. From the in-depth interviews high ranking officials from the Zimbabwe African National Union- Patriotic Front (ZANU-PF) were identified by the respondents interviewed as the main politicians who were corruptly promoting and protecting illegal mining and trade of gold as well as diamonds

⁵³ Field Interviews, KweKwe, July 2012
⁵⁴ Field Interviews, KweKwe, July 2012
in Zimbabwe. In Gwanda and Kwekwe when probed all the respondents stated that:

_Machef emusango (ZANU-PF) ndivo varipamberi panyaya dzeouri nekuti ndivo vanotonga kana tasvika panyaya dzegold. (The ZANU-PF bigwigs are the ones involved in corruption as they are the ones who control the gold trade)_55

In the mining of diamonds, particularly in the Marange diamond fields, the politicians are believed to be influencing the awarding of diamond mining contracts. Currently there is no transparent and accountable process by which concessions to mine diamonds in Zimbabwe are awarded. Basing on evidence prevailing on the ground, the study found out that all the companies that have been given mining rights to mine diamonds in Zimbabwe are those with close links to senior politicians in government and the military. The Chinese company Anjin is a beneficiary of having close links with senior politicians in government and the military as the instrumental means through which it gained access to the Marange diamonds. A Chiadzwa resident supported this observation by stating that:

_It is beyond doubt that the mining companies in Chiadzwa are obtaining mining rights through corrupt means as they are greasing the palms of party (ZANU-PF) bigwigs to fast track acquisition of these rights._56

There is a strong reason to believe that the senior politicians and the top brass in the military are getting kickbacks for granting diamond mining licenses to companies of questionable repute through opaque processes that are not open to public scrutiny. The failure by companies mining diamonds to remit their contributions through the normal channel, which is directly to the Ministry of Finance, further creates a veil of secrecy already shrouding diamond mining in Zimbabwe. At the same time the unexplained accumulation of wealth by senior government ministers and the top military brass with close links to diamond mining in Marange is a clear indication of abuse of position, authority and influence for self-enrichment at the expense of the majority poor who have to make do with poorly equipped hospitals, clinics and schools.

**Bureaucrats and Bureaucratic Corruption**

The study revealed that bureaucrats were heavily implicated in corruption in respect to gold and diamond mining. From the study it emerged that other than political corruption, there is also widespread bureaucratic corruption in gold and diamond mining stemming from the concentration of wide discretionary powers in the hands of bureaucrats and the opportunities that government structures create for corruption. The main bureaucrats involved in bureaucratic corruption in gold mining are the officials in the Ministry of Mines and Mining Development and members of the police force. Officials in the Ministry of Mines and Mining Development (MoMMD) are in the habit of overtly demanding bribes or kickbacks from members of the public who wish to venture into mining in return for gold mining licences and mining claims in areas that are deemed lucrative in terms of gold mining. The Ministry of Mines officials have made it extremely difficult and almost impossible for people who want to venture into mining without paying some form of a bribe. A respondent interviewed in Kwekwe noted that:

_Ukasa dhiza vakomana vekumines hapana chako (If do not give a bribe to the Ministry of Mines officials your chances of getting a mining license are close to nil)_57
CHAPTER FOUR: The Power Dimension to Mineral Related Corruption in Zimbabwe

It has become common occurrence that those who fail to pay bribes to the Ministry of Mines officials find themselves being supplanted for flimsy reasons either for encroaching into an existing claim or having been allocated the wrong claim. Those who are able to pay hefty bribes to the Ministry of Mines officials are able to gain access to lucrative gold claims. The case study below is one of the many cases in which bureaucrats abuse their power to dispossess genuine claim owners.

The Police and Bureaucratic Corruption
Evidence from the study clearly point out that the police are involved in corrupt activities in gold and diamond mining. There is strong evidence to suggest that the police are acting corruptly by receiving bribes. In Gwanda and Kwekwe it emerged that the police were receiving bribes from people illegally involved in gold mining. As a result of this, it was noted that senior police officers were living lavish lifestyles. In Gwanda a key informant noted that:

boCommissioner laboconstable bakhe sebele mota, lemali ngenxa yebuguluvu begolide (the police commissioner and his officers are now rich because of the corrupt gold deals)58

Some of those who were allegedly fingered to be engaging in corrupt activities are amassing wealth at a rate that defies their salary scales. The police officers have become an emergent business class owning taxis, shops and commuter omnibuses. It is most likely that they are getting all this money to start businesses through bribes from those with the financial muscle and politicians to forcefully remove people with legally acquired claims by applying the law in a selective and biased manner. The study established that those with money are approaching

58 Field Interview, July 2012

Box 1. Bureaucratic Corruption Involving Ministry of Mines Officials and the Police

Mr X a miner based in Kwekwe obtained a claim to mine gold from the Ministry of Mines and Mining Development in Gweru in 2005. In 2010, however, he was approached by Mr Y who claimed to be the rightful owner of the gold mining claim. Mr Y had the support of a senior police officer from Gweru who is his relative. The two harassed and chased away Mr X’s workers. Mr X alleges that when they went to the Ministry of Mines to resolve the matter, initially Mr Y failed to produce any legal documents showing that he was the owner of the mine. Mr X was then advised by the Mining Commissioner to go back to his claim and resume mining operations. However, Mr Y kept on disturbing mining operations at Mt X’s claim. Mr X alleges that the police and some of the Ministry of Mines officials connived with Mr Y to forge some documents that he then later produced as proof of ownership. Upon production of these dubiously acquired documents the Mining Commissioner suddenly changed his earlier stance to uphold Mr X’s ownership rights and decided, instead, to award Mr Y the mining claim. Mr X alleges that the Commissioner stated that since he (the commissioner) and Mr Y are both from Gweru there was a possibility that corrupt means were used to sway the opinion of the Mining Commissioner and award the claim to Mr Y. To rub salt to the wound the Mining Commissioner advised Mr X to accept a new mine claim which was located below the Kariba power line. The new mine besides having poor gold deposits could not be exploited as it was directly below a major power line, mining regulations prohibit mining operations to take place under such circumstances. In fact what it meant is Mr X was dispossessed of his mining claim through fraudulent means which is outright corruption.

Source Field interview, July 2012
the police, the claim peggers and Ministry of Mines officials offering irresistible amounts of cash to secure gold claims that have been allocated to certain individuals who cannot match the bribe money offered by their rivals. A respondent who was a victim of illegal dispossession concluded his narration by saying that:

"Those with money are using their financial power to wrestle gold claims from their rightful owners. I as a victim witnessed first-hand the dirty tricks of those with money and how they removed me from my claim."  

The police upon receiving the bribes embark on eviction operations which lead to the dispossession of gold mine claims from those who had legal rights. Overnight those with legal claims find themselves destitute of the right to legally mine gold and the bribe payers became the new claim owners. The threats from the police combined with high legal costs and the bureaucratic processes involved to regain the lost claim discourages most people who had been dispossessed of their claims to seek legal recourse. In fact the police are regarded as a law unto themselves whatever they proclaim is law. 

The police also received bribes from the illegal gold miners who want to pan or are already panning for gold in restricted areas without mining certificates. Mining laws in Zimbabwe require mining activities to be lawful and this is done through the acquisition of mining licenses. It is also critical to note that mining licenses are only granted if the miners satisfy laid down criteria that are also compliant with environmental regulations stipulated by the Environmental Management Agency (EMA). In Gwanda and Kwekwe the study established that the majority of the gold miners were mining gold illegally as they did not possess the requisite mining licenses and environmental certification. To circumvent this legal requirement the illegal miners simply paid bribes to the police to facilitate their illegal mining operations. 

The police also received bribes from the unlicensed miners who intend to sell their gold. Mining laws in Zimbabwe are clear that only licensed dealers can sell or buy gold. By allowing unlicensed dealers to sell or buy gold on condition that they would have paid the police a bribe distorts information of how much gold has been extracted and the revenues it generates. The bulk of the gold that is traded illegally does not find its way to the Reserve Bank but is usually shipped out of the country thereby depriving the country of the much needed revenue.

The Rich

Corruption in the gold and diamond sector is not only perpetrated by the politicians and the bureaucrats. The rich, particularly the local business and international business people as well as cartels are also heavily involved in mineral related corruption in Zimbabwe. Chinese, Korean, Israeli and Russian fortune seekers are some of the many foreign nationals that have invaded the Zimbabwean mineral Eldorado. A respondent in the Ministry of Mines stated that:

"Fortune seekers from all over the world are frequenting their offices offering whatever which can help them secure mining rights."  

This corroborated what the researcher observed at the Ministry of Mines Head Offices in Harare. Wealthy business people both local and international had and exercised financial power to corruptly muscle their way into gold and diamond mining. Because of the financial power they possess international business people have the capacity to get lucrative mining contracts by bribing the politicians and bureaucrats. In fact the study established that foreign treasure seekers are prepared to pay large amounts in bribe form to acquire mining rights of

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59 Field Interview, July 2012

60 Field Interviews, Harare, July 2012
CHAPTER FOUR: The Power Dimension to Mineral Related Corruption in Zimbabwe

Zimbabwe’s precious minerals. The study established that this supply side of corruption goes beyond bureaucratic corruption which is petty corruption to political corruption which is classified as grand corruption. Grand corruption involves the exchange of mega bucks in return for high value mining concessions. This form of corruption involves big mining claims, the big guns, those in power and the rich business people or cartels.

An Ambiguous Mining Policy Framework

The power elites in Zimbabwe have used ambiguity to camouflage their corrupt activities in the mining sector. In the context of this study policy framework denotes the scheme of courses of action that guides conduct. Usually the mining policy framework is explicitly stated in the country’s national budgets, Mid Term Plans and at times in the speeches made by the President and government ministers. The power elites are the ones who make policy pronouncements. Policy pronouncements are difficult to make in a polarized political environment as currently experienced in Zimbabwe. Under the GNU, Zimbabwe has witnessed a strained policy environment characterised by conflicting policy statements which have created confusion in the country’s mining policy framework. A confused policy environment sends ambiguous policy signals which are seized upon by the power elites to engage in corrupt activities. A key informant summarized the discord in policy pronouncements by stating that:

The two MDC formations and ZANU-PF seem to be always singing a different tune from different hymn books when it comes to policy issues in the mining sector.

Invariably, mining policies in Zimbabwe recognize that minerals must be profitably exploited for socio-economic development. For the policy goal to be realized in the mining of gold, diamonds and platinum there has to be transparency, accountability and probity in how mining deals are negotiated and transacted as well as a record of revenues generated by the minerals. However, policy practice prevailing in Zimbabwe is an antithesis to the principles of transparency, accountability, probity and fairness. The power elites are negotiating mining deals in gold, diamonds and platinum under a veil of secrecy. What is generated from these deals is not known to the general public serve for doctored financial statements which clearly show that the country’s mineral wealth is being underpriced to conceal corrupt dealings involving the power elites. The four mining companies that have been awarded diamond mining rights in Chiadzwa, Diamond Mining Corporation, Anjin Investments, Marange Resources and Mbada Diamonds in Chiadzwa are still to make their shareholding structure known to the public. The fact that they can maintain silence on their shareholder structure for a considerable period of time shows that they are enjoying the support of the power elites who are keen to keep their levels of benefit from diamond mining away from public scrutiny.

The policy pronouncements regarding the application of the Indigenisation and Economic Empowerment Act remain controversial. Again the controversy is emanating from the differences in ideology characterising the partners in the GNU. The problematic establishment of Community Share Ownership Trusts (CSOTs) in the mineral rich areas of Zimbabwe reflects how diametrically opposite the policy perspectives of the GNU partners are. Depending on one’s political inclinations CSOTs are seen as impositions on communities which are used to enrich members of a certain party to the exclusion of supporters of certain political parties. The other view is that CSOTs are for community empowerment and those opposing them are pushing an alien and externally sponsored agenda. This has created uncertainties in the mining sector and paved the way for rent seeking behaviour. Further the policy on indigenisation...
Annual State of Corruption Report 2012

is being enforced with little coordination among key ministries such as the Minister of Finance, Mines and Mining Development, Industry and Commerce and cabinet in general, and this creates confusion to the investors in the mining sector. Such uncertainty is used by the power elites to enrich themselves as they are given bribes to uphold deals even if they do not comply with the law.

Loopholes in the Legal Framework that Promote Mineral-Related Corruption

The legislative framework governing mining in Zimbabwe is not watertight and has created opportunities for corruption involving the power elite. Power elites are quick to exploit any gaps in the legal system for self-enrichment. Mining in Zimbabwe is regulated by a raft of legislative instruments. The study had a particular interest in the Mines and Minerals Act (Chapter 21:05), Gold Trade Act (Chapter 21:03), Precious Stones Trade Act (Chapter 21:06). The Diamond Act is yet to be enacted. These pieces of legislation are the principal laws governing the mining sector in Zimbabwe, as they specify clear provisions for the acquisition, maintenance and relinquishing of mining title and how precious minerals such as gold, platinum and diamonds should be traded. Particular emphasis in this study was on the Mines and Minerals Act (Chapter 21:05) which is the principal law governing mining in Zimbabwe.

Mines and Minerals Act (Chapter 21:05)

The Mines and Minerals Act (Chapter 21:05) is the main piece of legislation governing mining in Zimbabwe and is administered by the Minister of Mines and Mining Development through the Ministry of Mines and Mining Development. This law besides providing for security of tenure stipulates provisions for acquisition, maintenance and relinquishing of mining title. The law has been in force since 1965 and has been amended several times to reflect the prevailing socio-economic realities. The fact that the law has survived colonial times and continues to be relevant in the post-independence era is probably its major weakness. On this basis, the Act is deemed to be old and perpetuates the colonial legacy. To all intents and purposes the colonial era was characterized by despotism, racial bias and the enactment of laws that unfairly empowered those in power. This legacy seems to have been carried over into the post-independence Zimbabwe and this has created an environment that promotes corruption involving the power elites. Close scrutiny of the Act reveals that it has sections that are out of sync with democratic and good governance tenets. These anachronistic sections have created unnecessary room for rent seeking behaviour.

Section (2) Part I of the Act vests the rights to minerals in Zimbabwe in the President instead of the State. This provision of the Act gives the President unfettered control over all the mineral resources in the country. The President, as the dominant member of the power elites, can give mining rights to people of his own choosing without him explaining or accounting for his actions to anyone. In a highly polarized political environment such as is currently prevailing in Zimbabwe the actions of the President when it comes to the granting of mineral rights is often highly contested. This is perceived to be one of the reasons why the mining sector is riddled with corruption. Thus the granting of special mineral rights without following due procedure to foreigners such as the Chinese to mine diamonds in Chiadzwa’s diamond fields is a typical example of how the Act gives an individual boundless powers to singly allocate the country’s mineral resources.

The Act also gives wide discretionary powers to the Minister of Mines and Mining Development and his Ministry officials. In a way the Act gives the Minister of Mines powers to act unilaterally with little regard for the principles of accountability, transparency and professionalism that should guide his conduct as a government minister serving the people. Thus these wide
discretionary powers have been abused by the Minister and his officials for personal enrichment as is the case currently prevailing. For example under the Act the Minister of Mines has the final say in the granting of an Exclusive Prospecting Order (EPO) instead of it being done collectively with the Mining Affairs Board. An EPO confers the exclusive right to prospect for specified minerals in any defined area in Zimbabwe. The maximum possible period for operating an EPO is six years. Thus EPOs in the mining of gold, diamonds and platinum are highly sought by those who intend to mine these minerals and are prepared to bribe government officials, in particular, the Minister to get hold of them. In the Chiadzwa diamond fields companies such as Anjin have been granted EPOs by the Minister under unclear circumstances. The lavish lifestyle of the Minister of Mines which is not commensurate with the $900 salary per month makes it beyond doubt that there is abuse of office for personal enrichment.

Part II of the Act gives the Minister the powers to appoint the Mining Affairs Board whose functions, inter alia, cover the issuance of mining licenses. The Minister appoints the chairperson of the Board and the bulk of its members. This opens room for patronage politics as the people appointed to the Board, more often than not, pay allegiance to the Minister. Objectivity in the granting of mining licenses is eroded as the whole Board cannot oppose the Minister even in cases where there is evidence of outright corruption in the awarding of licences.

The Act gives the Mining Commissioner discretionary powers in the awarding of mining claims. A mining claim is simply a permit to mine. Ordinary claims are up to 25ha and special claims are between 26 and 150ha. The claim confers on the holder the exclusive right to mine the mineral resource for which the claim was registered and of prospecting for other minerals on the claim. According to the Act the claim must be inspected annually and fees paid annually as well. This has opened an avenue for corruption involving the Mining Commissioner and officials in the Ministry of Mines. What is obtaining on the ground is that miners are not following the provisions of the Act. Claims are not inspected annually as prescribed by the law. Those with backlogs in fee payments are bribing officials in the Ministry of Mines who are mysteriously making current their claim rights. In Kwekwe there was a case in which claims were made current when it was evident that the claim holder was not making any payments for six years. The Act is clear, if a miner fails to pay the annual fees for three consecutive years that claim is repossessed.

Further the Mining Commissioner is using his powers to revoke some claims and awarding them to other individuals under unclear circumstances. This has seen a number of miners being unfairly dispossessed of their claims. For those dispossessed of their mining claims it is difficult to repossess the claim. The Act (Section 89(3) limits the rights of an applicant to appeal to the Administrative Court against the decision by the authorities to revoke their claim. With full knowledge of this provision of the Act, officials in the Ministry of Mines have accepted bribes to illegally dispossess legal holders of claims.

**Loopholes in the Institutional Framework that Encourage Mineral Related Corruption**

The existing institutional framework in Zimbabwe’s mining sector promotes corruption involving the power elites who are aware of its inherent weaknesses. By manipulating these weaknesses the power elites are abusing the institutions that are supposed to be responsible for the administration of mining for personal benefit. The institutional framework that administers mining in Zimbabwe spans from the Ministry of Mines and Mining Development to its specialized parastatals such as the Zimbabwe Mining Development Corporation (ZMDC) and the Minerals Marketing Corporation of Zimbabwe (MMCZ). Institutions as administrative structures through which government policies and legislations are enforced are significantly shaped by the socio-political environment in which they operate. If the socio-political
environment is one that promotes and sustains corruption it is likely that the institutions will reflect this environmental influence. It is noteworthy to point out that the highly polarised political environment currently in Zimbabwe is a fundamental aspect that has contributed to the manifesting weaknesses in the institutional framework overseeing mining in the country. Government Ministries in Zimbabwe at the formation of the Government of National Unity (GNU) via the Global Political Agreement (GPA) were apportioned on partisan lines. The Ministers and bureaucrats instead of acting in the national interest act according to the narrow interests of the political parties they are affiliated to. This apart from creating a dysfunctional government has created an environment where there is intrigue and secrecy in the conduct of government business. The mining sector has not been spared. Under the GNU the Ministry of Mines and Mining Development was given to ZANU-PF which automatically places it under the control of a ZANU-PF Minister. Given the differing political ideologies between the parties in the GNU the ZANU-PF Minister acts unilaterally and in accordance with the preferences of his party. ZANU-PF ministers and bureaucrats as well as military leadership affiliated to it have over the years been accused of being corrupt with high profile corruption cases widely publicized in the media. For example the late Godwin Nhari, a ZANU-PF functionary, was caught at the airport illegally in possession of diamonds whilst trying to leave the country. The Minister of Mines has at many public fora defended his partisan actions. At a meeting organized by the Public Accountability of Zimbabwe the Minister refused to shed detail on the diamond mining operations in Chiadzwa citing prejudice to national interest which of course is defined by his own party. By hiding behind narrow partisan definitions of national interest, Zimbabweans were denied information on how diamonds were being mined at Chiadzwa and who the main buyers of the country’s diamonds are as well as how much is being generated by the diamonds. The Minister of Mines and Mining Development on the basis of the wide discretionary powers he wields has usurped the powers and functions of Ministries such as Finance. In fact the Minister of Mines has maintained a stranglehold on the mining of diamonds in Zimbabwe. Vesting excessive powers in an individual politician is a recipe for corruption and rent seeking tendencies. For example the Minister of Mines covertly controls the proceeds from the sale of diamonds mined at Chiadzwa, a function that is supposed to be that of the Ministry of Finance and Zimbabwe Revenue Authority. The incessant war of words between the Minister of Finance and the Minister of Mines concerning revenues from Chiadzwa’s diamonds is a clear manifestation of a turf battle going on and alerting the nation to abuse of national resources with little or no accountability and transparency. Not much is known about what the diamond companies at Chiadzwa are generating from the mining of diamonds apart from the Minister and his party colleagues. What is visible though, are the dramatic changes in the life styles of politicians and the top military brass with close connections to the Marange diamonds that have become absurdly affluent in the midst of widespread poverty.

The ZMDC is one such institution that was created by the government to oversee mining in Zimbabwe. ZMDC’s key responsibilities are to invest in the mining industry of Zimbabwe on behalf of the state, planning, coordinating and implementing mining development projects on behalf of the state, advise the minister on all matters concerned with corporate investments in the mining industry, reviewing annually the economic conditions and prospects of the mining industry. However, the situation obtaining on the ground is that the ZMDC lacks the institutional capacity to effectively carry out its mandate. For example due to ministerial intervention ZMDC has lost control of its function to monitor and control the joint venture initiatives that the Government of Zimbabwe is going into in the diamond fields of Chiadzwa. In fact the veil of darkness covering the mining of diamonds deals in Marange smack of organized grand political
corruption where the nation is not fully appraised on how much is being generated by the diamond sales. The ZMDC is also failing to control the operations of small scale gold miners so that they contribute fairly to the national fiscus. Most of the gold of the small scale miners is finding its way to foreign markets in South Africa and Botswana thereby prejudicing the country of the much needed revenue. The MMCZ is part of the institutional structure responsible for marketing minerals from Zimbabwe. Its broad mandate includes it being the marketing and selling agent for all minerals, investigating marketing conditions for all minerals, purchasing and acquiring any minerals for its own use account and to sell and dispose them, advising the minister on all matters relating to marketing of minerals, encouraging local beneficiation and utilization of minerals. The role of the MMCZ has been supplanted by the Minister of Mines. Evidence on the ground clearly points out that the Minister is using his powers to grant marketing rights to mining companies relegating the MMCZ to a bystander. As a result the rights for the marketing and selling of Zimbabwe’s gold, diamonds and platinum have been given to companies with links to the Minister and his party. Again how much revenue is generated by the companies is not declared to the Zimbabwean populace thereby raising strong suspicions of corruption. The Zimbabwe Republic Police Minerals Unit is the arm of the ZRP that is responsible for enforcing Zimbabwe’s mineral laws. Its main function is to ensure that there is full compliance with the country’s mineral laws. The study established that due to manpower shortages in the force the enforcement of mineral laws is now done by the generality of all the members of ZRP. This has given rise to bureaucratic corruption as the ZRP officers are demanding bribes from the illegal miners such as the gold panners. In Gwanda and Kwekwe the study noted that the ZRP officers even colluded with the illegal miners to facilitate the deals in gold which is unlawful and proscribed by the law. The Precious Minerals Act and the Gold Act clearly stipulate that only licensed people can deal in gold, diamond and platinum. The fact that Zimbabwe’s gold and diamonds are leaving the country through unorthodox means despite heavy police presence is sufficient evidence that there is corruption involved and the beneficiaries are the power elites who can facilitate the presumed lax in security to enable minerals to pass through the supposed water tight net.

**Recommendations**

To deal with corruption involving the power elites the study recommends the following measures:

Zimbabwe’s political environment needs urgent pacification so that the current politics of polarization that have created room for rent seeking behaviour, corruption, lack of probity, transparency and accountability can be done away with. This can be done if all political parties and the general populace accept a democratic order where those in power can be held to account for their actions. Such a democratic order is only possible through a constitution which demands accountability, transparency and honesty on those who occupy positions of power and authority in government and society at large. Creating a democratic political order has to be done concurrently with the building of independent and efficient watchdog institutions such as an effective Anti-Corruption Commission with powers to prosecute those public officials found guilty of corruption in the mining sector. Civil society watchdog organisations can take a lead in ensuring that there are surveys and timely reporting on corruption issues so that the general populace is always informed on whom among the power elites are engaging in corruption. Watch dogs also include a vibrant and independent media which is free to report power elites who engage in corrupt activities in the mining sector.
An effective fight against corruption demands political will to back up intentions to mitigate corruption. The presidency should show serious resolve to do away with corruption in the mining sector by backing up prosecuting agencies such as the police when it comes to bringing to book politicians and bureaucrats found to be involved in corrupt deals in the mining sector.

Laws such as AIPPA and POSA which criminalise reporting on the power elites need to be repealed so that the media can report corrupt officials who engage in corrupt deals in the mining sector. Currently AIPPA and POSA are being used by the power elites to shield themselves from media scrutiny in instances where they will be participating in corrupt mineral deals.

There is urgent to enact the Diamond Act that will regulate the extraction and trade in diamonds. The absence of a diamond Act has promoted a free for all scenario in diamond trade where the power elites have literally acted in a laissez faire fashion to enrich themselves from diamond mining.

All the government officials (politicians and bureaucrats) should be made to compulsorily declare their wealth upon taking office. This can help to curb political corruption as public officials will be made to account for how they would have accumulated wealth if they suddenly become very rich or show signs of unexplained affluence. Such a measure can be buttressed by a name and shame policy where those public officials who acquire wealth through the abuse of office are named and shamed in public without fear or favour. Knowledge that they will be publicly named and shamed can deter public officials from engaging in corrupt deals in the mining sector.

The Zimbabwe government should come up with stiffer penalties that make it unattractive to engage in mineral related corruption. Jail terms for mineral related corruption should be custodial sentences that entail more than ten years of incarceration. This should be sufficient enough to deter anyone including the power elites from mineral related corruption.

There is need to create a lean but efficient government which is not oversized and within the limits of what current economic performance can sustain. The current Zimbabwe government is too bloated and this has in a way created power elites who want to become rich quickly whilst in power. Thus a lean but efficient government has to be accompanied by privatization policies that allow the participation of private players in the mining sector who play by the rules of accountability and transparency.

There is no doubt that the mining laws in Zimbabwe need to be overhauled. The Minerals and Mining Act needs to be revised completely so that it reflects that Zimbabwe is now an independent state where the laws are not designed to serve the class or individual interest of a certain group of people.

There is need to broaden the players involved in the granting of mining rights and mining deals. Parliament as the representative body of the people and cabinet as the highest decision making body should work jointly to scrutinize all the mining deals entered into by the Minister of Mines and the President. Through parliamentary scrutiny, all the mining deals are examined to ensure that there is transparency, accountability and probity on the part of the public officials involved. This will remove the veil of secrecy currently synonymous with mining deals in Zimbabwe.

The Zimbabwe government should come up with a strong regulatory framework that ensures that the revenues generated from the sale of gold, diamonds and platinum are declared to the general public on a regular basis. This can be done by strengthening ZIMRA and the Ministry of Finance so that these institutions are able to assess whether there is correlation between volume of minerals sold and the revenues paid into the national fiscus.

**Conclusion**

There is no denying that the power elites in Zimbabwe are an obstacle to socio-economic development by engaging in mineral related corruption. Their abuse of power in the mining sector has prejudiced the country of revenues that are
supposed to ensure that schools, hospitals and clinics and roads are maintained in a functional state for the benefit of the poor. The only way the excessive powers of the elite can be curtailed is through a democratic political order that has strong checks and balances that make it difficult for the power elites to enrich themselves from the country’s mineral resources.
CHAPTER FIVE:
The Human Rights Dimension to Mineral Related Corruption in Zimbabwe

by Godwin Chitereka

Introduction
Africa’s abundant mineral wealth continues to be the cause of mineral related corruption which has resulted in gross human rights violations and underdevelopment. This makes the natural resources curse phenomenon more real and evident in Africa than anywhere else in the world. Instead of benefiting the local people through broad based development, corruption in the continent’s mining sector has been the cause of death, underdevelopment and the enrichment of a few in power and their surrogates. As a result of corruption African people face environmental degradation and pollution of water systems, loss of livelihoods, forced evictions and relocations, drug shortages at rural hospitals and clinics, dilapidated school infrastructure, collapsed bridges and poor road networks in areas where the mining companies are operating. Thus corruption has greased the wheels of the exploitation and injustice which characterize the mineral exploitation in Africa. In Zimbabwe the link between corruption, human rights and development assumed centre stage in the country’s mining sector as a result of the widely documented state sponsored human rights violations by the country’s security forces in Marange’s Chiadzwa diamond fields. The excessive attention given to the injustices in Marange tends to overshadow human rights violations elsewhere in Zimbabwe’s mining areas by actors other than the state. It is not only the state that is involved. Private individuals and companies have also engaged in corrupt activities which have resulted in the violation of human rights and stalled development in Zimbabwe’s mineral rich communities. There is no doubt that communities across Zimbabwe living in mining areas have experienced violation of their Environmental, Economic, Social and Cultural Rights (EESCR) by the state, rich individuals and mining companies.

Research Objectives and Questions
The overall objective of this study on which this chapter is based is to provide a forensic investigation into how mineral related corruption is impacting on the rights of communities in mineral...
rich areas. In the process, the Environmental, Economic, Social and Cultural Rights of communities are elaborated as they link to development. Thus the study is guided by the following specific objectives:

- Document how mineral related corruption is impacting on the rights of community members in Kwekwe, Chiadzwa, Gwanda and Mhondoro
- Examine the social and economic costs of corruption on human development
- Examine how communities can help in fighting against mineral related corruption
- Generate policy recommendations on how gold and diamond mining can help improve human development

To achieve the above objectives the study seeks to answer the following questions

- What is mineral related corruption and how is it linked to human rights debates?
- How are rights-based approaches framed around natural resource accumulation in Zimbabwe?
- Does the mining legislation in Zimbabwe protect human rights?
- In what ways have been the rights of communities, illegal miners, traditional structures, women and various vulnerable groups impacted by mineral related corruption in Gwanda, KweKwe and Chiadzwa?
- What are the rights and spaces of small scale miners in Zimbabwe?
- What are some of the abuses documented in Zimbabwe’s mining areas?
- How are civil societies involved in engaging communities to safeguard their human rights?
- How have various international processes such as the Kimberley Process influenced human rights issues in the mining areas?

Methodology

This chapter is based on a desk and field study. The study relied heavily on the desk study given the highly sensitive nature of human rights in Zimbabwe, particularly in Marange. As a result the study extensively reviewed newspaper, magazine, blogs reports and press releases dealing with human rights dimensions of mineral related corruption in Zimbabwe. Field visits were made to document first hand some of the experiences of the victims of rights violations in Zimbabwe’s mineral rich communities. Field visits were made to Gwanda and Kwekwe in order to capture first-hand how community economic, social and cultural rights were being affected by the mining operations.

Conceptual Framework of Mineral Related Corruption, Human Rights and Development

Mineral Related Corruption

An understanding of mineral related corruption can only be gained by recourse to the definition of corruption. In trying to define corruption this study acknowledges the fact that there is no single, comprehensive and universally accepted definition of corruption. The term “corruption” comes from the Latin word ‘corruption’ which means moral decay, wicked behaviour, putridity or rottenness. Transparency International (TI) defines corruption as the misuse of entrusted power for private gain. Private gain means both financial or non-material gain and material gain, such as predatory amassing of wealth. To circumvent the difficulties of giving a conclusive definition of corruption there is an attempt to provide acts that are

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criminalized under several national penal laws and form part of the international and regional legal framework for combating corruption. In the UN Convention the acts in question include:

- Bribery of national public officials;
- Bribery of foreign public officials and officials of public international organisations;
- Embezzlement, misappropriation or other diversion of property by a public official;
- Trading in influence;
- Abuse of function or position;
- Illicit enrichment—a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income;
- Bribery in the private sector;
- Embezzlement of property in the private sector;
- Laundering of the proceeds of crime;
- Concealment;
- Obstruction of justice.\(^69\)

Corruption is a complex and multifaceted phenomenon that affects all countries in various degrees, including developed countries. Basing on this brief depiction on how corruption is defined mineral related corruption refers to obtaining undue advantage from mineral resources (gold, diamonds, platinum) for private or personal gain by public officials. Since corruption takes two or more parties to indulge, mineral related corruption involves state officials, private individuals and companies who unfairly obtain personal benefit from the minerals. In Zimbabwe mineral related corruption manifests itself when public officials, private individuals and corporates collude to expropriate the country’s mineral wealth for self-enrichment.

**Human Rights**

The concept of human rights occupies a place of centrality when discussing rights violations that result from mineral related corruption. It must be noted up front that what is exactly meant by human rights remains controversial and ambiguous. Despite this ambiguity, human rights are basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language, or other status.\(^70\) In Zimbabwe though there is tendency to overemphasize political and civil rights as well as physical abuses, the notion of human rights is much broader than this narrow conceptualization. Human rights include civil and political rights, such as the right to life, liberty and freedom of expression; and social, cultural and economic rights including the right to participate in culture, the right to food, and the right to work and receive an education.\(^71\)

Human rights are protected and upheld by international laws and treaties as well as domestic laws of acceding states. The Universal Declaration of Human Rights (UDHR) is widely regarded as the foundation of the international system of protection for human rights and domestic laws of states are guided this declaration.\(^72\) It was adopted by the United Nations General Assembly on December 10th, 1948. All countries of the world including Zimbabwe are guided by the UDHR. In this study, though environmental, economic, social and cultural rights are the main focus, human rights are categorized in terms of generations. The categorisation of human rights is done for analytical purposes as it is well known that rights are intertwined and overlap than is envisaged by these analytical categorises. The four generations of human rights are:

**First Generation Human Rights:** The first generation relates to freedom (liberté) and entails civil and political rights that protect individuals from state power.\(^73\) Civil and political rights include protection from proscribed discrimination, freedom of thought and conscience, freedom of speech,

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69 African Governance Report II Corruption in Africa 2009


71 Ibid

72 Ibid

freedom of religion, the right to participate in civil society and politics. With respect to mineral resources, communities in mineral rich areas in Zimbabwe must be given the right to be involved in decision making and openly voice their concerns on how these resources must be exploited for their benefit.

Second Generation Human Rights: Second-generation rights are those relating to equality (égalité) encompass economic, social and cultural rights. They ensure the right to be employed, the right to equal working conditions, the right to social security, the right to education, the right to cultural participation and the right to unemployment benefits.

Third Generation Human Rights: Third-generation rights, also known as solidarity rights, are collective rights dealing with the principles of brotherhood (fraternity). Generally speaking, third generation rights are loosely binding laws found in the Stockholm and Rio declarations. They cover environmental rights, rights to intergenerational equity and sustainability, the right to self-determination, the right to natural resources and collective rights.

Fourth Generation Human Rights: While the rights of the first three generations apply to human beings, the fourth generation rights correspond to the well-being of mankind. This encompasses the right to development. Broadly understood fourth generation human rights further expand on intergenerational equity and place a particular emphasis on the promotion of economic, social and cultural rights of communities.

Environmental, Economic, Social and Cultural Rights
In this study environmental, economic, social and cultural rights are quintessential in understanding and analysing the rights of communities living in mineral rich areas. Often as a result of mining operations the environmental, economic, social and cultural rights of these communities are affected in a negative way. ESCR have their roots in the Universal Declaration of Human Rights. These rights protect people’s entitlements to economic, societal and cultural benefits. In 1966, the United Nations adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) aimed at protecting economic, social and cultural rights. The economic, social and cultural rights, among other fundamental rights, provided for in the ICESCR include the right to an adequate standard of living that encompasses adequate food, shelter, clothing, education, and work as well as the right to social security. At the continental level, the African Charter on Human and People’s Rights (ACHPR) provides the framework for the realisation of economic, social and cultural rights. The ICESCR also makes provision for the right to work, health, culture, housing and education among other rights. Domestically, as a signatory to the ICESCR and the ACHPR the Constitution of Zimbabwe and subsidiary legislation, particularly the Environmental Management Act (Chapter 20:27), also captures the economic, social and cultural rights. While Zimbabwe is a signatory to international conventions that seek to protect economic, social and cultural rights, the country has been poor at implementing these rights due to numerous factors which include limited resources, lack of judicial activism and lack of political will. On the whole the relevance of economic, social

74 Ibid
75 Ibid
76 Evans, D, G, Human Rights Four Generations of Practice and Development New York State University of New York 2007
77 http://www.amnestyusa.org/research/human-rights-basics
78 Articles 6, 7, 8, 11 and 13 ICESCR
79 Articles 15, 16 and 17 of the African Charter on Human and People’s Rights (ACHPR)
80 Mtisi, Shamiso et al op cit p16
CHAPTER FIVE: The Human Rights Dimension to Mineral Related Corruption in Zimbabwe

and cultural rights lies in their ability to advance sustainable development that mitigates the debilitating effects of poverty often afflicting communities in mineral rich areas.

The Concept of Development

Closely linked to the concept of human rights and mineral related corruption is the notion of development. The contemporary struggle in developing countries including Zimbabwe is how to ensure that communities in mineral rich areas enjoy development standards matching the abundant mineral wealth. This is in light of the fact that communities in mineral rich areas in developing countries such as Zimbabwe are entrenched in perpetual poverty despite the abundance of high value mineral resources which include gold, diamonds and platinum.81 Development is a multidimensional process involving major changes in social structures, popular attitudes, and national institutions, as well as the acceleration of economic growth, the reduction of inequality, and the eradication of absolute poverty.82 In essence development transcends economic development; it covers social, political, technological, agricultural, gender and cultural development. Thus development is a broad concept which covers virtually every aspect of human life.83 To be more specific this study places primacy on human development which is basically about widening people’s choices, empowering them to make decisions, greater access to knowledge, better nutrition and health services, more secure livelihoods and a sense of participation in community activities.84 This is only possible when communities have control over their locally available resources.

Mineral resources are some of the resources available to communities and if real human development is to take place, these communities must be able to make decisions on how they should benefit from local mineral wealth.

The Link between Mineral Related Corruption, Human Rights and Development

There is an inextricable link between mineral related corruption, human rights and development. Corruption is a serious violation of people’s human rights as it has a grave impact on livelihoods.85 While corruption violates the rights of all those affected by it, it has a disproportionate impact on people that belong to groups that are exposed to particular risks, such as rural communities which are characterized by poverty and the highest number of poor people.86 Corruption not only affects economic growth and discourages foreign investment, thereby indirectly affecting the poor, but reduces the net income of those living in poverty, distorts policies, programmes and strategies that aim to meet their basic needs, and diverts public resources from investments in infrastructure that are crucial elements of strategies to lift them out of poverty.87 In developing countries such as Zimbabwe the economic, social and cultural rights of communities are violated when public officials enter into self-enriching deals with mining companies or rich individuals. Thus corruption limits the people’s choices and erodes community participation in the exploitation of mineral resources. When the expansion of people’s choices is limited and their participation in the exploitation of minerals is constrained there is no doubt that development is negated.

81 Ibid p19
87 Ibid, p21
The Rights Based Approach and Natural Resource Extraction in Zimbabwe

The Rights Based Approach (RBAD) has been defined as integrating the norms, standards and principles of the international human rights framework into plans, policies and processes of development. Thus the idea is to give much reference to the importance of economic, social and cultural rights as well as civil and political rights, showing that an interdependent relationship exists between the rights. The RBAD provides the normative and legal framework derived from internationally negotiated norms and legal standards. As the main duty holder, these standards are binding on States and enable scrutiny of State obligations to respect, protect and fulfil each right. The point to note is that rights are indicators of change, standards for planning and assessment that development planners can use to establish clear objectives, ensure meaningful participation and set appropriate benchmarks and indicators.

A human rights perspective therefore provides the normative and legal protection to vulnerable groups in particular, which is further reflected in the principles of the minimum core and adequate realization. The RBAD is attached with claims, rather than benevolence. RBAD is inherently about mechanisms of accountability directed at those violating the claims. At times the legal and judicial reform mechanisms may give the appropriate remedies for rights violations. At other times the more traditional tactics of the spiral theory will prove useful to deal with the States not conforming to the normative principles.

The spiral theory is popularly known as the naming and shaming approach in which local NGOs, international NGOs and foreign governments condemn human rights abuses perpetrated by the State, individuals and companies. This approach has been used to highlight the human rights abuses in the diamond fields of Marange. International NGOs such as Global Witness and local based NGOs particularly Centre for Research and Development (CRD) led by Farai Maguwu have named and publicly shamed some of the state officials involved in the violation of human rights in Chiadzwa. Local organisations such as the Zimbabwe Environmental Law Association (ZELA) use the RBAD approach to promote and protect the economic, social and cultural rights of people living in mining areas.

This study notes that the RBAD approach is yet to take root in Zimbabwe’s extractive industry. There is little regard for the economic, social and cultural rights of communities in mineral rich areas. Natural resources in Zimbabwe are being exploited for the benefit of a few politically and economically connected individuals, companies, state institutions and foreigners at the expense of the economy and the local communities. Mineral related corruption continues to negate the entrenchment of RBAD as a means of promoting and safeguarding the rights of communities in mineral rich areas of Zimbabwe. Some of the major impacts of mining, which occur as a result of mineral related corruption, on the communities include environmental degradation, loss of land, water pollution, human rights violations and blatant plundering of resources without any material benefits accruing to the affected communities.

Companies and individuals mining for gold, platinum and diamonds in Zimbabwe are not doing much in terms of alleviating

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89 Ibid, p25
90 Mutopo, P A Human Rights Based Approach To Reproductive Health Amongst Adolescent Girls in Zimbabwe Masters Thesis Norwegian Centre for Human Rights Faculty of Law, University of Oslo, 2006.
91 Ibid, p27
92 Ibid, p28
93 Ibid, p29
94 Risse et al, The Power of Human Rights
95 Ibid
96 www.ichrp.org
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the poverty in mineral rich areas as whatever they are giving in the form of corporate social responsibility is not adequate enough to cater for the many poor people residing in mineral rich areas. This is worsened by the fact that the:

poor and vulnerable women, men and the youths in rural and urban areas, either individually or collectively, often lack adequate knowledge and resources to challenge government actions, decisions or laws as well as private sector actions that contravene their constitutional rights or the country’s obligations under international law. Further, when it comes to defending themselves against overreaching government, too many citizens are afraid to call the government and the private companies to account for their actions.98

The above observation by ZELA is a clear indication that the RBAD approach in the mining sector, though much talked about is not properly understood and poorly implemented such that communities in mineral rich areas of Zimbabwe continue to experience gross violations of their economic, social and cultural rights.

Mines and Minerals Act (Chapter 21:05)
The Mines and Minerals Act is the principal law governing the mining sector in Zimbabwe, with provisions for tenure, acquisition, maintenance and relinquishing of mining title.99 Though the Act is in twenty seven Parts the rights it covers are the mining rights, acquisition and registration of mining rights, rights of claim holders and preservation of mining rights.100 These rights only pertain to those who exploit minerals. The Act does not protect the economic, social and cultural rights of people and communities living in areas where mining is taking place. In fact the Act has glaring loopholes which disempower people and communities living in mineral rich areas.

Part I of the Act vests the rights to minerals in the President with broad powers to dispose of mining rights and to issue special grants for the mining of minerals. Thus the Act gives the President excessive powers over minerals rather than the State. This is problematic in many ways. Firstly, communities in mining areas do not have a say on how mining rights are granted even where their economic, social and cultural rights are clearly threatened. Secondly, the President as a politician can issue mining rights to companies and individuals of his liking without due regard to the rights of affected communities or individuals. The granting of mining licenses to foreign companies under unclear circumstances in Chiadzwa with no community consultation suggests how Presidential powers can be used to make unilateral decisions in the mining sector.

Section 26 of the Act stipulates that all state, communal and private land (either owned by a private company or person) is open to prospecting. This provision in the Act does not at all protect the economic, social and cultural rights of communities in mineral rich areas. By opening up the land to prospecting the state is in a way saying that the interests of those looking for minerals are paramount to those of the communities where these minerals are found. Prospectors are given the blank cheque to
violate the economic, social and cultural rights of communities in the name of prospecting. The only rights protected are those of private landowners who can be compensated if their right to enjoy or use land is impinged upon by mining activity. However, private landowners are now a rarity particularly in light of the Fast Track Land Reform which has drastically altered land tenure in Zimbabwe. Most of the land where mining is taking place is owned by the state or the Rural District Council (RDCs) not the communities. This means that compensation is due to the state or the RDCs instead of the people or communities should such land be affected by mining activities.

As a result of these deficiencies the Mines and Mineral Act has been blamed for being too old and perpetuating the colonial legacy that greatly affects communal land rights. The Act dates back to the colonial period where human rights were indiscriminately violated by the repressive colonial authorities, clearly this shows how unsuitable this piece of legislation is and no longer relevant in post-independence Zimbabwe. Though the Act has over the years been amended to suit the prevailing realities brought by independence the repressive spirit and environment in which it was formulated that permitted human rights violations still haunt it to this day. This situation leaves communities in mining areas vulnerable to evictions and displacement by mining companies who may in most cases just pay the local authorities and start removing people without giving them any direct compensation. The people in Chiadzwa face forced relocations and inadequate compensation in order to pave way for mining companies to extract diamonds.

Environmental Management Act (Chapter 20:27)

Mining operations in Zimbabwe, with specific regard to environmental protection and conservation, are covered by the Environmental Management Act (Chapter 20:27). The Act imposes a duty on “persons” and mining companies to protect the environment. The Act makes it a crime for any person to pollute water, air and the environment. It requires every generator of effluent or solid wastes to put in place measures to prevent or reduce pollution and environmental degradation from their activities. Section 4 (1) of EMA provides the following rights: every person has a right to live in an environment that does not cause harm to health, the right to access environmental information and the right to participate in environmental decision making processes. Section 97 of the Environmental Management Act as read with the First Schedule mining companies are required to undertake an EIA and apply for an EIA Certificate to the Environmental Management Agency (EMA). The EIA is a planning tool that can be used to assess the potential social, environmental, economic and cultural impacts of a project. The EIA report should also state the different measures that will be adopted by the mining company to address the problems identified. An effective EIA process is one that involves community consultations and participation to evaluate how the proposed mining project may affect their environmental, economic, social and cultural interests.

Experiences on the ground reveal that the provisions of EMA Act are not being followed. Those engaged in mining including the gold panners and mining companies are violating the law with little or no penalties at all. Gold panners are using harmful chemicals such as cyanide which pollute water sources. This was evident in Kwekwe and Gwanda. There was also widespread

101 Maturure, M A Review of the Legislative and Policy Framework for Community Based Natural Resources Management in the Mining Sector; Study Commissioned By the CBNRM Forum, 2008.
103 Extractive Industries Policy And Legal Handbook ZELA, 2011
104 Ibid, p11
105 Ibid, p27.
106 Extractive Industries Policy And Legal Handbook ZELA, 2011
environmental degradation which threatened agricultural and grazing land. This affected the economic rights of the people in communities who relied on agriculture and livestock rearing. Though the law makes it mandatory for mining companies to carry out an EIA there is overwhelming evidence pointing to the fact that there is a lot of corruption going on when it comes to these EIAs. There is no evidence on the ground that EIAs have been conducted and when probed most miners become elusive. In fact most of the miners interviewed could not give an adequate explanation on how they acquired EIAs certificates in light of the fact that their operations are visibly not compliant with the environmental laws.

The Kimberley Process and Human Rights in the Mining Sector

Zimbabwe is not immune and has to respond to international efforts that seek to minimize human rights abuses in the mining of minerals such as diamonds. One such international effort is the Kimberley Certification Process (KCP). The Kimberley Process Certification Scheme was introduced in 2003 in response to mounting international pressure to the growing problem of conflict diamonds.\(^\text{108}\) This came about after a meeting of diamond producing states in Kimberley, South Africa, in May of 2000 to deliberate a solution to the menacing problem of conflict diamonds, which approximately accounted for 15% of rough diamond shipments at the time.\(^\text{109}\) The United Nations General Assembly met in December of 2000 and adopted a resolution on conflict diamonds which included the creation of an international certification scheme.\(^\text{110}\) This led to the establishment of the Kimberley Process Certification Scheme which is a joint government, international diamond industry, and civil society initiative designed to curb the flow of conflict diamonds on the world market. The main objective of the Kimberley Process is to promote transparency and accountability in the diamond trade, specifically stopping the illicit trade used by rebels or rogue states to fund wars which are usually associated with human rights violations.\(^\text{111}\)

Under the Kimberley Process Certification Scheme member states are compelled to certify that diamonds mined within their precincts are conflict-free. To ensure compliance by member countries the scheme is monitored through review visits, annual reports and regular exchanges and analysis of statistical data.\(^\text{112}\)

To date the Kimberley Process has over 48 members, including 17 African countries. The countries in the Kimberley Process represent an estimated 99.8% of rough diamond production worldwide.\(^\text{113}\) African states that have acceded to the Kimberley Process include major diamond producers such as Angola, Botswana, the Central African Republic, the Democratic Republic of Congo, Cote d’Ivoire, Namibia, Sierra Leone, South Africa, Tanzania, Togo and Zimbabwe.\(^\text{114}\) The Process now has international credibility as it is supported by the United Nations and World Trade Organisation’s. As a result, the Kimberley Process Certification Scheme has greatly contributed to the cessation of diamond linked wars and promotion of human rights.

Though the Kimberley Certification Process has helped to drastically reduce wars and stop human rights abuses linked to diamonds it has its own inherent weaknesses which limit its effectiveness as a mechanism for safeguarding human rights in the extractive industries of member states. One of the major

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\(^{108}\) www.pbs.org/newshour/extra

\(^{109}\) www.pbs.org/newshour/extra


\(^{113}\) www.pbs.org/newshour/extra

weaknesses of the Kimberley Certification Process is that the scheme relies on consensus-based decision-making, which often means slow progress or inaction on key issues.\textsuperscript{115} The scheme is also dogged by a lack of consistent political will, and outdated and obstructive procedures which prevent it from achieving its potential and fulfilling its mandate of preventing diamonds from fuelling violence and human rights abuses.\textsuperscript{116} For the past years the Zimbabwe case has shown deep fissures in the Kimberley Process. There is mixed reaction on whether Zimbabwe should trade her diamonds on the international market given the allegations of human rights abuses linked to diamond mining.

The major diamond producing African countries such as South Africa are adamant that Zimbabwe meets the minimum criteria which allow the country to trade her diamonds on the international market. Western countries led by the United States of America strongly feel that Zimbabwe still needs to improve on her human rights record before Zimbabwean diamonds can be traded freely on the international market. In the midst of bickering among the diamond producing countries Zimbabwean diamonds have found a ready market in countries such as India, Israel, Dubai and even the United States itself- a country strongly opposing the open trade of Zimbabwean diamonds. This has led to some critics arguing that KP’s response to the systematic and gross human rights violations rampant in the diamond fields of Zimbabwe ranges from ineffectual to complicit.\textsuperscript{117}

However, the study notes that physical abuses at the diamond fields of Marange have considerably receded although the communities there still face violations of their economic, social and cultural rights. This is because the mandate of the KP does not include human rights issues.\textsuperscript{118} So far attempts to expand the mandate of the KP to include human rights has been resisted by diamond mining countries such as Zimbabwe which ironically is being accused by the civil society groups within and outside the country of violating the environmental, economic, social and cultural rights of communities in the Chiadzwa.

Impact of Mineral Related Corruption on the Rights of People in Gwanda, Kwekwe and Chiadzwa Communities in Gwanda Kwekwe and Chiadzwa have experienced widespread corruption linked violations of their economic, social and cultural rights which have affected their livelihoods and general wellbeing. The degree of rights violations as a result of corruption varies from place to place. In areas such as Gwanda and Kwekwe the people there did not experience physical human rights abuses as those witnessed in Chiadzwa. Research evidence shows that Kwekwe and Gwanda experience economic, social and cultural damage as a result of mining operations. Gwanda and Kwekwe are similar and unique in that these areas have a high number of illegal gold miners.

Gwanda District is found in the Matabeleland South Province of Zimbabwe. The district is well known for its cement production plant at Colleen Bawn. Besides cement production the district also has a gold belt with substantial deposits of gold that have attracted a number of illegal gold panners from within the district and beyond as far afield as Masvingo. The activities of the illegal gold miners have affected the economic, social and cultural rights of communities in Gwanda. Evidence from the study reveals that the operations of the illegal gold miners are linked to corruption involving the state officials, particularly the police and politicians. Kwekwe district is found in the Midlands Province of Zimbabwe. The district sits on one of the largest known gold deposits in the country. Hence most of the gold produced in Zimbabwe comes from Kwekwe district. Naturally, the gold deposits have attracted the attention of mining companies and illegal gold miners who have flocked to the


\textsuperscript{116} Zimbabwe: Rampant Abuses in Marange Diamond Fields \url{http://www.hrw.org/news/2012/06/04/zimbabwe-diamond-abuses-show-need-reforms}.

\textsuperscript{117} Human Rights Watch Diamonds in the Rough June 2009 p28 \url{http://www.hrw.org/reports/2009/06/26/diamonds-rough}.

\textsuperscript{118} \url{http://www.hrw.org/reports/2009/06/26/diamonds-rough
district in search of the precious mineral. The large influx of
the illegal gold miners has seen an increase in mineral related
corruption which has prejudiced the local communities of their
economic, social and cultural rights.

Gold mining is highly regulated in Zimbabwe by legislation such
as the Mines and Minerals Act (Chapter 21:05), the Precious
Mineral Act (Chapter 21:06) and the Gold Act (Chapter 21:03)
which proscribe unlicensed people from mining or dealing in
gold. However, the illegal gold miners in Gwanda and Kwekwe
are able to mine and deal in gold without any licensing of any
form whatsoever. This has been made possible by rampant
corruption involving the police, Ministry of Mines officials,
private companies and the illegal gold miners. The study noted
that the illegal gold miners and mining companies were bribing
the police and Ministry of Mines officials to facilitate their
unlawful mining activities. These illegal gold miners do not
follow mining regulations and their mining activities have largely
resulted in environmental degradation, water pollution and loss
of land. In order to extract the gold these illegal miners dig huge
pits that have endangered livestock and become a health hazard.
The pits dug by the illegal miners have become sources of water
borne diseases such as malaria as they provide fertile breeding
ground for the malaria causing anopheles mosquitoes.

The companies and illegal gold miners are not paying adequate
royalties to the government and local authorities in Kwekwe
and Gwanda. Rather what they pay in the form of bribes is
expropriated by the state officials for their own personal benefit.
This has limited the capacity of the local authorities, the Rural
District Councils and the central government to offer basic
services such as education, health care, water and sanitation
facilities. When communities are deprived of essential services
such as education, health, water and sanitation this obviously is a
violation of their economic, social and cultural rights. The most
affected groups are the vulnerable and poor women, men, youth
and children in Gwanda and Kwekwe who lack a strong voice to
defend themselves from the destructive actions of the illegal
gold miners and mining companies as well as mineral related
corruption by state officials.

**Marange – Chiadzwa Diamond Fields**

The Chiadzwa area of Marange in Manicaland approximately
90 km south-west of the city of Mutare has Zimbabwe’s largest
diamond deposits covering almost 123 000 hectares. It was
the discovery of diamonds and the subsequent international
diamond rush in 2006 that placed Marange and Zimbabwe on the
world map. Marange is the name of the chief of the area under
which the diamond fields were discovered while Chiadzwa is
the name of the Headman of the local ward in which the alluvial
diamond fields are situated. Geologists claim that the Marange
diamond fields are the largest alluvial discovery in history with
the capacity to produce two to three million carats per month
over two decades. Prior to Zimbabwe becoming a KCP member
in 2010 diamond mining was done outside the KCP regulations.
A free for all scenario prevailed in Marange.

The community in Marange experienced erosion of their
economic, social and cultural rights as a result of the unregulated
diamond mining and even after the regularization of mining
activities carried out by both the illegal miners and mining
companies respectively. The situation worsened when the
government awarded the diamond mining contracts to Diamond
Mining Corporation, Anjin Investments, Marange Resources and
Mbada Diamonds. On the basis of these contracts these mining
companies have caused the displacement and relocation of
families to areas far away from their original homes. This tends to
break deep rooted family ties and expose the relocated families
to a new social and cultural set up which they are not accustomed
to. Thus relocations not only sever ties among families but also
deny the relocated families from enjoying economic benefits
that diamond mining is bringing to those families that have
stayed behind. On the cultural front ancestral shrines and graves
have been desecrated as diamond seekers indiscriminately dig the land in search of the precious mineral. This has destroyed the cultural heritage of the people in Chiadzwa. Human rights abuse peaked in Chiadzwa during Operation Hakudzokwi, October 27, 2008.\(^{119}\) The operation has generated mixed views. One view states that the operation was carried out to appease the security forces who had become restless as a result of the economic decline. The other view is of the opinion that the operation was carried out to restore sanity and pave way for regulated diamond mining. What is clear however is the fact that the operation resulted in gross human rights violations. The police, military and the intelligence used ruthless methods to remove the illegal miners who had thronged Chiadzwa in search of diamonds. Mining companies also played a part in human rights abuses through their private security personnel who wantonly abused people.

### Civil Society and its Role in the Protection of Community Rights in Mining Areas

It is now widely recognized that civil society organisations play an important role in the areas of development, good governance and democratisation in the use of natural resources in mineral rich countries. The study established that communities living in mining areas are poor and the women, men, the disabled, youth and the children lack the capacity to confront the government and big mining companies where their rights are violated. This has created a caveat for civil society to intervene and assist communities in the fight to call government and mining companies to account for their economic, social, environmental and cultural impact on communities’ livelihoods and rights. The civil society through advocacy and lobbying can help to promote and safeguard human rights in mining areas.

The involvement of the civil society in the extractive industry is part of the democratization process in the use of natural resources. Democratisation in the context of natural resources use requires the state, mining companies, individuals and communities themselves to uphold the principles of transparency, accountability, equity and equality when it comes to the exploitation of resources such as minerals.\(^{120}\) In Zimbabwe the concept of civil society is highly contested and this requires a brief discussion of the concept. Notwithstanding the contestations surrounding the concept, in this study, civil society is defined as ‘an aggregate of institutions whose members are engaged primarily in a complex of non-state activities—economic and cultural production, voluntary associations, and household life—and who in this way preserve and transform their identity by exercising all sorts of pressures or controls upon state institutions.’\(^{121}\) Civil society would include trade unions; professional associations; church and para-church organizations; residents, student, business and other special interest associations; the media; and various types of non-governmental organizations (NGOs).\(^{122}\) Among many functions the work of civil society involves limiting the power of the state more generally, and challenging its abuses of authority; monitoring human rights, educating citizens about their rights and responsibilities as well as strengthening the rule of law. Thus civil society organisations intervention in the promotion and protection of human rights in mining areas can be done through a number of ways.

The role of civil society in Zimbabwe is to provide a free public sphere where citizens argue with one another about the questions of how the rights of communities in mining areas are being violated. This is done by identifying the perpetrators of human rights violations and their impact on the economic, social and cultural rights of communities. Civil society organisations such as

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\(^{119}\) www.hrw.org/reports/2009/06/26/diamonds-rough

\(^{120}\) www.ichrp.org


as CRD led by Farai Maguwu have taken a lead in highlighting the human rights abuses perpetrated by the security forces in the Marange diamond fields. The information gathered by the CRD research activities have provided discussion points on the human rights violations that are linked to corruption. This role is central when it comes to finding proper solutions and decision-making regarding mineral resources. In other words, civil society’s role is to provide a public communication system where people have room for debate, participation and democratic decision-building. This has helped to reduce human rights violations linked to mineral related corruption.

In the mining sector the function of civil society is to monitor for accountability in the extraction of minerals such as gold, diamonds and platinum. Monitoring by civil society in the mining sector involves ensuring that mining companies are in compliance with internationally set human rights standards and that the level of corruption is kept at a minimum. This function consists mainly of monitoring the activities of the state apparatus and government officials and mining companies.

The KCP requires the participation of civil society groups to monitor whether the mining of diamonds is done in a clean way which does not promote conflicts. In Zimbabwe ZELA has taken upon itself the role of monitoring the violation of economic, social and cultural rights by the state and mining companies in communities living in mining areas. At a local level the Chiadzwa Community Development Trust (CCDT) has effectively played its monitoring role through the evaluation of the operations of the mining companies in Chiadzwa. CCDT has remained consistent in raising alarm where it feels the diamond mining companies are violating the community’s economic, social and cultural rights. Such activism has minimized human rights abuses by the state and mining companies.

Civil society in Zimbabwe’s extractive sector has fought hard to be a part of the policy making process through the development of a programme of action to address human rights abuses. Through organized workshops and seminars civil society has lobbied the government to generate policies and pieces of legislation that protect the economic, social and cultural rights of communities living adjacent to mining areas. ZELA and Transparency International Zimbabwe are taking a lead in that sphere by constantly engaging government officials so that the existing policy framework governing the extractive sector can be improved in a way that safeguards human rights and curbs mineral related corruption.

Civil society and its organizations in Zimbabwe has tried hard to fulfill the role of balancing the power of and negotiating with the state on human rights issues in the mining sector. This is more than evident in Marange. In light of the gross human rights abuses perpetrated by the state in Chiadzwa organisations such as ZELA and the CRD have tackled the state head on. Such action has made the state sensitive to human rights abuses in the mining sector. The reduction in incidences of human rights violations in Chiadzwa can be mainly attributed to the efforts of the civil society organisations.

The civil society in Zimbabwe has helped a great deal in organizing communities in mining areas to stand up for their rights. This has been done through educational campaigns and trainings. Often communities in mining areas may be aware that their economic, social and cultural rights are being violated but they lack the tactics to engage the state and mining companies. Civil society organisations have contributed a lot in capacitating these communities with the knowledge of human rights and the tactics to effectively engage the state and mining companies so that their rights are safeguarded. The study noted that the Chiadzwa Community Development Trust has provided the community with the knowledge of setting up community based monitoring groups and how to engage mining companies that threaten economic, social and cultural rights.

**Conclusion**

There is no doubt that evidence from the study strongly point out
that mineral related corruption has contributed to the violation of the economic, social and cultural rights of communities living in mining areas. The state and mining companies are at the forefront of violating the economic, social and cultural rights of communities. Their actions have impoverished communities as mineral related corruption retards development; leave communities poorer and powerless to confront those who violate their rights. The Chiadzwa case is a very sad one as the state and mining companies colluded to perpetrate physical abuses, violate economic, social and cultural rights of an entire community. This has shown the evil link between mineral related corruption, human rights violation and lack of development.

Mining legislation in Zimbabwe does not fully capture the issue of human rights. For example the Mines Act does not explicitly state how the rights of communities in mining areas should be upheld. So long as mining legislation is not clear on issues of human rights communities in mineral rich areas will continue to experience violations of their economic, social and cultural rights as a result of mineral related corruption involving the state and mining companies.

The civil society despite its own inherent limitations has played a significant in trying to promote and protect human rights in mining areas. Civil society organisations such as CRD, ZELA and CCDT have engaged communities and created an awareness of human rights as well as identification of cases where these rights are violated. This has awakened communities in mining areas to fight for their economic, social and cultural rights.

**Recommendations**
To ensure that human rights are promoted and protected in mining areas the study recommended that:

**Constitutional Provisions to Guarantee the Rights of Communities in the Mining Areas**
The Constitution of Zimbabwe needs to have clear provisions which guarantee the rights of communities in the mining areas. This can be done through a Bill of Rights that makes economic, social, cultural rights enforceable and justiciable. Once the economic, social and cultural rights of communities are enforceable this will compel the state and mining companies to put measures in place that protect these rights.

**Enshrining Human Rights in the Mining Legislation**
Presently mining legislation in Zimbabwe is not specific on how human rights should be protected in the mining sector. To remedy this deficiency, starting with the Mines and Mineral Act, there should be explicit provisions that specify the economic, social and cultural rights of communities living in mining areas. Once mining legislation is clear on the protection of human rights it is easy for affected communities to engage with those who violate these rights. This will also force the state and mining companies to be more accountable and transparent in their operations. Further, enshrining Human Rights in Mining legislation will ensure that mining companies direct their social responsibility activities in a way that benefits the community.

**Expanding the Mandate of the Kimberley Certification Process**
It has been noted with concern that the Kimberley Certification Process’s mandate is limited to conflict diamonds alone excluding the issue of human rights. Thus the mandate of the KCP should be expanded to include human rights abuses linked to diamond mining. This will ensure that countries not necessarily at war but violating human rights are barred from trading their diamonds on the international market.
Community Empowerment
Communities in the mining areas need to be empowered with the knowledge on human rights and the capacity to engage those who violate their rights. Once communities are empowered they are able to initiate processes that ensure that the state and mining companies respect and uphold economic, social and cultural rights.

Increased Civil Society Participation
The civil society and its organisations should play an expanded role ensuring that human rights are protected in mining communities. This is made possible through effective advocacy and lobbying. The participation of civil society organisations ensures that communities are made aware of their rights entitlement, can recognize cases where their rights are violated and organize themselves to confront those who violate their rights.
CHAPTER SIX:

Gender and Mining in the Context of Mineral Related Corruption in Zimbabwe

by Sunungurai Chingarande and Farai Mutondoro

Introduction

There has been considerable effort to promote gender equality and empowerment in Zimbabwe, through examining the relationship between gender and various important issues such as gender and land reform (Goebel, 2005), gender, poverty and economic adjustment (Kanji, 1995) gender and community based wildlife utilization (Nabene, N and Matzke, G 1995) inter alia, there is literature on the relationship between gender and corruption, especially mineral related corruption. This is despite a growing concern that corruption is gendered. The nexus between gender and corruption in Zimbabwe has rarely been explored. Against this backdrop Transparency International Zimbabwe conducted a study to examine the gendered dimensions of corruption in the mining of gold and diamond in Zimbabwe, the findings of which are presented in this chapter.

Gender in the context of this chapter refers to the socially constructed roles and responsibilities connected to being male or female in a particular society. The way a particular society is organised impacts on how women and men relate to each other, are perceived and what roles and responsibilities are assigned to them. The experience of being gendered thus differs from one society and context to another. In the mining industry, the historical gendered roles played by men and women have been quite traditional. Men have entered the public sphere (the mine workplace), while women have remained in the domestic sphere (the home). Men have been breadwinners, while women have been responsible for maintaining the family. On the mines, women have also provided sexual services to male mineworkers. These socially ascribed roles between men and women shape the form and nature of corruption that both sexes experience and participate in.

Study objectives

The objectives of the study were to:

- Find out and explain the variation in participation by men and women in gold and diamond mining in Zimbabwe
- Examine the gendered form of corruption in gold and diamond mining
- Assess gaps and areas fuelling gendered corruption in gold and diamond mining
- Generate policy recommendations to combat and curb gendered corruption in gold and diamond mining

Research Questions

The following research questions guided the study:

- What is the level of participation of men and women in gold and diamond mining?
- What is the division of labour in gold and diamond mining?
- Why are there variations in the participation of men and women in gold and diamond mining?
- What forms of corruption related to gold and diamond
mining do men and women participate in?
• What fuels gendered corruption in gold and diamond mining?
• What can be done to combat and curb gendered corruption in gold and diamond mining?

Methodology
Data was gathered mainly through in-depth interviews with male and female gold and diamond miners and some of the women who sell food and beverages to the miners in Kwekwe, Gwanda and Chiadzwa. Key informant interviews were also conducted with members of Chiadzwa Community Development Trust, security forces, Ministry of Mines and Mining Development officials, and representatives of women in associations for women miners. The selection of the study sites considered the availability of women in both legal and illegal mining as well as rural and urban miners.

Secondary data was reviewed including civil society reports and the regulatory framework guiding the mining sector such as the Mines and Minerals Act and the Gold Act. A general observation was that there is dearth of literature on gender and the mining sector. This gap was acknowledged at regional level by Ranchod (2001) who has argued, ‘there is not much recorded involvement of women’s participation in the formal mining industry. The mining industry has been called the ‘last bastion of exclusive male employment’ with women’s participation in the industry limited to work as above ground administrative staff, or nursing injured mineworkers.’

The data generated was largely qualitative and was therefore analysed using the thematic approach.

Research Findings

Participation of Men and Women in Mining
The mining sector is traditionally dominated by men as miners and also as board members in the Mining Affairs Board, which is mainly composed of large-scale miners and two representatives from small-scale miners. This is despite the prevalence of comprehensive national, regional and global gender and women’s empowerment norms and standards. The Mines and Minerals Act governing the mining industry together with its proposed amendment Bill are totally gender neutral and blind.

The absence of policy and legislation that provides for gender makes it difficult for mining entities to take steps to mainstream gender and ensure women’s empowerment in their sector.

The large scale mining scenario, as noted above, is very much a male-dominated sector while women are better represented in the small-scale sector. In Zimbabwe, more than 50,000 women undertake artisanal and small scale mining (MWAGCD, forthcoming). Artisanal mining is usually undertaken outside the legal and regulatory framework using simple tools and equipment such as picks and shovels, wheel barrows, homemade processors and the odd compressor for drilling. Most of the people involved in artisanal and small scale mining are very poor, working marginal deposits in extremely harsh and dangerous environments. Precarious mining methods, the use of toxic chemicals such as mercury, sulphuric and nitric acids and petrol or diesel pumps that produce fatal carbon monoxide pose serious threats to the environment and human life. Women are particularly vulnerable to the use of mercury as it may cause abortions and deformity in unborn babies.

Small scale mining on the other hand is more extensive and is sometimes mechanized. Small scale miners usually have legal titles to the land they work whereas artisanal miners generally
do not have legal title to the land they work.
Globally there are more women in artisanal and small scale mining than in large scale mining operations. In some African countries such as Mali and Burkina Faso women constitute more than 50 percent of artisanal (informal) miners. In South Africa, women have long been associated with small-scale mining which is often associated with unsafe working conditions, a historically unregulated policy environment and a lack of appropriate mining technology where they are primarily as a means of survival (Ranchord, 2001). Both legal and illicit mining discriminate against women. Illegal mining refers to those miners who operate without a certificate of registration of mines from the Mining Commissioner, the Provincial Mining Commissioner or Rural District Council Office; and an approved environmental impact assessment (EIA) from the Environmental Management Agency (EMA). The percentage of female registered miners according to the Mining Commissioners register was only 10 per cent (compared to only 2.3 per cent in South Africa in 2001) as Figure 1 shows.

**Figure 1: Gender Division of Labour in Mining Activities**
Figure 1 shows that much of the high value activities are dominated by men. This is largely due to myths and norms such as those stating that women are not supposed to go into the mines because if they do, the stones (minerals) will disappear (Ranchord, 2001).

In the mining sector, 70 percent of the 25 000 Small Scale Miners registered under the Zimbabwe Miners Federation (ZMF) are into gold mining. It is estimated that approximately 15 percent of all those who are involved in small scale mining in Zimbabwe are women (therefore about 3 750 women are currently involved in small scale mining in Zimbabwe), 95 percent of whom are involved in gold mining. It is further estimated that an additional 50 000 women are involved in artisanal/informal gold mining or gold panning. The majority of women involved in mining are in the artisanal/informal and hazardous and illegal gold panning sub-sector.

It is argued that artisanal and small scale miners own more than 60 percent of the mining concessions in Zimbabwe, especially gold and gem stone concessions. It is estimated that women own approximately 20 percent of all the mining concessions in Zimbabwe. The majority of the concessions owned by women are gold mining concessions. It is difficult to obtain sex disaggregated data from the Ministry of Mines and Mining Development as the ministry does not maintain sex disaggregated registers of the mining concessions and mining titles.

The majority of women involved in artisanal and small scale mining produce precious metals such as gold and precious and semi-precious gem stones such as diamonds, sapphires, garnets and rubies because they are easy to process, transport and sell. Since 2009 to the present some women are applying for special grants for coal. Participation by women in artisanal and small scale mining has great potential to generate wealth and empower women. For example, on average small scale miners produce roughly 100-300 grams of gold per month using manual production methods supported by minimal machinery (MWAGCD forthcoming). Taking into consideration that there are approximately 3 750 women with mining claims it can be assumed that women have the potential to produce 375 kilograms of gold per month. This translates to US$ 15 million dollars per month. To this can be added approximately 50 kilograms of gold from artisanal women miners who produce an average of one gram of gold per month. At the average spot prices of US$ 42 per gram this comes to US$ 2 000 000 per month thus giving a projected total of US$ 17 million per month.\textsuperscript{123}

According to the MWAGCD, 2011 report, a new category of women is emerging with women from different professions expressing interest and seeking to invest in mining projects. These women are looking to invest in medium to large scale mainstream mining in a variety of mineral commodities with most of them focusing on diamond mining, cutting and polishing, coal and tantalite mining. This is a good entry point as it is a new sub-sector for the indigenous people in Zimbabwe. It is therefore a good area in which to try and establish the 50/50 principle for gender equity and equality and women’s empowerment in the mining sector. Women are also seeking to enter into joint venture partnerships in order to bring the much needed financial resources for their intended projects. Applications for diamond mining have been submitted by several women’s consortia to the Zimbabwe Mining and Development Corporation (ZMDC) and to date none have been granted a diamond mining concession. Provincial consortia have so far registered about 10 companies of more than 150 women each, such that at least 1 500 women have submitted applications for alluvial diamond mining concessions in the country. This is in addition to the first group of 7 500 women as shareholders in their respective consortia. The MWAGCD is assisting through letters of support and recommendation to the ZMDC.

\textsuperscript{123} MWAGCD, 2011
Women as Employees in the Mining Sector

Very few women are employed in the mining sector, especially at technical and managerial levels. Gender insensitive legislation and the absence of a gender sensitive mining policy and cultural beliefs and practices continue to make it difficult for women to be employed in mining at the same level as their male counterparts. It is estimated that the mining sector contributes 5 percent of the labour force in Zimbabwe and only 5 percent of these are women. The mining and quarrying industry has the lowest share of women in formal employment. This seems to suggest that this profession has been stereotyped as a male environment.

Employment in this sector was 43,225 employees in 2000, peaking at 51,619 in 2004, before declining to 35,626 at the peak of the economic recession in 2008 and slowly recovering to 40,961 in 2010. Male formal employment in the mining and quarrying industry peaked at 49,266 employees in 2004, before declining to 38,742 in 2010, representing a 22 percent decline during this period. In the meantime, female formal employment in this sector was only 2,173 in 2004 and slightly increased to 2,219 in 2010, representing a 2 percent increase during this period. Overall, the mining and quarrying industry contributed 2.8 percent to total employment in the formal sector in 2000, rising to 5.4 percent in 2010 (MWAGCD, forthcoming).

Overall, employment in the mining and quarrying industry fell by 21 percent between 2004 and 2010. The sector is a “hard sciences” area and most of the professionals there are engineers, geologists, and environmentalists, which as highlighted earlier are not female domains. In addition, the mining sector is considered to be hard labour manual work sector where women are generally excluded. In mining towns this marginalization of women in the mining sector has historically led to mining towns and settlements being famous for female prostitution and the resultant high HIV and AIDS prevalence. Because women are rarely recruited for jobs within mining operations, they become dependent on their spouses for survival when these are hired by mining companies. Commercial sex activities tend to increase as a result of the presence of more males in the community. Furthermore, women have tended to provide ancillary services such as supply of food, drink, water some clothes and licenses to buy and sell gold and gemstones.

Although women are involved in the mining sector as entrepreneurs, workers and members of communities affected by mining operations, they still derive limited benefits because they are still marginally represented in the sector.

Constraints to women’s participation in the mining sector in Zimbabwe

It was established that generally mining requires huge capital outlays, which many indigenous entrepreneurs, particularly women cannot afford. The financial constraint is by far the biggest challenge encountered by women in mining in Zimbabwe. With regards registration, substantial financial capital is required for prospecting and registration of mines as well as carrying out of environmental impact assessment. A mining course costs $250. According to the Mining (General) (Amendment) Regulations, 2012 (No. 16) the annual fee for alluvial, eluvial, rubble deposit or dump precious metal claims has been hiked by one thousand percent (1000%) from $10 to $1,000. An ordinary prospecting license per mining district and for the whole country costs $500 and $1,000 respectively. The application fee for registration of base mineral blocks pegged under ordinary license and for mineral blocks pegged under special prospecting license costs $2,000 and $4,000 respectively. The cost of a gold buying license, gold jewellery permit and custom milling license are $5,000, $2,000 and $8,000 respectively. The fees for smelting gold amalgam are $50 per 100grams. The cost of pegging has not been included in the Regulations. The permit to acquire and possess explosives is $1,000. In addition, EIA costs $1,000 (WILSA, 2012).

Mining is not only a capital intensive venture, but it also has a
long gestation period that can be as long as 5-10 years. Several other factors account for the poor representation of women in the mining sector as follows:

- Lack of gender sensitive policy and legislation governing the mining sector;
- Lack of mechanization for mining operations;
- Limited technical and business knowledge and skills among women involved in mining;
- Limited access to information on the mining sector by women;
- Limited geological mine evaluations;
- Limited linkages with large scale mining corporations;
- Small mining concessions which are non-viable business entities;
- Poor coordination of the representation of women in mining; and
- Cultural beliefs and practices that discourage women’s participation in mining.

Artisanal and small scale miners, particularly women, face a number of challenges such as:

- They work marginal or small deposits;
- Their operations tend to be labour intensive with poor rates of recovery and income earning;
- Lack collateral security to obtain bank loans;
- Lack the education and skills to interact effectively with lending institutions to negotiate for business loans;
- Lack of technical support;
- Limited access to markets and support services;
- Health and safety hazards;
- Face prejudice and experience credibility gaps from family and the business community regarding their capacity to successfully engage in mining businesses; and
- Limited capacity for environmental reclamation and restoration,

Box 1 presents challenges and constraints in artisanal mining in Zimbabwe, using the case of Mbizo and Zhombe in Kwekwe District.

**Box 1: Challenges and Constraints in Artisanal Mining in Zimbabwe: The Case of Mbizo and Zhombe, Kwekwe District, Midlands Province, 2012**

The study of 122 miners in Mbizo and Zhombe established that a high proportion (80 percent) of miners in that area is illegal miners, and women constituted 79 percent of the illegal miners. Women engage in illegal mining activities because of many factors which include lack of knowledge and understanding of the mining legal framework. Women are discouraged from registering by the complexity of the registration process, so women opt out and risk illegal mining. Practically it takes 9 to 12 months to acquire all the required legal mining documentation. Lack of adequate and appropriate equipment is another major obstacle. After paying for equipment such as a compressor hire and pump, labour, transport and milling the owner remains with 10 percent of proceeds. In this study only 4 percent of the respondents had mechanized equipment with none of them being a woman.

However, although illegal mining is a major source of family income, it is highly risky especially to women as they are usually on the run, being sought after by police and other parties in the mining framework like EMA and also running from bullying male miners who displace them from site with a higher concentration of ore. Illegal; women miners are victims of harassment, frequent arrests, dishonesty and bullying by unscrupulous gold buyers.

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125 Women and Law in Southern Africa Research and Education Trust Zimbabwe (WLSA), 2012.
and male miners. In the Kwekwe district study, 80 percent of the women interviewed had experienced dishonesty in the ore extraction to selling processes, 60 percent of the miners had at one time been arrested or faced problems with the police. Of the latter, 72 percent of them were women. The frequent movements of miners increase the vulnerability to the risk of contracting HIV. Women also bear the brunt of other negative social impact of mining such as health, safety and environmental risks which include mercury poisoning, contamination of drinking water and reduced quality of life due to unclean and unhealthy environment caused by air, water and noise pollution.

Source: Women and Law in Southern Africa Research and Education Trust Zimbabwe (WLSA), 2012; Creating a conducive legal and policy environment in mining in Zimbabwe; A Report on a baseline study in Mbizo and Zhombe, Kwekwe District, Midlands Province; Zimbabwe

Women miners have inadequate equipment and cost of hiring equipment is beyond their reach. They have inadequate marketing skills and linkages leading to low return sales.

Current and Potential Funding Opportunities for Small Scale Women Miners in Zimbabwe

While several banks are providing loans for small scale mining, most of these facilities are not gender sensitive, but can be used as entry points for women in mining to access the much needed investment finance, see Table 1.

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126 A total of 122 questionnaires were administered to 84 miners (61 women and 23 men) and 38 non-miners (16 men and 22 women).
### Table: Current and Potential Funding Opportunities for Small Scale Women Miners, Zimbabwe, 2011

<table>
<thead>
<tr>
<th>Institution</th>
<th>Description</th>
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<tbody>
<tr>
<td>Tetrad Investment Bank</td>
<td>Through its holding company Gainwell, has created a special facility to gold producers who sell their gold to the bank, Kadoma November 2010 initiative. A facility to facilitate the mechanization of their gold suppliers to enhance gold production, for example funding plant and machinery to miners on hire purchase for over a twelve months period. Facilitating access to a reliable source of energy by funding procurement of generators to offset intermittent electricity supply currently disrupting gold production. Encouraging miners to formalize their operations by operating through registered companies and consortiums and not as sole traders.</td>
</tr>
<tr>
<td>Brainworks Capital</td>
<td>Targets small scale mining the country. Debt and equity and venture capital are the sources of funding for small scale miners.</td>
</tr>
<tr>
<td>Commercial Bank of Zimbabwe (CBZ)</td>
<td>Is already lending to the mining sector in general. Willing to create a special facility to fund women in mining projects, similar to the youth in mining fund.</td>
</tr>
<tr>
<td>First Banking Corporation</td>
<td>Has special financial schemes that women in mining can tap into for their mining projects</td>
</tr>
<tr>
<td>ZB Bank</td>
<td>Has already worked with the Minerals Marketing Corporation of Zimbabwe to set up a special fund for the procurement of metal ores, especially chromite ores from small scale producers.</td>
</tr>
<tr>
<td>Institution</td>
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<tr>
<td>The African Development Bank (AfDB)</td>
<td>Launched the African Women in Business Initiative through which the Bank seeks to enhance women in business access to finance. Can be approached for institutional support and capacity development for the women in mining apex body and its members and the establishment of a special financial instrument through which women can access funding for their mining projects.</td>
</tr>
<tr>
<td>The Preferential Trade Area (PTA) Bank</td>
<td>Provides finance (US$500 000 up to US$ 20 million) for projects including mining and infrastructure development for businesses operating in the COMESA region.</td>
</tr>
<tr>
<td>The Afrexim Bank</td>
<td>The Project related Program financing scheme offered by the bank can be used to finance mining projects because most of the products from the mining sector, especially gold are almost all exported.</td>
</tr>
<tr>
<td>The Mining Industry Loan Fund (MILF) and Plant Hire</td>
<td>The MMMD manages a special fund that is intended to provide financial support to small scale miners by availing speculative, mine development and infrastructural development loans. The plant hire scheme is meant to make it possible for small scale miners to procure mining equipment and machinery on a hire purchase basis. In 2011, it is expected that the MILF will bring in compressors and pumps and accessories for the benefit of miners and women miners will benefit from this scheme.</td>
</tr>
</tbody>
</table>

Source: Edited from the Ministry of Women’s Affairs, Gender and Community Development (by Constance Kunaka, Silverside Mine, Mhangura), 2011, Economic Empowerment of Women, Mining Sector Study
Some illegal artisanal miners have decided to join hands with some security officers to loot diamonds from the diamond mines in Chiadzwa. The most protected diamond mine in Chiadzwa is Mbada Diamond mine which is located in Shonje Mountain. Shonje Mountain has the largest quantity of diamond deposits and even though it is protected by the Zimbabwe National Army officers (ZNA), Zimbabwe Republic Police (ZRP) and the company’s security officers the area has not been immune from the illegal activities of the artisanal miners.

It was established that close to 90 percent of the security guards employed by Mbada Diamonds Mining Company are locals. Most of them were recruited from the villages surrounding Chiadzwa as a response to the government initiative that local people should benefit from the exploitation of resources in their areas. This was also a move by the government to abolish illegal artisanal miners from the area by reducing unemployment. These security guards usually work in cahoots with the illegal artisanal miners most of whom are their kinsmen and allow them to steal some diamond ore from the mining area. One respondent explained how nepotism can be a tool of entering the diamond fields.

“I have my uncle who is a guard at Mbada Diamonds and he is the pillar of our syndicate. He phones us to come when he is on duty, we get in the diamond fields via the mountain side at a place called “Dread’s gap”. There is a hole in the fence through which we enter the diamond field and that area is far from the guards’ compound. We don’t get deep into the diamond field because there are some tower lights inside the field so we dig near the fence quickly and we sneak out with diamond ore. Uncle closes the hole or we close it before we leave. The following day we sift for diamonds with him.”

Another respondent was a member of a syndicate which includes two soldiers, one police officer and four civilians. The syndicate is led by the police officer and the soldiers in its operations. The police officer and soldiers act as informants to the artisanal miners and ensure that they are not apprehended during police crackdowns on artisanal miners. The respondent said that the police officer and the soldiers tell them when the despoil will be coming or when the Reaction Police will clean up the Chiadzwa area of illegal artisanal miners. The Reaction Police are the group of police officers which is brutal when dealing with the illegal diamond diggers. The Reaction Police is synonymous with the Military Police and is also responsible for arresting corrupt police officers. The respondent and his syndicate usually dig for diamonds during the night at Pure Diamonds site which has more security loopholes than any other company. The mining at Pure Diamonds has not yet started and the area is not well protected. Pure Diamonds is more than twenty kilometres away from Anjin mine and Sino; it is on the periphery of the mineral rich area in Dozva. There are no tower lights in the mining field and artisanal miners invade this area more than other areas. The respondent said it is safer to be in syndicate than to be a poacher because if a poacher is caught in the diamond fields he will be thoroughly beaten by the police, soldiers or guards. The respondent and his syndicate sift for diamonds (kusketa mutaka) at Kurauone School in the presence of the two soldiers and the
police officer. If they find some diamonds they share amongst themselves or they sell them to the unlicensed buyers who are usually found at Chakohwa or Hot Springs shopping centres in Chimanimani and share the money.

Bribing the security officers is one of the ways the illegal artisanal miners are using to gain entrance into the diamond fields. Most security officers protecting the diamond fields solicit for bribes from the illegal artisanal miners in exchange for entrance into the diamond fields. The bribing which is known as “kudhiza” in Chiadzwa is in done in different transactions. Cash ranging from five to ten dollars per individual is handed over to the security officers in order to enter the fields. One respondent said this about how he enters the diamond fields:

“Ini ndino dhiza because zve syndalo handidi, masoja kana mapurisa anogona kukupandukira. Ndino dhizira pa fence asi kana usina mari maguard anokutorera chero chinhu chaunacho. Ini ndakatorerwa ma sneakers angu matsva ku Mbada...” (I pay bribes because I don’t want to be in a syndicate, the soldiers or police can turn against you. I pay bribes at the fence but if one doesn’t have cash the guards will take anything the person has. I had my new pair of sneakers taken at Mbada.)

Bribing (kudhiza) is associated with “Live Show Operations” meaning that the artisanal miners work in the presence of the security officers. The illegal miners are given about thirty minutes of collecting ore by the security officers before another group is let in. The security officers guard the illegal miners who will be digging diamond ore and ensure that no poachers will sneak into the diamond field. Poachers do not pay bribes and if they are caught they will be beaten thoroughly by the security forces. The amount of bribe also determines the area in the diamond fields artisanal miners will be allowed to dig. There are some areas in the diamond fields which have more deposits than others and these areas require more money than other areas. The respondent said the main problems the artisanal miners who get in the diamond field through bribing face is that they may have to pay the bribe more than once. He stated that if one pays a bribe at the point of entry into the diamond fields, he will have to pay another bribe to a different group of security officers whom he comes across in the diamond fields failure to do so may lead to some thorough beatings. Some security forces betray the artisanal miners by arresting them after they have paid some bribes to them.

One syndicate has managed to tame the security officers by befriending them. The members usually ingratiatingly indulge in excessive beer drinking with the soldiers and police officers at Hot Springs shopping centre which is about five kilometres east of the Chiadzwa diamond fields in Chimanimani. They buy beer for the security officers from some of the proceeds of illegal mining and manage to develop some mutual relationships with them. This is one of the ways the illegal artisanal miners manage to get into the diamond fields. The security officers also mingle with some females who are artisanal miners-cum prostitutes known locally as “gwejeleen”. Some security officers solicit for sexual favours from these women in exchange for entry into the diamonds fields. One lady from Marange growth point is a member of a syndicate which consists of three women and four men. She said she offers sex to some police officers and soldiers in order to get in the diamond field. The leader of their syndicate is a 32 year old man who comes from Nyachityu village and he offers the girls to some soldiers or police for sex and they get in the diamond fields. The syndicate leader remarked,

“Mapurisa mazhinji ndinovarongera mabhebhi emu syndalo yangu
Syndalo yangu inonzi Mabhebhi Hobho. Kana taenda kumunda mapurisa akati tipei mari ndinongoti ndine magwejeleen angu. Vamwe vanoti havadi vasikana vasinga gezi asi vanwe vanoti
zvakanaka.”

(I offer some girls in my syndicate to the police for sex. My syndicate is called Many Girls. If we get to the diamond fields and the police ask for money I tell them that I can offer them a girl for sex. Some say they don’t want dirty girls while others say it is okay).

One woman remarked,

“Isu tino pinda mumunda ne bonde and zvinototitira. Vasikana vakabatana seni havana nhano because kana ndika famba pamberi pe maguard, anobva apera simba and hava resist kundi inivhaita because ndino swinga.” (We get in the diamond fields through sex and everything is well for us. Beautiful girls like us do not have problems because if I pass by the guards, they become weak and they won’t resist inviting me because I swing)

Another female respondent said she no longer indulges in sex with anyone for money or diamonds. She said that she does not even get in the diamond field anymore. She said she is only involved in carrying the diamond ore from Chiadzwa to Hot Springs and in sifting and sorting diamond ore for diamonds. She said she carries heavy diamond ore on her head and for her, this is the most difficult role. The way from Chiadzwa to Hot Springs is rocky and the respondent said she often kicks some stones and stumbles of rocks which made her lose one of her toe nails.

Philda is 23 years old. She comes from Mutambara area in Chimanimani. Philda has been a commercial sex worker since 2007 after she completing her O’level at Nhedziwa Secondary School. She decided to combine prostitution and artisanal mining in 2008 when Zimbabwe was at the peak of economic melt-down. She said she is no longer interested in artisanal mining and all the activities involved in it because it has not been satisfactorily rewarding to her. She had remarked:

“Tiri kushandiswa. Kana tika tengesa mangoda machinda anotora mari yacho zhinji. Takambo bata ngwetungwetu raitsovora maziso mumwe wedu aka ita maths naro aka nyeba kuti ratorwa nemapurisa iye ari tengesa akadya ega mari. Chinorwadza ndechekuti isu mabhebhi tisu tinenge tatakura mutaka kana kuita sex nesu nemapurisa kuti dombo iroro rivepo. Tiri kushandiswa torasiswa...” (We are being used. If we sell some diamonds the guys take most of the money. We once got a diamond which was very clear and one of us deceived us saying the diamond had been confiscated by the police and yet he had sold it and spent the money by himself. What is painful is that it’s us the women who would have carried the diamond ore or who would have had sex with the police for the diamond to be in our hands. We are used and discarded)

Conclusion

The mining sector excludes women and is gender insensitive. High value activities are dominated by men while women dominate low value activities owing to gender role socialization and lack of capital and equipment. Formal employment in the mining sector is also dominated by men as it tends to require science subjects related qualifications which are traditionally shunned by women. Due to exclusions in both formal employment and legal mining, women tend to be found in illicit mining activities.

Recommendations

i. There is need to formulate a gender-sensitive Mineral Development Policy and bring to a conclusion to the revision of the Mines and Minerals Act to remove the current uncertainty in the mining sector. The Act should be gender mainstreamed.

ii. Efforts should be made to come up with a structured financing package for women in mining under the venture capital arrangement with commercial banks, in which banks are providing mining equipment on short term lease hire,
with no collateral security requirement. The equipment purchased remains the property of the financial institution until it is fully paid for by the miner after which it ownership is transferred to the purchaser.

iii. There is need for a specific quota or affirmative measures that promote women’s participation in the mining sector.

iv. Many of the small and medium companies in the mining sector already have a significant participation of indigenous people, including women, and these provide an opportunity for unlocking new value in the economy. Support to small scale mining could be achieved through win-win arrangements with large scale miners in terms of both capacity building, technical and financial resources, as has been the case with some large mining companies in Zimbabwe. Opportunities for joint ventures include: ZMDC in diamond and gold mining, diamond and colored gemstone cutting and polishing; and the provision of transport services to the Mineral Marketing Corporation of Zimbabwe (MMCZ); among others. A 50/50 gender recruitment at the Zimbabwe Technology Diamond Centre (ZTDC) is also necessary.

v. There is need to facilitate the participation of women in the decision making structures for the administration of Community Share Ownership Trusts (CSOTs) that are currently being established in several mining communities throughout Zimbabwe under the Indigenization and Economic Empowerment Programme, to ensure that women’s empowerment programmes are taken on board.
CHAPTER SEVEN:
An Assessment of the Community Share Ownership Schemes in Zimbabwe in Light of Transparency, Accountability and Beneficiation

by Sunungurai Chingarande and Farai Mutondoro

Introduction

Community share ownership trusts or schemes (CSOTs) have gained currency in the commercial exploitation of mineral resources in Zimbabwe. Invariably, CSOTs are seen as conduits for community participation in shareholding in various businesses which are involved in the extraction of natural resources. The establishment of the CSOTs in Zimbabwe is provided for by the Indigenisation and Empowerment Act (Chapter 14:33) and the Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010. Zimbabwe's indigenization laws stipulate that 10 percent shareholding in qualifying businesses shall be reserved for the Community Share Ownership Schemes or Trusts. The indigenization laws also state that 51 percent of shares in any business with an asset value of or above US $500 000 in Zimbabwe should be owned by the locals. Most mining companies in Zimbabwe involved in the extraction of gold, diamonds and platinum are affected by this provision in the indigenisation laws. Thus CSOTs have gathered much momentum in the mining sector than in any other sector of Zimbabwe’s economy. Consequently, several CSOTs have been registered in the country’s key mining areas. There is the Zimbabwe Platinum Mines (Zimplats) Mhondoro-Ngezi CSOT, the Matabeleland South CSOT at Pretoria Portland Cement in Collen Bawn, Gwanda as well as the CSOT of Marange Zimunya in the diamond rich area of Chiadzwa. Many more have been established or are in the process of registration across the country. The proceeds from such participation are supposed to be used in projects which benefit the communities. Envisaged purposes of the CSOTS are the provision, operation and maintenance of water and sanitation facilities, schools and clinics among other key infrastructural development projects.

Though the concept of CSOTs is still in its infancy in Zimbabwe, the country is following in the footsteps of countries such as Botswana, South Africa, China, Norway and Australia which already have similar schemes aimed at ensuring that mineral rich communities benefit from the exploitation of these minerals. The CSOTs also follow the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) model, started in the late 1980s in Zimbabwe, and subsequently widely emulated elsewhere in southern Africa. CAMPFIRE was developed largely around the concept of managing wildlife and wildlife habitat in the communal lands of Zimbabwe for the

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127  www.mydie.gov.zw

128  The Indigenisation and Empowerment Act (Chapter 14:33)

129  The Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010

benefit of the people living in these areas.\textsuperscript{131} Whereas CAMPFIRE focused specifically on wildlife management for community benefit, CSOTs have broadened scope to include mineral resources. If properly implemented CSOTs have the potential not only to empower mineral rich communities and promote local economic development but also act as a mechanism to curb corruption in the extractive industry by ensuring that resources are exploited in a transparent and accountable manner. This study thus assesses the CSOTs as vehicles that can be used at a community level to manage mineral resources for local development.

Objectives of the Study

This study reviews the implementation of the CSOTs in the Gold, Diamond and Platinum mining sector in Zimbabwe. Apart from reviewing the implementation of CSOTs, the study sought to ascertain the level of involvement and participation by communities in the CSOTS as well as in decision making on how the proceeds from mining can benefit local communities. The study also assessed gaps and areas prone to corruption risks and theft in the management and operation of CSOTs. Further, the study attempted to make a comparison of the Zimbabwean CSOTs model with those found in Botswana, China and Norway. The aim of comparing the Zimbabwean CSOTs with other models was to glean best practices from these countries which can be used to strengthen the local CSOTs so that they better serve their respective communities in terms of socio-economic development. Finally, the study provides recommendations and lessons in modeling the CSOTs in the broader socio-economic development agenda of Zimbabwe.

Methodological Approach

The study is based on a fact finding field work carried out in the months of July and August 2012 in Gwanda and Mhondoro-Ngezi, Marange and Kwekwe. Confidential interviews were held with key informants in the respective areas who included CEOs of the Rural District Councils, community leaders, Chiefs, Councillors, and community based community groups as well as the ordinary community members. These key informants were selected on the basis of the intimate knowledge they had of CSOTs as their members or as prominent leaders in the communities. Given the politicization surrounding the implementation of the CSOTs the majority of the key informants interviewed agreed to be interviewed on condition that their names were to remain anonymous in the final report.

Conceptual Considerations

Defining Community

The concept of community, though elusive by nature, occupies a place of centrality in CSOTs and is worth examining in detail. Struggles for natural resources control and access playing out in mineral rich areas of Zimbabwe because of the formation of CSOTs clearly show how critical an understanding of the concept community is in this study. A community is defined as a group of people with common interests and characteristics living within a particular geographic area, and having one or more additional ties.\textsuperscript{132} The foregoing definition has a community locale orientation which stresses geographical location in defining community. This is the definition that has been adopted by the Zimbabwean authorities in defining community in the context of CSOTs. Consequently CSOTs in Zimbabwe are named after areas they are formed in. However, the concept of community has over the years evolved and assumed a broader meaning than is applied to CSOTs. There is need therefore to highlight some of the key aspects within the definition of community.

\textsuperscript{131} Ibid, p1

such as community locale and community of interests that have an implication on the operations of CSOTs and how they decide who gets what, where and when. The conceptualisation of the Community of interests goes beyond the community locale understanding of community assumed by the definition of community presumably applying to the CSOTs. Contextualised, community of interest include all the players both community locale members and those outside the community who feel that they have a stake in the local mineral resources. The outside players could be politicians, policy makers, bureaucrats and business people both local and foreign (the rich) who are not the sons and daughters of the community but by virtue of their positions of power and influence have access to the minerals. This signifies the role of power and influence in CSOTs. Thus contrary to popular thinking it is not community locale that has the sole interest in the local mineral resources there are also other ‘communities’ that are also in the struggle for these natural resources. With the foregoing in mind there are inevitable conflicts in CSOTs arising from how community is defined which inevitably impacts on the management of mineral resources in communities.

**Decentralisation**

The CSOTs are premised within the decentralization paradigm with a particular bias towards devolution. The establishment of CSOTs in principle (and at least on paper) depicts a decentralization model. Decentralization refers to the transfer of political power, decision making capacity and resources from central to sub-national levels of government. The Minister summarized the government approach to CSOTs by stating that: we applied a much more decentralised and transparent system that will see our communities benefiting in the process.

In a broad sense Minister Kasukuwere alluded to the fact that CSOTs are local governance structures that are meant to afford communities voice and agency in how local mineral resources are exploited. A number of arguments have been advanced to support decentralization in general. Though general and cross cutting these arguments are equally valid in the context of CSOTs. The following arguments which reflect preference for decentralization include:

**Allocative efficiency:** Local authorities are more sensitive to local priorities and needs, and can modify service provision to reflect this; **Information provision:** Local government can keep people informed as they are in direct contact with users of services; **Responsiveness:** The proximity of local government to service users means that, provided that they have sufficient autonomy, they can be more responsive to local needs than central government; **Local revenue maximization:** Local authorities can optimise local sources of revenue by levying local taxes, fees and user charges and using the income locally; **Accountability:** Local communities are better placed to influence politics and policy at the local level than at the national level. Communities can put direct pressure on local authorities if they are unhappy with the delivery of services.

The variant of decentralization envisaged under the CSOTs is devolution. Devolution refers to the transfer of rights and

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133 Fulcher, H, The Concept of Community of Interest A Discussion Paper which explores the concept of Community of Interest as it applies to Local Government boundaries Discussion Paper 2, 1989.


assets from the centre to local governments or communities.\textsuperscript{138} It can also mean the transfer of natural resource management to local individuals and institutions located within and outside of government. All of these processes occur within the context of national laws that set the parameters for decentralization or devolution. Drawing from the cited definitions of devolution, CSOTs can be said to be devolved structures as they are given the authority and rights to raise money from the proceeds generated from local natural resources for purposes of community development.

The way in which decentralisation is undertaken and the impact that it has is heavily dependent on the context in which it takes place.\textsuperscript{139} Thus the highly charged political context in which CSOTs are being implemented in Zimbabwe obviously has an impact on how minerals are going to be exploited in the host communities. It also has a bearing on the power dynamics within the CSOTs and how the local communities express their voice in the management of mineral resources. For example the stranglehold that the central government has on the CSOTs implies limited decentralization as the interests of the communities that host mineral resources are still subordinate to that of the central government.

\textbf{Empowerment and the Indigenisation Process}

The CSOTs in Zimbabwe bring to fore the concept of empowerment. On many occasions the CSOTs are touted as instruments that will empower communities so that they gain control of mineral resources in their respective areas. In defining the term empowerment it must be noted from the outset that it has different meanings in different sociocultural and political contexts. In its broadest sense, empowerment can be defined as the expansion of assets and capabilities of poor people to participate in negotiate with, influence, control, and hold accountable institutions that affect their lives.\textsuperscript{140} It can also mean increasing one’s authority and control over the resources and decisions that affect one’s life. As people exercise real choice, they gain increased control over their lives. Drawing from the highlighted definitions empowerment assumes that a disadvantaged group of people is capacitated through deliberate action to gain access of and make decisions on how resources should be allocated. Prior to the CSOTs communities in Zimbabwe’s mining areas lacked the power and influence to decide the exploitation of local mineral resources. Thus the CSOTs are seen as instruments that empower communities in a way that gives them voice, ownership and control over mineral resources which have the potential to change the local development landscape for the better.

At the heart of the empowerment drive in Zimbabwe is the indigenization process. It is hard to conceptualise CSOTs outside the notion of indigenization in Zimbabwe. The laws that govern CSOTs and the ideals that guide them are embedded in the indigenization discourse. It is imperative then to gain an understanding of indigenization as defined by the Zimbabwean authorities. Indigenisation is defined as a deliberate involvement of indigenous Zimbabweans in the economic activities of the country to which prior to 18 April 1980, they had no access, so as to ensure equitable ownership of the nation’s resource.\textsuperscript{141}

Within the context of indigenization the communities that need to be empowered are those populated by the indigenous blacks which prior to the promulgation of the Indigenisation and Economic Empowerment Act [chapter 14:33] did not control or own a stake in companies that mined minerals in their areas. The

\textsuperscript{138} Shackleton, S, Campbell, B, Wollenberg , E & Edmunds, D Devolution and Community-Based Natural Resources Management: Creating Space for Local People To Participate and Benefit? ODI Natural Resources Perspective Number 76, March 2002

\textsuperscript{139} Hadingham, T (2003) p3

\textsuperscript{140} Popular Coalition to Eradicate Hunger and Poverty 1995

\textsuperscript{141} www.economic.co.zw
community of interest definition becomes applicable as it ropes in all Zimbabweans who were disadvantaged during the colonial era irrespective of geographical location.

The Legal Framework of CSOTs in Zimbabwe

It is important from the outset to mention that currently Zimbabwe lacks a formalized legal structure for the CSOTs. There is yet to be a specific Act of Parliament that outlines the formation and operations of the CSOTs. The Indigenisation and Empowerment Act (Chapter 14:33) is silent on the CSOTs which is surprising. Important structures as the CSOTs which have a telling impact on the way national mineral resources need a specific piece of legislation that details the rights and obligations of communities, central government and mining companies in the exploitation of these mineral resources.

The CSOTs are captured in the Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010. The Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010 provide for the formation of CSOTs to ensure that natural resources in Zimbabwe benefit local communities. Natural resources which necessitate the formation of CSOTs include, inter alia, the air, soil, waters and minerals of Zimbabwe. In this study the main resources of concern are the minerals, gold, diamonds and platinum. Section 14B (3) of the Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010 states that a community share ownership scheme or trust shall be constituted by a Deed of Trust registered with the Deeds Office. The rationale for forming CSOTs through a deed of Trust is to guarantee communities a stake in the exploitation of natural resources that are found locally. It is also meant to engender a sense of community ownership, control, responsibility and above all support development efforts in mineral rich areas.

According to the Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010 the features of the CSOTs are as follows:

(a) in the case where the beneficiary community are the residents of a Rural District Council, the Rural District Council shall have the right to appoint the trustee or trustees who will hold the shares or interest in the qualifying business on behalf of the community (the actual percentage of which shares or interest shall be added towards the fulfilment of the minimum indigenisation and empowerment quota)

(b) in the case where the beneficiary community are the residents of one or more wards of a Rural District Council, the manner of appointment of the trustee or trustees who will hold the shares or interest in the qualifying business on behalf of the community (the actual percentage of which shares or interest shall be added towards the fulfilment of the minimum indigenisation and empowerment quota) shall be as agreed between the Rural District Council concerned and the qualifying business.

(c) in the case where the beneficiary community are the members of a distinct community of persons as defined in a community share ownership scheme, the manner of appointment of the trustee or trustees who will hold the shares or interest in the qualifying business on behalf of the community (the actual percentage of which shares or interest shall be added towards the fulfilment of the minimum indigenisation and empowerment quota) shall be as set out in the Deed of Trust of the community share ownership scheme or trust concerned.142

The CSOTs are guided by the community locale definition of community. Community is defined taking into account three main

142 The Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010
considerations. Firstly, community means the residents of the Rural District Council established in terms of the Rural District Councils Act [Chapter 29:13] whose natural resources are being exploited by a qualifying business. Secondly, community also means the residents of one or more wards of a Rural District Council specified in a community share ownership scheme whose natural resources are being exploited by a qualifying business. Thirdly, community is taken to mean any other distinct community of persons as defined in a community share ownership scheme, who are affected by the exploitation of the natural resources in or adjacent to their place of residence.\(^{143}\) Accordingly, this implies that there shall be one Community Share Ownership Trust per District.

The Statutory Instrument also states that the Minister of Youth Development, Indigenisation and Empowerment, in consultation with the Provincial Committees and relevant Chiefs, appoints members of the Trust. Also provided in the law is the fact that Chief(s) shall be the Chairpersons of the trusts. The Trustees terms of office shall be three years and may be renewable for another three years. A separate Trust account shall be opened with designated signatories including the District Administrator. Clearly, the legislation governing CSOTs gives too much power to the central government exercised through the Minister of Youth Development, Indigenisation and Empowerment. Such an arrangement disempowers local communities in mineral rich areas as decisions on who to appoint and how CSOTs should function is not done at community level but elsewhere. This gives credence to the assertion that in reality the Minister rather than the communities has power to determine the distribution of resources.

**Institutional Framework of the CSOTs**

The institutional arrangement for CSOTs is one area that determines inclusion or exclusion, whether there is transparency and accountability in the management of mineral resources as well as the areas of conflict. Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010 provides that there shall be between 5 to 11 members of the Community Share Ownership Trust depending on the size of the defined community in relation to the business concerned. Membership of the Trust includes the following.

- **Chief – (Chairperson), rotational where there are more than one chief in the District; Other Chiefs in the District; District Head of the Ministry of Youth Development, Indigenisation and Empowerment; District Administrator; Council Chairperson – (Vice Chairperson); CEO of RDC Ex-Officio (Secretary);**
- **Representative(s) of qualifying business(s) drawn from senior management level of the business; Representative of women;**
- **Representative of the youth; Representative of the disabled; A Lawyer; Accountant; Any other person co-opted by the trust for their expertise and/or special skills from time to time.\(^{144}\)**

The CSOTs are chaired and managed by the Chiefs. Under the CSOTs, Chiefs are seen as critical as they lead the communities and are supposed to administer resources on behalf of their people. Since the CSOTs cover areas which fall under the jurisdiction of different Chiefs, the chairmanship rotates on a yearly basis among the chiefs in the District. This is done not only to afford each Chief an opportunity to chair the trust but also the chance to shape socio economic development in their respective areas.

The participation of the Chiefs in the CSOTs has been questioned. Though Chiefs are generally regarded as the custodians of customary law and practice, their support has always been sought by successive regimes since Zimbabwe

\(^{143}\) Ibid, p17

\(^{144}\) The Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010
CHAPTER SEVEN: An Assessment of the Community Share Ownership Schemes in Zimbabwe in Light of Transparency, Accountability and Beneficiation

was colonized and in the postcolonial era to ensure the people’s compliance with the prevailing rules. The postcolonial Government of Zimbabwe has also sought to make use of the Chiefs to generate and sustain popular political support for Zanu-PF. It has been argued that because they are appointed by the President, report to a Minister from the President’s party and they are paid monthly allowances by the state, Chiefs feel obliged to politically support the President’s party at all times. This partisan view of the Chiefs suggests that in the CSOTs they will be guided by the interests of the political party rather than those of the communities they represent. As a result this opens the Chiefs to manipulation and corruption.

The District Administrator (DA) is also part of the CSOTs. As the representative of the central government at a local level, the DA is included to provide technical advice and to also ensure that the views of the government are upheld at the local level. This brings to question whether communities have an independent say in how mineral resources are exploited, given that the central government in Zimbabwe has strong interference tendencies.

In the Trust is the District Head of the Ministry of Youth Development, Indigenisation and Empowerment. The rationale for having a representative of the Ministry of Youth Development, Indigenisation and Empowerment is to ensure that the Trust functions as envisaged by the indigenization laws. However, the inclusion of the District Head of the Ministry of Youth Development, Indigenisation and Empowerment in the Trust is perceived to be part of the broader scheme of the central government to control CSOTs. The District Head of the Ministry of Youth as a government functionary is there to protect and advance the interest of the central government at the expense of the interests of the communities.

The local authorities, the Rural District Councils, are also included in the trust. Rural District Councils are included because these are the main authorities responsible for planning; they know the geographical order of the communities and have a relatively better appreciation of the developmental needs of the areas under their jurisdiction. In the Trust the RDCs are represented by the Chairperson of the Rural District Council who is trustee and the Chief Executive Officer of Rural District Council who is the Secretary of the Community Share Ownership Trust. The Chief Executive Officer and the Chairperson of the Rural District Council, who like the DA, are part of the team of technocrats that gives the trust advice on how to allocate the fund money and which projects to prioritize. Again like the DA, the involvement of the RDC is critical in the Trust but it also has its own limitations. There is likely to be a contestation for power between the Chiefs, the DA and the RDC for control of the mineral resources and this can lead to decision making paralysis.

CSOTs should also have an accountant and a lawyer preferably sons or daughters of the communities in question. An accountant is included because CSOTs involve huge amounts of money whose administration require a knowledgeable person with financial accounting skills and experience. The main duties of the accountant are to maintain the books of the trust ensuring that the funds are disbursed in a transparent, accountable and responsible manner. A lawyer is part of the trust in order to provide legal advice and take care of legal matters should they be litigation involving the Trusts. In communities where there are no native accountants or lawyers, recruitment can be done outside the community. This often extends the community locale

145 Makumbe, J Local authorities and traditional leadership in Visser, J, D et al Local government reform in Zimbabwe A policy dialogue Community Law Centre University of the Western Cape, 2010.
146 Ibid, p105.
147 Ibid, p106
148 The Indigenisation and Economic Empowerment (General) Regulations, 2010, Statutory Instrument 21 of 2010
149 Ibid
definition of community to include the community of interest characterization which ropes in people who are not members of the community as defined by the CSOTs. The million dollar question is will these foreign sons or daughters have the community interest at heart.

The CSOTS also draws membership of the trusts from special groups in the communities. In the trust there should be a representative of the disabled people, a member of the youth and the women.\textsuperscript{150} The inclusion of these special interest groups is meant to promote their participation which could not be possible if affirmative action is not taken. Representatives from the business people are also included in the trust. The rationale for including the representatives of the business people is to broaden the pool of people to provide advice on how to invest the money from the fund in a way that will benefit the communities. Criteria for selecting the members of these special interest groups has become highly contested as allegations are that it is done more according to political party affiliation than in accordance with the principles of broad based community participation.\textsuperscript{151} Principles of broad based community participation require membership to community decision making bodies to be done based on merit, objectivity and non-partisanship, among other key considerations.

The composition of the CSOTs appears broad based and ideal for effective local communities to benefit from the exploitation of mineral resource. However, the composition of the CSOTs can be dysfunctional because of the asymmetrical power dynamics that exist among and within the CSOTs leadership. The bureaucrats who are appointed by the government wield more power based on technical competency, knowledge and governmental authority they possess.

\textsuperscript{150} Matonhodze, M, M  Community Share Trust For Whose Community NewsDay Wednesday, 28 March 2012

\textsuperscript{151} Ibid
CHAPTER 8:
Conclusions
Research Findings

Areas Open to Corruption
The study sought to identify possible areas of the CSOTs which are susceptible to corruption.

Formation of the CSOTs
The manner in which CSOTs are formed has emerged as a burning issue which clearly exposes the political patronage related corruption associated with the Trusts. This study established that the formation of the CSOTs is not done at community level. What subsists on the ground is that a cabinet steering committee chaired by the Minister of Youth Development, Indigenisation and Economic Empowerment is responsible for the formation of the CSOTs. The cabinet steering committee arbitrarily came up with an Operational Framework for CSOTs which determines the composition of each Trust and specifies the signatories to accounts of each Trust.152 It has been argued that such a composition of the Boards of Trustees and signatories to the Trust accounts would ensure that the CSOTs and their finances will be firmly in the hands of individuals aligned to the Minister's political party.153 In fact the study established that most of the members if not all of the CSOTs had strong links to ZANU-PF. The regulations give the Minister unfettered wide discretionary powers to decide whether to approve or reject an indigenisation plan or to attach conditions to such a plan. This arrangement leaves the possibility of plans being accepted and rejected on the basis of “who” rather than “what” is proposed in the indigenisation plan.154

Excessive Political Interference: Losers and Gainers
CSOTs are regarded as decentralised structures which allow communities to shape their own development agenda through the exploitation of mineral resources. This suggests that CSOTs are immune from external influences given that the local leadership which comprises the chiefs, DA and CEO. This is not the case on the ground; there is a lot of political interference in CSOTs. Political interference tends to create an atmosphere that promotes corruption, negates transparency and accountability. Where there is political corruption, personal interest and benefit takes precedence at the expense of community development. At the central government level the Minister of Indigenisation and

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153 Share Ownership Trusts Open to Abuse www.financialgazette.co.zw (Accessed 10 August 2012)
154 Ibid www.financialgazette.co.zw (Accessed 10 August 2012)
the Minister of Local Government are excessively involved in the operations of the CSOTs. Their interference is pronounced in the selection of the members who constitute the Board of Trustees and how the money from the Trusts is disbursed.\textsuperscript{155} The Member of Parliament (MP) is also seen as interfering in the operations of the CSOTs. In Mhondoro–Ngezi the MP is so powerful that he decides who becomes a member of the CSOT and what projects to undertake. The study discovered that political interference results in undeserving individuals winning tenders to construct schools and clinics.\textsuperscript{156} The structures built are normally substandard which prejudice the community.

Political interference in the operations of CSOTs thus clearly delineates the losers and those who stand to gain from political patronage. The study established that those people who are close to the politicians and the bureaucrats overseeing the CSOTs are the main beneficiaries. These are the people who are corruptly rewarded by being appointed to the CSOTs structures and are the very same people who win tenders to build schools, clinics and offer services required.\textsuperscript{157} The loser, naturally is the wide community that suffers when competent people who have the technical know-how and credentials to drive local development are excluded due to corruption and political patronage.

**Management of the CSOTs Funds**

The general expectation is that the CSOTs funds will be managed in a responsible, prudent, accountable and transparent manner that promotes community development. Contrary to this expectation is the reality that the Trust funds present, probably, the weakest area of the CSOTs. Currently CSOTs do not have a clearly laid down operational parameters or a legal instrument to safeguard funds leaving them open to abuse. The CSOTs do not guarantee that communities will benefit from mining projects, as the money is just entrusted for development to local Chiefs, with few checks and balances.\textsuperscript{158} At the national level there is an ensuing struggle over the administration and disbursement of the funds allocated to CSOTs. The struggle pits the Ministry of Youth Development, Indigenisation and Economic Empowerment, which initiated the schemes, the Ministry of Local Government, the custodian of the trustees who are chiefs, and the National Indigenisation and Economic Empowerment Board (NIEEB) that is responsible for the disbursement of funds.\textsuperscript{159} These struggles for control of the Trust funds create fertile ground for rampant corruption and embezzlement. There are accusations that the three organs are fighting among themselves while at times conniving to loot the funds that would have been contributed by companies that have complied with the indigenisation laws, leaving the intended beneficiaries, the communities, out of the equation.

The Board of Trustees of the CSOTs are given broad discretionary powers to manage the funds. It must be noted that the Trust exercise does not guarantee that communities will benefit from mining projects, as the money is just in name entrusted for development to local Chiefs, with few checks and balances. The study established that mechanisms to ensure accountability and transparency in the way Trust funds are managed are not watertight. For example the Board of Trustees can unilaterally decide the sitting fees which are considered to be excessively high.\textsuperscript{160} The case of the Zvishavane CSOTs was cited as a typical example of how the Trust funds can be abused. In 2011, five chiefs in Zvishavane, namely Mazvihwa, Masunda, Mapanzure, Wedza and Mafala, dipped into US$2 million dollars

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\textsuperscript{155} Community mining project slammed as ‘vote buying’ exercise www.swradioafrica.com. (Accessed 13 October 2012)

\textsuperscript{156} Interview with Key informant Mhondoro Ngezi 15 August 2012

\textsuperscript{157} Interview Mhondoro Ngezi 15 August 2012.

\textsuperscript{158} Community mining project slammed as ‘vote buying’ exercise www.swradioafrica.com (Accessed 13 October 2012)

\textsuperscript{159} Share ownership trust funds looted, NewsDay October 5, 2012

\textsuperscript{160} Interview Harare 15 October 2012
from Mimosa Mine under the Zvishavane Community Share Ownership Scheme. The chiefs then awarded themselves US$5 000 each as sitting allowances for meetings they attended to decide on how to share the money. This compelled the Local Government minister Ignatius Chombo who directed the Zvishavane chiefs to return part of the US$2 million they had shared among themselves. It is not yet clear whether the Chiefs returned the money.

Lack of Technical Capacity
The control and management of CSOTs is entrusted in the hands of the Chiefs. Previously, in all the local government structures for example in the Rural District Development Committees (RDDCs) Chiefs were there with a mere ex officio status with minimal say on local development issues. The formation of CSOTs has all of a sudden placed the Chiefs at the centre of local development and the management of large sums of money. However, most of the Chiefs heading the CSOTs lack the technical capacity to effectively manage local development and the Trust funds which are in excess of $10m. The general perception among community members interviewed is that most chiefs are old and illiterate without an understanding of the sophistry of fund management and development issues. As a result the Chiefs do not have the professional nor technical competency to really capture the people’s wishes. This lack of technical competency provides fertile ground for corruption. The technocrats such as the DA, CEO and District Head of the Ministry of Indigenisation can manipulate this loophole by facilitating or entering into deals which personally benefit themselves at the expense of the community.

Poor Communication
The major weakness associated with CSOTs is poor communication on their functions and operations. Findings from the study invariably reveal that many people do not really understand what CSOTs are and how they should assist in the development of their communities. It is this opacity which those interviewed said is creating opportunities for rent-seeking behaviour and corruption. The funds of the trust funds are being abused by those in charge because community members are not informed on where they can access information on the operations of the CSOTs. It is not known how much money the Chiefs should get from chairing the CSOTs meetings. This lack of information has also created a false perception among most people that CSOTs are partisan structures that serve the interests of a certain political party.

Awarding of Development Tenders and Jobs
CSOTs are supposed to engage in infrastructural development projects that feed into the broad community development programme. This means that the CSOTs award tenders for infrastructural development projects such as road, clinic, school, water and sanitation facilities. All things being equal the awarding of tenders should be done in a transparent way which is open to public scrutiny. The study established that the awarding of these tenders is not transparent and often shrouded in secrecy. In fact the awarding of tenders by the Trusts is one area where there is rampant corruption. Those who win the tenders to build schools and clinics are those with strong links to members of the Trusts and who also show unequivocal support for ZANU-PF. Most of the people interviewed invariably stated that it is difficult if not impossible to win a tender if one is not aligned to ZANU-PF or known by the Board of Trustees.

Anecdotal evidence suggests that some chiefs were demanding bribes to facilitate employment
with mining companies operating in their areas. In Mhondoro-Ngezi, Zimplats recruits casual mine workers from the local community, mostly the youth. Under the scheme the local people are required to register with the chief who forwards their names to the company for recruitment. It came to light that one of the chiefs in Mhondoro-Ngezi was demanding a facilitation fee of US$30 which the locals said was too high.\textsuperscript{165} This is a clear case of how corrupt chiefs can be. Instead of assisting the local people to get employment the chiefs are personally benefiting from the local recruitment scheme operated by mining companies.

\textbf{CSOTs and Local Empowerment}

The general belief underpinning the CSOTs is that they will provide for local empowerment which entails that communities gain authority, ownership and control over the mineral resources in their vicinities. This is premised on the view that under the Indigenisation laws there is direct equity participation by the communities within which businesses are exploiting natural resources on a commercial basis. The situation currently prevailing on the ground is that contrary to the local empowerment notion. CSOTs are supply side and top down institutions imposed on the communities by the central government. Most community members interviewed in this study argue that communities never demanded for CSOTs particularly in their present configuration.

\textit{CSOTs and Conflict and Struggle for Access to Resources}

It is increasingly emerging that CSOTs arrangements are sources of conflict and struggle for access to mineral resources. Anomic situations are usually conducive grounds for corruption and tend to undermine transparency and accountability. The dominant presence of contesting power centres such as the Minister of Indigenisation, Minister of Local Government, RDC, DA and the Chiefs is a source of conflict in the CSOTs.\textsuperscript{166} Officials such as the RDC Chief Executive, DA and the Chiefs have different perceptions of how CSOTs should develop the community. The DA representing central government will always want to import the paternalistic tendencies to development favoured by the centre. RDCs will obviously want to control development from a ‘locale’ point of view. The chiefs as traditionalists will want the CSOTs to drive development from sentimental paradigms that respect the cultural set up of their respective areas. The party officials roped into the CSOTs will obviously want to promote the interests of the political party. Thus the struggle for control within the CSOTs is seen as between the RDC, DA, party functionaries and the Chiefs. The true voice of the community is stifled under the current configuration of the CSOTs. Thus instead of empowering, CSOTs disempower communities as possible conflicts between the Chiefs, DA and RDCs can result in arbitrary decisions which do not advance community interests.

\textbf{CSOTs and Decentralisation}

The Minister of Indigenisation, Youth and Economic Empowerment has openly stated that CSOTs are a decentralized institution meant to benefit communities as they will push the development agenda guided by local peculiarities and considerations. The fact that the CSOTs are community based masks the deep seated central government interests. Central government as the creator of the CSOTs has a vested interest in their operations. Under the indigenisation laws the Minister of Youth Development, Indigenisation and Empowerment, in consultation with the Provincial Committees and relevant Chiefs appoints members of the Trust. The study noted that decentralization envisaged by the CSOTs is limited as the central government retains a heavy

\textsuperscript{165} Interview, Mhondoro-Ngezi, 2012

\textsuperscript{166} Interview, Harare, 2012
hand on their functions and operations. Excessive involvement of the Minister of Indigenisation and the Minister of Local Government in the affairs of the CSOTs is clear indication that the central government is reluctant to allow communities to manage local development.

Do CSOTs Provide Local People with Voice and Agency?

The composition of the CSOTs is a source of contestation in all the communities where they have been formed. This includes the areas covered by this study. Composition of the CSOTs give indications to key fundamental aspects (1) is there inclusion that is belonging or citizenship in CSOTs based on residency, interest or identity (2) who are the winners and losers in the CSOTs. The steering committee of CSOTs is mainly composed of government ministers who report back to cabinet rather than the communities on the operations and progress made by the trusts in bringing about local development. In all the trusts so far established, none of the eighteen Ministers, save for Ignatious Chombo, come from the concerned areas. This begs the question: which constituencies will these Ministers be working for, the constituencies that voted for them, or, will they now be so benevolent as to work for their newly assigned mineral-rich constituencies? Why should Ministers from a different area, or anyone else for that matter, be seconded to a Community Share Trust of a community to which they do not belong. This brings into play the community locale and community of interest debate. The Ministers as community of interest, since they are not members of community locale as defined by the law, are seen as likely to push an agenda that reflects personal interest. The residents of Chiadzwa were critical of this current set up which they blamed for the sometimes insensitive decisions being made in the relocation of people affected by diamond mining. They argued that if the Ministers responsible were from Chiadzwa they will show compassion in the way people were being inhumanely uprooted from their ancestral homes. Thus in their current state CSOTs represent a poor form of decentralization as they leave communities with strained power to autonomously decide on how to derive benefit from local natural resources. So long as the central government through its representatives, the Ministers and the DAs continue to maintain a stranglehold on the CSOTs talk of giving communities voice and agency over the management of local mineral resources remain a pipedream.

Experiences from other countries: The Sovereign Wealth Fund

Zimbabwe can derive maximum benefit from her abundant mineral wealth by drawing lessons from mineral beneficiation schemes that have been set up in other countries that are also mineral rich. Whilst it is true that communities which are home to mineral resources must be seen to be benefiting from these resources there is need to adopt a national approach to mineral beneficiation that includes the nation as a whole. Mineral resources such as gold, diamonds and platinum are national resources which should transcend narrow community benefit to cover all the four corners of the country. In the same vein, minerals such as gold, diamonds and platinum are non-renewable resources and there is need to come up with a sustainable solution that will ensure that the country continues to derive benefit even after the mineral resources are exhausted or there is a fall in the prices of minerals that may destabilize the economy. Contemporary experiences from mineral rich countries such as Botswana, Nigeria, Libya, Norway, China and Australia show that sovereign wealth funds can be used to

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167 Interview, Harare 2012
168 Community Share Trust For Whose Community www.newsday.co.zw (Accessed 7 October, 2012)
169 Interview, Harare, 2012
170 Interview Harare, 2012
accrue profit for the benefit of the nation’s economy and its citizens.

**What is a Sovereign Wealth Fund?**

A sovereign wealth fund (SWF) is a state-owned pool of money generated from revenues of natural resources such as gas, oil, diamonds, gold, platinum and other minerals that is invested in various financial assets. Origins of the sovereign wealth funds can be traced to the 1950s when oil and resource-producing countries such as Kuwait created a special fund to help stabilize their economies against fluctuating commodity prices, and to provide a source of wealth for future generations. Thus the primary functions of a sovereign wealth fund are to stabilize the country’s economy through diversification and to generate wealth for future generations in essence making them intergenerational funds. The profits from the sovereign wealth fund are also channelled towards national development to fund infrastructural development projects in the form of schools, hospitals, clinics and roads.

Sovereign wealth funds are fundamentally different from CSOTs in many ways. In essence sovereign wealth funds are a national fund managed by the government for national benefit. This is different from CSOTs which are managed at a local level by community leadership for local developmental purposes. The major difference between SWF and CSOTs is that the former are invested to generate profits which become wealth that can be set aside for future generations and to stabilize the economy in response to commodity fluctuations. As a result SWFs are managed by professionals who are knowledgeable in the areas of investment and risk management. CSOTs in their present configuration in Zimbabwe are only there to utilize Trust funds provided by companies exploiting mineral resources for infrastructural development purposes and service provision in the host communities. There is no explicit provision in the indigenization legislation to allow the investment of the Trust funds so that they generate wealth for future generations. This is a major weakness of the CSOTs as it is given that the prices of minerals fluctuate on the international market sometimes causing instability not only to the communities but to the national economy as a whole. In light of this weakness of the CSOTs there is need for the Government of Zimbabwe to consider setting up a SWF for the country’s extractive industry.

It is also important to point out that sovereign wealth funds also have inherent weaknesses. A successful SWF requires a high degree of transparency which allows their accounts to be accessible to the public for scrutiny. They also need to be audited by reputable international audit organisations to ensure that the funds accrued are used for purposes that advance national development as well as sustainable enough to benefit future generations. This is a challenge in most mineral rich African countries, including Zimbabwe, where the leadership is reluctant to avail information on how much is being generated from the mineral resources and how the funds are being managed as well as managed. Management of SWFs requires skilled fund managers which are not readily available in countries such as Zimbabwe facing a debilitating socio-economic-politico crisis which has caused a massive brain drain of skilled personnel including fund managers.

**Botswana: The Pula Fund**

Botswana is one of the major producers of diamonds in the world. Consequently, diamonds have been the engine of growth in Botswana. The domestic cost of diamond production is low compared to their overseas sales value (priced in American dollars) and as a result, diamond sales for Botswana are extremely low.
profitable. This has enabled Botswana to realize perennial balance of payments surpluses. The Government of Botswana successfully negotiated with De Beers Diamond Company for a 50-50 share ownership in all of the country’s diamond mines. To derive maximum benefit from the diamonds the Botswana government created a sovereign wealth fund.

The Pula Fund as the Botswana SWF is known was established under the Bank of Botswana Act in 1994 and is currently valued at US$ Billion. It is exclusively invested in foreign currency denominated assets. The fund invests in public equity and fixed income instruments in industrialised and developed economies. Investment decisions and objectives are based on sustaining purchasing power of the reserves and maximizing returns within an acceptable level of risk. The goal of the fund is to preserve a portion of the income generated from diamond exports for future generations. Out of a possible transparency ranking of 10, the Pula Fund is ranked sixth. This means that the Botswana government is trying to as much as possible manage the Pula fund in a transparent and accountable way which can provide useful lessons should Zimbabwe want to adopt the Tswana SWF model. The receipts accrued from the diamonds have allowed the Botswana government to invest considerably in a wide variety of development schemes starting with the 1974 Accelerated Rural Development Program, whereby the government committed a considerable amount of money toward building roads, dams, clinics, schools, and water reticulation schemes. To date Botswana stands out as one of the countries in Africa that has successfully managed to set up a SWF and to manage its mineral wealth for national benefit defying the natural resource curse associated with the continent.

Norway: Norwegian Government Pension Funds

The Norwegian Government Pension Funds established in 1990 is a sovereign wealth fund where the surplus wealth produced by Norwegian petroleum income is held. As regards its objectives, the fund is used primarily as a savings fund for future generations. Only the expected real return of the fund can normally be transferred to the central government budget and used for general budgetary purposes. The Government Pension Fund–Global has a current portfolio value of around USD 656.2 billion. The day-to-day management is delegated to Norges Bank but the ultimate responsibility lies with the Ministry of Finance, which issues guidelines for the investment of the fund’s capital in shares and other securities abroad. Its institutional set-up is often quoted as a benchmark in terms of transparency and accountability. The fund publishes quarterly and annual reports which include a detailed disclosure of assets under management, the currency and asset class composition of the portfolio down to company level and a standardised reporting of its performance against a benchmark.

Recommendations

To make CSOTs more effective and community oriented this study recommends that:

* Establishment of a Clear Policy, Legal and Institutional Framework Governing CSOTs

Currently the policy, legal and institutional framework governing CSOTs is not clear. There are contestations between the Ministry of Indigenisation and the Ministry of Local Government over the control of CSOTs. In the long run this tends to be dysfunctional to the operations of the CSOTs in the long run. The government has to ensure that the CSOTs are governed by one Ministry

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175 Taylor, I Botswana’s “Developmental State” and the Politics of Legitimacy Department of Political and Administrative Studies University of Botswana, 2002.
177 www.swfinstitute.org/swfs/pula.
178 www.swfinstitute.org/swfs/pula.
preferably the Ministry of Local Government as it is the one that oversees for local government structures which are responsible for local development. There is need to pass a CSOTs Act that gives CSOTs a clear legal structure.

* Depoliticisation of the CSOTs Implementation
There is need to depoliticize the implementation of CSOTs and remove the notion that it is the preserve of one political party. It should be inclusive with the participation of all the Zimbabweans irrespective of political affiliation. In order to fully empower community members of the Board of Trustees of CSOTs should be representative in order to reflect the social, political, cultural and economic diversity of communities.

* An all Inclusive Process of Forming CSOTs
If CSOTs are to be true community based structures which represent local development aspirations there is need to involve the community in their participation. Involving the communities in the formation of CSOTs builds a sense of ownership which is critical if they are to be instruments that drive local development. Community members must be given an opportunity to select people that constitute the Board of Trustees through a transparent process which is devoid of political partisanship.

* Nation and Communitywide Awareness Campaigns on the CSOTs
CSOTs are being implemented under the Indigenisation process which is vaguely understood by most people in the rural communities. Therefore there is need for educating the public on the implementation of the CSOTs under the Indigenization and Economic Empowerment Act. Communities should be fully knowledgeable on how the IEE policy is being implemented with specific regard to the establishment of CSOTs. Educational programmes will make communities know their rights or obligations in the implementation process of CSOTs. It is therefore imperative that countrywide awareness campaigns should be launched, and all national languages should be used to make communities understand the functions, operations, composition and obligations of the CSOTs.

* Training of People who Constitute CSOTs
There is need to train people who join CSOTs as trustees particularly the Chiefs on their mandate, function and operations. Regular training sessions will ensure that members of the CSOTs are knowledgeable on the management of the fund and general community development.

* Transparency and Accountability
CSOTs can only be effective if there are strong mechanisms to ensure transparency and accountability. To promote accountability and transparency CSOTs should not only be accountable to the Minister but to Parliament and the scrutiny of civil society. Parliamentary oversight will ensure that CSOTs are doing what they were initially established to do and that there is transparency and probity in their operations.

* Formation of SWFs
Zimbabwe needs to go beyond CSOTs to create a Sovereign Wealth Fund. A SWF will ensure that the benefits of extraction of the country’s mineral resources also accrue to future generations regardless of geographic location as minerals are a national endowment whose benefits must be enjoyed by all Zimbabweans. SWF, if properly managed, can ensure local development as well as ensuring that benefit also accrues to future generations.

Conclusion
CSOTs are a noble idea that ensures that communities which are home to mineral resources benefit from the exploitation
of these resources. Placing the community at the centre of ownership, control as well as decision making on how to use mineral resources can stimulate community oriented development which is usually in line with the aspirations of the local people. However, the CSOTs in Zimbabwe need to rectify teething problems such as excessive political interference, perceptions of corruption and the top down approach that currently characterize them if their full potential to advance community development can be realized.


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