



IANRA

International Alliance on Natural Resources in Africa

The Need For Model Mining Legislation

*Case studies on the impact of mining in Angola,
Democratic Republic of Congo, Kenya and Zimbabwe*

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Contents

INTRODUCTION

CASE STUDIES

Kenya: The dangers of fluorspar

Angola: Bypassing the community

Zimbabwe: Problems with platinum and chrome

DRC: Mining amidst people

TOWARDS A SET OF PRINCIPLES FOR A MODEL MINING LEGISLATION FOR AFRICA

Problem 1: People are often made poorer by mining projects

Problem 2: Women bear a disproportionate burden of the impacts of mining

Problem 3: Mine-affected communities are often excluded from mining revenues and benefit-sharing

Problem 4: Mining legislation is often inadequate and/or not implemented in practice

Problem 5: Consultation mechanisms are inadequate and FPIC is absent

Problem 6: Mine-affected communities often lack information compared to companies and the state

Problem 7: Cumulative social and environmental impacts from multiple companies and/or the state are often seen as no one's responsibility

Problem 8: People are denied their rights to natural resource governance

Problem 9: Decisions to mine are often taken arbitrarily and subjectively

Problem 10: Expropriating land to make way for mining is rarely subject to sufficient analysis and objective consideration of the national interest

Problem 11: Compensation is rarely adequate or fair and often not paid at all

Problem 12: Artisanal and small-scale mining is poorly regulated, exacerbating the adverse impacts of mining

Problem 13: Mining-affected communities lack adequate redress mechanisms and justice mechanisms are inefficient

ACKNOWLEDGEMENTS

This report presents new research from mining operations in four countries – Zimbabwe, Angola, Kenya and the Democratic Republic of Congo – and highlights ongoing problems as well as policy and legal principles to curb adverse human rights impacts from industrial mining on communities living in mining areas. IANRA hopes it can be a useful resource for mining communities to ensure their own development trajectories, including alternatives to mining, as well as enhance their bargaining power related to mining agreements. The report is meant to contribute to raising awareness on the impacts of mining on human rights, to enhancing inclusive policy analysis and policy making, to strengthening monitoring and enforcement, and to informing legal and policy changes aimed at more just and sustainable use of natural resources. It should be considered as a building block for critical analysis about community rights, and local and national development in relation to mining.

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IANRA highly values critical engagement on its findings, so please feel free to contact the IANRA Secretariat (info@ianra.org) with any questions.

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INTRODUCTION

Africa is rich in natural resources, with significant deposits of gold, platinum, iron ore, copper, diamonds, and other minerals and metals. Some estimates are that Africa holds 30% of the world's mineral reserves.¹ Recent discoveries of oil and gas in some countries could be game-changers for their economies and people. Yet, currently, Africa's people benefit little from these riches as African governments capture only a small share of the final value of the vast mineral exports from the continent.

Of even greater concern is that many communities in mining areas – usually farmers who are already poor – are left worse off as a result of mining operations, which are often conducted by multinational corporations. Their (communal) rights, as guaranteed in the African Charter on Human and Peoples' Rights (ACHPR), are often violated, such as the right to dignity, the right to health, the 'unquestionable and unalienable' right to self-determination, and the right of 'all peoples' to freely dispose of their wealth and natural resources. Entire villages across Africa have been forcibly removed from their ancestral land, in many cases with no replacement. Members of communities on mineral-rich land, including traditional leaders, women, children, and the elderly, have been arrested and imprisoned for protecting the only land they have, which is often their only source of livelihood, and for exercising their right to protest. Rivers, land, and crops have been contaminated from mining processes and communities have lost access to water sources. Mining-affected communities are repeatedly excluded from mining revenues and

benefit-sharing. Women bear a disproportionate burden of the impacts of mining while consultation mechanisms with those affected are often inadequate and the concept of free, prior and informed consent (FPIC) is not generally promoted.

Many countries' mining legislation lacks adequate laws concerning, for example, resettlement, compensation, local content policies, community development, community governance and decision-making, community consultation, and environmental standards.

Some countries have such policies but do not adequately implement them. Pleas to mining companies and governments by communities often result in conflict and limited tangible improvements in their lives.

Governments in effect subsidise mining operations by awarding tax incentives and through companies' evading tax and hiding revenue. In addition, governments provide health care for mineworkers and mining-affected community members, clean up polluted water and attempt to rehabilitate mined land, among others services.

However, in recent years, spurred on by rising commodity prices, some African governments have listened to their people and increased taxes and royalties on mining companies to

gain a greater share of revenues. Some governments have revised their legislation to increase the likelihood of communities in mining areas benefiting from resource extraction and for the country to benefit from beneficiation and value addition processes. At the regional and continental level progressive governance and resource management have been developed, such as the African Mining Vision, the Southern Africa Resource Barometer principles, the SADC Protocol on Mining, and the ECOWAS Mining Directive. Nonetheless, reports from all over Africa suggest these positive changes do not go far enough as people in mining areas continue being displaced from their homes and their land and are offered poor, if any, compensation; and are regularly bypassed in decision-making.² The old model of 'extractivism' – which sees Africa as essentially as a source of cheap raw materials and labour for the benefit of political elites and corporate interests – is unfortunately alive and well.

About this report

This report begins with new research from mining operations in four countries – Kenya, Angola, Zimbabwe, and the Democratic Republic of Congo (DRC) – and highlights ongoing problems and adverse human rights impacts from industrial mining on communities living in these areas. Some problems arise from inadequate legislation, while others are due to poor implementation of existing legislation. In many cases, governments do not adequately – if at all – promote the rights of their people, but rather allow companies to profit at their expense. The case studies highlight the continuing, urgent need to curb the excesses of mining in Africa and, moreover, to transform mining into a genuine development process. The second section of this report summarises

the state of mining in Africa by outlining 13 problems that urgently need to be addressed. For each of the problems key principles are suggested to guide governments in resolving them. These principles flow from what mining-affected communities raise as clear priorities – notably, securing customary land-use and access rights, upholding FPIC for all extractive activities from exploration through to mine closure, and ensuring democratic and non-discriminatory decision-making in keeping with the ACHPR and national constitutions. In addition, the principles offer solutions to key challenges faced by mining-affected communities such as poor or no compensation for lost livelihoods and/or property, and the lack of benefit-sharing from mining operations.

It is clear there is a need for democratic and equitable negotiations on mining projects in Africa to ensure benefits are distributed equitably.

This report calls for the development of Model Mining Legislation (MML) to ensure that governments transform policies and laws to ensure African mining supports the rights and needs of its people, especially those directly affected by industrial mining activities. It is important, however, to recognise that there are current efforts to harmonise legislation, especially mining legislation, across Africa and in its sub-regions. It is for these reasons that MML, which addresses some of these inadequacies and challenges, needs to be developed.

¹ Africa Progress Panel, Equity in Extractives: Stewarding Africa's Natural Resources for All, 2013, p.44 http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf

² See, for example, numerous reports and articles at www.bench-marks.org.za; www.minesandcommunities.org; and www.business-human-rights.org

BACKGROUND TO THE CASE STUDY RESEARCH PROJECT: IANRA AND THE MML

The International Alliance on Natural Resources in Africa (IANRA) is a network of 41 member organisations and 14 national groupings in Africa with community partnerships and international links. Each national grouping has up to 30 member organisations totalling around 150 participating civil society organisations (CBOs), faith-based organisations (FBOs), non-governmental organisations (NGOs), and social movements, all of which work on natural resources justice in Africa. The aim of the IANRA is to promote community-centred, sustainable and equitable management of natural resources in Africa, thereby significantly improving livelihoods, contributing to socio-economic development, promoting conservation and empowering communities to determine their own long-term destinies.

Since 2011, the IANRA member organisations have had discussions about developing a Pan-African Project to advocate for mineral resource and related legislation and policies that protect and promote human rights, and work toward inclusive development. This was mainly informed by the Road to Remedy Project which saw many communities visiting others across the sub-regions from Johannesburg to Mombasa through Malawi and Zimbabwe. The idea was kept alive through every annual general meeting until the project started in 2013.

On the basis of the 13 major problems and principles identified in this case study synthesis report, the IANRA membership developed its ‘First Principles towards a People Centred Model Mining Legislation’, which laid the foundation for local awareness-raising and advocacy on the issues, and developing the MML. As part of the MML project, IANRA also developed an analysis of international and national legislation and policies related to extractive industries and human rights, as well as a policy advocacy guide for use by communities, civil society, policy-makers and other stakeholders. These analyses formed the basis for the call for a MML for Africa. Some laws were found to be archaic, developed during the colonial era thereby ensuring that people do not benefit from the natural resources of their land or allowing for human rights violations. Other legislation conflicted with acts and policies which override basic human rights and freedoms. It is against this background that IANRA saw it fit to draft a model law informed by these findings and various IANRA reports from communities across its membership.

The drafting of the MML started in March 2015 following research with key stakeholders from across the continent, such as communities, other CSOs and key policy-makers from, for example, the African Commission on Human and People’s Rights, Working Group on Extractive Industries, the Pan-African Parliamentary Committee on Justice and Human Rights, and the African Minerals Development Centre (which is tasked to ensure implementation of the African Mining Vision).

METHODOLOGY

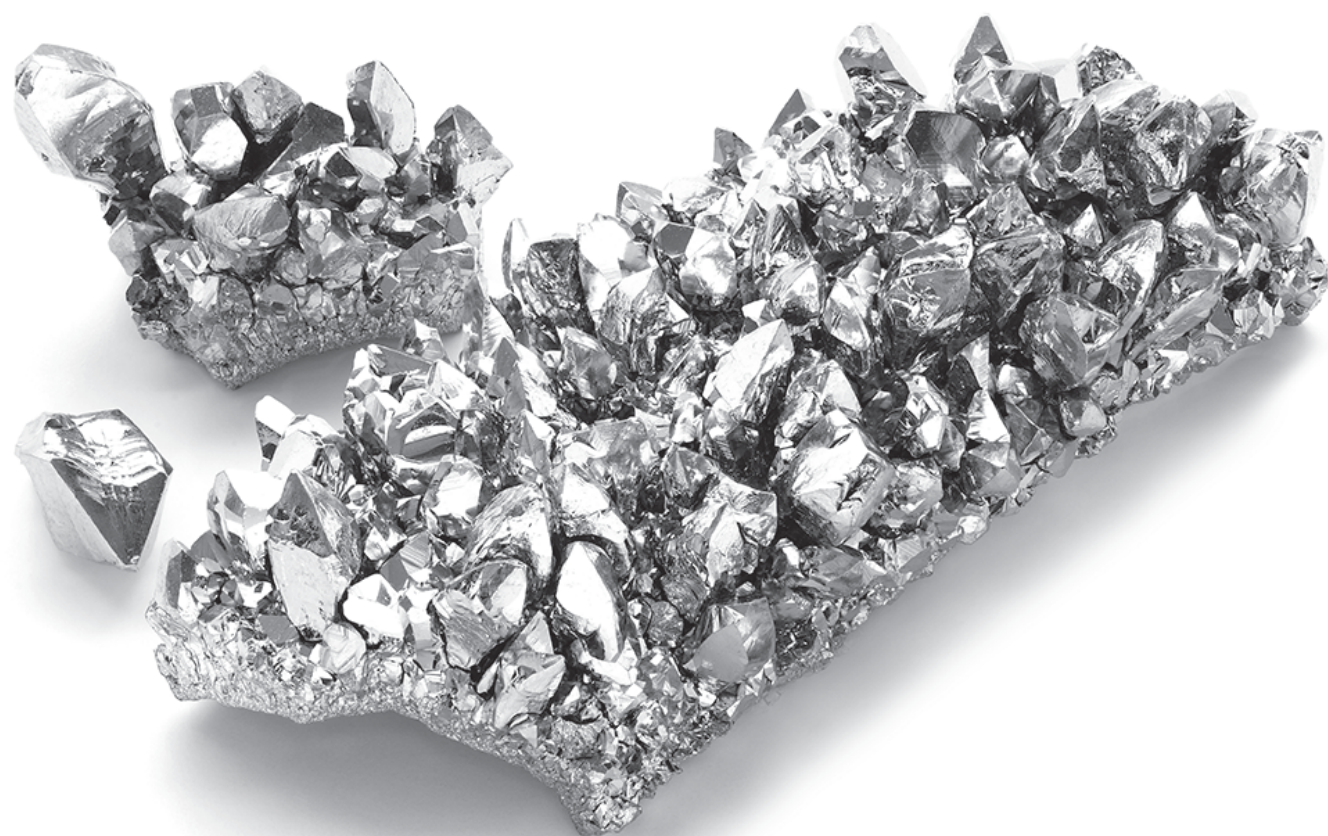
Case study research was conducted by the following IANRA member organisations (which are also the implementing organisations of IANRA’s MML Project): the Zimbabwe Environmental Law Association (Zimbabwe); Development Workshop (Angola); ASADHO (Association Africaine de Défense de Droits de l’Homme [African Association for the Defence of Human Rights] (Democratic Republic of Congo); BenchMarck Foundation South Africa (BMF) and Coast Rights Forum (CRF) in collaboration with the Natural Resources Alliance of Kenya (KeNRA) (Kenya).

The countries were selected as case studies based on large-scale mining-related human rights violations, the level of community organisation, and the level of engagement and working history between partners and selected communities. Case studies were conducted using a combination of formal and participatory action research (PAR) methods, with the aim of developing long-term advocacy plans in the research areas. An overarching methodology and set of guiding research questions was built to frame the four case studies to ensure they can be compared and synthesised.

Implementing partners at country level (together with a designated local researcher, affected communities, and the overall IANRA research coordinator) were responsible for final identification, design, and implementation of the case studies. The MML Project team provided general oversight and the IANRA coordinator provided PAR training and ongoing support. Partners ensured that training in the research methodology and an orientation on the guiding content frame for the case studies were provided for the case study researchers.

In each country, implementing partners identified an existing representative community structure (or supported the establishment of a community-based committee to provide guidance and oversight in the case study research) to ensure it supported local needs and that the knowledge generated could be taken forward at community level through follow-up work and advocacy actions. The research design aimed to ensure groups that traditionally hold less power and have limited space for participation in local decision-making – such as marginal ethnic groups, women, or young people – were fully involved in research activities (through their own focus groups, for example). The research methodology also aimed to better understand human rights impacts on women specifically and how these findings could help produce gender transformative policy recommendations for the development of the MML.

Interviews and focus group discussions were held with people affected by mining and local government officials in the Ministry of Mines and the mining companies themselves. Secondary research was conducted and research findings were sent to the respective mining companies for their comments.



Fluorite or fluorspar is the mineral form of calcium fluoride. It is a major source of hydrogen fluoride, a commodity chemical used to produce a wide range of materials.

Kenya

The dangers of fluorspar

This case study, conducted by Coast Rights Forum (CRF) in collaboration with KeNRA, highlights the impact of the Kenya Fluorspar Company (KFC) on the people of the Kerio Valley in Elgeyo Marakwet county of western Kenya. The study examines KFC's Kimwarer mine at two locations – Soy and Chemoibon – which are near Kimwarer town in Keiyo South constituency.

Part of the Rift Valley, the Kerio Valley, which ranges from 1,200 metres to 1,000 metres deep, is known for its significant fluorite deposits discovered in the 1960s. Fluorspar, the second most important mining commodity in Kenya after soda ash, is used to produce fluorites, which are a key component in the manufacture of industrial commodities such as steel, hydrofluoric acid and fibreglass. KFC, established in 1971, is based at the southern part of Kerio Valley in Kimwarer town and is one of the few large mining companies in Kenya. The company exports most of its produce to Europe and India.

Once a government business, KFC was privatised in 1997³ and is chaired by Charles Field-Marsham,⁴ a Canadian who is also the son-in-law of Nicholas Biwott, the former MP for Keiyo South (1979 –2007) and cabinet minister who served as right-hand man to President Daniel Arap Moi. In April 2015, cabinet secretary, Najib Balala, said the company had revenues of around KShs 4-billion a year, but had declared only KShs 300,000 to the government.⁵

³ 'Kenya Fluorspar fully compliant with government tax obligations', 18 May 2015, <http://www.indmin.com/Article/3454338/Kenya-Fluorspar-fully-compliant-with-government-tax-obligations.html>

⁴ See <http://fieldmarshamfoundation.org/team-category/trustees/>

⁵ George Omondi, 'Row looms as Balala plans audit of Biwott's kin mining firm', 10 May 2015, <http://www.businessdailyafrica.com/Row-looms-as-Balala-plans-audit-of-Biwott-s-mining-firm/-/539546/2712310/-/79haiuz/-/index.html>

KFC plays a significant economic role in Keiyo South and is the only major employer there. It employs around 200, people, most of whom are from Keiyo district. The company reportedly paid Keiyo county council KShs 18.4-million a year in land rates in 2012, and also pays local carriers millions of shillings a year to ferry fluorspar from field to factory.⁶ However, these positive local impacts must be weighed against the experiences of many others in the local community.

The problem of historical compensation

Mining by KFC is controversial because of the unresolved issue of compensation for loss of land going back to the 1970s that continues to affect the local community and blight relations between it and the company. In 1973, the government set aside 9,070 acres (3,664 hectares) of land used by the local community for the KFC; according to government sources there were 4,379 people living on this land who were entitled to compensation. However, the sum offered for the loss of land was paltry – KShs 450 per acre – and was rejected by the overwhelming majority of villagers. Only a small number of villagers accepted compensation (209 people, according to the villagers’ information) but the government now claims that compensation has already been provided for all. Indeed, the government set aside a sum of KShs 3.6-million for compensation in 1975 but most of this disappeared, presumably to corruption. Ever since, the villagers have been campaigning for fair compensation and are now organised in the Kimarer Sugutek (Fluorspar) Community Trust, established in 2005. In effect, the villagers live as squatters on ‘their’ land. Estimates are that around 1,500 families living in the mine area farm an average of around 4 acres of land.

In 2009, the villagers tried to take their case for compensation to the Kenyan High Court in Nairobi, but this failed to progress due to lack of funds. In 2011, the villagers presented a memorandum to the Truth, Justice and Reconciliation Commission in Nairobi and Eldoret, but the Commission failed to mention this in its final report.

The Community Trust says its meetings in the local area are often disrupted and frustrated by powerful local leaders, the police, provincial administrators, and the KFC. Some community leaders have even been arrested or persecuted.

This situation is bad for both the villagers and the company: the villagers are frustrated at remaining squatters in an uncertain situation, while the KFC is annoyed at not being able to freely engage in mining activities on the land and has long implored the government to remove the ‘squatters’ from ‘their’ leased land. In 2012, for example, KFC’s managing director wrote to the Commissioner of Mines and Geology to undertake ‘urgent action’ against 2,500 to 3,000 people in the area and livestock which were moving freely and interfering with KFC’s work.

In May 2015, the government announced it was setting up a taskforce headed by a lawyer, Paul Otieno Nyamodi, to investigate concerns

raised by the local community.⁷ Five members of the local community will participate in this taskforce.⁸ According to the government statement announcing the taskforce, the latter will ‘explore ways of compensating the residents for their deprived land’ [sic] and also ‘investigate circumstances under which compensation alleged funds [sic] were diverted to other uses by past and present administrators and politicians’.⁹

However, in addition to historical compensation, the Community Trust has a long list of grievances against the KFC for a variety of adverse impacts on their livelihoods.

Other adverse impacts of mining

The company is in effect pressing the local community to relocate without offering fair compensation or the means to rebuild their livelihoods elsewhere.

The Community Trust says that when the KFC wants to expand mining to a new part of the lease area where villagers are living, it induces them to move with the offer of KShs 15,000 (US\$144), a sum regarded merely as a ‘token’ by the villagers.

If they refuse, some people’s houses have been demolished while others have either been forcefully evicted or engulfed by mining operations, leaving them no choice but to leave.

People are also not allowed to rebuild or make significant renovations to their homesteads located within the lease area. Erecting a fence around the homestead or making improvements to the traditional mud thatches by introducing iron sheets can result in warning letters being issued. The Community Trust states that the company has:

*continued to disturb our people and disrupted their livelihoods and in the process have suffered dire social and economic inconveniences and losses as well as mental anguish and trauma due to these haphazard mining plans.*¹⁰

KFC mining operations thus further contribute to the issue of Internally Displaced Persons within the lease area.

KFC does not allow people in the lease area to grow food and cash crops on their land. If farmers try to prepare their land for crop planting the KFC plants trees, so to all intents and purposes evicting the farmers by depriving them of their livelihood. Some women farmers say that in order to farm they have to leave their homes in the leased area and travel long distances, which means leaving their children without care. Women then face the added burden of having to transport their yields back to where they live.

Similarly, the company does not allow people in the lease area to harvest their trees as logs, timber, firewood, or charcoal, which could also provide an important source of livelihood. Women caught looking for firewood can be arrested and their firewood and tools (pangas, axes, and ropes) confiscated by the KFC guards, the Kenya forest guards, or the police.

⁶ ‘Fluorspar mining set to be the real big earner’, 2 February 2012, <http://www.nation.co.ke/counties/Fluorspar-mining-set-to-be-the-real-big-earner/-/1107872/1318014/-/i4jrhu/-/index.html>

⁷ ‘Press statement launch of taskforce May 2015’, <http://www.scribd.com/doc/264936503/Press-Statement-Launch-of-Taskforce-May-2015>; ‘Move to instil discipline in mining sector welcome’, 11 May 2015, <http://www.businessdailyafrica.com/Opinion-and-Analysis/Move-to-instil-discipline-in-mining-sector-welcome/-/539548/2713150/-/wgdhjl/-/index.html>

⁸ ‘Press statement launch of taskforce May 2015’, <http://www.scribd.com/doc/264936503/Press-Statement-Launch-of-Taskforce-May-2015>

⁹ ‘Press statement launch of taskforce May 2015’, <http://www.scribd.com/doc/264936503/Press-Statement-Launch-of-Taskforce-May-2015>

¹⁰ Kimarer Sugutek (Fluorspar) Community Trust, ‘Brief History of the Fluorspar Land Compensation Problem’, briefing made available to the researchers

Local villagers believe local water supplies may be polluted by mining activities; if independent water sampling has taken place, the villagers are unaware of it.

They say that KFC discharges effluents from its processing plant/factory into the Kimwarer and Mong rivers which join to make the greater Kerio River or Endoo.

The local residents use the water from these rivers for drinking, watering their livestock, and irrigation. Kerio River also serves Elgeyo Marakwet, Baringo, West Pokot and Turkana counties. Media reports from as long ago as 2004 claimed the company was releasing waste laced with hydrochloric and sulphuric acids and other heavy metals into the river, posing risks to the lives of the people using the water.¹¹

A Ministry of Water and Irrigation investigation in 2005 found that waste-water from the company’s sedimentation ponds, which had high levels of fluoride, were finding their way into the Kimwarer River. The report noted that KFC ‘is likely to be releasing the waste direct to the river’, and called on the company to desist from doing so, stating ‘the rights of the locals have to be respected’.¹²

The company uses heavy mining machines in areas where landslides, soil flow, and rock

falls often occur, which endanger the lives of people and livestock as well as buildings and crops. There have been cases where people’s goats have been buried alive by the company’s bulldozers and livestock run over. These machines also uproot and bury indigenous trees which have economic, cultural and medicinal significance. The villagers are never compensated.

These mining landslides, soil flows, and rock falls have also blocked and destroyed waterways and water pipes, affecting the community’s access to water. Yet KFC has not, as far as is known, offered to supply alternate sources of water to the local community.

KFC mining operations have created large quarries and pits that endanger the lives of people and livestock. A number of cattle, sheep, and goats have fallen into the open quarries and died or had their limbs broken. The community is unaware of any case of compensation for any livestock deaths or injuries caused through such accidental falls.

The company also uses powerful mining explosives that cause huge, loud explosions, and throw stones, rocks and other debris which have sometimes hit or killed animals or damaged nearby buildings and crops, and endanger people’s lives.

KFC has established road barriers in a number of places¹³ which are guarded 24 hours a day where company security guards check incoming and outgoing vehicles for ‘security’ purposes. However, the guards also harass local traders selling charcoal, firewood,

timber, and poles. The KFC guards sometimes hold a truck load of these goods for hours or even days without reason even when the traders have permits and the items do not come from the lease area. The police post at Chebutiei mainly serves the interests of the company rather than the local community by arresting people who are perceived to have wronged the company. In 2013, for example, four men were arrested one night and arraigned in Eldoret Law Courts on charges of theft for resisting tree-cutting in their village by KFC employees. The police who patrol the area are seen as working for KFC and the people regard the local government as simply siding with the company.

The KFC’s mining operations destroy graves through the use of heavy and earth-moving machines. However, the government has not

asked the company to put measures in place for the exhumation and reburial of the deceased relatives. The local community regards this as a distinct lack of respect for those departed. The Community Trust notes:

*the KFC has earned a reputation of a hostile neighbour that looks down upon our community and does not have any respect for us and our departed brothers and sisters, our cultural beliefs and practices, the rule of law and good neighbourliness.*¹⁴

In light of these extensive problems, KFC’s local community development spending is hopelessly inadequate. In Chepsirei village in Chop sub-location, however, local people have praised the company for the maintenance of the local road and for building classrooms in various schools in the area.

Voices Of Those Affected

*We do not like being forced to abandon our homes with no alternative place to go. KFC have ordered us the same way they ordered our grandparents. We have no jobs. They say they have constructed the roads but that is from our wealth [meaning the minerals], not theirs. We have no place to farm. If this was a good company, we would be getting benefits – for example, high-performing students would be getting school fees paid.*¹⁵

(Meeting in Waon, Morop sub-location, 21 May 2014)

They [KFC] excavate with indifference to our cultural survival such as beekeeping; our cows fall in mine quarries. We experience water shortage due to KFC’s indifference on the impact of their activities on our land, water springs, streams and rivers. Their offer of KShs 15,000 for internal relocation cannot even pay for demolition of a homestead structure let alone build a new home.

(Meeting in Waon, Morop sub-location, 21 May 2014)

¹¹ “During the mining process, waste laced with hydrochloric and sulphuric acids and other heavy metals is released into the river, posing a great risk to the lives of the people using the water. The wastes are released into River Kimwarer, a tributary of the main Kerio River, which is used by the locals for domestic use. River Kerio is clean upstream, but lower down it changes to brown due to the wastes. At the same time, trees around the river have dried up due to what the residents say are the effects of the toxic waste deposited in water. Many residents complain of chest complications which they attribute to air pollution. But the company downplays the effects of pollution caused by the mining activity, saying that the impact of what they produce is minimal and cannot cause any devastating effects. A supervisor with the company, who declined to be named, said allegations about environmental degradation were malicious, having them stop their activities”. Steve Mkawale, ‘The unhappy story of fluorspar wealth’, East African Standard, 18 July 2004, <http://poisonfluoride.com/ptpc/html/kenya.html>

¹² Letter from Provincial Water Office, Rift Valley province to Ministry of Water and Irrigation, 28 July 2005

¹³ The company has established three main road barriers/blocks on public roads; these are at Chebutiei on the Nyaru-Kimwarer Highway, on the Kimwarer-Muskut Road, and on the Kimwarer-Chepsirei Road at the Mong River Bridge

¹⁴ Kimarer Sugutek (Fluorspar) Community Trust, ‘Brief History of the Fluorspar Land Compensation Problem’, briefing made available to the researchers

¹⁵ It should be noted that although KFC gives scholarships to children of KFC members, because there is no amicable relationship, the community do not participate in deciding who gets a scholarship and in fact many do not know of this corporate social responsibility (CSR) gesture

Voices Of Those Affected

They are digging but we see no profit from the lease. Instead, we live in uncertainty; mothers are arrested for fetching firewood ... Before KFC, we had no problems, we had maize, millet, vegetables and sorghum ... When the company was a parastatal, the lease offered a good life until 1977.

(Kewapmwen village, Turesia sub-location, 26 May 2014)

We had freedom, no one touched us; we ploughed our lands, raised cows, sheep and goats. Now we are not allowed even firewood. They deny us firewood even when they fell trees.

(Kewapmwen village, Turesia sub-location, 26 May 2014)

If you are from nearby, KFC will not hire you because you will reveal their secrets. Therefore they prefer to hire outsiders. If you try to embark on a project such as a house, they will demolish it. When they demolished mine, I went to report to Kaptagat police (July 20th 2004). I was told to pick up my belongings and leave the iron sheets. I went to court and once the KFC knew about it, they called me to explain that I cannot win a case against the company. Now my money is finished, I cannot be hired because the case is not over.

(Kewapmwen village, Turesia sub-location, 26 May 2014)

Angola

Bypassing the Community

The Tyihule community is located in the municipality of Gambos in Huíla province of south-central Angola, and its inhabitants have lived in the area since at least colonial times, with strong ancestral links to the land.

The community is located 6 kilometres from the main town of Chimbemba and 130 kilometres from the provincial capital of Lubango. The people in the Tyihule community are of the Mungambwé ethnic group, a sub-group of Nhaneca Humbé, the main ethnic group of Huila province, and speak the local language of the same name. They are agro-pastoral subsistence farmers who move with their livestock according to the season, ie transhumance, regularly transiting a local area of 10 kilometres between April and August and moving between September and March to Tunda dos Gambos (100 kilometres from their local area) due to its rich lands for cattle pasture. The community occupies and uses land on the basis of customary principles and does not have any formal land titles.

Social services are few. The community has no electricity and the nearest school and clinic are located 7 to 8 kilometres from the community in Chimbemba. As a result, younger children often do not attend school and youths generally do not, as they are required to help with domestic and agricultural activities. Basic health needs are largely unserved since the community does not have transport of its own to the clinic. The Tyihule community is also very food insecure, and hunger is common. The south-central region of Angola is suffering from increased cyclical and prolonged droughts, which is greatly affecting agricultural production. The community is no longer able to produce an agricultural surplus to sell. People sometimes receive low-level food distribution from the government, but this is not sufficient to meet their needs.

The impacts of granite mining

Gambos municipality is rich in iron ore and granite and the main mining company in the area is Rodang Rochas Orcamentais LDA, an Angolan mining company¹⁶ reportedly established in 2008 with a US\$3.5-million investment.¹⁷ Rodang mines thousands of cubic metres of marron (black) granite in the area and exports to the United States, Europe and China. It has around 70 employees but its ownership and shareholders are unclear.¹⁸

¹⁶ Diário da República, III SÉRIE - No. 64 - De 10 De Agosto De 2004, pp. 2595-2596

¹⁷ 'Angolan ornamental rock company to diversify production in Huila province', 11 June 2010, <http://www.macauhub.com.mo/en/2010/06/11/9247/>; <http://jornaldeeconomia.sapo.ao/empresas/rodang-in-veste-mais-de-usd-3-milhoes-na-exploracao-de-granitos>, accessed 18 May 2015

¹⁸ In a 2004 publication of the National Agency for Private Investment (ANIP) of approved private investments, Rodang is listed as originating from Panama, http://www.anip.co.ao/ficheiros/pdfs/PAIS-ES_2004.pdf, accessed 18 May 2015). However, our information is that it was registered in Angola with its headquarters in Huila province, with an initial capital of US\$25,000, and with Arroso (Mineração e serviços, Limitada) and Milliken International IMC as shareholders

Rodang’s mining activities affect the Tyihule community in a number of ways, the most important of which is closing transhumant paths and occupying some farming land used by the community. The restriction in the community’s movement, a long-standing tradition of transhumant practices, occurred when mining operations began in 2008. In addition to the mine occupying land that the local community was using, people say it also destroyed two additional communal agricultural plots located outside the perimeter of the mine by dumping stones produced from mining activities. The traditional leader of the community (the secula) raised this issue with the local government, but was advised to drop it as the mining company now owned the land and contributed to state revenue. The community also say that fruit trees on some of the hills were destroyed when mining operations began, removing an important source of nutrition for an already food insecure population. The Tyihule community, which had never been displaced from land prior to the opening of the Rodang mine, received no compensation for the loss of their land. However, Angolan law is unclear on company obligations on this point.¹⁹

The community’s access to water sources has also been restricted by the mining operation. The excavation of the area is drastically altering the local topography, eliminating the small hills around the communities which serve a number of important purposes.

A cave at the foot of one hill, for example, which had provided a natural reservoir for rain water collection and an important source of water has been closed due to mining. In addition, a number of wells, which the community had excavated to obtain water,

have been closed or filled. However, as compensation for this loss of water the company did install a water tap for the community to use, but access to this depends on the good will of a guard.

People in the Tyihule community say they were not consulted or even informed about the possible opening of a mine in their area. It is not clear if the company has undertaken an Environmental Impact Assessment (EIA), but it is clear that the community has not been informed of, or involved in, the process.

By its nature, mining causes great environmental damage by excavating soil and disrupting natural ground-water systems. In an interview with the researcher, a Rodang representative claimed the pits created by excavation activities are re-filled once exploration is complete and the land then becomes sufficiently fertile for re-growth. However, the provincial directorate for geology and mines states that the company does not always re-fill the land following the closure of a mining operation. Neither is it clear whether in fact Rodang replants trees destroyed as a result of its mining operations. When the researcher asked the company how it mitigates environmental impacts in the

community, Rodang noted the spraying of water in mining operations to reduce dust and air pollution.

Many in the community say they were affected by the sound of explosives used by Rodang during its initial exploration phase. Since they had not been informed about the possible opening of a mine in their area, many people initially fled as they thought ‘the war was back’. The noise pollution from the ongoing use of dynamite in Rodang’s operations affects the community’s health and well-being.

The community is also dissatisfied with the mining company’s lack of social investments. Rodang claims it provided funding for some projects at the request of the local government,¹⁹ but in its view social investments are the Angolan government’s responsibility, to be paid for by its revenues from the mining sector.

Neither does the community significantly benefit from potential employment opportunities – only three men from the community are in paid jobs at the mine. Workers are mainly from other parts of the province where Rodang previously conducted mining operations, such as Chibia. Local people say Rodang is reticent to employ them since they lack training and experience. However, they believe they should be offered some kind of work opportunity since the mine is located in their community and caused them to lose some agricultural lands and water sources. Some also suggest a lack of transparency and corrupt practices in the recruitment process, saying that those who paid AKZ8,000 (US\$80) to the section head have been hired, while those who paid less were unsuccessful. Since the mine provides few job opportunities, and the community

faces starvation, many young people have gone to the provincial capital, Lubango, and even Luanda, to seek work.

People in the local community say the mining company barely engages with them and has never participated in community discussions or problem-solving. Although the community was invited to participate in the inauguration of the mine, this was virtually the only time it has had any interaction with the company. Language barriers do not help – community members do not speak Portuguese and the manager of the mining company does not speak the local language. In focus group discussions, community participants stated that before commencing activities, the mining company and local government should have approached the traditional leader and held a meeting with the community to discuss the project, hear the concerns of the community regarding possible negative impacts, and listen to their views on possible social investments to maximise the possible positive impacts.

The local community understands little of Angola’s mining and land legislation and is therefore unable to demand that their rights are respected. What they do have is a general sense of ‘entitlement’ to benefit from the mine’s wealth and a sense of disenfranchisement with respect to having been deprived of some farming land and water sources. However, the community’s low level of education and literacy makes it difficult for local people to actively engage in discussions of laws and policies.

¹⁹ Whilst the Constitution (2010) and the Land Law (2007) both recognise the right to fair compensation in cases of expropriation of land by the state for public interest, it is not clear how these rights are protected with respect to areas identified for mining activities. In the Mining Code, provisions with respect to resource extraction do not include communities’ right to give their consent; only legal land owners have this right and they are defined as individuals or state agencies

²⁰ For example, an article from the Angolan State Press Agency in April 2009 mentioned the construction of a school in Chibia municipality with funds from Rodang. http://www.portalangop.co.ao/angola/pt_pt/noticias/economia/2009/3/14/Rodang-investe-mais-tres-milhoes-dolares-exploracao-granitos.32d6fc3e-83da-44fe-b4a1-4bc150b798ad.html

PROBLEMS WITH ANGOLA'S MINING LEGISLATION AND POLICY

Although Angola's Mining Code of 2011 improves on the previous legislation in some respects, there remain a number of important gaps in legislation and policy that contribute to the lack of development of local communities. First, the mining legislation places few obligations on companies to promote CSR and local content policies, which could help develop local communities. The absence of local content policies in mining (such as requiring companies to procure a certain percentage of goods and services locally and employ a certain percentage of Angolan nationals) contrasts to the oil sector where promoting local content has become a requirement. The lack of strong legal requirements to promote CSR partly explains the lack of significant social investment in the local community by Rodang. The municipal government said in an interview that it had little responsibility for ensuring good practice by mining companies, except to encourage them to provide jobs locally where possible, and to repair any environmental damage. Indeed, government interviewees felt the development of the communities located close to the mines is the responsibility of the mining companies, while the company says this is the responsibility of the government. The lack of a strong and effective economic policy which promotes the non-extractives sector of the economy and diversifies economic opportunities for people contributes to the lack of local development.

Second, there is a lack of participatory and decentralised governance and active citizen participation in identifying developmental problems and solutions. This means communities do not have a voice or space to raise their concerns and demand their rights. The centralist approach to mining governance in Angola results in neither communal nor municipal levels of government holding much power with respect to mining operations. The power to regulate the mining sector is almost entirely in the hands of national structures, while the local and municipal levels of government have limited responsibilities for regulating environmental impacts and facilitating favourable business environments for mining. A related issue is a lack of transparency and accountability both in the extractives sector and public service delivery, which means communities are unable to hold either private sector or state actors accountable for respecting human rights or distributing revenues.

Third, Angolan law is vague on some issues, for example, environmental rights and protections as defined in the Environment Law and the Mining Code state that specific standards related to environmental preservation must be observed in mining activities. However, in drafting these standards,

environmental risks must be compared with the advantages that mining activities may bring to the communities, with the aim of balancing these interests – a difficult issue to weigh up.

Fourth, mechanisms to bring all stakeholders (the mining company, the communities and local duty-bearers) together are lacking, which means each actor operates in isolation from the other, with no means to discuss common issues. Whilst general conflict resolution processes, via traditional governance mechanisms, are outlined in Angola's legislation, the mining law does not establish any specific adjudicatory body to deal with conflicts arising between communities and companies. This problem is highlighted in the case of the Tyihule community, which complained about being deprived of agricultural land, but was rebuffed by local government.

Lastly, a major problem is the government's failure to implement legislation. The Mining Code states that the first objectives of the mining sector are to guarantee the continuous social and economic development of the country, create jobs, and improve local populations' living conditions. It adds that mining activities should disturb local economic and social arrangements as little as possible. These principles, however, are barely being promoted in practice in the case of the Tyihule community. The Angolan legislative system requires that laws are accompanied by regulations that provide the details of the general provisions outlined in the respective laws. Yet, despite being passed in 2011, the Mining Code regulations have still not been produced at the time of this publication. This explains why the local government lacks sufficient knowledge of the mining legislation.

Pl

*Platinum is one of the least reactive metals.
It has remarkable resistance to corrosion,
even at high temperatures.*



Zimbabwe

Problems with Platinum and Chrome

Mhondongori ward 5 is in the Zvishavane-Runde Rural District Council in the Midlands province of Zimbabwe, and is home to some 3,000 people living in 12 villages. Mhondongori ward 5 is a long settled agricultural farming area and has a history of formal and informal gold and chrome mining but has more recently hosted large-scale platinum mining activities. It is located at the southern end of the Great Dyke mineral belt, a 550-kilometre long seam of rock which hosts quantities of platinum, gold, nickel, copper, and chrome.

The major platinum mine in the area is Mimosa, a 200-metre deep underground operation which is jointly owned by two South African-based companies – Impala Platinum (Implats), which produces 22% of the world's platinum together with its mines in South Africa,²¹ and Aquarius Platinum Ltd, which is listed on the London, Johannesburg and Australian stock exchanges. In 2014, the Mimosa mine produced 110,200 ounces of platinum and was estimated to have reserves of 1.2-million ounces.²² Aquarius states that Mimosa contributed US\$130-million to the company's revenue in 2014, from which it made a gross profit, ie before tax, of US\$22-million.²³

The other main activity in the ward is small-scale chrome mining, involving local individuals and small enterprises in partnership with Chinese firms. Chrome operations in Zvishavane are all surface mining or open pit activities, and most are on claims belonging to Zimasco, which is mainly owned by the Chinese state company, Sinosteel Corporation. Zimasco operates a tributary system that gives out chrome mine claims to small-scale or artisanal miners, which are then provided with inputs and mine the chrome before selling to Zimasco. The most notable chrome mining companies are Mangemba, Mavhindi, Kagonye, Zim-China Chrome, Ding Li Chrome, and Mulaya Chrome. Most are not registered with the Ministry of Mines and fail to produce EIA certificates as prescribed by the Environment Management Agency (EMA) of Zimbabwe (see below).

Research by the Zimbabwe Environmental Law Association found that the local community believes mining has contributed to some economic benefits in the area. However, interviews with local people, the Rural District Council, the mines, and the EMA, also raise concerns about some social and environmental impacts and the legislation and institutions regulating mining.

²¹ 'Company profile', <http://www.implats.co.za/implats/Company-profile.asp>

²² 'Mimosa', <http://aquariusplatinum.com/mimosa>

²³ 'Mimosa', <http://aquariusplatinum.com/mimosa>

The Mimosa mine

The Mimosa operations are regarded by the local community as having both positive and negative impacts. On the positive side, the Mimosa mine allocates some funds to support local community development and has contributed US\$10-million to the Zvishavane Community Share Ownership Trust which funds projects in the district and in the 12 villages near the mine. At Mukwidzi Secondary School in one village, for example, the company has built two classroom blocks and equipped them with furniture, helped construct a community block by providing roofing and furniture, drilled a borehole and renovated a windmill and tank to supply water to the school and teachers' houses. The company has also contributed to equipping Mhondongori Clinic, drilling a borehole to improve local water supply, and building a clinic and housing for nearly all its employees.²⁴

The Mimosa mine employed around 1,550 staff and contractors in 2014.²⁵ Although it has created some jobs for local people, community leaders say these are disappointingly low, at only around 5% of the mine's workforce. The community is also concerned about an unclear quota system used to employ local people and what it perceives as the company's failure to deliver on its promises to employ more locals. Mimosa sub-contracts the hiring of employees to contractors who then take on construction workers. Most of these jobs are for casual labourers. Community members are concerned that labour laws are sometimes violated since there are cases of employees working for months without being paid.

Women have even fewer job opportunities at Mimosa and the small-scale chrome mines and, despite the government of Zimbabwe's National Gender Policy, mining remains a

male-dominated sector. Mimosa's mining operation tends to be labour intensive, highly mechanised, and based on shift models that all reduce the possible participation of women.

The local community is concerned about a number of social and environmental impacts of the Mimosa mine. One relates to emissions of black smoke and air pollution. Indeed, many local people believe they are continuously inhaling toxic dust, which emanates from the mine's slime dam.

The prevailing wind generally blows dust from the slime dam towards several villages, and villagers report that the air is pungent from mine operations. The dust causes some trees to turn black or white, and to dry and die. Communities also complain of noise from heavy trucks and machinery from the mine.

Lack of clean water is a major problem in all the villages and searching for water is a very time-consuming activity for women. In one village – known as Village 8 – there are no reliable water sources since there are few boreholes, most of which are broken. Yet the Mimosa mine taps its water from the nearby Ngezi River and conveys water for the mine through pipes that pass through the village. Local people believe they deserve to share the water and there have been cases of community members vandalising the pipes to access water. There are significant tensions

concerning this issue, which may become worse if not attended to.

Littering by contractors and small-scale miners is another problem. The regulations to ensure refuse is properly disposed of at designated points are poorly enforced, which leads to litter being widely scattered. As the mine area is not completely fenced off, livestock then feed on the litter which includes disused overalls, paper, bottles, aluminium cans and plastic. The community has asked the mine to employ local people to clear the litter in and around the mining area.

Portions of land are cleared by small-scale chrome miners and information provided by the local community is that some companies contracted to Mimosa, such as those engaged in construction or transportation work, randomly cut down trees for their own use. Such deforestation reduces the availability of firewood for local people and means women have to travel longer distances to obtain supplies.

There are also tensions concerning some land-use boundaries between Mimosa and the local community. When Mimosa fenced off its mining area it cut off the community's traditional walking paths to shops and grazing areas. Although the mine responded to objections by re-opening some of these paths, the local community still has less access than before and considers the company response to be inadequate.

There are, however, lines of communication between Mimosa and the community, much more so than with the small-scale chrome miners. Indeed, local people feel that Mimosa is very responsive to some of its concerns, unlike the chrome miners with whom there is very little communication. A committee

comprising the ward councillor and coordinator, village head, and political representatives was set up in 2001 when Mimosa's mining activities commenced. This platform was intended to allow the committee to hold meetings with the mine to discuss issues affecting the community. However, meetings are not held regularly and feedback to the wider community is not given consistently. Local people complain that the committee has an unclear mandate and is poorly managed.

Chrome Mining

Research found that the small-scale chrome miners have the biggest environmental and social impacts on the local community. Land has become increasingly degraded as a result of chrome mining and the formation of pits, which has led to loss of biological diversity including plants and natural assets important to people's livelihoods. The local community is fast losing grazing and agricultural land – rough estimates put the loss at 30% to 50% of all land in the ward. The chrome miners do not construct permanent roads and open up new ones to continue mining during the rainy season, which affects productive grazing land and causes loss of trees, grass and fertile soil.

In some villages – notably those known as 7a and 7c – open-chrome mining has left deep open pits, causing several problems in the rainy season. Children swim in these pools of water with the threat of drowning and being affected by water-borne diseases such as bilharzia. According to information from the ward councillor and interviews with the local community, an 11-year-old girl, Asa Mpofu, drowned in one of the pits in October 2012. Similarly, in 2001, Fortunate Siziba fell into a pit previously operated by Zimasco which was about 17 metres deep, and was left partially blind and his whole left side limp.

²⁴ See also Zimbabwe Environmental Law Association, Mining Within Zimbabwe's Great Dyke: Extent, Impacts and Opportunities, 2012, p. 8

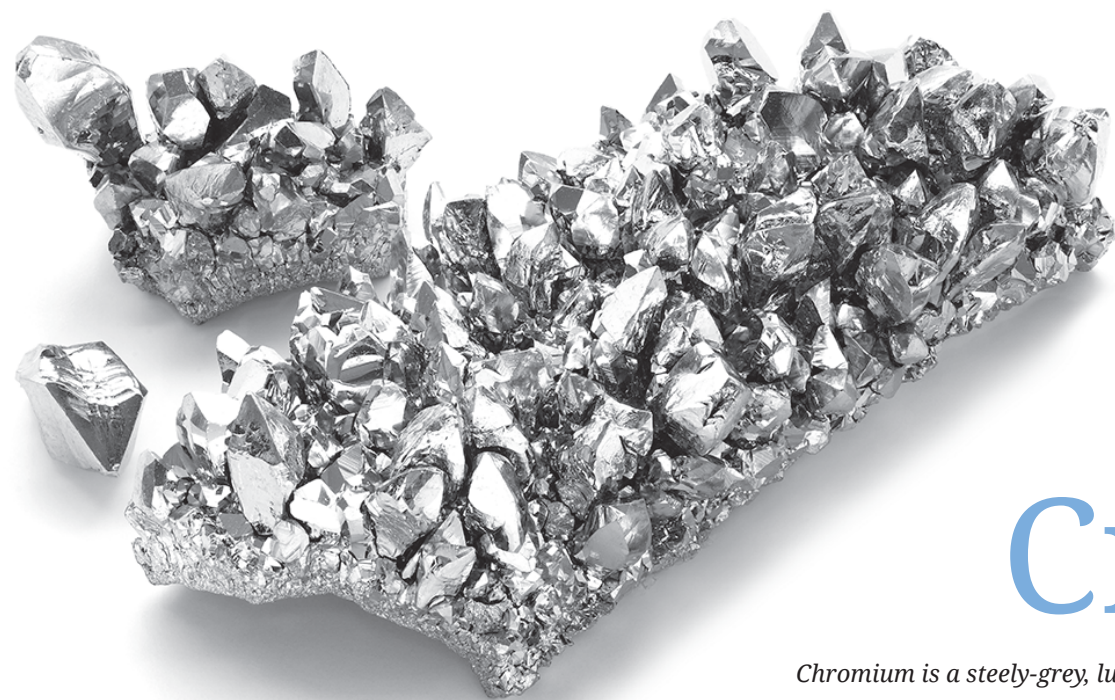
²⁵ 'Mimosa', <http://www.implats.co.za/implats/Mimosa.asp>

Livestock, vital to local livelihoods, have also died by falling into the pits as they look for water. These same open pits and the soil mounts have become hiding places for criminals who have targeted women; there have been some reported cases of women being raped and mugged in these pits. Field observations in the area clearly show that the EMA is not doing enough to ensure the chrome mining companies rehabilitate previously mined dumps and return the area to its previous condition.

A recent report by the Poverty Reduction Forum Trust in Zimbabwe notes the chrome miners in Zvishavane use explosives that cause

cracking in houses and veld fires, which destroy the natural vegetation and pose threats to animals and people.²⁶

There have also been cases where chrome miners have damaged community infrastructure, such as in 2013 when a heavy truck owned by a Chinese company damaged Mhondongori Bridge. The company initially promised to repair the bridge but then backtracked. The Rural District Council had to get involved and in the end repaired the bridge. The case highlights the need for ongoing conflict management as a tool to mediate conflicts between the mining companies and the communities.



Cr

Chromium is a steely-grey, lustrous, hard and brittle metal which takes a high polish, resists tarnishing, and has a high melting point.

POOR REGULATION OF CHROME MINING

The communities and local authority believe that monitoring of chrome mining by the Ministry of Mines and the EMA is grossly insufficient. They perceive that the process of granting mining licences by the Ministry of Mines does not involve other institutions and that it is unclear precisely who has been granted licences; the Local Authority is meant to play a key role in processing EIAs but in practice does not.

Zimbabwe's EMA is the statutory body responsible for ensuring the sustainable management of natural resources, protection of the environment, and prevention of environmental degradation. The Environmental Management Act stipulates that EIAs need to be conducted by all mining activities to identify possible impacts and propose mitigation measures before projects commence. The local EMA office in Zvishavane was not able to provide statistics on which mining operations within the ward have conducted EIAs.

For small-scale chrome mines, mitigation measures are meant to involve semi-filling in the pits and spraying water to reduce dust. Since these problems are widespread in the area, the district EMA office issues orders for rehabilitating the mined areas, and if necessary seeks assistance from the police to demand compliance. The relationship between most small-scale chrome miners and the EMA is not easy, mainly because some miners do not know the legislation. These miners tend not to attend meetings where the EMA raises awareness of environmental protection; thus, if they are prosecuted they claim to be unaware of their obligations and claim they should have been given warnings.

The EMA office and the local Rural District Council have a common appreciation of the environmental issues related to mining in the ward, and sometimes undertake joint compliance inspections to enforce rehabilitation. However, the same cannot be said of the relationship between the EMA and Ministry of Mines, although at the policy level both agree on the legislative framework and objectives. Enforcement on the ground is also hindered by inadequate financial resources.

An investigation into chrome mining by the Parliamentary Portfolio Committee on Mines and Energy from 2011 to 2013 noted:²⁷

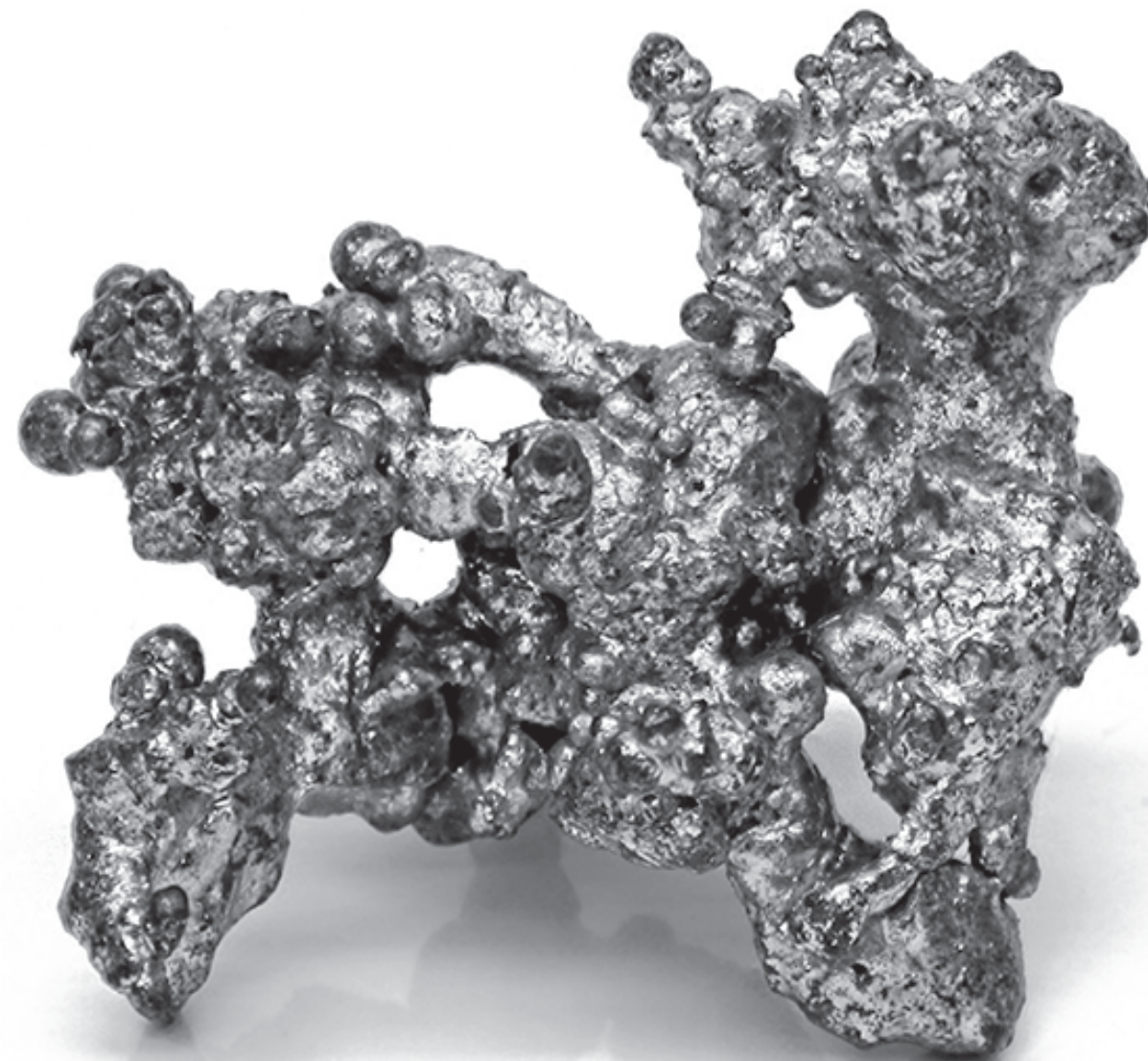
- Local authorities complained there was no communication from the Ministry of Mines on which mines were operating.
- The EMA was unable to enforce mining companies to abide by environmental regulations. The mines either ignored the EMA's warnings or opted to pay a fine for offences committed and thereafter continued flouting the regulations. It was also reported that some companies begin operating without notifying the EMA or doing an EIA.
- The mining companies do not respect government institutions as required by law. For instance, the local authorities struggle to receive payment of local taxes from these companies. Runde District Council once had to take Zimasco to court to force the company to pay their statutory obligations.

²⁶ Poverty Reduction Forum Trust, Poverty in Mining Communities in Zimbabwe: A Case Study of the Great Dyke, December 2013, p. 36

²⁷ Zimbabwe Parliament, Chrome Mining Sector in Zimbabwe, 2013, http://www.swradioafrica.com/Documents/Complete%20represented%20report%20_chrome_1_Report_on_Chrome_Mining_in_Zimbabwe11.pdf

DRC

Mining amidst people



Cu

Copper is a soft, malleable and ductile metal with very high thermal and electrical conductivity.

Ruashi is a copper and cobalt mine in Katanga province of the DRC. Consisting of three open pits and a processing plant, the mine currently produces 38,000 tonnes of copper and 4,400 tonnes of cobalt per year.²⁸ The mine is located in Ruashi municipality, one of seven in the city of Lubumbashi.

The Ruashi mine, which was established in its current form in 2000, is majority owned (75%) and managed by a private company, Metorex,²⁹ a South African-based company which is part of Jinchuan Group International Resources Co Ltd, a Chinese company listed on the Hong Kong stock exchange.³⁰ The remaining 25% ownership in the mine is by Gecamines, the DRC's state-controlled mining corporation.

Research by ASADHO was conducted in three districts close to the mine – Luano, Kawama, and Kalukuluku. Local people, some of whom live only 100 metres from the mining operations, are predominantly small farmers, with some running small businesses such as producing charcoal, while others are artisanal miners.

The research uncovered some positive, but mainly negative, impacts from the mine. People interviewed in the district of Luano, for example, told researchers that, before the establishment of Ruashi Mining in their district, the population lived largely in tranquillity, with arable land available for vegetable gardens, and clean water for drinking and fishing. However, this way of life has been significantly affected.

²⁸ 'Ruashi Mining', <http://www.metorexgroup.com/mine/ruashi-mining/>, accessed 25 June 2015

²⁹ 'Company Overview of Ruashi Mining', <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=30530067>

³⁰ 'Our history', <http://www.metorexgroup.com/about-us/our-history/>

Water

Local people say their drinking water is no longer safe for consumption because toxic waste from the mine is poured into the company's retention ponds, which overflow and run into the Ruashi stream and on to the Luano River, which is a vital source of water for local villages. The water changes colour into a yellowish mud.

Before mining began, two pumps supplied drinking water to the three districts. The company replaced two pumps, built a water tower, and drilled two wells but the latter had lower water capacity, thus reducing water availability. One of these pumps now supplies water that is untreated and muddy, clearly unfit for consumption.

Soil fertility

ASADHO's research with farmers found similar concerns with regard to soil pollution. Of over 250 people interviewed, 85% said their soil had been harmed by mining, notably by polluted water leaking into their vegetable gardens. Around 40% of people in the three districts earn their living by producing fruit and vegetables and selling these in and around the markets of Lubumbashi. Soil infertility is causing food production to decline and further impoverishing families. One man said:

The soil was very fertile and we used to have a great maize harvest prior to the establishment of Ruashi Mining, unfortunately the soil is no longer fertile since the launching of the activities. There are places where maize crops do not grow properly. I used to easily plant maize on over three hectares, but currently I barely get to 2 hectares per season and the production is so poor that I am no longer capable of meeting the needs of my family.

THE IMPACT ON WOMEN

Women have been especially impacted by the mine. Women interviewees told researchers that, before the mine, they had access to land for growing mangoes, guavas, sugar cane, vegetables, and other agricultural products, and for the collection of dead wood for producing energy, in the absence of electricity. In addition, clean water was accessible to most families in three communities. However, now they say that arable soil is scarce due to mining and that the available land is less productive. Many women now need to walk long distances in search of arable soil in neighbouring districts. Most women in these communities now cultivate in a designated agricultural concession known as Celestin Farm, which is located 20 kilometres from their homes. Access to this area is becoming even more difficult due to the closure of the public road by another mining company, Chemaf. In order to go around it, women are obliged to undertake a 32-kilometre walk with the risk of being attacked or raped.

The water in the Luano River was previously used for drinking, but is now suspected to be polluted due to mining. Women in the three communities need to walk long distances to obtain drinkable water. Those who cannot buy mineral water for their families are forced to use the polluted water for their daily consumption and this affects the health of the whole family, especially young children.

Relocation

Several families were relocated by the mine when activities began. According to interviews with those affected, the company imposed the terms of compensation without negotiation, and many people were given no compensation at all. Some people, however, did receive compensation but often at very low rates. For example, some farmers working their land in the mine area simply received a lump sum of US\$100, even though their future livelihood was being taken away. Compensation was awarded according to plot and house sizes, but for many people compensation was not provided for water wells and fruit trees on their land. Indeed, our information is that the company only compensated people who protested.

Some artisanal miners who were working in the quarry before the establishment of the mine were also not given fair compensation. It is estimated that there were some 10,000 such miners previously working in the quarry. Of these, only around 1,000 received compensation, according to local villagers, in the form of a lump sum of US\$200 per person. In negotiations the company promised to employ miners, but this promise was never honoured.

Air pollution

People in Luano, Kawama, and Kalukuluku are also worried that Ruashi Mining releases toxic smoke into the air for two hours each morning and evening when the chimney from its processing plant is active. People complain of problems with their sight and respiratory systems, such as chronic coughs. Virtually all those interviewed said the quality of the air they are breathing is very poor. Two nurses from health-care centres in Luano and Kawama districts confirmed they were aware of such problems in the community. Further air pollution is caused by the huge amount of dust coming from the open pits and landfills and from massive deforestation. However, the company has not assisted the community by supporting health care in the three districts investigated.

Blasting

Blasting by the company involves the use of explosives, causing rocks to be thrown up which repeatedly fall on houses and even on people, causing personal injuries and damage to property, such as cracks in the walls and roofs of buildings. ASADHO's research found that several houses had been damaged without people being given compensation. Ruashi Mining does not compensate victims of blasting operations. The extent of damage without repairs or compensation led the chief of the provincial mining division of Katanga to suspend the company's blasting activities in September 2013. Recommendations to the company by the provincial authorities to provide compensation have been ignored. Blasting takes place every week, at which time people in the community are required to leave their homes, often under pressure from the police.

Countering community opposition

Whenever the affected communities organise a peaceful protest against company actions, or call for compensation, Ruashi Mining requests police intervention. The police have often silenced the community by dispersing them with tear gas and detaining and interrogating protestors. A special police force was created through a recruitment system called Kuluna specifically for this purpose. During one protest, one local journalist who was taking pictures of the community and mine facilities was arrested and beaten and his materials confiscated by the police guarding the company's facilities. Community members say they are being silenced by these coercive actions.

There have also been cases when the police have resorted to brutal measures against alleged artisanal miners operating in Ruashi Mining's concession area. One woman told ASADHO's researchers of the death of her son, who was killed on his way back from his farm by a bullet shot by police chasing artisanal miners.

Lack of consultation

Members of the Luano, Kawama, and Kalukuluku communities say they were not consulted or informed about the establishment of the mine in 2000 or the dangerous nature of some of its activities. Community members first found out about the mine when they noticed two buildings being constructed on the site. In June 2006, the community discovered by way of a letter (dated December 2005) from Rusahi Mining to the mayor of Lubumbashi, that the company was planning to relocate the communities surrounding its facilities. The community pressed the company to inform it of its plans and a series of meetings to discuss the relocation were subsequently arranged. The local people interviewed say they never received information from the company or local authorities concerning the danger of some operations or the waste discharges from its activities.

Towards a set of principles for a model mining legislation

This section captures some of the key problems affecting communities near mining operations identified in the case studies and with African mining more broadly. These issues need to be urgently addressed by governments if local communities and national populations are genuinely to benefit from mining and pursue their own development paths. The key principles outlined below will hopefully contribute to forming a set of principles that will act as a basis for drafting a model mining legislation.

Problem 1: People are often made poorer by mining projects

- People often live in extreme poverty on the doorstep of huge wealth.
- Local communities’ land, water, forests, and air quality are generally adversely affected by mining, making them poorer.
- People can be displaced from, or deprived of, their farming land and livestock, essential for their livelihoods.
- Use of wood and water in mining concessions by mines can reduce access to these by local communities.
- Water and electricity services intended for mines sometimes pass through local communities that are not able to access them.
- Mining employs few local people and job promises often do not materialise. In rare cases of employment, the wages are poor.

Key principles

- Ensure mining projects leave local communities better, not worse, off.
- Expand community development plans and benefit-sharing agreements in which communities are involved in designing and monitoring. These should clarify the obligations of the mining company, government and community.
- Exclude the use of local wood and water resources in mining rights, which should be subject to community negotiation and consent.

- Promote local content policies as mandatory requirements to ensure companies source a certain percentage of their procurement spending and workforce from local/national sources.
- Design and monitor mining projects through local community participation and provide appropriate training.
- Identify the adverse impacts of projects by independent third parties not paid for by the company.

Problem 2: Women bear a disproportionate burden of the impacts of mining

- The adverse impacts of mining – such as loss of land, wood and water – can affect women more than men since women are usually responsible for farming and water and wood collection in the household.
- Women have fewer opportunities than men to benefit from potential mining employment.
- Women are represented less than men in decision-making and consultation mechanisms concerning the development and impact of mining projects.

Key principles

- Ensure women are key beneficiaries in mine-related community development plans and benefit-sharing arrangements.
- Ensure women are equally represented in consultation and decision-making processes.
- Regulate artisanal mining to ensure women have access to equal opportunities and benefits.

Problem 3: Mine-affected communities are often excluded from mining revenues and benefit-sharing

- Recent changes in mining legislation in some countries have been largely driven by the state seeking to capture a large share of

resources. However, mine-affected communities, and the nation at large, often benefit little, or sub-optimally, from potential mining revenues.

- Mining revenues to the state and tax payments by companies are often not transparent; individual mining agreements with companies are secretly negotiated, offering large tax concessions, without public or parliamentary input.
- Transfer pricing by companies is allowed to continue due to insufficient government monitoring, enforcement, or political will.
- Company financial declarations concerning production figures or tax payments are sometimes not reliable.
- Local communities usually have no financial stake in mining projects that affect them.

Key principles

- Incorporate the principle of local benefit-sharing into state policy to ensure local communities benefit from mining. Such policies need to be transparently designed and implemented.
- Award a percentage of the financial stake of mining operations to local communities.
- Ensure transparency of the local administration of funds and allow for the participation of affected communities.
- Engage in national public debates to set and monitor tax rates. Governments must publish tax receipts and payments.
- Mining agreements should be publicly debated and made publicly available.
- Ban individual agreements with companies offering different tax rates from the law; statutory tax rates should apply to all companies.
- Monitor and adequately resource monitoring of transfer pricing, and ensure the law can clamp down on companies engaged in this.

- Deploy independent observers to monitor company activities to ensure reporting is accurate.
- Make key company financial figures, such as production levels and profits, public.

Problem 4: Mining legislation is often inadequate and/or not implemented in practice

- Many countries’ mining legislation lacks adequate laws concerning, for example, resettlement, compensation, local content policies, community development, consultation and environmental standards. Other countries have such policies but do not adequately implement them.
- The development objectives of mining for local communities and the nation are rarely clear and explicit in legislation.
- Licensing mining projects with time-bound rights can create a scramble to discover and exploit resources too quickly, which may result in adverse impacts, poor management, and corruption.
- Many countries’ mining legislation gives discretionary powers to ministers and does not oblige them to consult widely.

Key principles

- Revise legislation so it adequately addresses all areas that may have negative and positive impacts on local communities, and ensure that it obliges government ministers to consult widely in promoting mining policy.
- Develop clear development objectives for mining and a set of outcome indicators to monitor them.
- Ensure there is independent, for example parliamentary, oversight of legislation and policy so that it is fully implemented.
- Maintain adequate cadaster systems to provide details of mineral deposits.

Problem 5: Consultation mechanisms are

inadequate and FPIC is absent

- Consultation mechanisms with mine-affected communities are generally inadequate in designing and implementing mining projects. ‘Consultation’ is ad hoc and intended simply to obtain the agreement of the community to the objectives of the mining company and state.
- The concept of Free, Prior, Informed and Continuous Consent (FPIC) is rarely enshrined in policy-making, meaning that companies and the state do not see it as important to obtain the consent of the community to proceed with mining or to shape the details of projects (such as resettlement or compensation policies).
- Licensing processes relating to reconnaissance, prospecting and exploitation often consider environmental assessments and community consultations only after the decision to mine has been taken, failing to respect community decision-making processes and local knowledge.
- Local communities’ own structures for consultation are often ignored by mining companies.
- Many traditional leaders are co-opted into processes to obtain the compliance of the community.

Key principles

- Introduce the principle of FPIC into mining policy and legislation.
- Ensure that adequate consultation processes between the state and local communities are undertaken; the state should not side simply with the company in expediting projects.
- Ensure traditional leaders are held to account in their communities; and separate traditional authority from customary law and decision-making processes.

Problem 6: Mine-affected communities often lack information compared to companies and the state

- The information and resources available to local communities is often completely disproportionate to that of the state and companies. This uneven playing field increases the risk of manipulation and coercion; formal negotiation and consultation processes can be meaningless in such situations.
- Processes such as EIAs, which are technical and require expert analysis, often bypass affected communities and ignore their concerns.

Key principles

- Ensure that mine-affected communities are aware of their rights in mining projects. Rights and development planning education should be carried out for communities in mining areas.
- Ensure key mining processes – such as EIAs and Resettlement Action Plans – are subject to full community consultation, and independent scrutiny, to prevent them being merely mouthpieces of mining company policy.
- Ensure licensing and environmental compliance processes are strongly informed by community-defined decision-making time-frames.

Problem 7: Cumulative social and environmental impacts from multiple companies and/or the state are often seen as no one’s responsibility

- Many communities continue to suffer from historical dispossession and marginalisation, affecting their current livelihoods.
- The social and environmental impacts of mining are generally cumulative, involving several companies, but for which none are held to account. (For example, one mine

may displace a community which resides in an area already inhabited by another community adjacent to a second mine where pollution of water resources is a problem and greater resource stress is felt by all.) States often fail in these circumstances to provide adequate alternative land or livelihood options. Since social and environmental impacts can compound each other, remedies cannot be made simply by addressing the original transgression.

Key principles

- Adequately compensate mine-affected communities for historical impacts and dispossession.
- Establish the practice of collective accountability of an industry or set of mines for social and environmental impacts in law, for which there is already some precedent in South African law.

Problem 8: People are denied their rights to natural resource governance

- Local communities are granted the right over the use and disposal of natural resources in a number of international treaties to which governments are signatories, most specifically in the African Charter on Human and Peoples’ Rights. Yet communities are frequently excluded in law and practice from decision-making on these resources.
- Some dispensations make all natural resources the property of the state, which facilitates capital accumulation by the state and corporate interests, often excluding communities and the nation at large.
- For centuries people have been custodians of their environment, but this is rarely acknowledged in approaches to environmental management. Rights of people are removed and ineffectual bureaucracies document and observe the destruction of the same resources.

Key principles

- Ensure local communities are the custodians of local resources and receive support in promoting the sustainable use of those resources, such as training in environmental monitoring.
- Include provisions for full community participation in environmental management so the value of resources is reflected in policy-making and in how impacts are assessed.
- Include mine closure and rehabilitation as elements in longer-term community development planning.

Problem 9: Decisions to mine are often taken arbitrarily and subjectively

- The decision to proceed with mining is often taken with little or no involvement of local communities or public debate, with details shrouded in secrecy. Beginning projects in this way is likely to shore up problems for the future.
- Governments rarely articulate the costs and benefits of possible mining projects and are seldom subject to independent scrutiny.
- Preparatory work – such as Environmental and Social Impact Assessments – is often inadequate and managed exclusively by the mining company itself.

Key principles

- Ensure decisions to mine involve achieving the consent of the affected community; guaranteeing social and environmental costs can be mitigated; having a plan for adequate compensation; and demonstrating that national interests are well-served in terms of revenues and other possible benefits.

Problem 10: Expropriating land to make way for mining is rarely subject to sufficient analysis and objective consideration of the national interest

- Many communities are displaced from their land in mining projects when governments invoke the ‘public’ or ‘national’ interest in proceeding with mining, yet these terms are broad and subjective and often amount to the abuse of state power.
- Governments rarely provide justifications, and costs/benefit analysis, for expropriating land.

Key principles

- Ensure community consultation, FPIC, and independent analysis of the costs and benefits of land expropriation; depriving farmers and others of their land must be regarded as a last resort in mining projects.
- Take full account of customary and private land rights, ownership and land use systems when drafting policies.

Problem 11: Compensation is rarely adequate or fair and often not paid at all

- Where compensation is paid for loss of land or housing, it is normally at a low rate (set by the government) and simply for the value of current assets (for example trees and crops), failing to take into account lost future income or the spiritual and cultural value of land.
- Where land is lost and replaced, the alternative land provided is often of poorer quality or located far from services.

Key principles

- Revise rates upwards and take account of lost future earnings from assets and the spiritual/cultural value of lost land.
- Provide replacement land of at least equal quality and appropriate location.
- Offer compensation packages (either in the way of cash or in-kind) to mine-affected communities.

Problem 12: Artisanal and small-scale mining is poorly regulated, exacerbating the adverse impacts of mining

- Commercial mining tends to take no responsibility for the small-scale mining that occurs nearby, even though the latter is often only possible because of the existence of the larger mine.
- The vast number of artisanal and small-scale miners makes it difficult to regulate these activities, which are compounded by inadequate state resources dedicated to monitoring compliance to regulation.

Key principles

- Involve local communities in designing and monitoring programmes related to small-scale mining.
- Ensure companies are aware of their legal and other obligations to small-scale miners near their mines. Specifically, company security forces must act within the law in protecting company property.

Problem 13: Mining-affected communities lack adequate redress mechanisms and justice mechanisms are inefficient

- Mine-affected communities often have few places to turn to air their grievances, access legal advice, or seek remedies for adverse impacts on their livelihoods.

Key principles

- Establish independent trusts, funded by mining revenue, to provide communities with expert legal and technical advice.
- Include grievance mechanisms in which local communities can freely air their concerns.
- Ensure government plays a supportive role in all mining projects.



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