

# **Foreign Direct Investment in Extractive Industries in Sub-Saharan Africa**

*A real hope or a mirage?*

**Grayson Koyi**

This study was undertaken by the author under the guidance and sponsorship of the Friedrich Ebert Stiftung (FES). However, the views expressed are solely those of the author and do not reflect the views of the sponsoring organisation.

September 2011

---

**FRIEDRICH EBERT STIFTUNG**

## LIST OF ACRONYMS

|         |  |
|---------|--|
| ALRN    | African Labour Research Network                        |
| COSATU  | Congress of South African Trade Unions                 |
| CSR     | Corporate Social Responsibility                        |
| FDI     | Foreign Direct Investment                              |
| GDP     | Gross Domestic Product                                 |
| GRN     | Government of the Republic of Namibia                  |
| GRZ     | Government of the Republic of Zambia                   |
| KCM     | Konkola Copper Mines                                   |
| MNCS    | Multi-National Corporations                            |
| MUN     | Mine Workers Union of Namibia                          |
| MUZ     | Mine Workers Union of Zambia                           |
| OHS     | Occupational Health and Safety                         |
| SSA     | Sub-Saharan Africa                                     |
| TAMICO  | Tanzania Mining and Construction Workers Union         |
| TUCTA   | Trade Union Congress of Tanzania                       |
| UNCTAD  | United Nations Conference on Trade and Development     |
| ZCCM-IH | Zambia Consolidated Copper Mines - Investment Holdings |

## Contents

|            |   |  |
|------------|---|--|
| <b>1.0</b> | <b>Introduction.....</b>                                  | <b>4</b>                               |
| 1.1        | Background Information and Motivation of Study .....      | 4                                      |
| 1.2        | Methodology and Data Collection .....                     | 6                                      |
| 1.3        | Scope and Limitation of Study.....                        | 6                                      |
| <b>2.0</b> | <b>Conceptual and Theoretical Framework.....</b>          | <b>7</b>                               |
| 2.1        | Conceptual Framework.....                                 | 8                                      |
| 2.2        | Theoretical Framework .....                               | 8                                      |
| <b>3.0</b> | <b>Key Study Findings .....</b>                           | <b>11</b>                              |
| <b>3.1</b> | <b>Botswana .....</b>                                     | <b>11</b>                              |
| 3.1.1      | General Overview.....                                     | 11                                     |
| 3.1.2      | Investing Company: Case of Debswana Diamond Company ..... | <del>12</del> <a href="#">13</a>       |
| 3.1.3      | Unionization.....   | 15                                     |
| 3.1.4      | Mineral Legislation .....                                 | <del>16</del> <a href="#">17</a>       |
| <b>3.2</b> | <b>Ghana .....</b>  | <b><del>19</del><a href="#">20</a></b> |
| 3.2.1      | General .....   | <del>19</del> <a href="#">20</a>       |
| 3.2.2      | Investment Company: Case of Anglo Gold Ashanti.....       | 21                                     |
| 3.2.3      | Unionization and Union Role in Legislative Review .....   | 23                                     |
| 3.2.4      | Mineral Policy and Legislation .....                      | 25                                     |
| <b>3.3</b> | <b>Malawi .....</b>                                       | <b>28</b>                              |
| 3.3.1      | General Overview.....                                     | 28                                     |
| 3.3.2      | Main Investing companies .....                            | 30                                     |
| 3.3.3      | Unionization.....   | 30                                     |
| 3.3.4      | Minerals Legislation Overview .....                       | <del>30</del> <a href="#">31</a>       |
| <b>3.4</b> | <b>Namibia.....</b>                                       | <b>33</b>                              |
| 3.4.1      | General Overview.....                                     | 33                                     |
| 3.4.2      | Investing Company: Case of AngloGold Namibia .....        | <del>35</del> <a href="#">36</a>       |
| 3.4.3      | Unionisation.....   | <del>37</del> <a href="#">38</a>       |

|                        |   |             |
|------------------------|---|-------------|
| 3.4.4                  | Minerals Legislation.....   | 3839        |
| <b>3.5</b>             | <b>South Africa .....</b>   | <b>40</b>   |
| 3.5.1                  | General Overview.....   | 4041        |
| 3.5.2                  | Investing Company .....   | 41          |
| 3.5.3                  | Union role in mining codes and other specific actions.....        | 4546        |
| <b>3.6</b>             | <b>Tanzania .....</b>   | <b>4950</b> |
| 3.6.1                  | General Overview.....   | 4950        |
| 3.6.2                  | Investing company: Case of Anglo Gold Geita Gold Mine (GGM).....  | 5051        |
| 3.6.3                  | Unionisation and Union’s role in Review Mineral Legislation ..... | 5354        |
| 3.6.4                  | Minerals Legislation.....   | 55          |
| <b>3.7</b>             | <b>Zambia .....</b>   | <b>5657</b> |
| 3.7.1                  | General .....   | 5657        |
| 3.7.2                  | Investing Company: Case of Konkola Copper Mines(KCM) .....        | 6061        |
| 3.7.3                  | Unionisation and Union Role in Development Agreements.....        | 6364        |
| 3.7.4                  | Mining Legislation .....  | 6566        |
| <b>4.0</b>             | <b>Emerging Patterns from Study Findings .....</b>                | <b>71</b>   |
| <b>5.0</b>             | <b>Key Challenges.....</b>  | <b>7273</b> |
| 5.1                    | Internal Challenges .....   | 7273        |
| 5.2                    | External Challenges .....   | 7374        |
| <b>6.0</b>             | <b>Conclusions, Policy implications and Recommendations .....</b> | <b>7677</b> |
| 6.1                    | Conclusions and policy implications .....                         | 7677        |
| 6.2                    | Recommendations of the study .....                                | 78          |
| <b>References.....</b> |   | <b>8182</b> |

Commented [p1]: Please add points 6.2.1-6.2.8

## 1.0 Introduction

.....

### 1.1 Background Information and Motivation of Study

Sub-Saharan Africa (SSA) is one of the poorest regions in the world. With a population of 800 million people and a per capita Gross Domestic Product (GDP) of US\$679 in 2009, SSA is a region in political and economic transition (African Economic Outlook, 2010). Politically, it has generally moved from a one party state and military dictatorship to a multiparty democracy but still has a long way to go before it can become anyone's example. Conflicts over natural resource control and benefits still abound. The region's economic performance has been largely chequered, beginning with modestly high growth rates and fairly rapid general development in the 1960s and early 1970s, but sliding into low growth thereafter. The period between 1974 and 2000 was characterized by low growth, rising poverty and major economic reforms (African Economic Outlook, 2010). More recently, SSA has started to see sustained positive economic growth and stable rates of inflation – as illustrated in table 1 below.

**Table 1: SSA's Key Macroeconomic Indicators, 2004 - 2010**

|                             | 2004 | 2005  | 2006   | 2007   | 2008   | 2009   | 2010   |
|-----------------------------|------|-------|--------|--------|--------|--------|--------|
| Real GDP growth rate (%)    | 7.2  | 6.3   | 6.4    | 7.0    | 5.6    | 2.5    | 4.7    |
| Inflation rate, annual (%)  | 7.5  | 8.8   | 6.9    | 6.8    | 11.7   | 8.3    | 7.2    |
| Real GDP per capital (US\$) | 597  | 617   | 639    | 664    | 681    | 679    | -      |
| External Debt (US\$ bn)     | -    | 241.6 | 213.12 | 240.24 | 243.49 | 256.16 | 278.45 |

**Source:** Africa Economic Outlook (2010); Economic Report on Africa (2011)

However, this growth has neither been poverty reducing nor broad based in that poverty levels, especially rural poverty, have remained on the high side and the sources of this growth have been localized within defined sectors, respectively (Economic Report on Africa, 2011:60). While debt

**Commented [p2]:** Maybe it is possible to put together some launching words.

sustainability has generally improved in the last decade, total external debt is still high relative to GDP and Exports (Economic Report on Africa, 2011:62). The region's sectors that have registered consistent growth in the recent past have mainly been in the mineral extraction. This is the sector that has seen heightened economic activity due to a resurgence of Foreign Direct Investment (FDI). Incidentally, FDI into SSA (as a percentage of GDP) has risen from about 1% in the period 1980-94 to 4.5% for the period 1995 – 2009 (Africa Economic Outlook, 2010:55). Foreign Direct Investment is, therefore, becoming one of the driving forces of national development in Africa. In fact, as the Economic Report on Africa (2011:60) observes, FDI has been one of the principal beneficiaries of the liberalization of the capital flows over recent decades and now constitute the major form of capital flows for many SSA countries.

Prior to the financial crisis, FDI inflows to Africa had been rising strongly since 2002, reaching US\$ 53 billion over 2007, a 47.2 percent increase on 2006 and their highest historical level (Africa Economic Outlook, 2008). Recent estimates further suggest that while global FDI may have fallen by up to 20 percent in 2008, flows to Africa have remained resilient. According to the World Investment Report (2009:15), FDI flows into Africa rose to US\$ 88 billion in 2008. This increased the FDI stock in the region to US\$511 billion. Mergers and Acquisitions (M & As), the value of which more than doubled in 2008, contributed to a large part of the increased inflows - in spite of global liquidity constraints. On the other hand, the booming global commodity market in the previous years was a major factor in attracting FDI to Africa. According to World Investment Report (2009:15), the main FDI recipients in Africa included natural resource producers that have been attracting large shares of the region's inflows in the recent past, but also some commodity – rich countries.

However, the flow of FDI into Africa has not been without challenges to host economies. For instance, the Economic Report on Africa (2011:60) notes that, “while Africa has generally benefitted from FDI inflows, concerns remain over the distribution of benefits between origin and host economy”. Besides, there are growing concerns about investors not respecting labour laws and natural environments of the countries they invest in. There have also been concerns that investors sometimes corrupt the whole process. If this is true, it must mean that FDI must be subjected to checks and balance to ensure a win-win situation. This study set out to examine the operation of FDI in extractive

industries in sub-Saharan Africa. The motivation was to understand the role of FDI in the economic development process of selected countries of sub-Saharan Africa and to what extent investing companies respect national legislation for mines and mineral development and labour standards in extractive industries of host countries. The overall objective was to understand the channels through which FDI impacts on the national economies of selected Sub-Saharan African countries and how investing companies relate with national legislation for labour and investment in extractive industries.

The report is organized as follows: The remainder of this section describes the methodology of the study and highlights the scope and limitations of the study. Section two provides the conceptual and theoretical frameworks within which the study is embedded. Section three presents and discusses the key findings. Section four teases out the emerging pattern across the countries studied while Section five relates to some common challenges. Section six concludes the study and presents recommendations.

## **1.2 Methodology and Data Collection**

The study used the inductive method of analysis. Inductive analysis begins with specific observations and builds towards general patterns (Moonilal, 1998:11).<sup>1</sup> The study was both qualitative and quantitative, and both primary and secondary data was used. On this basis, data collection involved both a review of important documents that shed light on the extractive industry in sub-Saharan African countries and mailed questionnaires to selected key informants. The review was both general and specific to FDI in the extractive industry in SSA. The sources of the secondary data included: related books, articles, journals, pieces of legislation, policy documents, published and unpublished papers and documents from the libraries and the Internet.

## **1.3 Scope and Limitation of Study**

---

<sup>1</sup> Inductive method is a contrast to the hypothetical-deductive approach, which requires the specification of the main variables and the statement of specific research hypothesis before data collection (Moonilal, 1998:11).

Admittedly, a comprehensive study into Foreign Direct Investment in Extractive Industries in Sub-Saharan Africa is a mammoth task requiring time and resources beyond what is currently available. This study was restricted to analysing aspects of FDI that have a direct bearing on the national economy, the social and economic well-being of workers and the environment. Specifically, the inquiry focused on:

- (1) Analysing the share of the extractive industries in the total gross domestic product of the respective countries, including the share in exports, tax revenues and the labour force.
- (2) Identifying and analysing whether the raw materials (i.e. minerals extracted) are processed locally and whether investing companies are involved in other sectors of the economy.
- (3) Identifying and analysing who the investors are and assessing whether there are local shareholders.
- (4) Ascertaining the levels and forms of employment created by the investing company.
- (5) Investigating the attitude of the investing company towards unions, communities and labour laws of the host countries.
- (6) Analysing how the investing companies deal with the following issues: environment, health and safety, HIV/AIDS, women, disabled people.
- (7) Analysing how the investing company relates with the host government, investment legislation and labour laws.
- (8) Ascertaining whether the trade unions have influence on the review of legislation and codes for the extractive industries.

The countries covered are: Botswana, Ghana, Malawi, Namibia, Tanzania, Zambia and South Africa. The study was not without limitations. Even though the study was on a regional scale, it was to be done from Zambia. Hence, the study relied heavily on internet based data and mailed questionnaires. Even with these limitations, however, the study offers some very useful insights that can inform critical debates on the subject as well as advise sustainable strategies for both policy and trade union action in future.

## **2.0 Conceptual and Theoretical Framework**



## 2.1 Conceptual Framework

### *Foreign Direct Investment defined*

Foreign Direct Investment (FDI) is here understood as “an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity of a country in an enterprise resident in another country” (UNCTAD 1999:7). In other words, it is the movement of capital across national frontiers in a manner that grants the investor control over the acquired asset. Thus, it is distinct from portfolio investment which may cross borders, but does not offer such control. Firms which source FDI are known as multinational enterprises (MNEs). In this case control is defined as owning 10% or greater of the ordinary shares of an incorporated firm, having 10% or more of the voting power for an unincorporated firm or development of a green field branch plant that is a permanent establishment of the originating firm.

### *Extractive Industry defined*

The term extractive industry is used to refer to industries involved in the activities of (1) prospecting and exploring for wasting (non-regenerative) natural resources, (2) acquiring them, (3) further exploring them, (4) developing them, and (5) producing (extracting) them from the earth. The term, as used in this study, does not encompass the industries of forestry, fishing, agriculture, animal husbandry, or any others that might be involved with resources of a regenerative nature. In this sense, the term is used here to refer to mainly mining activities.

### *Sub-Saharan Africa defined*

The term **Sub-Saharan Africa** is here used to describe the area of the African continent which lies south of the Sahara or those African countries which are fully or partially located south of the Sahara. It contrasts with North Africa, which is considered a part of the Arab world.

## 2.2 Theoretical Framework

The theory of Foreign Direct Investment (FDI) covers a range of explanations. The early neoclassical approach, summarized in an article by Macdougall (1960) hypothesize that capital flows across countries are governed by differential rates of returns. The approach, generally referred to as the pure capital movement theory, assumes perfect competition, risk free capital and mobility of factors of production and no risk of default. Mundel-Fleming model (1960) added a risk dimension to the pure capital movement approach and brought in the portfolio dimension. Major criticism of pure capital movement/portfolio approach relates to question of perfection in markets.

A related micro-based theory of FDI emerged with the development of the Vernon's product cycle theory (Vernon, 1966). The cycle theory represents an advance on previous theories, in that it incorporates an analysis of oligopoly and strategic market considerations. Building on this theory, Krugman (1979) further develops a theoretical avenue for explaining FDI flows between north and south based on innovations (in the north) and technology transfer (to the south).

Notwithstanding Vernon's contribution, a second wave of refinements to the neo-classical capital/portfolio theory of FDI came with the explanations based on the ideas of an International firm and industrial organization. In this approach, as set out by Hymer (1976), foreign firms are seen as having an advantage over local ones. The foreign firm's pursuit of FDI is explained by the theory of internalization. This is characterized by the desire to maximize transition costs, to take risk, increase control and market power, achieve economies of scale, and ensure advantageous transfer pricing. The works of Dunning (1993), which he terms the 'eclectic' paradigm, represents a culmination of this trend towards a refinement of theories of FDI. Dunning(1993) summarizes this strand by a theory of an 'ownership specific, location and internalization (OLI) framework.

Accordingly, this model considers the OLI triad of variables (ownership, location and internalization) as determining FDI. The idea it conveys is that the full explanation of the transnational activities of enterprises needs to draw upon several strands of economic theory. Based on the notion of **OLI**, therefore, four main types of FDI can be identified (Dunning, 2001):

- (1) Those designed to satisfy foreign markets, or set of foreign markets, viz, *market seeking*, or demand-oriented FDI.

**Commented [p3]:** Noy sure what you mean with 'viz'; maybe the short form of videlicet?

- (2) Those designed to gain access to natural resources, e.g. mineral, agriculture products, unskilled labour, viz., ***resource seeking***, or supply oriented FDI.
- (3) Those designed to promote a more efficient division of labour or specialization of an existing portfolio of foreign and domestic assets by MNEs, i.e. *rationalized* or ***efficiency seeking*** FDI.
- (4) Those designed to protect or augment the existing specific advantages of the investment forms and /or to reduce those of their competitors', i.e. ***strategic asset seeking*** FDI.

The character of FDI into SSA extractive industry has mainly assumed the form of resource seeking.

## 3.0 Key Study Findings

This section presents the key study findings for each of the countries studied. The presentation of findings is arranged around four broad themes as follows: (a) general overview of the contribution of mining to the national economy, (b) a case study of one major investing company for each of the countries selected, (c) a discussion on unionization, and; (d) a discussion on the mining/investment legislation of each of the selected countries.

### 3.1 Botswana

#### 3.1.1 General Overview

Botswana has a total population of 1.7 million people and a GDP of US\$ 0.016 (in 2010). Extractive mining activities contributes about 30 percent of the country's Gross Domestic Product (GDP) and 50% of its tax revenues, representing a dramatic growth in the mining industry since Botswana's independence, where mining contributed just 1 percent to GDP (Botswana Economic Report, April 2010). This growth is attributable to the development and discovery of several major diamond deposits. Today, Botswana's mining industry provides employment for approximately 21 000 people<sup>2</sup>, of which 80% are employed by the two biggest mining companies, Debswana and Bamangwato Concessions Limited (BCL). The share of mining in total national exports is in the region of 85 percent. The extractive industry is therefore vital to the national economy of Botswana both in terms of the share in the total GDP and national revenue and also in terms of employment generation.

Botswana is now the world's leading diamond producer in terms of quality and grade of its diamonds. In addition to diamond mining, Botswana has significant copper, nickel, cobalt, gold, soda ash and coal deposits which are currently being exploited and developed. However, other than cutting and polishing of diamonds that is done locally, most of the mineral raw materials are not processed within

---

<sup>2</sup> That is about 5 percent of the country's labour force.

Botswana. Hence, value addition; especially for base metals mining is still limited thereby confining the role of Botswana, as for other developing countries, to that of provider of raw materials in the global commodity chain. There is a redeeming note, however, for diamond cutting and polishing that holds promise for greater value addition in future.

Botswana is also one of Africa's major nickel producers, along with Zimbabwe and South Africa. However, Botswana's only major base metal mine, the Selibwi Phikwe Copper – Nickel – Cobalt mine has struggled with poor metal prices, lowering grade and depth of operations since 1999. As a result, the mine has become one of the highest cost producers of nickel in the world. Anglo American (30%), the Botswana government (30%) own the mine, operated by Bamangwato Concessions Limited (BCL). Selebi-Phikwe is the centre of Botswana's copper-nickel-cobalt mining industry. The mine consists of four mining centres: Phikwe Central, South East Extension, Selebi North and Selebi. It is one of the largest private sector employers with over 4850 employees. Some 3.5 Mt ore grading 0.62% nickel and 0.71% copper is produced per year, resulting in 40 000t of copper-nickel matte that is produced for refining in Zimbabwe and Norway.

The Tati Nickel Mining company near Francistown is owned by Anglo American (43%), Canadian Lionore Mining International (41%) and the Botswana government (15%). Tati has two operating mines, Selkirk and Phoenix, with production earmarked to double. As a result, the company intends producing approximately 320 000 t of nickel concentrate/year grading at about 5.5%. The orebody at Selkirk (located 15 km south of Phoenix), is described as a shallow plunging zone of massive sulphide mineralisation, about 200 m long, 100 m wide and up to 25 m thick. The down-plunge limit of the known massive sulphide orebody is located 150 m below surface. Tati resources have been estimated at 170 million tonnes at a nickel grade of 0.29% and a copper grade of 0.20% (Reserves: 48 Mt at 0.59% nickel and 0.34% copper). At Tati, LionOre completed the commissioning of a US\$66 million expansion project at the Phoenix underground mine in 2003 to upgrade ore throughput and construct an on-site wet concentrate treatment facility. Other main investing companies in the extractive industry in Botswana are: Africa Copper, AIM Gold, Norlisk Nickle Mining Company, Botash (mining Soda Ash), Firestone Diamonds and Africa Diamonds.

### **3.1.2 Investing Company: Case of Debswana Diamond Company**

### *The investors, ownership structure and geographic spread*

The main investor in diamond extraction in Botswana is a company called Debswana Diamond Company (Pty). The company was incorporated in 1969, with an original shareholding of 85% by De Beers of South Africa and 15% by the Government of Botswana. The company operates the following mines:

- the Orapa diamond mine which started production in 1971
- the Letlhakane diamond mine, opened in 1979
- the Jwaneng diamond mine, opened in 1982
- Teemane Manufacturing Co, Serowe, which is involved in cutting and polishing diamonds.

In August 1996, the Orapa mining lease was renewed to 2017 and the Debswana sales contract was renewed. Debswana also owns Botswana Diamond Valuing Company and has a 93% share in Morupule Colliery Ltd.

The company, however, is not involved in other sectors of the economy other than mining.

### *Production*

In terms of production, Debswana's performance during 2009 was severely impacted by the global economic downturn. In response to falling consumer demand, the company imposed a production holiday across all its mining operations from the end of December 2008 to midway through April 2009. Damtshaa mine remained closed for the duration of the year (Annual Report 2010, Debswana)

Debswana produced 17.7 million carats from 17.8 million tonnes treated in 2009. These figures contrast with 2008 production levels of 32.3 million carats from 35 million tonnes treated. Challenging market conditions in the first half of 2009 impacted directly on the company's profitability and revenues, however. As such, the company resorted to a number of cost-cutting measures that affected the elasticity of wages and conditions of services. Notwithstanding the incremental market improvement towards the end of the 2009, management continued to run the company with a keen focus on cash preservation, cost containment and an emphasis on flexibility<sup>3</sup>. The frontline victims of

---

<sup>3</sup> Continuity of power supply remains a key focus area in 2010 with Botswana's largest external supplier of power, Eskom, expected to reduce supply by 100Mw (29%) with effect from the beginning of the year. A number of initiatives are under

this cost containment have been workers who have had to endure low wage increments and job losses (Annual Report 2010, Debswana).

### *Employment*

Debswana is Botswana's largest employer, employing 6000 people, representing about 47% of share of employment in the mining sector. The main forms of employment are: the permanent employees who are mainly covered in the Bargaining Unit which ranges from grade A-C Bands and outsourced workers brought in by contractors that provide services to the mines. Outsourced workers are not members of the union mainly due to limited union constitutional scope and the labour law. This presents a challenge to the unions that they would need to begin to address both in terms of their own constitution and the existing industrial legal regime. Increasingly, jobs and services that are being outsourced used to be performed by workers employed in the company. However, some of these jobs and services (e.g. cleaning) are now being performed by contractors who come with workers that can't be organized by the mining union. The sphere of influence for the mining union is, therefore, being systematically curtailed (Survey Questionnaire, 2011).

### *Environmental issues, OHS and HIV/AIDS*

Debswana's safety performance for 2009 showed considerable improvement on the preceding year. There was a total of six lost time injuries with no fatalities incurred. Debswana's combined LTIFR was 0.09, compared to 0.22 in 2008, on an annual target of 0.12. Jwaneng, Orapa and Letlhakane mines remain certified to the ISO 14001 environmental management standard and the OHSAS 18001 safety and occupational hygiene standard (Annual Report 2010, Debswana). The company also has an HIV/AIDS programme, the HIV/AIDS Impact Management programme which according to management sources, "continued to grow steadily despite the many business challenges experienced in 2009." However, this view is not shared by the union. According to Botswana Federation of Trade

---

way both at government and company level to address the issue; these include an increase in capacity at Botswana Power Corporation's power station and the expansion of Morupule coal mine, wholly owned by Debswana, to meet the anticipated increase in coal demand.

Unions (BFTU) General Secretary at the time (2009), “HIV/AIDS-positive workers are still being heavily discriminated against, and prospective employees, notably apprentices in the mining sector, are still forced to undergo compulsory HIV/AIDS testing. Those who test positive are dropped and they have no legal options to follow” (Allafrica.com/stories, 2009).

### 3.1.3 Unionization

There is a union that organizes workers in the Debswana Diamond Company (Pty) Limited. The Union, which is recognized in the mining industries across the country, is called the Botswana Mine Workers Union (BMWU). It is an affiliate of the Botswana Federation of Trade Unions (BFTU) and ICEM. It has enterprise-based collective agreements with the Debswana Diamond Company. As at November 1, 2010, the indicative number of collective agreement was about 10 within Debswana, suggesting that there is no industry wide agreement across different mining operations in Debswana.

The attitude of the Debswana management to the union has been mixed but tendencies of hostility are commonplace. In 2004, over 400 workers and union leaders were dismissed for taking part in a strike action at Debswana diamond mines. Commenting on the attitude of private employers to unions in Botswana, General Secretary of the BFTU (2005) notes as follows: “In many private companies there is open hostility between the two parties; deadly mistrust, vindictiveness and open victimization of workers and union leaders is the order of the day.”(Allafrica.com/stories).The newspaper extract captioned in box 1 supports this observation.

**BOX 1: Conflict Haunts Debswana, October 2004**

**Article By Tato Chawaane**

*The conflict between Debswana management and the Botswana Mine Workers Union (BMWU) continues to haunt both parties. Debswana has applied to the Industrial Court that the union officials be jailed for defying a court order to stop the recent two week strike. The union has been given leave to file an answering affidavit by October 15. The Debswana management could ply by October 22. Amidst all this, BMWU has disclosed that the recent strike should not be seen in isolation. Matters started going wrong when BMWU voiced its displeasure at management awarding itself bonuses of P95,000 while workers were only given P2,500.*



**Source:** AllAfrica.com/stories [accessed 10 November 2010]

Wages for unionized workers in Debswana are as follows:

A2 band= P2714 – 3392

B1 – B4 = P3100 – 8200

C1 – C4 = P7900 – 19900

Of the approximately 6,000 workers employed in Debswana about 3353 are unionized (Survey Questionnaire, 2010). However, the role of the unions in influencing the review of legislation and codes for the extractive industry remains unclear in Botswana. Responding to a survey question, the union sources report that, “the investment agreements have been confidential and unions are not allowed to have access to them or to know what they entail. If anything, “unions are only involved in reviewing laws that have nothing to do with laws in the extractive industry” (Survey Questionnaire, 2011). Nonetheless, at the operation level, unions are allowed to enter into agreements on how production would be managed. Examples include the implementation of continuous operation at the mines while the observing public holidays.

In terms of specific activities or actions undertaken by unions with regard to transformation and development of mining areas, it seems the case that unions in Botswana have predominantly focused their activities on negotiations of conditions of service only. On the role of China in the extractive industry in Botswana available information suggests that there are currently no mining activities controlled by investment companies from China. Chinese companies in Botswana appear concentrated in the construction industry (Survey Questionnaire, 2010).

#### **3.1.4 Mineral Legislation**

The relationship between the Government of Botswana and Debswana appear cordial. A statement in the preamble of the Mines Policy reads as follows: “Because the Government’s partnership with De Beers in the diamond industry has proved so mutually beneficial, it has approached the perceived

need to update existing mineral legislation pragmatically”(Mines and Mineral Act, 1999). The Mines and Minerals Act of 1977 has been revised to incorporate changes designed to facilitate the issuing of exploration and mining licences and to make Government participation in new developments more attractive to investors. The new Mines and Minerals Act was passed in July 1999.

The key feature of the revised licensing regime is that the whole process from prospecting to mining was made automatic and predictable, removing stages of negotiation which previously existed. Concession types perceived as irrelevant to the industry (such as the non-exclusive reconnaissance permit, and the restricted prospecting and mining leases) were done away with. The new feature was the introduction of the retention license, designed to accommodate explorers who on making a discovery may find it cannot immediately be mined economically. Previously, prospective mining investors would have lost their entitlement if not able to bring a resource into production, but will now be able to defer development for two successive three-year periods. In the first, their rights will remain exclusive subject to confirmation that viable development remains impracticable, while in the second, with an escalating license fee, limited rights of access to third parties to reassess the prospect are allowed (Mines and Minerals Act, 1999).

While the Government has retained the right to acquire a minority interest in new mines, this is now generally up to a maximum of 15%, and is on commercial terms with the Government paying its pro-rata share of costs incurred. Taxation of mining companies outside the diamond industry was also revised with a new variable rate income tax replacing project-specific rates. The new rate is normally 25%, increasing on a sliding scale for very profitable projects up to a theoretical maximum of 50%, determined annually by reference to the mining company’s profit ratio (Mines and Minerals Act, 1999).

Procedures for small-scale mining were also simplified and some royalty rates reduced. For diamonds, the new act applies only as far as the discovery stage, and thereafter the process of individual negotiations will remain applicable to the development of new mines. Royalty rates, calculated as a percentage of the gross market value of the mineral, are currently 10% for precious stones (including diamonds), 5% for radioactive minerals, precious metals, semi-precious stones and coal, 3% for all other minerals, including building and industrial mineral products.

Applications for mineral rights are made to the Minister of Mineral Resources and Water Affairs through the Geological Surveys Department (exploration) or the Department of Mines (mining). There are three types of mineral rights in Botswana (a reconnaissance permit, a prospecting licence and a mining lease). The rights may be granted to an individual or company as provided for in the Act (Mines and Minerals Act, 1999).

### Types of Licenses and general conditions

- A **Reconnaissance Permit** does not confer exclusive rights on the holder but allows the holder to look over a wide area in the country without any financial obligation. The validity of the permit is one year and the permit itself is not an entitlement to a prospecting licence. A permit is not transferable.
- A single **Prospecting Licence** is restricted to a maximum area of 1000km<sup>2</sup> and confers exclusive rights on the holder over the mineral applied for and as specified in the licence. The law permits for one company to hold a number of licences. The licence holder is obliged to remain committed to the proposed work programme and estimated expenditures. The holder is also obliged to notify the Minister of the discovery of any mineral of possible economic value within 30 days following the discovery. The holder of the prospecting licence may apply for a mining lease, but this in itself, the prospecting licence, does not guarantee that a mining lease will be given. Reports are required once every three months to be submitted to the Geological Survey Department.
- A **Prospecting Licence** is valid for three years and may be renewed for further two periods of two years each. A reduction by 50% of the licence area is made at each renewal. With the approval of the Minister a prospecting licence may be transferable. Annual charges are P1/km<sup>2</sup>/y with a minimum of P250.
- A **Mining Lease** is only issued to a prospecting licence holder over the ore deposit in question. The lease is valid up to 25 years and may be renewed for another period not exceeding 25 years. With the approval of the Minister a mining lease is transferable. Mining

lease charges are P12/km<sup>2</sup>/m for precious and semi-precious stones and P6/km<sup>2</sup>/m for other minerals.

- **Restricted prospecting licences** are issued for building or industrial minerals for an area not more than 10km<sup>2</sup>.
- A **restricted mining lease** is issued to an applicant who is a holder of a restricted prospecting licence or a prospecting licence. The intended capital expenditure will not be less than P50,000. The licence is issued for a period not exceeding 15 years and renewal for the same period.
- A mineral right holder must obtain a written consent of the owner or lawful occupier of the land before commencing operations.
- Building and industrial minerals permits are restricted to citizens of Botswana and to areas not exceeding 0.5km<sup>2</sup>. Non-Botswana citizens may be issued with such a licence if it is in the national interest or for special works. The permits are issued for periods not exceeding five years and renewed for a period not exceeding five years. These permits are not transferable. Annual reports must be submitted to the Minister.

The Government of Botswana also insists to have an effective participation in the mineral sector through equity participation and board representation. Generally for large projects Government participation falls within the range 15 to 25% issued free of cost. Minimum controls are exercised on business operations and the management is left entirely to the private sector partner. Government normally requires some representation at board level.

Botswana has a National Conservation Strategy Coordinating Agency which promotes the use of environment impact assessment. Sectoral the regulations under the Act contain detailed requirements for environment control.

## 3.2 Ghana

### 3.2.1 General

Ghana has a population of 24.2 million people and a total GDP of US\$32.5 billion in 2010. Mining accounts for 5 percent of the country's GDP and minerals make up 45 percent of total exports, of which gold contributes over 90 percent of the total mineral exports. The main focus of Ghana's mining and minerals development industry is gold. Ghana is Africa's second largest gold producer. Production is dominated by Gold Fields Ghana and Anglo Gold Ashanti. Other main mining companies are: Golden Star Resources, New Mont Ghana Gold Limited and Chirac Gold Mines.

Ghana is also a major producer of bauxite, manganese and diamonds. Overall, the country has over thirteen large-scale mining companies producing gold, diamonds, bauxite and manganese, and, there are also over three hundred registered small scale mining groups and ninety mine support service companies. Several other organizations are involved in producing building and industrial minerals in the country. However, the main investing companies in the extractive industry in 2010 were: AngloGold Ashanti with a local market share of 10 percent, Gold Fields Ghana Limited with a market share of 32 percent, New Mont Ghana Gold with a market share of 19 percent, Chirac Gold with a market share of 12 percent, Golden Star Resources with a market share of 11 percent. In terms of total revenues in 2010, the following were reported revenues for the following gold mining companies:

- Anglo Gold Ashanti (combined for Obuasi and Iduapriem mines): US\$ 607 million from a total production of 502,103 ounces.
- Gold Fields Ghana (combined for Tarkwa and Damang mines): US\$1179 million from a total production of 962,786 ounces.
- Gold Star Resources (combined for Wassa and Bogoso mines): US\$432 from a total production of 354,854 ounces.
- Newmont Ghana Gold Limited: US\$655 from a total production of 546,000 ounces.
- Chirac Gold Mines: US \$ 304 million from a total production of 240,293 ounces.

The extractive industry is therefore very important to Ghana's national development. The involvement of FDI in extractive industries does, therefore, have a critical role in leveraging national development. Indeed, minerals make up 45 percent of total exports, of which gold contributes over 90 percent of the total mineral exports. The Extractive industry also contributes substantially to employment and tax revenues. One shortcoming, however, is that the minerals extracted are not processed within

Ghana but exported mainly in their raw form. The threat of Ghana remaining a raw material enclave, as is the case with most developing countries, looms large. Promoting efforts around value-addition must therefore assume a matter of urgency.

### **3.2.2 Investment Company: Case of Anglo Gold Ashanti**

#### *The Investors, ownership structure and geographic spread*

Anglo Gold Ashanti Ghana is owned by Gold Fields Limited, a South African international gold company (71%), IAMgold, a Canadian company (19%) and the Ghanaian government (10%). There are no local shareholders (other than the government) in Ashanti Gold Ghana. The company's main mining activities are at Iduapriem and Obuasi gold mines. Other than in the mining of gold, Ashanti Gold Ghana is not involved in other sectors of the economy.

#### *Investment, Production*

In terms of production, Iduapriem's total production in 2009 was 190,000oz at total cash costs of US \$516/oz. Its capital expenditure in 2009 was US\$28m. Obuasi's total production in 2009 was 381,000oz at total cash costs of \$630/oz. Its capital expenditure in 2009 was US\$94m. Production levels for 2010 were: 185,488 for Iduapriem and 316,615 for Obuasi.

#### *Environmental issues*

Ashanti Gold has an integrated Environment and Community Policy captioned in box 2 below. However, there is a big gulf between the stated values and the practice. Most fundamentally there is a weakness in the existing law. Arguably, surface mining is one of the most polluting investments. Thus, mining laws that regulate the activities of mining companies should have the objective of providing adequate protection for the rights of mining communities, the environment as well as ensure equal benefits to the host countries and the investor. An important characteristic of the mining and mineral law in Ghana, however, is the clear protection of the interest of multinational companies whilst the protection of the community rights and the environment is fluid. Mr George A. Sarpong, a Lecturer of Law at the University of Ghana and a visiting Lecturer Northwestern University, Illinois, raised the issue of gaps in the Ghanaian environmental laws as follows: "as regards standards, to be enforced,

however, there are gaps in the Ghanaian environmental legal regime. There is no legislation regulating the discharge of wastes into water, reversing systems or the marine environment. He describes the provisions in the Mineral and Mining Law, for environment protection as merely an omnibus provision and it does not set precise standards to regulate industrial mining.

**BOX 2: ASHANTI GOLD'S INTEGRATED ENVIRONMENT AND COMMUNITY  
POLICY**

*AngloGold Ashanti's Values*

*We respect the environment. We want the communities and societies in which we operate to be better off for AngloGold Ashanti having been there. To achieve these values we will:*

- *comply with all applicable laws, regulations and other requirements.*
- *communicate and consult on our activities throughout the lifecycle of our operations and make this policy available to the public.*
- *manage efficiently and safely the resources under our stewardship and respect the values, traditions and cultures of the local and indigenous communities in which we operate.*
- *contribute to biodiversity protection in our areas of operation.*
- *work to prevent pollution and minimise waste from our activities.*
- *mitigate our greenhouse gas footprint and climate change risks.*
- *acquire and use land in a way which promotes the broadest possible consensus among interested people.*
- *avoid resettlement to the extent feasible and minimize and mitigate its adverse environmental, social, cultural and economic impacts.*
- *undertake initiatives in partnership with the societies in which we operate with the aim of contributing to a sustainable future for host communities.*
- *ensure financial resources are available to meet our closure obligations.*
- *establish, maintain, continually improve and audit management systems to identify, monitor and control the environmental and community aspects of our activities.*
- *ensure that our employees and contractors are aware of this policy as well as their relevant responsibilities.*

**Source:** <http://www.anglogold.com/EnvironmentalandCommunityPolicy.pdf>

### 3.2.3 Unionization and Union Role in Legislative Review

In terms of Unionization, there are unions organizing the extractive industry in Ghana. For instance, Ashanti Gold Fields has a recognition agreement with the major Mine Workers Union in Ghana, the Ghana Mineworkers Union (GMWU), and an affiliate of the Ghana Trade Union Congress (TUC). Although Gold Fields largely complies with the recognition agreement signed with the GMWU, the union has struggled to force management to implement collective bargaining agreements. For instance, a 2007 study undertaken by the African Labour Research Network (ALRN) reported that “workers at Ashanti Gold Fields complained that management was sometimes reluctant to attend the agreed union-management meetings. They also complained about management’s reluctance to implement some clauses in the collective agreement relating to education and Medicare for mineworkers and their dependents” (ALRN, 2007:6). The union also reported experiencing problems in getting access to relevant information needed for negotiations. They complained that the company uses the excuse of “sensitive information” to deny the union timely access to financial information which is essential to a fair collective bargaining. However, in the recent past, the company’s website has been posting the company’s financial statements and operational figures.

On wages, in general, wages paid by some mining companies tends to be on the high side compared to wages in the non-extractive mining industries. Wages paid by Gold Fields Ghana, for instance, are relatively high compared with other workers in the country. The wages range between US\$178 – 308 for unskilled workers and US\$422-930 for skilled workers (ALRN, 2007:10).

Regarding the role played by Unions in the review of legislation and codes in the extractive industry, this seemed unclear, at best superficiality. For instance, when asked whether unions were aware of the nature of the development or investment agreement entered into between the investing company and the government, the response was in the negative. Rather, they explained that these agreements are mostly kept between the government and the companies. Further, that although announcement and publication of the signing of such agreements are made in the local media, the contents are not seen. However, when asked whether unions had an influence on the review of the legislation and codes for the extractive industry, the answer was in the affirmative, but that participation was almost always



cosmetic. An example cited was with respect to Ghana's Minerals and Mining Law where although stakeholders participated in its draft, the unions argue that their input and that of other stakeholders did not reflect in the final document.

Undeterred, however, the Ghana Mineworkers' Union reports that they have had to undertake some specific activities and actions with regard to transformation and development of mining areas. More specifically, the Ghana Mineworkers' Union operates a micro-credit scheme. This scheme was instituted to provide easy access to credit to its members to meet some financial contingencies. The scheme is contributory and as at December 2010 an approximately 6,000 members had registered with a cumulative contribution of about US\$ 3.5 million. The intention is to register a 'Savings and Loans Company' in 2011 with the Bank of Ghana to grow the fund and expand its scope to include the general mining community and other sectors of the economy.

Secondly, the union reports the establishment of a Fund to provide support for members in times of struggle with employers. The fund is only accessed when the union is pressing home a demand against an employer such as strikes.

Third, the union is constructing a Ghana Mineworkers' School Complex. This is a very modern three-storey block complex under construction at Obuasi to provide competitive access to education to the miners' children and relatives. There are also intentions to replicate this at Tarkwa.

Fourth, the union has a bursary scheme called Bissa & McCarthy Educational Endowment Fund. This is a bursary scholarship arrangement by the union to support the children of members to further education up to the Senior High School level. Preference is given to brilliant but needy children and children of deceased union members. As at 2010, 291 students had benefited from the Fund.

Fifth, the union runs some human capital development programmes for members. As at December 2010, for instance, 60 members had been sponsored to pursue Certificate, Diploma & Post Graduate Diploma in Labour Studies at the University of Cape Coast, Ghana. These programmes are in collaboration with the Ghana Trade Union Congress and the University Of Cape Coast. The Union

General Secretary is reported to have been instrumental in designing this programmes' curriculum and was one of the pioneer lecturers.

Lastly, the union runs HIV/AIDS Voluntary Counselling and Testing in the Mines. In this regard, the union has also undertaken in collaboration with ICEM two major VCT on HIV/AIDS at Nsuta and Obuasi, two major mining towns in Ghana. Members, their families and the entire community were screened on HIV/AIDS.

3.2.4 Mineral Policy and Legislation

Mining and minerals were a specific and integral part of the Economic Recovery Programme. New legislation was promulgated, financial incentives were introduced, new state institutions were set up and major rehabilitation of state-owned mines was carried out. The basic law is the Mining and Minerals Law which was passed in 1986 (PNDC Law 153). This and associated legislation combines regulation of the mining industry with fiscal incentives for investors. Some of the more significant features of the legislation are:

- 1. All minerals are owned by the State. Exclusive mining rights are granted by the Ministry of Mines and Energy. A summary follows:

| Licence type | Reconnaissance                           | Prospecting                         | Mining Lease  | Restricted lease                 |
|--------------|--|-------------------------------------|---|----------------------------------|
| Purpose      | Regional exploration, not incl. drilling | Search for minerals and valuation   | Extraction of minerals  | Building and industrial minerals |
| Area         | No limitation on size                    | 150 km <sup>2</sup>                 | 50 km <sup>2</sup> per lease up to maximum of 150 km <sup>2</sup> per company |                                  |
| Period       | 12 months renewable                      | 2 years renewable with reduction of | 30 renewable  |                                  |

|  |  |                            |  |  |
|--|--|----------------------------|--|--|
|  |  | area to not less than half |  |  |
|--|--|----------------------------|--|--|

2. Negotiable matters are deferment of royalty payments, work programs, and the level of export earnings retention allowances. No transfers are permitted without the approval of the Minister of Mines and Energy.

3. The legislation is to be applied equally to Ghanaians and foreigners, except for the provisions relating to artisanal mining and exploitation of construction minerals which is reserved for Ghanaians.

4. The Government is entitled to a free carried equity interest of 10% in mineral ventures. It also has the option of purchasing an additional 20% at a fair market price.

5. Royalties vary from 3% to 12% of the gross value of minerals produced. The variation is related to the "operating margin" and is designed to prevent royalties becoming too onerous during times of low profitability.

6. Relevant institutions include:

- Ministry of Mines and Energy - overall responsibility for the mining industry
- Minerals Commission - recommends mineral policy. The first contact for prospective investors and source of essential information
- Geological Survey Department - geological studies including map production and maintenance of geological records
- Mines Department - health and safety inspections and maintenance of mining records
- Lands Commission - legal records of licences and legal examination of new applications
- Chamber of Mines - association of representatives of mining companies.
- Environmental Protection Agency - overall responsibility for environmental issues related to mining

#### **Fiscal Regime and Commercial Legislation**

The Ghana Government acquires 10% free equity in any mining venture and has the option to acquire an additional 20% participatory interest at fair price. In addition to this, the holder of a mining lease

is required to pay royalty of between 3% and 12% on the total revenue of the minerals obtained from the mining operations. The holder is required to pay income tax at the rate of 35% and an additional Profit tax of 25% as provided under the Additional Profit tax Law 1985 (PNDCL 122). A mining lease holder is also required to pay annual rental charges as prescribed by Regulations. These taxes may be decreased by the following capital allowances:

- (i) Depreciation 75% of the capital expenditure incurred in the first year of investment and 50% of the declining balance in subsequent years.
- (ii) Investment allowance of 5% in the first year only.
- (iii) Losses in each financial year not exceeding the value of the capital allowance for the year may be carried forward. Capitalisation of all pre-production expenses approved by the authorities when the holder starts development of commercial mining.

The holder of a mining Lease is also granted the following benefits:

- (i) Exempted of staff from out of Ghana payments of income tax relating to furnishing accommodation at a mine.
- (ii) Exempted of staff from out of Ghana payments of income tax relating to furnishing accommodation at a mine.
- (iii) Immigration quota for expatriate personnel free from any tax imposed by government for the transfer of foreign currency out of Ghana.
- (iv) Exempted from the selective alien employment under the selective alien employment decree.

Ghana's Minerals and Mining Act 2006, Act 703 have added some significant aspects to the country's commercial law, and, according to the Mining Journal, they are:

- (i) Expenditure on exploration and development may be capitalised in accordance with regulated amortisation provision for tax relief;
- (ii) Capital allowances have been designed to shorten the pay-back period and include 75% write off of capital in the first year and 50% annually thereafter on a declining balance;

(iii) Retention of a proportion of revenue in foreign currency account for use in acquiring essential equipment and spare parts required for mining operations which would otherwise not be readily available without the use of such earnings;

(iv) Exemptions from import duties on imported plant and equipment.

### 3.3 Malawi

#### 3.3.1 General Overview

Malawi is largely an agricultural based economy with a total population estimated at 13.4 million people in 2010 and a total GDP of US\$4.97 billion (in 2010). The contribution of the extractive industry to the economy's total GDP was reported at 0.98% in 2010. The total labour force is estimated at 4.5 million people. Total formal employment in the extractive industry, however, is reported at 20,118 with over 12,000 drawn from quarrying activities. Table 2 below captures mineral production for the period July-December 2010; while table 3 captures formal employment in the extractive industry. The main minerals exported are coal and uranium – as captured in table 4 below.

**Table 2: Levels of Mineral Production (July to December, 2010), Malawi**

| Type                  | Annual Production (tonnes) | Mid Year (tonnes) | % Change in Production |
|-----------------------|----------------------------|-------------------|------------------------|
| Coal                  | 79,186                     | 57,750            | 73                     |
| Rock Aggregate        | 989,750                    | 487,150           | 49                     |
| Uranium Concentrates  | 773                        | 596               | 77                     |
| Agriculture Limestone | 31,790                     | 17,160            | 54                     |
| Cement limestone      | 57,296                     | 20,782            | 36                     |
| Dimension Stones      | 436                        | 560               | 129                    |
| Phosphate Rock        |                            | 825               |                        |

|           |       |       |     |
|-----------|-------|-------|-----|
| Gemstones | 207   | 278   | 134 |
| Terrazzo  | 4,434 | 3,940 | 89  |

Source: MoNREE

**Table 3: Formal Employment in the Mineral Sector, Malawi**

| Mineral                                | Employment Levels<br>(No) | Mineral              | Employment Levels<br>(No) |
|--|---------------------------|----------------------|---------------------------|
| Coal                                   | 907                       | Gemstones            | 1260                      |
| Uranium                                | 859                       | Ornamental<br>stones | 46                        |
| Cement Limestone                       | 90                        | Terrazzo             | 1340                      |
| Agricultural, Calcitic and<br>Hydrated | 1640                      | Other Minerals       | 2144                      |
| Quarry aggregates                      | 12030                     | Exploration          | 195                       |
| Cement manufacturing                   | 511                       |                      |                           |

Source: MoNREE

**Table 4: Levels of Mineral Exports Between July and December 2010**

| Mineral             | 2010 Quantity (mt) | July –December 2010<br>Quantity (mt) | As a % of<br>2010 exports |
|---------------------|--------------------|--------------------------------------|---------------------------|
| Coal                | 15,500             | 11,200                               | 72.26                     |
| Uranium cake        | 726.008            | 549.04                               | 75.62                     |
| Other               | 0                  | 0                                    | 0.00                      |
| 1)Granulated Clay   | 1,020              | 0                                    | 0                         |
| 2)Dimension stones  | 435.9              | 301.9                                | 69.26                     |
| 3)Rock aggregate    | 9,946.22           | 0                                    | 0                         |
| 4)Gemstones         | 122.967            | 76.81                                | 62.46                     |
| 5)Rock/Soil samples | 16.43              | 0                                    | 0                         |
| Copper Ore          | 0                  | 120                                  | 0                         |

Source: MoNREE

Admittedly, real mining activities are on the low side in Malawi as the economy remains largely agricultural. Much of the mining activities noted are of a quarrying nature. Besides, the role of FDI in the extractive industry is still limited

### **3.3.2 Main Investing companies**

The main investing companies in the mineral extraction industry are: Paladin (Africa) which mines Uranium; Eland Mining Company which mines coal and Nkhachila Coal Mines which mines coal. Paladin's annual production in 2010 was 773 tonnes. Paladin has a total workforce of 1,000 with 730 on permanent employment contracts while 270 are on fixed employment contracts. Nkhachila has a workforce of 150. Eland has a total workforce of 71, with 67 on permanent employment contracts while 4 are on fixed employment contracts.

### **3.3.3 Unionization**

There is no union specifically organizing the extractive industry in Malawi. At best, no record of unionization exists. The average minimum and maximum wage levels for workers in the mining sector are: MK120, 000 (US\$476 at the ruling exchange rate as at March 2011) and 15,000(US\$60).

### **3.3.4 Minerals Legislation Overview**

1. All minerals are vested in the President on behalf of the people of Malawi. The search for mining and disposal of these minerals is governed by the Mines and Minerals Act (1981). The Administration of the Act is the responsibility of the Commissioner for Mines and Minerals in the Ministry of Energy and Mining.
2. The overall policy objective is to maximise the economic benefit to the nation that can be realised from the exploitation of the nation's mineral resources. The government encourages investors to explore, delineate, evaluate and where viable exploit the resource using appropriate technologies.
3. Reconnaissance Licences (RL) are issued for one year for an agreed programme over an area not exceeding 100 000 km<sup>2</sup> at a fee of K1 000 for the licence and annual charges of K0.1 per

km<sup>2</sup>. No subsurface operations are permitted unless specifically authorized. However, holders may erect camps and temporary buildings.

4. An Exclusive Prospecting Licence (EPL) confers exclusive rights to carry out a programme of prospecting operations for specified minerals over a specified area. A detailed programme of exploration, expected expenditures and personal details are required. There must also be a proposal for the training and employment of Malawi citizens in the operations. The licence is issued for a maximum of three years and may be renewed twice for periods not exceeding two years each. Fees payable at issue are K500 and annual charges are K10.00 per km<sup>2</sup>. Fees of K200 are payable for each renewal requested. The maximum area at initial grant is 2 500 km<sup>2</sup> and this is reduced by 50% at each renewal. The holder has the automatic right to apply for and be granted a Mining Licence after recording a final and on submission of a feasibility study report. Progress reports must be submitted to the Minister at the end of each phase including a work programme and cost estimates for the following phase.
5. A Mining Licence (ML) may be issued to holders of an EPL or non holders. The applicant must give a detailed feasibility report including the anticipated programme of mining operations, an environmental impact assessment, and proposals for the employment and training of Malawians. The licence confers the holders the exclusive right to prospect, mine, produce and sell specified minerals from the designated area. The maximum area for non holders of EPL is 250 km<sup>2</sup> and for the holders not more than the land subject to the EPL. The ML fee is K1000 per km<sup>2</sup>. The initial term for a ML is for a period not exceeding than 25 years or estimated life of the mine, whichever is shorter. It may be renewed for a period of 15 years thereafter. Regular reports on the operation must be made to the Minister.
6. Three types of licences are issued for small scale mining and prospecting operations. Methods are limited by both financial costs and technical expertise. These licences are:

6.1. Mineral Permits are issued to individuals by the District Commissioner of the area for building and other construction materials upon payment of a prescribed fee. The fee depends upon the quantity to be extracted.

6.2 Non-Exclusive Prospecting Licences (NEPLs) are issued to individuals or firms who cannot afford large scale prospecting operations but have technical expertise. The holder may conduct prospecting operations in one or more districts for any mineral specified in the licence. The holder may not prospect in an area held under exclusive



licence. The initial term of the licence is one year but may be renewed for further one year periods. Applicants must be Malawians or foreign nationals who have resided in Malawi for not less than four years. The holder must seek permission from owners of the land before commencing operations.

6.3 Mining Claims are issued to holders of NEPLs after submission of sketches and fees. A claim licence confers the holder exclusive right to prospect mine and sell the product. The maximum area to be pegged for each claim is two hectares and up to three claims may be pegged with one NEPL. All claims expire on 31st March of each year and renewed effective 1st April. Fees payable are K35.00 and K30.00 for grant and renewal respectively. A claim licence does not prohibit the land owner from grazing and farming on the property. A claim may be cancelled where either conditions are not being met or the deposit can be exploited using large scale equipment. Annual reports on prescribed forms must be submitted to the Commissioner of Mines and Minerals.

In addition, the following apply to the following types of Licences:

1. Reserved Minerals Licences are issued to those wishing to buy and sell precious and metals and precious semi-precious stones. The fee is K300 at each application and duration is one year.
2. A RML, EPL and ML may only be transferred with the approval of the Minister.
3. Malawi is preparing a National Environmental Action Plan, however, the Mines and Minerals Act already contains adequate environmental provisions. Potential environmental impacts must be included in applications for exploration and mining and in a mining proposal; suggestions for addressing environment problems, prevention of pollution from mining and mineral treatment and land rehabilitation must be submitted.

Overall, while Malawi predominantly remains an agricultural economy, there is a resurgent phase of exploration-particularly as new geological surveys show new potential for mining strategic minerals such as uranium and gold. This presents new opportunities for a refreshed look at the mining and resources sector in the context of national development objectives of Malawi. The trade union movement will need to begin to position itself and raise the voice against the tendencies observed

elsewhere where mineral extraction hardly begins local citizens. A useful starting point, for union intervention, however, is to get the industry unionised.

## **3.4 Namibia**

### **3.4.1 General Overview**

Namibia is endowed with abundant mineral resources and the mining industry is and will continue to form a significant part of the national economy for the foreseeable future. The full potential is largely still untapped in a landmass that requires more intensive grassroots mineral exploration. Mining contributes between 14% and 17% to Gross Domestic Product (GDP). Overall, mining products produce up to 50% of Namibia's annual export earnings. Direct tax revenue from the mining sector remains of considerable importance to the income of the central government of Namibia. Since independence, corporate taxes from mining companies have contributed between 30% and 50% of all receipts. These values are increased when direct taxes on diamond exports are taken into account. Despite the fact that the mining sector employs less than 5% of the total labour force down from almost 10% in the early eighties, mining sector is still the largest private sector employer. In 2001 the mining sector employed 6165 people. As at 2009, the mining sector employed a total of about 4800 people.

Although the mining industry plays a vital role in Namibia's economy, the mining sector has experienced a decline in growth over the past few years. This has mainly been as a result of several mining ventures closing down due to diminishing ore reserves and low commodity prices.

### **Profile of the Mining Sector**

Namibia produces a wide range of minerals and metals as follows:-

#### **Diamonds**

Namibia is one of the world's largest diamond producers and currently provides in the region of 10% of the world's uranium. Diamonds are mined in Namibia from secondary deposits located along the Orange River, the southern portion of the coast as well as in offshore areas. The diamonds mined are of exceedingly high quality, with about 90% consisting of gem quality. To date, offshore mining constitutes some 60% of the total Namibian diamond production. Exploration for secondary diamond deposits is currently conducted along the entire Namibian coast, as well as in offshore areas. Exploration for primary diamond deposits is concentrated over **cratonic** areas in north-eastern and eastern Namibia (GRN, 2009:3). The increase in marine diamond exploration and mining has raised Government interest in marine mining. Restrictions on prospecting activities over the Diamond Area 1 (or Sperrgebiet - forbidden area), representing a total of 26 000 km<sup>2</sup> has been lifted by Namdeb. Namdeb had previously held exclusive diamond prospecting rights over this ground but has subsequently relinquished some of its 26 EPL that it currently holds. The area has good base metal potential, especially following the development of the Skorpion zinc mine that is located within this area.

**Commented [p4]:** Not sure what 'cratonic' means; maybe you mean crotonic?

## **Uranium**

The Rössing mine near the Swakopmund coastline is the only uranium mine in Namibia. Production is normally in line with delivery requirements to existing customers and the objective of reducing global uranium inventory and mine costs. However, low uranium prices have stopped further exploration for this commodity and have also halted further development of three possible feasible projects.

## **Base Metals**

Copper is currently produced at several major mines and is smelted at Tsumeb. Lead and zinc are also mined in Namibia and some of which are exported as concentrates. Exploration for base metals is currently conducted in the so-called "Sperrgebiet" in southern Namibia, as well as within the carbonate platform sediments in northern Namibia.

## **Precious Metals**

Gold is currently mined at only one location in the country, but it is also produced as a by-product of copper refining. Exploration for gold mineralisation is currently conducted at various locations. Exploration for Platinum Group Elements (PGEs) is currently underway in northern and southern Namibia.

### **Industrial Minerals**

Namibia produces a wide variety of industrial minerals including fluorspar, wollastonite, bentonite, salt and others. Apart from fluorspar and salt, these minerals are only mined on a small scale. There is good potential for further growth of the industrial mineral sector.

### **Gemstones**

Namibia is a source of a great variety of gemstones such as tourmaline, aquamarine, garnet, amethyst and topaz. Gemstone mining plays a vital role in Namibia, both in the formal and informal sectors. In particular, the small-scale mining community is increasingly making use of these available mining opportunities.

### **Dimension Stone**

Namibia produces a wide variety of dimension stone, consisting mainly of marbles, granites, diorites and sodalite. Most of the dimension stone is exported as raw blocks, with only a small quantity being cut and polished locally. In addition, marble derivatives find application in the industrial sector. This sub-sector poses opportunities for further development.

#### **3.4.2 Investing Company: Case of AngloGold Namibia**

##### *Investors and ownership*

AngloGold has exclusive ownership of the Navachab mine, which is an open pit gold mine located near the town of Karibib. The Navachab gold mine is the only mine which AngloGold owns in Namibia. The company is not involved in other sectors of the economy. AngloGold does not have

any competitors, as it is the only company mining gold in the country. The Navachad gold deposit was discovered as a result of a geochemical exploration program in 1984. An appraisal was later carried in 1986 followed by a feasibility study in 1987, which led to the decision to proceed with the development of the mine. The first gold bar at the mine was poured in 1989. The plant achieved full production in 1990 with the owners being Erongo Exploration and Mining Company (70 per cent), Metal and Mining Company of Canada (20 per cent) and Rand Mines Exploration Company (10 per cent).

AngloGold acquired the gold mine in 1997 and has since had exclusive ownership of the mine. The gold reserves of the mine were expected to have been exhausted by the year 2003, but plans were set in motion to extend the mine's lifespan to 2013 and beyond as the company reported good prospects at the mine. The plans to extend the life span of the mine were temporally halted in 1999 due to factors such as low gold prices, strained relations with the mine workers union, difficulties in obtaining work permits for senior non-Namibian staff and a delay by the Ministry of Mine and Energy to declare the mine a continuous operation. However, all the mentioned issues were resolved and the mine's operations have been extended to 2013 as requested by AngloGold.

#### *Investment Volume*

After AngloGold obtained permission to extend the mine, the company decided to go the owner mining route, which is a process whereby Navachab would now be mining the gold instead of using sub contractors to do the mining. It was envisaged that the company would be investing more than N\$ 100 million (about US\$ 154 million). During the extended life span, the mine is expected to continue with its current mill throughout of around 1.3 million tonnes a year and its annual production of 80,000 ounces. The gold mined is exported to South Africa where it is refined and combined with the rest of the gold from all AngloGold mines and exported to Europe and America.

#### *Employment created*

The mining sector in Namibia has experienced severe contraction in employment over the years. During the periods of 1997 and 2000, for instance, the mining sector reduced its workforce by over 40 per cent (from 6592 in 1997 to 3868 in 2000) (Labour Force Survey 1997 & 2000). However, due

to the plans to extend the life span of the Navachab mine and the mine starting with “owner mining”, permanent employment has increased at the mine. Since 2004, many employees are being recruited as permanent staff at the mine.

A 2007 study report that the company employed 225 permanent workers, 56 casual workers and only 5 subcontract workers. More than half (56 percent) of the employees at the mine were production personnel, followed by professionals (10 percent). Only about 7 per cent of the employees were highly skilled, in management and skilled artisans, while 5 per cent were unskilled personnel. The whole process of owner mining has resulted in a shift in employment. The company now employs more people on permanent staff basis compared to subcontractors.

Prior to the extension of the mine’s life span, the mine relied heavily on subcontractors to carry out the mining activities at the Navachab. The company used the Karibib Mining and Construction Company (KMCC) (Pty) Ltd, subcontractors to do the mining. Under the contract, the subcontractors mined about 3,6 million tonnes per year. From the beginning, the company had plans to go to owner mining at some point. After the decision was taken to extend the mine’s life span, the company conducted an in-depth feasibility study that included technical, financial, human resources aspects and a lengthy process, and also resulted in the formation of a mining department. The owner mining process began at the end of 2003 after the contract with the Karibib Mining Subcontractors came to an end. The maintenance of the equipment is outsourced and the suppliers of the equipment run the maintenance system.

### **3.4.3 Unionisation**

The majority of the workers (more than 70 per cent) at the mine belong to a trade union and the Mineworkers Union of Namibia (MUN) is the sole union at the mine. MUN is an affiliate of the National Union of Namibian Workers (NUNW). Currently, the mineworkers’ union is the only union organising within the mining industry. This explains why all the workers at the mine are members of MUN. MUN has had a recognition agreement with the company since 1990, before AngloGold obtained ownership of the mine. The majority of all workers in unskilled to specialised skills job category are members of the union.

The union and the mine have a recognition agreement that allows the workers to elect a permanent union representative at the mine. The conditions under which the union representative is elected require that he/she be in the employment of the company for at least three years and that such person be a member of the union for at least a period of one year. The company deducts union fees directly from the union members' salaries and pays it in to the union account. At the mine, workers' representatives meet with the workers once a month. Likewise, they meet management on a monthly basis. Current issues that affect both parties are discussed at these meetings. After these meetings, the workers' representatives also meet with the workers to report back and also to give workers a chance to raise new issues affecting them. The union representatives have access to the mine and have the freedom to distribute information to the workers. At the mine, union representatives have the freedom to distribute information to their members as long as they have informed management prior to doing so. The union representatives reported that they did not have access to information needed for negotiations when this information was requested from the company. Both management and the workers' representatives reported having a good relationship and understanding that they had created over the last couple of years.

The wage levels in AngloGold Namibia are in the range of US\$436 – US\$875 for unskilled categories and US\$1052 – US\$1240 for skilled categories.

#### **3.4.4 Minerals Legislation**

In Namibia, all mineral rights are vested in the state. The Minerals (Prospecting and Mining) Act of 1992 regulates the mining industry in the country. Policy has been designed to facilitate and encourages the private sector to evaluate and develop mineral resources. The Mining Rights and Mineral resources division in the Directorate of Mining is usually the first contact for investors, as it handles all applications for and allocation of mineral rights in Namibia. Several types of mining and prospecting licenses exist, outlined briefly below:

- *Non Exclusive Prospecting Licenses (NEPL)*

Valid for 12 months, these licenses permit prospecting non-exclusively in any open ground not restricted by other mineral rights. Prospectors must furnish the Mining Commissioner on details on all samples removed from the NEPL area.

· *Reconnaissance Licenses (RL)*

These licenses allow regional remote sensing techniques, and are valid for 6 months (renewable under special circumstances) and can be made exclusive in some instances. A geological evaluation and work plan needs to be submitted to the Mining Commissioner.

· *Exclusive Prospecting License (EPL)*

Individual EPLs can cover areas not exceeding 1000 km<sup>2</sup> and are valid for three years, with two renewals of two years each. Two or more EPLs can be issued for more than one mineral in the same area. A geological evaluation and work plan (including estimated expenditure commitments) are a pre requisite prior to issuing of the licenses.

· *Mineral Deposit Retention Licenses (MDRL)*

These allow successful prospectors to retain rights to mineral deposits which are uneconomical to exploit immediately. MDRLs are valid up to five years and can be renewed subject to limited work and expenditure obligations.

· *Mining Licenses*

Can be awarded to Namibian citizens and companies registered in Namibia. They are valid for the life of mine or an initial 25 years, renewable up to 15 years at a time. Applicants must have the financial and technical resources to mine effectively and safely.

Prior to licenses (bar the NEPL and RL) being issued, all applicants are required to complete an environmental contract with the Department of Environment and Tourism. Environmental impact assessments must be made with respect to air pollution, dust generation, water supply, drainage/waste water disposal, land disturbance and protection of fauna and flora.

**Fiscal and Legal Regime**



The minimum tax rate on a mining company is 25%. Most mining companies pay between 25 – 40%, with diamond mines taxed at 55%. Corporate tax of 40% applies to profits from non mining activities. Allowable tax deductions for mining companies are as follows:

- All pre production exploration expenditure is fully deductible in the first year of production.
- Subsequent exploration expenditure is not ring fenced and is fully deductible in the year it occurs, so that profits from existing operations can be used to fund exploration in any part of the country.
- Initial and subsequent development costs (including start up capital and loan finance) are fully deductible in equal instalments over three years.
- Contributions to a fund for restoring the environment are fully deductible.

### **Royalties**

Royalties to the State Revenue Fund are payable on exports of certain rough or semi processed minerals:

- 10% on rough and uncut precious stones
- 5% on rough or unprocessed dimension stone
- 5% on any other mineral which can be economically processed in Namibia

## **3.5 South Africa**

### **3.5.1 General Overview**

South Africa has a total population of 50 million and a Gross Domestic Product of R2.7 trillion (2010). The mining industry in South Africa has over the decades developed into a key industry. As Pillay writes, in 2004 there were close to 800 mining operations in South Africa with total sales valued at R139.8 billion of which R109.9 billion earned through exports (2005:226). In 2009, the mining industry contributed 31.7 percent of total exports, 5.8 percent to Gross Domestic Product and employed over 415,000 employees, or about 6.1 percent of the country's labour force. The mining industry is well developed and South Africa is one of the few countries in Sub-Saharan Africa that can boast of value-addition through processing of such minerals as copper, coal, diamond, uranium, among others.

Because of the vastness of the mining industry, the discussion here focuses on gold mining and will particularly discuss the case of Gold Fields South Africa. Otherwise, there are over 33 gold mining operations in the country that employ 195 940 workers. South Africa has the largest gold reserves in the world and is also the largest global gold producer – producing 15.2 per cent of the total global gold output. Estimates from the Chamber of Mines suggest that the industry creates 1 indirect job for every 3 persons employed on a mine. The gold industry itself contributes R26 billion to the GDP, that is, 2.6 per cent of GDP. Thus, mining is an extremely important sector to the national economy of South Africa. Ownership, however, still remains predominantly white. Efforts to redress this have pushed Government into instituting a number of regulatory and legislative measures.

### 3.5.2 Investing Company

Gold Fields' head office is based in Johannesburg, South Africa. The company wholly owns three mines in South Africa: Driefontein, Kloof, and Beatrix. The company's shares are listed on the Johannesburg Stock Exchange (JSE) in South Africa, and the New York Stock Exchange (NYSE) in the United States of America. Since 2005, the company has contributed over R568 million in taxes to the South African government. Its total wage bill, including benefits and allowance is in the region of R3.3 billion. Of the R5.8 billion spent on material and services almost 100 per cent flows to locally based companies. Eight per cent of the company's total procurement spending targets black empowerment companies. Gold Fields was one of the first mining houses to sell part of the company to a black empowerment company, Mvelaphanda Holding. The chairman of Mvelaphanda Holdings, Tokyo Sexwale, serves as one of the non-executive directors on Gold Fields board. This sale was in keeping with government policy to transform the mining industry.

#### *HIV/AIDS Policy*

The company's HIV/AIDS programme centres on prevention, providing care and treatment, and community support. The company has partnerships, with organised labour, government and other business sectors. A study conducted by the company estimates that the HIV prevalence in the group is about 30 per cent. Therefore, the company introduced a strategy on HIV/AIDS that:

- Creates awareness and provides education and training on HIV/AIDS to employees, and host and labour sending communities;
- Offers informed, consented, voluntary counselling and testing (ICVCT) for people affected by HIV/AIDS;
- Manages sexually transmitted infections (STIs) amongst employees with the syndrome management approach, and provides STI treatment and Periodic Presumptive Therapy (PPT) to people at high risk in host communities;
- Offers Wellness Management services, including HAART;
- Develops and supports home-based care throughout southern Africa, in particular in remote and under-resourced labour-sending communities (including Mozambique, Swaziland, Lesotho and Botswana); and
- Develops and maintains a wide range of empowering partnerships.

In 2002, the company, together with National Union of Mineworkers(NUM), launched a Wellness programme. The company's policy looks very promising in dealing with this problem. Employees that are infected and qualify for ARV are provided with it. An agreement has been signed with the unions that provides for projects and programmes in the following areas:

- Awareness and education;
- Management of STIs;
- Condom distribution and promotion;
- Informed, consented voluntary counselling and testing;
- Care, support and treatment through Wellness Management and home-based care;
- Community partnerships to encourage behavioural changes in host and labour-sending communities, particularly for high-risk persons such as commercial sex workers;
- A responsible and compassionate ill-health retirement programme for employees who have reached a stage of medical incapacity, supported by community home-based care; and
- Ongoing monitoring, research and development.

*Health and Safety*

South Africa is considered to be in the lead on health and safety related issues on the continent, particularly in the mining industry. Improving safety at its deep-level operations in South Africa is a significant challenge for Gold Fields, however. Work-related accidents still permeate the company's operations. However, according to the company, it has a multi-pronged approach to improve its health and safety environment. Team training and behaviour-based campaigns that emphasise looking out for colleagues in the workplace and eliminating risk behaviour, is one such approach. The company issues all underground employees a self-rescuer, which provides at least 35 minutes of oxygen supply to enable an employee to reach a life-sustaining refuge bay in the event of air contamination.

In addition, the Full Compliance Programme, which has been implemented in South Africa since June 2000, and later extended to the international operations, seeks to eliminate all fatal accidents at all Gold Fields operations. A comprehensive safety reporting system, meeting legislative requirements, exists within all divisions; workers receive compulsory health and safety training annually, when returning from vacation.

Gold Fields undertakes to eliminate, minimise, and control any hazards and risks identified in the workplace. Efforts to minimise noise-induced hearing loss, pulmonary tuberculosis (TB) and silicosis exist at all operations. A comprehensive medical surveillance programme is in place - as required by the Mine Health and Safety Act of 1996. The principal health hazards associated with the group's operations are thermal stress, noise, airborne pollutants and radiation. Codes of Practice have been compiled for thermal stress, noise and airborne pollutants and have been fully implemented. Since workers receive mandatory health and safety training annually when they return from vacation, they felt that senior management of Gold Fields take health and safety issues seriously.

However, NUM is of the opinion that much more can be done. NUM suggests that there be more engagement between the head office of NUM and the head office of the company on this matter through a formal structure. NUM is also concerned about management engagement in the health and safety committee at mine level as junior staffs who have no decision making powers mainly attend these meetings. The research found that there are occasions when shaft supervisors don't necessarily take health and safety. Workers stated that some shaft supervisors force them to engage in activities

that are contrary to what they are taught at the health and safety training. This was reaffirmed by the NUM officials.

### *Environment*

The company's environmental policy states that it will strive to:

- Assess and meet the requirements of industry standards with respect to environmental management practices;
- Continually assess and improve environmental performance and implement processes, practices, materials or products that avoid, reduce or control pollution;
- Take cognisance of, and comply with, applicable environmental legislation, regulations and other requirements to which the organisation subscribes;
- Apply a transparent and constructive approach in daily interactions with stakeholders;
- Minimise the use of consumptive resources and promote the reduction and recycling of waste products where possible;
- Integrate environmental management into management practices throughout the company;
- Exercise prudence with critical ecological resources, in particular where impacts are unknown or uncertain;
- Apply proven risk management methodologies; and
- Train and educate employees in environmental responsibilities.

Gold Fields' Environmental Management System is certified to ISO 14001 requirements. Every mining site develops its own individual environmental management plans that are monitored. Biannual external audits are performed on the entire environmental programme. There is a focus on management systems, pollution prevention, waste minimisation, and energy conservation. The reporting guidelines cover all environmental management issues as defined in the ISO 14032 series.

Workers and union officials stated that the company takes environmental issues very seriously.

### *Corporate social Responsibility*

The Gold Fields Foundation focuses on community development that aims to improve the quality of life in host- and labour-sending communities through grants and donations related to training, welfare, small business development and job creation, with particular emphasis on the empowerment of women and youth. The Foundation receives R1 for every ounce of gold produced and 0,5 per cent of pre-tax profits. The company's Corporate Social Responsibility activities are quite extensive in South Africa. Some of them are listed below.

- The Litshovhu Secondary School at Louis Trichardt in Limpopo Province was reopened in June 2002 after Gold Fields spent R1.1 million upgrading the school for the Madombisha community. Six extra classrooms, a laboratory and a library were built.
- The Gold Fields Environmental Education Service Centre at Rhodes University in Grahamstown, South Africa, offers various environmental education courses and programmes. This centre provides, among other things, teaching and resource materials, distance-learning courses and materials, and training in environmental education.
- The company also provides grant top tertiary educational institutions.
- Health care focus is on helping communities around our mines and in the remote rural areas to access health care by building clinics, refurbishing local hospitals and supporting the growth and development of health care workers through the Gold Fields Nursing College situated in Carletonville.

Other programmes include home-based care initiatives in the major labour-sending areas. Gold Fields was instrumental in establishing the Bambisanani Pilot Project in the Eastern Cape, an internationally acclaimed community-based health care project for people living with HIV/AIDS and other terminal diseases. The Gold Fields Foundation funded the establishment of the Paediatric Oncology Ward at the Chris Hani Baragwanath Hospital in Gauteng.

### **3.5.3 Union role in mining codes and other specific actions**

The company's policy states that any trade union, which is significantly representative of its employees, is afforded recognition in terms of existing agreements. The National Union of Mineworkers (NUM), an affiliate of COSATU, is the largest union in the mining sector and represents about 67 per cent of Gold Fields employees making it the largest union in the company. Solidarity and United Association of South Africa are the two other unions that have recognition agreements with the company with the latter representing mainly administrative staff. Solidarity represents mainly skilled workers while NUM mainly unskilled and semi-skilled workers. Collectively the three unions represent 78 per cent of Gold Fields South Africa workers.

NUM and Solidarity have a good working relationship and tend to support each other during negotiations with the company. Historically, NUM membership was predominantly black while Solidarity membership was exclusively white. This has changed in recent times. In an agreement with the National Union of Mineworkers (NUM), Gold Fields South Africa has since 2004, established a forum known as the Plenary, with representatives from both management and the union. "The primary objective of the Plenary is to address, in a spirit of joint problem solving, issues relevant to both parties." Solidarity is represented in all of the subcommittees of the plenary. The plenary deals with the following:

- Negotiation of terms and conditions of employment;
- Recognition of duly elected union representatives;
- Provision of facilities to union structures (branch committees and shaft steward Committees) to conduct their business and to have meetings;
- Discussion of threats to industrial peace with shaft stewards and/or union officials;
- Allowance of full time union officials access to their operations; and
- Allowance of trade union representatives to represent employees in disciplinary and grievance procedures.

However, shop stewards have complained that when they need a few days off to attend union meetings/workshops, they are told by management that it's a waste of time and they are not given time off. In addition to the plenary, there are regular meetings between the local mine management and union officials – sometimes they meet up to 3 times per week to discuss general day-to-day

problems. While the perception of an open and transparent relationship between unions and management may prevail, union representatives have stated that management is not necessarily open on all issues. An African Social Observatory report (2005), sites the black empowerment deal with Mvelaphanda Holdings, where unions learnt of the transaction through the media. Financial matters are also considered sensitive and not disclosed.

Union officials have expressed dissatisfaction with the mine's local management efforts to suppress workers' expression of dissatisfaction. For example, when NUM plans marches, mine management distributes pamphlets threatening workers that they will be "dealt with" if they engage in the march. Mine management's response to the union on this issue is that there is nothing legally preventing them from this action. Shop stewards mention that permission is required from mine management (HR manager) before putting up notices. Wages and benefits are negotiated every two years in the Chamber of Mines, where bargaining councils are defined by job grades.

The agreements reached are binding to all mining companies. Unions have complained that management at Gold Fields takes a long time to implement these agreements and when the company is not in favour with the agreement reached at the Chamber of Mines, the company then reinterprets the agreement and implements it accordingly. Another form of frustration brought to the fore by NUM members, and confirmed by the NUM branch, is the ongoing situation where the company stopped deducting union fees from NUM members' wage. NUM's attempt to elicit a response from the company on the matter and to ascertain how the company seeks to resolve it remains elusive – the company provides no response. Workers have no choice but to resubmit a membership form to the company. It takes the company up to 3 months, from receiving the membership form, before the deductions actually take place. This problem has not only been raised with the mine management but also with senior management at the head office. Considering that other unions don't experience this problem, coupled with the company's failure to respond on the matter, suggests a level of passive aggression towards NUM.

The wage levels for South Africa Gold Fields range from US\$328 –US\$592 for unskilled categories and between US\$862-US\$2117 for skilled categories. A common feature of the wage structure for Gold Fields South Africa is the huge wage gaps between management and unionised workers. According to a 2007 report by the African Labour Research Network, the total earning of an executive



director at Gold Fields in 2004 was 289 times higher than those of the lowest paid mine worker (ALRN, 2007:12)

In terms of the role of the union in the review of Minerals' legislations and Codes, NUM is aware of the nature of the development or investment agreement entered into between the investing company and the government and acknowledge that these agreements do not compromise the requirements of the law in respect of the labour market and the question of preferential access, such as to energy, water, land, etc. On Union influence on the review of the legislation and codes for the extractive industry it was reported that the Union is involved directly with the legislative process through its parliamentary office.

In addition, there are specific activities undertaken by unions with regard to transformation and development of mining areas. For instance, on Occupational Health and Safety (OHS) and environmental campaigns, the NUM has been intimately involved as well as on Corporate Social Responsibility (CSR). *"The struggle for a health and safe workplace was a direct and inevitable consequence of the legacy of the mining industry. From the beginning of its existence, health and safety became a bread and butter issue. The NUM drew the line on the sand of death and declared Business could not continue as usual with the unrelenting casualties from the killingfields that was the mining industry"* explained a Union Official.

This struggle was to culminate in the Leon Commission in 1994 after the Hlobane mine disaster. The NUM actively participated in the inquiry into the disaster, represented by a formidable legal of Headle and Thompsons. The recommendation of the Leon Commission led to the enactment of the Mines Health and Safety Act, a very progressive piece of legislation by even today's standards.

The real struggle to implement the act belonged in the mine shafts. The first Full time Health and Safety Representative was negotiated at an Anglo American Mine, Ergo on the East Rand. From the hence forth the NUM was to spearhead the Health and Safety in the South African Mining Industry. The NUM launched the first ever and only stay away strike against the continued disgraceful and unacceptable safety record in the mining industry, a strike marked by unprecedented global solidarity action with the NUM in 2000.

Earlier the NUM had taken unprecedented legal actions against mining companies for occupational safety damages. One was the celebrated Asbestos case, which was to be followed by a case against Vantech, a Multinational mining company - a case in which it won punitive damages of R2 million for workers who suffered from respiratory occupational diseases. The NUM had also successfully indicted a mining company, Msauli in the high court from unbundling and declaring a dividend without compensating mine workers fatally ill from occupational diseases.

On the question of the Environment, the NUM actively participated in the World Summit on Sustainable development and has never looked back ever since. The NUM became an important stakeholder in the evolution of the policy space henceforth, a policy space that spanned the Corporate Social Responsibility revolution to the current Climate change discourse, embedded in the struggle for workplace and community citizenship for mineworkers.

Further, NUM has established the Mineworkers development agency for the specific purpose of the economic development of mineworkers.

On Chinese Investment, there was no evidence of mines in South Africa that are owned by foreign investment coming from China

## **3.6 Tanzania**

### **3.6.1 General Overview**

Tanzania has been the major focus of Africa's gold exploration and development over the past few years. As a result, the mining industry in Tanzania has assumed a rising trend since 1999. Up to 15% of Africa's recent exploration expenditure has been spent in Tanzania, thought to have Africa's largest gold reserves, after South Africa. Diamonds, gold, nickel and gemstones play key roles in Tanzania's growing minerals industry. However, nearly all major developments have been seen in the gold sector. As at 2011, minerals made up over 52% of the country's exports, of which, a large part came from gold. Value-addition, however, is on the low side as much of the mineral exports are in form of raw materials. The share of the mining industry to the national Gross Domestic Product was about 10% in 2010.

The main investing companies are:

1. Barricks North Mara Gold Mine with about 711 employees, of which 366 are unionized;
2. Williamson Diamond Limited with about 540 employees, of which 529 are unionised;
3. Barricks Africa Bulyanhulu Gold Mine with about 2200 employees, of which 1200 are unionized;
4. Barricks Africa Buzwagi Gold Mine with about 700 employees, of which 310 are unionized;
5. Barricks Africa Tulawaka Gold Mine with about 250 employees, of which 200 are unionised;
6. Anglo Gold Ashanti Geita Gold Mines (GGM) with about 2,200 employees.
7. Stamico Kiwira Coal Mine with about 405 employees, of which 388 are unionized
8. Uvinza salt mine with about 180 employees
9. Resolute Gold Mine Nzenga with about 250 employees
10. Tanzanite one
11. Tanzanite Africa.

### **3.6.2 Investing company: Case of Anglo Gold Geita Gold Mine (GGM)**

AngloGold Ashanti is one of the world's leading gold producers. The company has 22 operations in 10 countries. Before the merger with AngloGold in 2004, Ashanti Goldfields owned the Ashanti Gold Mines in Geita (which is now known as Geita Gold Mining Ltd). In 1999 Ashanti Goldfield sold 50 percent of its shares in the mines to AngloGold. The two companies formed Geita Gold Mining Ltd (GGM). Geita Gold Mining Ltd. was registered locally in Tanzania in May 1999 as a private company owned by AngloGold Ashanti Ltd. The official inauguration of GGM was in August 2000. The company is responsible to both the head offices of AngloGold in Johannesburg and Ashanti Gold Field Company in Accra, Ghana. There are sub head offices in both South Africa and Ghana to deal with different issues. Geita Gold Mining Ltd. is located 20km west of Lake Victoria in Tanzania.

#### *Employment*

The company employs 2,200 workers (900 employees by GGM and 1,300 by contractors), of which 90 per cent are Tanzanians and 10 per cent expatriates.

#### *Environmental issues*

Tanzania has established a National Environment Management Council. The Government is drafting a general environmental legislation. Sector specific requirements are addressed in mineral titles. In the case of GGM, a comprehensive environmental impact assessment was prepared before mining commenced to provide the government and the community with the facts about the proposed project. GGM achieved the international certification for environmental excellence by attaining the ISO14001 International Standard for Environmental Management. GGM regularly monitors the quality of air and water within the licensed area as well as testing noise and vibration levels from blasting and other related mining activities. Domestic waste and other types of waste are collected separately for recycling or for controlled placement in a designated landfill site for encapsulation within the waste rock dump. As part of the mining process, GGM tests for and delineates waste rock that could potentially form 'acid rock drainage'. This waste rock is taken separately to the waste rock dump and encapsulated beneath waste rocks.

GGM has rehabilitated over 70 hectares of disturbed land around the mine. Several hundred kilograms of local tree species seeds have been collected and planted to rehabilitate the large waste rock dumps. Topsoil is then spread back over the rock, in which the plants can successfully grow. Some grasses grow immediately from seed already in the topsoil. Ultimately GGM aims to reintroduce native fauna and flora that once inhabited the area.

However, despite all these efforts, the local community in the Geita Township have complained of air pollution caused by heavy GGM traffic. The roofs of their houses at the township are covered with red coloured dust. People have started to experience problems with their lungs and have chest pains. The company responded to the issue by stating that it is not GGM's responsibility as the company pays taxes to the government and the government is to care for its people.

#### *Human rights*

Anglogold Ashanti claims to aim for a positive impact on the people, culture and communities in which it operates. The company's policy states that the company will respect local and indigenous people, their values, traditions, culture, and the environment. Although there is no clear evidence of violation of human rights at GGM, people within the local communities have complained about non-compensation for their land since 1998 (ALRN, 2005:131). These people are from the Nyakabale, Katoma and Nyamalembo villages. The company blames the government's inefficiency and cumbersome procedures to undertake the revaluation process. The government, on the other hand, has stated that the company has been uncooperative on this matter. The local communities from these villages who have not yet been compensated argued that they have been affected socially, culturally, psychologically, and economically because they cannot participate in any developmental, social, and cultural activities due to having not known their future for the last seven years; they cannot undertake any community developmental activities. They are waiting for compensation whose currency value is already outdated. They are not sure whether the government or investors will take care of this or whether they will be forced to accept any offer submitted to them. The company states that all compensation due by GGM was paid over the local government and it is the local government that has not paid the compensation to the community.

#### *Corporate Socially Responsibility (CSR)*

The company has a number of CSR initiatives that benefit the community. One such project is the Nyakabale Agriculture Project, which is a partnership involving the community, GGM, and All Terrain Services (ATS), the catering contractor to the mine. The project entails using the cash crop, moringa oleifera, to extract oil from its seeds and vitamin supplements from its leaves. About US\$ 55,000 has been spent on this project since 2001. The beneficiaries of the project, 60 cooperative farmers, have already generated US\$ 80,000 (ALRN, 2007).

GGM has also established a nursery that produces indigenous trees for transplanting. In the first year about 20,000 saplings were produced. About T.shs 5,000,000 (US\$ 5,000) was allocated by GGM for the yearly district tree planting campaign. In 2001, the company started funding an HIV/AIDS awareness and prevention programme for the community and its employees through a partnership with African Medical Research Foundation. Elements of the programme include:

- Training 60 community educators in the three villages surrounding the mine. The educators distribute health materials and demonstrate the use of condoms;
- Focused interventions for high-risk women. About 22 women were trained in various life skills; and
- Other forms of training that include sexual and reproductive health, voluntary counselling, and HIV/AIDS testing.

The company further donated about 240 million T.shs through the Kilimanjaro Climb Challenge and an operating budget in the campaign against HIV/AIDS. The other support provided by the company to the health sector includes:

- The building of two outpatient buildings at different health centres in the Geita District;
- The building of two operating theatres, one at Geita government hospital and one at Kharumwa;
- The building of one maternity ward at Geita hospital;
- The building of four secondary school administration blocks, at Katero, Bukwimba, Kamena and Kamhanga; fifteen classrooms, four teacher's houses, one staff room, and four chairs and one table;

Generally, therefore, GGM has a functional CSR programmes that seem to be benefiting the communities around which it operates.

### **3.6.3 Unionisation and Union's role in Review Mineral Legislation**

The union operating in AngloGold Ashanti's Geita Gold Mine in Tanzania is called the Tanzania Mining and Construction Workers Union (TAMICO), an affiliate of the Trade Union Congress of Tanzania (TUCTA). Here, the union has faced significant challenges in pushing for recognition, as the

company refused to sign a recognition agreement<sup>4</sup>. There is no collective bargaining between TAMICO and GGM management (as at April 2011). This is because GGM management does not recognise TAMICO as a trade union. Only when the union has recruited 50 per cent of all workers will it be given a recognition agreement. The employer does not see the need for collective bargaining as they argue they have their own system of establishing wages and working conditions based on international labour markets. It was further argued that workers are represented through three Workers Representative Councils (WRCs) representing unskilled, skilled, and expatriate workers respectively. Workers do not like being represented through the WRC as the representatives are chosen by management to safeguard the interests of management. Therefore, there are no real worker representatives at the workplace. Workers also argue that workers' representatives are there to undermine the role of the real workers' representative organisation (TAMICO). Management states that WRC are elected by employees but failed to provide details of the election process even though this information was requested. The absence of such information makes it difficult to ascertain the extent to which the election of the WRC is free and fair. According to the company, 7 of the 29 WRC representatives are members of TAMICO.

Incidentally, AngloGold Ashanti's Geita Mine in Tanzania signed a code of conduct and an access agreement but refused to negotiate wages and working conditions. Wages and working conditions [are] determined unilaterally by management which argues that it has its own system to determine wages and conditions of services based on international labour markets. The wages for AngloGold Geita Mines range from US\$150 to US\$750 per month for unskilled work categories.

In terms of the role of unions in extractive industry legislation or codes, it was the case that the union had no information on the terms and agreements entered into between the Government and the foreign investor in the extractive industry. As such, main union actions have been limited to advocacy work projecting the workers voice in issues arising in extractive mining activities, workers education

---

<sup>4</sup> According to the code of conduct and access agreement signed between the union and GGM, the trade union has to recruit at least 50 per cent of the work force in order to be recognised by the company. Due to management tactics this target of recruiting 50 per cent of the work force at the company is difficult to achieve. According to the union, when it recruits workers and submits the deduction form to the company, management prepares a similar form and summons workers individually to the human resource development manager to sign management's form. Workers allege that when signing management's form they are told to choose between being employed or joining the union. Many workers have opted to remain employed.

and training to raise awareness and issues of HIV/AIDS, occupational health and safety at the workplace.

The role of Chinese investment in the extractive mining industry in Tanzania is not yet significant.

#### 3.6.4 Minerals Legislation

Administration of the Mining Act 1998 is by the Minister responsible for mineral affairs and Commissioner of Mineral Resources. Under the Act, Mineral Rights concern large scale and small-scale operations.

- A *Reconnaissance License* is issued for one year and renewed for a period not exceeding a year. License preparation fee is US\$250, annual rent is US\$10/km<sup>2</sup> and renewal fee is US\$200. The license may be either exclusive or non-exclusive. Applications should provide a work programme. Half yearly reports must be submitted and on expiry of the period, all data, maps and reports under license must be surrendered to Government. The license holder may apply for a prospecting license covering all or part of the area.
- A *Prospecting License* is issued for a period of up to three years and renewable two times for a period up to two years each. At each renewal at least 50% of the area is relinquished. License preparation fee is US\$400, annual rental is US\$30/km<sup>2</sup> and renewal fee is US\$200. Applicants must submit particulars of financial and technical capabilities, work programme and budget, and proposals for employment and training Tanzanians. License holders must submit quarterly reports, including copies of all data, maps, logs, interpretations, etc.
- A *Mining License* will only be granted to the holder of a Prospecting License over the area. The license is granted for a period of 25 years or the life of the mine. It is renewable for a period not exceeding 15 years. License preparation fee is US\$600, annual rent is US\$1500/km<sup>2</sup> and renewal fee is US\$200. The applicant must submit a feasibility report including environmental and health safeguards, plans for local sourcing of goods and services and employment and training of Tanzanians. The license holder must submit regular reports according to regulations.



#### IN ADDITION:

- Under section 15 of the Mining Act the Minister may enter into a mineral agreement (not inconsistent with the Act) for the purpose of granting a Prospecting or Mining License in order to define terms and conditions to be included in the license.
- Agreement should be made with the lawful occupiers of land and their written consent obtained to carry out mining or prospecting operations. Compensation may be payable. The Minister may intervene if consent is withheld unreasonably.
- There are prospecting rights and mining claims for small-scale operations by Tanzanian citizens, companies or cooperatives. These rights are available only in designated areas for prescribed minerals. Prospecting rights are granted for a period of 12 months and are renewable. The holder can peg a claim and register with the Commissioner. The claim holder can prospect and mine this claim. It is valid for one year and renewed as long as mining operations continue. Claim holders must pay royalties and submit returns. Non compliance leads to cancellation of rights. Claim preparation and annual fees are TSh5000 and TSh6000 per annum respectively.
- There is no state obligation to participate in neither mining ventures nor requirement for local equity.
- A mineral right may be transferred upon application and approval by the Minister.

### 3.7 Zambia

#### 3.7.1 General

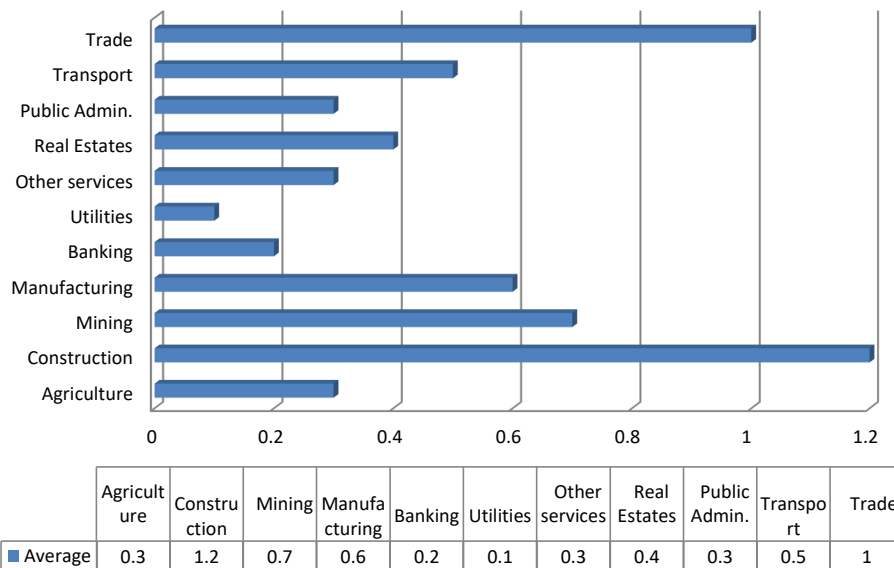
The structure of industrial contribution to real GDP growth can shed light on the nature and pattern of Zambia's economic growth and thus highlight the share of the extractive industry on the GDP. For instance, for the period 2001 to 2006, Zambia's real GDP growth rate was 5.6 per annum- as seen in table 5 below. Decomposing this growth rate figure of 5.6% clearly indicates that much of this growth came from construction (1.2%), trade (1%) and mining (0.7%) in that order. A graphical representation is shown in figure 2 below. In other words, mining contributes about 12.5 per cent to Zambia's total GDP.

**Table 5: Industries Contribution to Real growth in Zambia (percent), 2001-2006**

|                | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | Average |
|----------------|------|------|------|------|------|------|---------|
| Total          | 4.5  | 4.5  | 5.8  | 6.1  | 5.8  | 6.7  | 5.6     |
| Agriculture    | -0.5 | -0.3 | 0.8  | 0.7  | 0.4  | 0.3  | 0.3     |
| Industry       | 2.0  | 2.8  | 2.5  | 3.2  | 2.3  | 2.6  | 2.6     |
| Construction   | 0.6  | 1.0  | 1.4  | 1.5  | 1.6  | 1.3  | 1.2     |
| Mining         | 1.0  | 1.2  | 0.3  | 1.1  | 0.2  | 0.6  | 0.7     |
| Manufacturing  | 0.5  | 0.6  | 0.9  | 0.5  | 0.4  | 0.6  | 0.6     |
| Services       | 3.0  | 1.9  | 2.5  | 2.2  | 3.1  | 3.8  | 2.8     |
| Banking        | 0.0  | 0.3  | 0.3  | 0.3  | 0.3  | 0.3  | 0.2     |
| Utilities      | 0.4  | -0.2 | 0.0  | 0.0  | 0.1  | 0.3  | 0.1     |
| Other services | 0.5  | 0.1  | 0.2  | 0.2  | 0.3  | 0.4  | 0.3     |
| Real Estates   | 0.4  | 0.4  | 0.4  | 0.4  | 0.4  | 0.3  | 0.4     |
| Public Admin.  | 0.5  | 0.1  | 0.0  | 0.0  | 0.3  | 0.6  | 0.3     |
| Transport      | 0.2  | 0.1  | 0.3  | 0.4  | 0.5  | 1.4  | 0.5     |
| Trade          | 1.0  | 1.0  | 1.2  | 1.0  | 1.2  | 0.4  | 1.0     |

**Source:** Ianchovina and Lundstrom (2008:17)

**Figure 2: Average Sector Contribution to RGDPGR (%), 2001-2006**



Thus, the mining sector remains the major contributor to Zambia's economic growth with its average share being 12.5 percent between 2001 and 2006 and 9.1 percent between the years 2006 and 2009. Further, the sector's contribution to foreign exchange earnings and the country's formal employment levels is at 70.3 percent and 8.0 percent respectively. The extractive industry in general is poised to assume even more significance in the national economy given the recent discovery of oil and gas which have seen an increase in oil exploration projects. These exploration projects are being carried out by the private sector and are likely to develop into mining projects in the next few years as indicated in table 6 below.

**Table 6: Exploration Projects 2006-2010**

| Project                      | District/Province   | Company                             | Mineral        | Ore Reserve   | Status   |
|------------------------------|---|-------------------------------------|----------------|---|--|
| Konkola North Copper Project | Chililabombwe   | Teal (Z) Ltd.                       | Copper         | 220 Mt @ 2.64% copper contained   | Feasibility Study and EIA completed in 2009. Mining operations expected to start in 2011 |
| Mkushi Copper Project        | Mkushi  | First Quantum Mining and Operations | Copper         | 309 Mt @1.04% copper contained  | Pre-feasibility and EIA completed in 2009  |
| Mkushi Joint Venture Copper  | Mkushi  | Seringa Mining Ltd.                 | Copper         | 10 million tonnes   | Pre-feasibility and EIA completed in 2009  |
| Kalumbila Copper             | Mwinilunga  | Chirundu Joint Ventures Ltd.        | Copper/Uranium | Poly-metallic ore resource of 1.45 billion tonnes of ore at 0.76% copper, 0.03% nickel, 0.04% cobalt and some uranium | Detailed exploration in progress   |
| Luri Hill Project            | Mumbwa  | Luri Gold Mines Ltd.                | Gold           | Defined: 378,000 ounces; Indicated: 117,000 ounces  | Detailed exploration in progress   |
| Oil and Gas                  | Eastern, Luapula, Northern, North-Western, Southern and Western | Government                          | Oil and Gas    |   | 23 blocks demarcated and 11 offered to successful bidders by 2009                        |
| Kariba Uranium               | Siavonga  | Denison Mine Ltd.                   | Uranium        | 11 million pounds   | Pre-feasibility and EIA completed in 2009. Mining expected to commence in 2012           |
| Chirundu Uranium             | Siavonga  | Chirundu Joint Ventures             | Uranium        | 9.5 million pounds  | The company was conducting Bankable Feasibility Study and the EIA completed by 2009      |

**Source:** Ministry of Mines and Minerals Development, 2010.

Copper production has increased in the recent past, rising by 15.9 percent from 576,400 tonnes in 2008 to 667,173 tonnes in 2009. The increase in copper production has been mainly as a result of the commencement of production at Lumwana Mine in the north western part of the country. In terms of contributions to tax revenues, table 5 below gives the summary of the nature of taxes and the amounts contributed in the period 2007 and 2009. The major contention, of course has been that the amount of corporate tax paid by the mines has been on the low side. In 2009, for instance, only about US\$15,000 was paid by mining companies in corporate tax. This is the reason it seemed rational that

the windfall tax should be introduced. In 2008, the year when the windfall tax was effected, this tax contributed about US\$36,000 to total revenues. However, with the change in the Presidency following the death of the late President, Levy Mwanawasa, the windfall tax was discontinued. This raised a lot of apprehension among stakeholders within Zambia.

**Table 7: Taxes and Duties paid**

|              |                         | <u>2007</u>      | <u>2008</u>      | <u>2009</u>      |
|--------------|-------------------------|------------------|------------------|------------------|
| <b>No.</b>   | <b>Description</b>      | <u>US \$ 000</u> | <u>US \$ 000</u> | <u>US \$ 000</u> |
|              |                         |                  |                  |                  |
| 1            | Corporate Tax           | 98,193           | 113,709          | 15,419           |
| 2            | Royalty Tax             | 19,469           | 66,892           | 50,730           |
| 3            | Variable Profit Tax     | 0                | 0                | 0                |
| 6            | Export Levies           | 22,326           | 32,616           | 22,396           |
| 7            | Customs / Import Duties | 20,457           | 15,597           | 9,243            |
|              | Local Authorities       |                  |                  |                  |
| 8            | . Property Rates        | 3,152            | 3,385            | 5,633            |
| 9            | . Personal Levies       | 89               | 85               | 72               |
| 10           | PAYE                    | 97,913           | 106,629          | 106,803          |
| 11           | Windfall tax            | 0                | 35,844           | 1,737            |
| <b>TOTAL</b> |                         | <b>261,599</b>   | <b>374,757</b>   | <b>212,033</b>   |

**Source:** Zambia Chamber of Mines (2010:7)

In terms of employment, the mining sector contributes about 8 percent to total formal sector employment in Zambia. The trend of employment growth in the mining sector has been on the decline, however. This has mainly been due to redundancies due to mine closures and down sizing of the workforce by new mining investors. The table below shows trends in recent mining employment. What is also noteworthy is that a substantial proportion of the employment in the mines in Zambia involves sub-contracted workers, averaging about 26 percent of total employment in the mining sector during the period 2007 to 2009.

**Table 8: Employment in the Mining sector in Zambia, 2007-2009**

|   | 2007    | 2008    | 2009    |
|---|---------|---------|---------|
| Total own workforce   | 40,017  | 37,751  | 32,515  |
| Total sub-contracted workforce                                    | 27,083  | 28,104  | 24,817  |
| Estimated formal sector employment                                | 500,000 | 500,000 | 500,000 |
| Proportion of mining employment in total formal sector employment | 8%      | 7.5%    | 6%      |

**Source:** Zambia Chamber of Mines (2010:8); Labour Force Survey, 2007;

In terms of mineral processing, the copper, lead and zinc ores, are not only mined and beneficiated but smelted and refined into metals prior to export. In addition, the precious metals plant in Ndola, Copper belt recovers bullion and other metals from the slurries. Cobalt is recovered through a leaching process. Copper metal fabrication into cables, though small, is an important industry. Foundries produce mill balls from scrap iron while calcinations of lime and cement production constitute important industrial mineral related activities. However, while there are about ten (10) large scale mining companies in Zambia, only about three (3) are involved in processing mineral into finished products (GRZ, 2010:28).

### **3.7.2 Investing Company: Case of Konkola Copper Mines(KCM)**

#### *Investors and ownership*

One of the major foreign investors in the copper mining industry in Zambia is the Konkola Copper Mines (KCM). Konkola Copper Mines Plc (KCM) is the largest private employer in Zambia. It is a subsidiary of the international mining conglomerate Vedanta Resources Plc, a London listed FTSE 100 metals and mining group. The Konkola Copper Mines head office is located in Chingola in the Copper belt Province of Zambia. KCM has operations in Chililabombwe, Chingola, Nampundwe and Kitwe. KCM's primary products are: Copper, Cobalt, Pyrites and Acids KCM's products are primarily exported to the Middle East, Asia, Africa and Europe. In terms of structure of ownership, Vedanta Resources holds 79.4% of the issued and outstanding ordinary shares of the Company. The remaining

20.6% interest in the Company is held by ZCCM-IH, a Lusaka and Euronext listed company that is 87.6% owned by the Zambian Government and 12.4% owned by public shareholders.

#### *Investment volumes*

KCM has embarked on a number of capital expansion projects. Notably, the Konkola Deep Mining Project (KDMP) estimated to have cost US\$ 400 million and is expected to increase the production capacity of Konkola Mine from 2 million to 6 million metric tonnes of copper ore per annum. The project involved the sinking of one main shaft down to 1,490 metres and other supporting shafts for ventilation, dewatering and equipment. Alongside the KDMP, KCM has been constructing a new concentrator, which has the capacity to handle 6 million tonnes of ore. The KDMP is scheduled for completion in 2010. KCM also constructed a new smelter complete with acid plant at Nchanga with a capacity of 250,000 tonnes of copper ore per annum at an estimated cost of US\$300 million which was completed in 2008. Thus, in terms of investment volumes, KCM has spent over US\$700 million in capital investment expenditures since taking over the mine.

#### *Employment Created by the Company*

KCM is the largest private sector employer in Zambia, with over 9,500 full time employees and an additional 11,000 working for its sub-contractors.

#### *Corporate Social Responsibility*

KCM has in place a social policy, which is primarily focused on community support. KCM owns and operates 2 schools providing basic education to over 1,000 children from both mine employees and non-mine employees in Chililabombwe and Chingola. In addition KCM Plc owns and operates 2 hospitals and 7 clinics located in Chililabombwe and Chingola. The health facilities provide free health care to employees and their dependants and are also accessible to non-mine employees on a cost recovery basis.

KCM is also involved in the malaria roll back programmes in the areas surrounding its operations. Further, KCM supports sport. In particular from 2005 to 2007, it supported the Football Association of Zambia (FAZ) national league, the Premier League. KCM also undertakes a local economic development programme. Under this programme KCM supports retrenches and retirees to form small businesses in fields such as labour hire and sanitation and cleaning services. The other is the Agribusiness development involving sustainable livelihoods for miners and ex-miners. The aim of this programme is to provide alternative employment and promote food security beyond mining through agribusiness training and support in horticulture, fish farming and bee keeping. While such initiatives are important, it was difficult to ascertain their effectiveness and contribution to poverty reduction and community welfare in the absence of a comprehensive assessment. The involvement and role of the labour unions in these programmes was also not clear.

#### *Policies on HIV/AIDS, Health and Safety and Environmental Management*

KCM has an HIV/AIDS policy that protects confidentiality of employee HIV status, employees' rights to work and benefits notwithstanding their status and prohibits discrimination against HIV positive employees. The policy states no pre-employment HIV/AIDS screening and no conducting compulsory testing. The policy provides for education, voluntary testing and counselling of employees. Under its safety, health, environment and quality policy, KCM aims to maintain a production system that complies with both international and national standards on safety, occupational health and environmental management. Within this context, the objective of KCM is stated as "to provide attractive returns to its shareholders in a socially and environmentally responsible manner". It further states that KCM commits to upholding the values of good citizenship and seeks to contribute to the wider economic, social and environmental well being of Zambia. The policy further states that KCM is committed to the principle of sustainable development, which it takes to mean "development that meets the need of the present without compromising the ability of future generations to meet their own needs". The policy also states that senior executives, line management and all employees are accountable for safety, occupational health, environment and quality issues. The policy also recognizes the importance of stakeholder engagement and thus aims to promote and maintain constructive

dialogue and good working relations with employees, local communities, regulatory agencies, business organizations and interest parties.

However, the recent pollution (October, 2010) of the surrounding streams and Kafue River that provides drinking water to most residents on the Copper belt puts KCM commitment to test and speaks volumes about its attitude to the local communities and the environment. Recently, a Magistrate court found KCM guilty of wilfully polluting the environment and the company was fined an equivalent of US\$4000- see boxed text below.

**Text Box 3: Court Fines KCM US\$4000 for Polluting Environment**

*A court in Zambia has fined Konkola Copper Mine more than USD 4,000 for polluting water in Kafue River last month after some effluent seeped into the stream, a source of livelihood for more than 20,000 Chingola residents. The Chingola magistrate Court fined KCM ZMK 21.9 million after the company was found guilty on four counts of pollution in October [2010] following a legal suit filed by the Environmental Council of Zambia that sought redress. Mr.Sililo Siloka resident magistrate handed down the sentence after the miner admitted to the pollution of the river an action that took place between October 29th to 31st 2010 resulting in the water utility company shutting off the water to the residents in the area. According to the facts before the court in the first count, the company was charged with polluting the environment contrary to section 91 (1) of the Environmental Protection and Pollution Control Act 12 of 1990 Cap 204 of the laws of Zambia. In the second count, it was charged with discharging poisonous, toxic, ecotoxic, obnoxious or obstructing matter, radiation or other pollutant into the aquatic environment contrary to sections 24 and 91 (1) of the Environmental Protection and Pollution Control Act 12 of 1990 chapter 204 of the laws of Zambia. In the third count KCM was found guilty of wilfully failing to report an act or incident of pollution of the environment contrary to section 86 subsections (1) and (3) of the Environmental Protection and Pollution Control Act 12 of 1990 cap 204 of the laws of Zambia.*

*KCM wilfully failed to report the incident without delay following the pollution incident at the accused' premises, leading to pollution of the environment in Chingola. In the fourth count the court established that KCM failed to comply with the requirements for discharge of effluent contrary to regulation 12 (b) of the environmental protection and pollution control regulations statutory instrument 172 of 1993. The company on the dates in question failed to comply with requirements by discharging pregnant toxic liquor solution into the aquatic environment with concentration above the prescribed statutory limits. Further facts stated that officers from the Environmental Council of Zambia visited the site of the pollution and that the company expressed ignorance concerning the pollution but that later agreed that the source of the pollution was from its tailings leach plant. KCM through its lawyer Mr Eljab Banda said that it was remorseful and that it had undertaken necessary measures to mitigate the damage caused and to prevent future incidents. The company is expected to comply with immediate effect. Recently, KCM disposed and allowed some effluent to seep into the Kafue River and affected more than 20,000 people that depend on the water for their livelihood.*

**Source:** Times of Zambia, 28 November, 2010

**3.7.3 Unionization and Union Role in Development Agreements**

*Trade union presence*

KCM employees are represented by the Mineworkers Union of Zambia (MUZ) and the National Union of Miners and Allied Workers (NUMAW). MUZ is the oldest and largest union in the mining industry affiliated to Zambia Congress of Trade Unions (ZCTU) and the ICEM. NUMAW is a more recent union and currently organizes workers at KCM only. NUMAW is locally affiliated to the



Federation of Free Trade Unions of Zambia (FFTUZ). What is encouraging is that at KCM the two unions often work together and conduct the collective bargaining together. The two unions, however, only organize workers that are directly employed by KCM and not those sub-contracted by the company. There is therefore, an urgent need for the two unions to broaden their scope and coverage and act to organize this cadre of workers that form a significant proportion of the workforce at KCM. MUZ has branches at all KCM Plc operations. The union at branch level is run by branch officials who are periodically elected by workers. The branch officials are assisted by shop stewards who represent workers at the shop floor in the various sections of each operation handling worker grievances and disputes.

#### *Collective bargaining agreements*

At KCM, the union has a recognition agreement from the company and has collective agreements covering wages, salaries and conditions of service. In addition, the collective Agreement is read in conjunction with the other existing conditions of employment contained in the Company Standard Condition of Employment and Service, Company Procedures, company Disciplinary Code, the subsisting Collective Agreement and the Recognition Agreements made. As earlier indicated, at KCM Plc, MUZ and NUMAW, negotiate jointly with management and come up with one collective agreement. The Collective Agreement on wages and salaries is reviewed every year while that of conditions of employment and service is reviewed every two years.

#### *Relationship with Company, Government and Civil Society*

Generally, there exists a cordial relationship between the Union and the KCM management. The relationship with the Government has, however, become less than cordial in the recent months. The Mine Workers Union of Zambia (MUZ) has accused the Government of underhand methods aimed at undermining the intention of the MUZ president to challenge for the leadership of the Zambia Congress of Trade Unions (ZCTU). The Mine Workers Union of Zambia under the leadership of Mr Rayford Mbulu is perceived to be strong in articulating the cause of labour.

#### *Wage Levels*

The wage levels range between K2, 000, 000 (US\$425) per month for the lowest to around K3, 000, 000(US\$640) per month for the highest unionized employee. Wages and salaries are being linked to inflation, which has stabilized over the years and dropped to a single digit. However, the nominal wages/salaries have not recovered from the high price levels attained during periods of high inflations in the past. While prices of essentials have stabilized at a high level there has not been corresponding wage adjustment to ensure that wages are linked to the purchasing power parity.

In terms of the role of the unions in the formulation of development agreements or review of mineral legislation, there was no evidence to suggest that they were involved. These development agreements were done in a non-transparent way and their specific terms have not been made public officially. For this reason, the unions have repeatedly called for the review of these mining agreements. Within this context the unions have called for a more judicious mining tax regime, especially the re-introduction of the windfall tax. They have also been advocating for the review of the Minimum wage to protect non-unionized workers in the mining industry. The Unions have also been actively involved in awareness activities related to uranium mining.

On the role of Chinese Investment in the extractive mining industry in Zambia, this has assumed increasing prominence with Chambeshi Mines being owned by the Non-Ferrous China Africa Mining Limited (NFCMA). The major challenge in the labour context, however, has been the frequent abuse of workers rights in Chinese owned mines.

#### **3.7.4 Mining Legislation**

The Mine and Mineral Act (1995) - which greatly simplified licensing procedures, places minimum reasonable constraints on prospecting and mining activities, and creates a very favourable investment environment, whilst allowing for International arbitration to be written into development agreements, should this be deemed necessary. A framework for responsible development has also been created through publication of the Environmental Protection and Pollution Control Regulations.

##### *Licensing System*

Three types of license are available to the large-scale operator:

- Prospecting License - this confers the right to prospect for any mineral over any size of area for a period of 2 years renewable.
- Retention License - this confers the right to retain an area subject to the Ministers agreement, over which feasibility studies have been completed but market conditions are unfavourable for development of a deposit at that time. Size of area may be that covered by a prospecting license or smaller area as redefined by the License holder.
- Large Scale Mining License - this confers exclusive rights to carry out mining operations and other acts reasonably incidental thereto in the area for a maximum of 25 years. The area to be held should not exceed the area required to carry out the proposed mining operations. Applications need to be accompanied by environmental protection plans and by proposals for the employment and training of citizens of Zambia.

Similar rights are available to smaller operators, but on a reduced scale

- Prospecting Permits - relate to areas of 10km<sup>2</sup> and have duration of 2 years non-renewable.
- Small Scale Mining License - relate to areas not exceeding 400 hectares and have duration of 10 years renewable.
- Artisans Mining Rights - give the right to local people to mine on an artisanal basis in an area not exceeding 5 hectares, for a period of 2 years non-renewable.
- Gemstone License - holders may carry mining operations over an area, not exceeding 400 hectares for a period of not more than 10 years

#### *Environment Framework*

Key steps in establishing a project as laid down by the regulations:

- Preparation of a project brief to the Director of Mines Safety describing the site, proposed activities and all aspect of potential environmental impact.
- The Director may request more information or can forward the brief to the Environmental Council of Zambia recommending one of: rejection; acceptance after

submission of a full Environmental Impact Statement; the project be accepted and be allowed to proceed immediately.

- Preparation of an Environmental Impact Statement and submission to the Director of Mines Safety.
- The Director of mines Safety submits his recommendations to the environmental Council which makes the final decision
- Environmental Impact Statements, if called for, to be updated annually or within fifteen months of the first statement.
- Environmental audits of project to be completed annually.
- If a developer finds the provisions of any regulation unduly onerous, he may apply to the Minister or Director of Mines Safety for an exemption from that regulation. The exemption may be granted under prescribed conditions.
- Developers of large scale mining projects to contribute to the environmental Management Fund for rehabilitation purposes.

#### *Tax Regime & Incentives*

Surcharges on mineral production compare very favourably with most countries in terms of royalties and taxes, and a number of financial incentives have been created specifically to encourage investment in the mining industry.

#### *Royalties*

A royalty is payable calculated as 2% of the market value of minerals f.o.b. less the cost of smelting, refining and insurance, handling and transport from the mining area to the point of export or delivery within Zambia. Royalty payments may be deferred if the cash operating margin of a holder of a Large Scale Mining License falls below zero.

#### *Corporate Tax*

Exporters of copper and cobalt are levied 35% of taxable income whereas other mineral and "non-traditional" commodities (i.e. excluding copper and cobalt) attract a levy of 15%. Companies listed on the Lusaka Stock Exchange are levied at 30% of taxable income.

#### *Relief from Income Tax*

Investment in mining, including prospecting, attracts deductions from income tax on the following expenditures:

- capital expenditure; allowances of 25% on plant, machinery and commercial vehicles; 20% on non-commercial vehicles; 5% on industrial buildings.
- prospecting expenditure under special circumstances.
- mining expenditure under special circumstances
- mining expenditure on a non-producing mine
- mining expenses incurred by a mine of irregular production close to the end of its life.

#### *Relief from other Surcharges*

A holder of a mining right is exempt from customs, excise and Vat duties in respect of all machinery and equipment required for exploration or mining activities

#### *Remission*

There are no restrictions in respect of the amount of profits, dividends, or royalties that may be externalized, although a withholding tax of 15% is levied.

*In general, the Zambian tax regime also provides the following terms.*

- 100% deduction of pre-production expenses and other capital expenditures as defined in the Income Tax Act.
- Accelerated depreciation allowances for expenditure on machinery and equipment which does not qualify for the 100% deduction. Unlimited carry forward of losses.
- Import duties are charged on specific items and the duty varies between 20-40%. But items such as beers, wines, cigarettes, jewellery, cosmetics and luxury capital goods may be charged at higher rates. Certain essential goods such as crude oil, medical supplies and fertilizers are exempt from import duty.
- Pay-as-you-earn system of tax collection applies to personal emoluments. Individuals ordinary resident in Zambia are liable to tax on income flow sources in Zambia.

**Other taxes include the following:** Non-resident withholding taxes, all charged at 10% include; rents, contractors, dividends, interest, management fees and royalties.

Evidently, mineral legislation in Zambia seems biased towards foreign investors. The debate on the windfall tax illustrates this point. The feeling of some stakeholders is that the windfall tax must be re-introduced while the fear of Government is that it will scare away investors. In February 2008, at the height of a worldwide boom in commodity prices which began in 2003, government introduced a windfall tax. Copper was then fetching around \$7,000 per tonne on the London Metal Exchange (LME). “These measures are competitive, reasonable and balanced,” said Ng’andu Magande, finance minister at the time. “With this [new tax], the government will be able to improve education and health services and make investments that will create more jobs in other sectors of the economy and improve livelihoods of Zambian citizens.” (National Budget 2008).

Then the global economic recession hit, and the price of copper tumbled along with falling demand. According to the Bank of Zambia, the country’s revenue earnings from copper sales in 2009 fell to \$2.9 billion from \$3.6 billion the previous year despite increased output. The decline in earnings was a direct result of lower prices for the metal, which plummeted a low of \$3,000 per tonne in the first quarter of 2009. Mines such as the Luanshya Copper Mines (LCM) closed down, putting thousands out of work. Mopani Copper Mines (MCM) threatened to put their Nkana and Mufulira mines in the Copper belt province on care and maintenance. Government scrapped the windfall tax just a year after its introduction.

But since then, copper prices have rebounded, fetching as much as \$8,000 per tonne on the LME. Copper production in the country is this year (2010) expected to exceed 720,000 metric tonnes, a level of production that was last seen in 1973. This places the country within reach of the medium-term target of one million metric tonnes per annum. But despite rebounding prices, Government has opted for a different formula. “On the call for the re-introduction of windfall tax, the Government position is that this will not be done as the variable profit is already in place. The variable profit tax is an extra or windfall tax on mining profits,” Finance and National Planning Minister Situmbeko Musokotwane maintained during his budget presentation (National Budget 2010).

Variable tax is calculated as an extra 15 percent that companies pay on profits that exceed eight percent of their overall income. This is in addition to the standard 30 percent corporate tax. The Chamber of

Mines in Zambia (CMZ), says if the windfall tax on the mines is brought back, it would make Zambia an expensive destination for mining activities in the region. However, some stakeholders feel that refusing to collect windfall tax is embracing poverty.

Presenting the 2011 national budget to Parliament on October 8, Minister Situmbeko did not disclose actual figures, but said he was pleased to report that tax collections from mining companies had improved in 2010. “With the current high copper prices and production, I expect even higher tax payments from mining companies.” But Matthias Mpande, who lectures at the School of Mines at the University of Zambia, is critical of the variable tax. “The mines are making huge profits, but disguise the revenue in the consolidated financial results, and it is difficult for the Zambia Revenue Authority (ZRA) to calculate the actual taxes,” said Mpande, who served as the Minister of Mines in former president Frederick Chiluba’s administration. “We’re pressing for the re-introduction of windfall taxes because they are easier to collect – based on international minerals prices – than the variable profit taxes.” He says the mining sector’s contribution towards the treasury in Zambia is still very low as there is no voluntary tax compliance by the mines.

A 2009 report released by some non-governmental organisations with an interest in an equitable trade system that enables development was critical of the existing legislation in most African countries that favour low royalty taxes which combines with mining contracts, called development agreements in Zambia. In a report titled “Breaking the Curse: How Transparent Taxation and Fair Taxes can Turn Africa’s Mineral Wealth into Development,” by the Tax Justice Network for Africa (TJN-A), ActionAid, Southern Africa Resource Watch, Third World Network Africa and Christian Aid, they question accounting practices by multinational companies that conceal the true value of their operations and a mixture of secrecy and flawed laws passed by parliaments in Africa deprive resource-rich countries of revenue. The Zambia Chamber of Commerce and Industry (ZACCI) also supports a windfall tax for the mining industry, but says the tax should be based on profits and not revenue. “ZACCI therefore supports the windfall tax to ensure that the country benefits adequately from its natural resources, government needs a sizeable level of revenue to run and also invest in the social sectors of the country,”. ZACCI notes that a review of revenue streams in the national budget indicates that currently, income tax by way of Pay As You Earn (PAYE) and company tax is the highest contributor to Government revenue, placing a heavy burden on a small working class and a few companies.

On the balance, it seems rationale that a windfall tax is brought to bear on massive profits that the mining investors are reaping from Zambia. Copper is a wasting asset and within the next 25 years most of the functional mines now will have exhausted most of the copper ores. The key question would then be how justifiable is it that the national economy should be left without much to show for its once resource endowment?

#### **4.0 Emerging Patterns from Study Findings**

The study scanned the FDI in extractive industry landscape across the Sub-Saharan Africa. While the brush with which this was painted was broad, there are some striking similarities in the findings across different countries that were sampled. Some key points of findings can be summarized as follows:

- (i) A revelation and confirmation that minerals constitute an important economic activity in Africa, contributing enormously to employment, Gross Domestic Product (GDP) and tax revenue.
- (ii) Value-addition is still on the low side, with minerals continuing to be exported raw. The potential danger of most of these economies being confined to raw material enclaves, therefore, appears real and justified.
- (iii) Ownership patterns in the extractive industry various across the countries but there are some dominant Transnational Companies that have spread their control and influence in more than one country.
- (iv) The nature of Government participation is largely either through some minority shareholding, as in the case of Botswana and Ghana, or ownership of mineral rights that apply in the case of the rest of the countries studied.
- (v) There is a fairly common legal system relating to mining across the various phases: exploration, prospecting, extraction etc but such legal system is largely unclear in terms of localization or reinvestment of mineral extraction benefits. While efforts at corporate social responsibility exist in varying degrees, they generally appear to fall short of tangible developments that would remain and sustained beyond the productive lifespan of extractive activities.
- (vi) The most challenge seems to lie in developments with regard to environment and Occupation Health and Safety and the respect of fundamental rights and principles at work.



- (vii) Terms of employment are tending to be inclined towards ‘flexibilisation’ with patterns of pay and conditions of employment for unionized categories tending to be on the low side in relations to cost of living measures.
- (viii) Union activities around FDI in extractive industries have not assumed much visibility across the much of SSA. However, in some countries, e.g. South Africa there are some interesting activities undertaken by unions with regard to transformation, development of mining areas, industrialisation, OHS campaigns (unions have won a separate and more effective legislation covering mining alone) which could provide best practices for emulation elsewhere. More fundamentally, unions across facing increasing challenges that may require common strategies.
- (ix) The role of china has added another dimension to FDI in mineral extraction across SSA.

## 5.0 Key Challenges

Admittedly, a lot of challenges have come to bear on trade unions in the extractive industry in Sub-Saharan Africa. The comings in of foreign investors who are usually unfriendly to workers and trade unions have altogether combined to have their toll.

### 5.1 Internal Challenges

The rapidly changing labour market environment has brought a number of challenges to the unions. The liberalisation of the economy in most of these countries coupled with privatisation resulted in a substantial decline in trade union membership. This weakened the unions’ strength and financial capacity since much of trade unions’ income comes from membership subscriptions. Consequently, the lack of sufficient resources has limited or reduced the number of services that trade unions can provide to the general membership. In the same vein, very few unions have been in a position to attract and retain well-qualified personnel, who can assist in the formulation of viable responses to policy issues. The political authority is usually overloaded with a lot of work and thus doesn’t find time to draft union positions and policies. Therefore, very few unions have policies and/or policy positions to inform their interface with FDI in the extractive industry. Exceptions do exist, however, and South African union provides some useful practices.

The birth of splinter unions has also weakened trade union solidarity in the extractive industry as they sometimes make conflicting demands or statements. The case of Mine Workers Union of Zambia (MUZ) and the National Union of Mines and Allied Workers (NUMAW) is one such example. Due to this fragmentation, calls for industrial action sometimes do not yield favourable results as not all members will participate because they belong to different trade union organisations even though they are within the extractive industry sector. Attempts to amalgamate the fragmented small unions, especially those in the same industry, have not been fruitful as some trade union leaders are scared of losing positions. They would rather struggle as small entities, leading to the personalisation of organisations. The smaller unions have thus no capacity to deliver services other than just representing workers at work places.

Growing anti-trade union tendencies have also been associated with the penetration of FDI in the extractive industry. Botswana, Tanzania and Zambia provides clear cases on this account. But divide-and-rule tactics by Government and employers have also resulted in the weakening of trade union solidarity. The case of Namibia on the issue of the social protection floor attests to this fact. In some instances, employers promise those workers who do not join trade unions good conditions of service. As a result, some do not see the reason for being unionised. Besides, there are those that just enjoy being free-riders or benefiting from efforts of their colleagues without trade union members.

But the gender and age gaps in trade union membership and leadership are another great challenge that unions in the extractive industry need to address. Preliminary findings show that women and youths are under represented in trade union structures. Though efforts to address this problem (like establishment of Women's Committees) have been put in place, there is still need to address the gender and youth problem through affirmative or deliberate action of co-opting women and young workers into the trade union leadership structure.

## 5.2 External Challenges

Most of the challenges of the unions in the extractive industry are a result of external factors, however. These are caused by, among other things:

- ***Unfavourable Labour Laws***

While the study reveals that the legal system exists in almost all the sampled countries, these laws, particularly in relation to the industrial and employment regimes do not adequately protect workers from violations of their rights from employers. Most of the laws in their current set up appear inclined to conform to the dictates of a liberal system. This has given employers, especially new investors, a leverage to violate workers' rights at will. Some of the new employers have taken advantage of loopholes in the labour laws by running away from the obligations that go with long-term employment by using casual labours. The case of Zambia is illustrative in this regard. In some cases, the law is not strong enough to compel investors to negotiate and sign collective agreements with trade unions. Tanzania is illustrative in this context as is Zambia. Generally, therefore, there has been growing anti-union tendencies among new investors, some of whom are on record of abandoning workers without paying them terminal benefits on repatriation or closure.

In some instances, the current labour laws are also weak on the engagement of expatriate staff by new investors and the differences between their incomes and those of local staff. Malawi provides a useful case in this regard. Here, most new investors have taken advantage of the situation by recruiting their nationals in management positions and paying them hefty compared to local experts of similar qualifications and experience.

- ***Growing 'Informalisation' of work***

The growing informal economy as a result of shrinking formal economy employment continues to pose a great challenge to the trade unions in the extractive industry which has to find ways or means of intervening. This has mainly manifested in the growing usage of contract workers across the countries samples. Admittedly, the informal economy is diverse and has numerous problems such as rising reports of violation of workers' rights which requires the trade union movement to extend its coverage to include informal economy workers but the case of contract workers in the mining industry

has fallen right at the doorstep of unions in the extractive industry and challenges them to act about it.

- ***Lack of Genuine Consultation among Social Partners***

Though institutions of social dialogue exist, such as the Tripartite Consultative Labour Council (TCLC), the resolutions of these councils are not usually legally binding. Therefore, social partners do not usually feel obliged to adhere to the recommendations. In Zambia, for instance, Government is on record of having changed the contents of the recommendations for some Statutory Instruments from the TCLC. This and other similar actions have brought the credibility of the Council in to question (Fashoyin, 2002). But there are some cases such as in Malawi where the unions have been exerting their influence on the atomic energy act but gain this has not been informed by a pro-active organisational logic.

- ***Occupational health and safety and the environment***

But it is in the area of occupational health and safety that it seems has emerged a formidable external challenge. Evidence of the lack of respect of occupational health and safety and the environments in which FDI operates is overwhelming

In summary, therefore, the challenges that the trade are faced with as a result of FDI in the extractive industry include:

- Rising levels of unemployment as a result of restructuring and retrenchments in privatised companies;
- Deregulation of labour laws as one of the means of attracting investment, which has resulted in job insecurity;

- Casualisation of labour and contract employment so as to avoid the costs of long-term employment by new investors;
- Rising incidences of violations of workers' rights and anti trade union attitude among new investors;
- Widening income disparities between foreign managers and local employees;
- Rising incidences of divisions and splinter unions due to mistrust and growing levels of suspicion;
- Limited technical capacity in trade unions to tackle the challenges of FDI due to lack of training programmes;

In their reaction to these and other challenges, trade unions have undertaken a number of measures aimed at protecting their members. Some of the measures include capacity building programmes through education and training of trade union officials and members in labour and other issues; research on socio-economic issues for policy response and alternative submissions; campaigns for social justice; social dialogue to name but a few. But much remains to be done.

## **6.0 Conclusions, Policy implications and Recommendations**

### **6.1 Conclusions and policy implications**

FDI is often presented as 'Africa's only hope for driving the country's development agenda and providing the basis for a new win-win relationship. It is often argued that FDI offer the prospect of augmenting domestic resources for development whilst simultaneously improving job opportunities and standards of living for the citizenry. The results obtained in this study suggest that the impact of FDI in extractive industries in SSA is mixed. On one hand, FDI has had positive effects on national development, for instance, in terms of increased production, increased levels of exports, and

employment creation. On the other hand, the labour market has had to endure, on balance, more negative effects, for instance, in terms low wages and poor terms and conditions of employment; industrial accident and hazardous work environments and contract labour and outsourcing.

Besides, the impact on the standard of living of the citizenry has, hitherto, been limited. The concentration of FDI mainly in the mineral extraction sector means that the poor have largely not benefited directly from these investments. Corporate social responsibility efforts have largely been superficial and lacking in significance, except in a minority of cases. Against this background, the conclusion the study reaches is that FDI in the extractive industry in SSA has not provided significant local benefits. This urges for more checks and balances as most investors have not respected the labour and environmental laws of the countries they have invested. The generous fiscal regimes accorded to foreign investors have also left much to be desired, especially that minerals are a wasting asset. To benefit from FDI in extractive industries, SSA countries need, at the very minimum to adopt adequate legal and institutional frameworks and to strike an appropriate balance between the interest of the private sector, the national host country government and the local community. Far too often, significant gains have failed to accrue to the host economies. In fact, in many cases the extraction of minerals, with or without MNCs, has been associated with various economic, social and environmental costs – contributing to the so called **resource curse**. Thus, more attention should be devoted to finding ways to turn the curse into a blessing.

The paper also makes a conclusion that much of FDI inflows to SSA has been resource seeking. Against this conclusion, various actions can help to ensure greater development benefits: for example: SSA countries should develop their geological survey data in order to get the necessary information to strengthen their bargaining position in negotiations with MNCs. More policy analysis should be undertaken on ways to encourage industrialization and diversification based on resource extraction and to improve mining taxation schemes. More technical assistance may be needed, however, to improve regulatory frameworks (including mining codes) and institutional capabilities of host countries. More countries and companies involved in extractive industries should be encouraged to become party to the extractive Industries Transparency Initiative. The scope for intra-Africa collaboration in the area of developing development - friendly policies and institutions regulating the involvement of MNCs in extractive industries should be explored.

## **6.2 Recommendations of the study**

The foregoing discussion, therefore, bears implications for policies and intervention programmes. The study was not strictly policy oriented, however, so there is a limit to what can be done in terms of policy analysis and recommendations. The following are therefore recommendations on policy issues that arise from the study.

*Governments in SSA should consider the following proposals:*

### **6.2.1 Revisiting development/mining agreements**

On the basis of the finding of this study that significant FDI in Extractive industries in SSA is concentrated in mineral extraction for exports, the policy implication for this finding is obvious. Governments in SSA must seek to utilize increased tax revenue from mineral exports to fund local development initiatives. The argument for revisiting the development agreements between Government and investors in the mining sector is therefore of utmost importance. The rising revenues associated with boom periods must be seen to translate into increased social and economic provisioning for the citizenry. Currently, the nature of most development agreements between national Governments and investors in the mining sector restrict the amount of tax returns that can accrue to government treasury either in form of direct or indirect taxes, including royalties. Profit externalisation is also unlimited. Government must therefore revisit the development/mining agreements to harness the full revenue potential that it can receive from increased FDI in extractive industries.

### **6.2.2 Protection of the Environment**

The evidence of environmental degradation arising from activities in the extractive industry sector compel the need for Government consider adopting the policy of “the polluter pays” whereby FDI involved in polluting the environment must be made to clean and compensate the victims. However, there are a lot of gaps in the legal regimes of many SSA countries when it comes to environmental protection in the context of extractive mining activities. This urges the need for strengthening the environmental law as it relates to mining.

#### **6.2.3 Enhancing the capacity of occupation health and safety institutions**

The study revealed a worrying trend in industrial accidents and broad occupational health and safety deficits in FDI in extractive activities, which urge the need for increased capacity of the mines safety institutions, as well as the Government’s factory inspection Departments.

#### **6.2.4 Strengthening the employment and industrial relations law**

The growing tendency for poor wages and atypical forms of work in FDI projects across SSA that this study reveals urge the need to strengthen the employment and the industrial Relations laws to end the increasing tendency for sub-contracting in the mining industry, so as to secure quality jobs and equal treatment of workers. This reform should secure more clearly the right to freedoms of association of all workers and the requirement on employers to recognise collective bargaining rights of unions. But an amendment of the legislative framework alone while being a necessary precondition will not in itself suffice. Sufficiency will require strengthening the institutional mechanism for the enforcement of the labour law to ensure foreign investors can at all times adherence to national labour legislation.

*Foreign direct investment should consider the following proposals:*

#### **6.2.5 Developing social development management plans**



The study underscored the generally accepted notion of corporate social responsibility that point to the obligation that corporations have to constituent groups in societies in which they operate. On this basis, FDI in SSA must consider developing comprehensive social development management plans that reflect a realistic assessment of the needs and capacities of local communities in which they operate, and ensure they can contribute to the socio-economic provisioning, particularly in areas of health service delivery, education, sanitation, hygiene, housing and preventative programmes.

#### **6.2.6 Respect of national legislation**

The study revealed incidences of disregard of existing national legislation by some investors in SSA. As such, it becomes imperative that foreign investors should make public commitments to respect the labour, environment, employment, immigration and health and safety laws of the land, and co-operate with regulatory bodies, including committing to transparent processes for rewarding workers.

*Trade union should consider the following proposals:*

#### **6.2.7 Organising the Unorganised workers**

The study revealed that terms and conditions of unionised workers were generally better than those not unionised, especially contract workers. Trade unions must therefore act on existing possibilities to broaden their coverage and begin to organise contract workers. The ethic of worker solidarity must invoke within the trade union collective the spirit of 'touch one torch all' and this must propel them to evolve mechanisms of representing contract and casual workers.

#### **6.2.8 Cross-border trade union solidarity**

The violation of labour and social rights and environmental damage in a particular country can become an issue that trade unions in other countries can take up, thus building real forms of solidarity among trade unions internationally. Thus, developing concrete links between trade unions across national borders is necessary. Besides, it will be necessary for the trade union to develop alternative codes of governance: The challenge to create better codes than the limited ones in existence needs to be collectively taken up by unions in different countries organising within the same company so that the company is not able to divide and play on the national divisions between workers. This process can build a common vision and strategy for unions continentally.

---

## References

African Labour Research Network (2007): *South African Mining companies in Africa*. ALRN, Johannesburg.

Alden, C.(2005).China in Africa, *survival*, 47(3), pp 147-164.

Alemayehu Geda(2002).Finance and Trade in Africa: Macroeconomic Response in the World economy Context, London:Pallgrave-McMillan.

Alemayhu, G. (2006). "The Impact of China and India on African Manufacturing: Review of the Relevant Literature." Addis Ababa University, Department of Economics and African Economic Research Consortium (Mimeo).

Budget (2010): *2010 National Budget*. Ministry of Finance and National Planning: Lusaka.

Budget (2011): *2011 National Budget*. Ministry of Finance and National Planning: Lusaka.

Central Statistics Office (2000): *Census of Population and Housing*, CSO, Lusaka.

Central Statistics Office (2007): *Labour Force Survey Report 2005*, CSO, Lusaka.

Christopher Stevens and Jane Kennan(2006).*Opening the Package: The Asian Drivers and poor-country trade*, Institute of Development Studies, University of Sussex, Brighton, BN1, 9RE, UK, [www.ids.org](http://www.ids.org),

Cole, G.A. (1996): *Management: Theory and Practice*. London: Letts Educational.

CSO (2006): *Formal Sector Employment and Earnings Inquiry Report 2006*, CSO, Lusaka.  
Development Economics **47**: 61-95.

Eichengreen B., Ree,Y. and Tong,Y.(2004).*The Impact of China on the Exports of Other Asian countries*, National Bureau of Economic Research, WorkingPaper1078,

Eichengreen.B.andTong Hui (2006).How China is Reorganizing the world Economy, *Asian Economic Policy Review*, vol 1, pp 73-97.

Enterplan(2005). Department for International Development: *The effect of China and India's Growth and Trade Liberalization on Poverty in Africa*. DCP 70,Final Report, p1,  
[www.enterplan.co.uk](http://www.enterplan.co.uk).

Hymer, S (1976) *The International Operations of National Firms: A Study of Direct Foreign Investment*, MIT Press.

I-Hui Cheng and Howard J .Wall (2005). *Controlling for Heterogeneity in Gravity Models of Trade And Integration*, Federal Reserve Bank of St.Louis Review, January/February 2005, 87(1), pp 49-63.

Kaplinsky, Paphael, Dorothy McCormick and Mike Morris (2006) 'The Impact of China on Sub Saharan Africa' (DFID China Office, DFID, UK.

Martin, R. (1989). '*Trade Unionism: Purposes and Forms*'. Oxford: Clarendon.

Michel –Xiaobao Chen, Andrea Goldstein, Nicholas Pinaud and Helmut Reisen(2005).China and India: What is it for Africa? OECD Development Centre, Preliminary Draft.

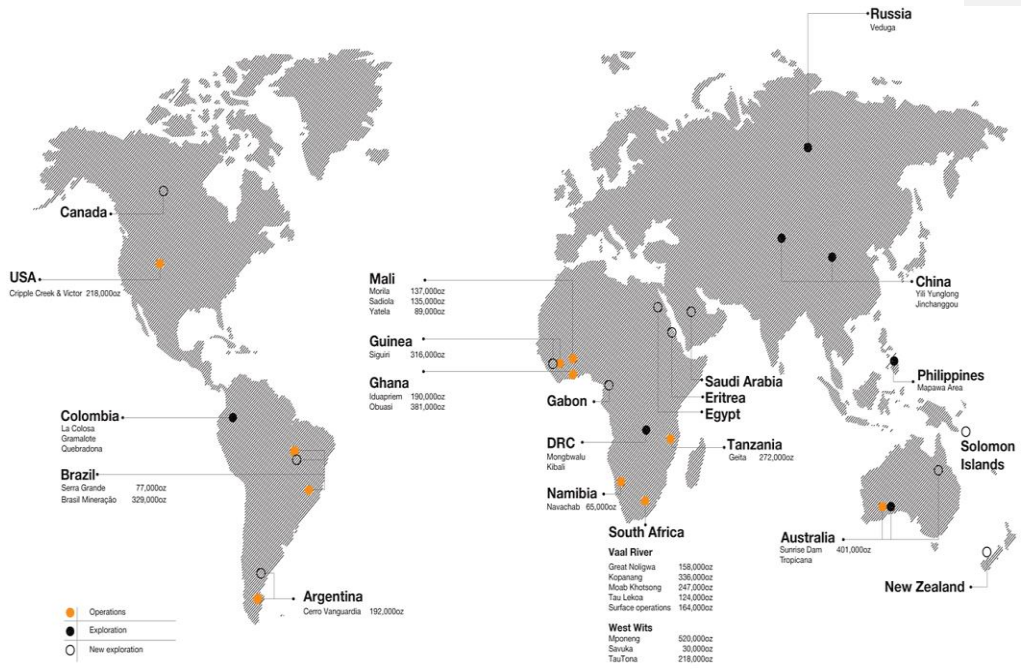
Moonilal, R (1998): *The Changing Landscape of Labour Relations, New Domains for Trade Unions: A Case Study of Trinidad and Tobago*. PhD Thesis, ISS, The Hague.

World Bank (2004): *World Development Indicators 2004*. Washington, D.C

World Bank (2004): *World Development Indicators 2004*. Washington, D.C.

Zambia Chamber of Mines (2010): *The Mining Tax Debate: An endless Tug of war?* A presentation to the Public forum, 16 July, 2010, Solwezi.

# Appendix 1: Ashanti Gold Global Operations



Source: <http://www.anglogold.com/> [accessed on 11 November 2010]