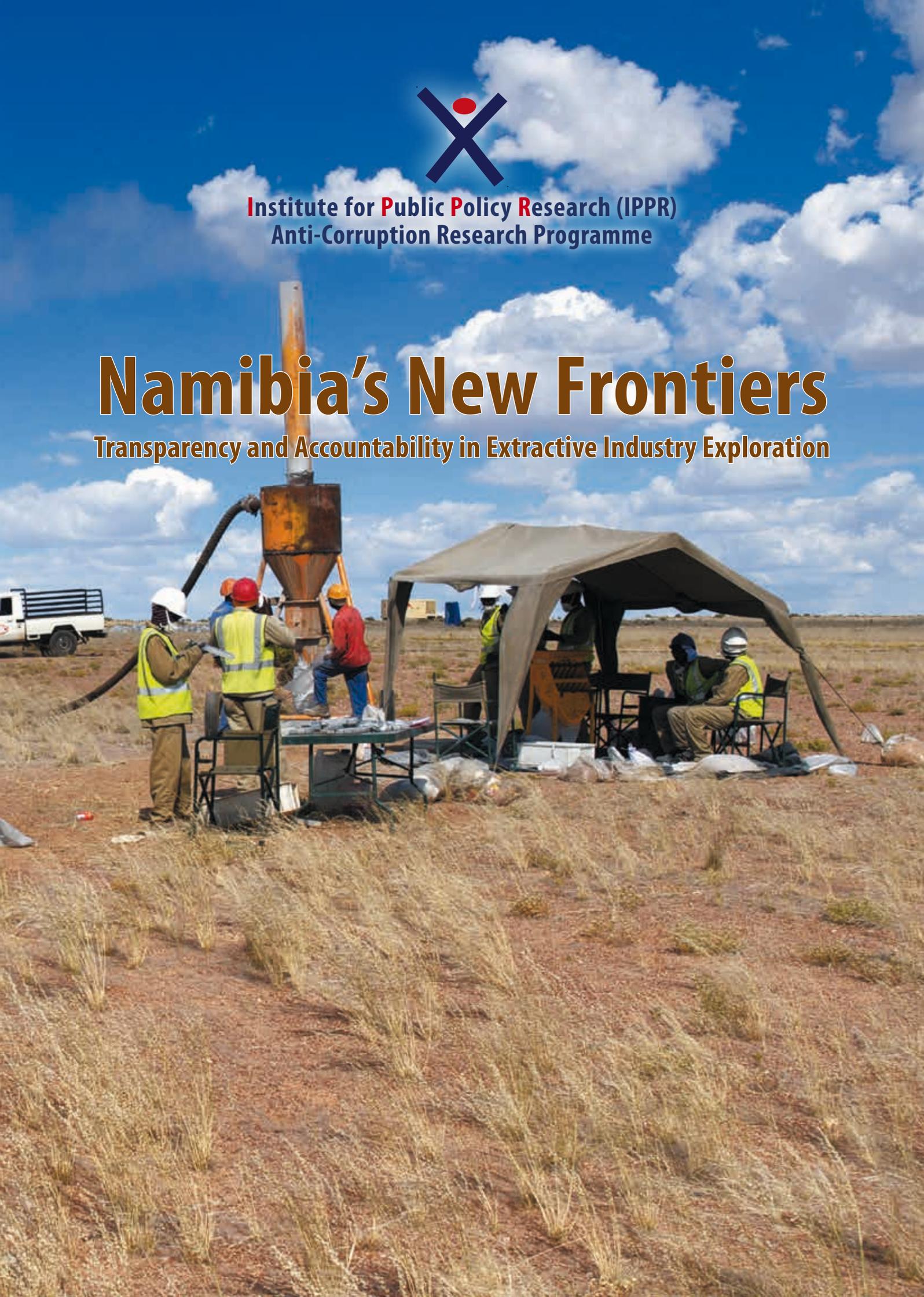




Institute for Public Policy Research (IPPR)
Anti-Corruption Research Programme

Namibia's New Frontiers

Transparency and Accountability in Extractive Industry Exploration



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Namibia's New Frontiers

Transparency and Accountability in Extractive Industry Exploration

Anti-Corruption Research Programme
June 2013

Edited by Graham Hopwood

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Abbreviations and acronyms

ACC	Anti-Corruption Commission	LRDC	Law Reform and Development Commission
ADB	African Development Bank	MARC	Minerals Ancillary Rights Commission
AGA	AngloGold Ashanti	MIASA	Mining Industry Associations of Southern Africa
AMV	Africa Mining Vision	MDGs	Millennium Development Goals
ASM	Artisanal and small-scale mining	MDTF	Multi Donor Trust Fund
ATI	Access to information	MIGA	Multilateral Investment Guarantee Agency
BEE	Black Economic Empowerment	MME	Ministry of Mines and Energy
CAFOD	Catholic Agency for Overseas Development	NEEEF	New Equitable Economic Empowerment Framework
CASM	Communities and Small Scale Mining	NGO	Non-Governmental Organisation
COP	Communication of Progress	OECD	Organisation for Economic Cooperation and Development
CSR	Corporate Social Responsibility	OPEC	Organisation of the Petroleum Exporting Countries
DFAIT	Department of Foreign Affairs and International Trade	PDAC	Canadian Prospectors & Developers Association of Canada
DFID	Department for International Development	PEL	Petroleum Exploration Licence
DRC	Democratic Republic of Congo	PIAC	Public Interest and Accounting Committee
EBRD	European Bank for Reconstruction and Development	PWYP	Publish What You Pay
EHS	Environmental Health and Safety	RMI	Responsible Mining Initiative for Sustainable Development
EISA	Environmental and Social Impact Assessment	TESEF	Transformational Economic and Social Empowerment Framework
EITI	Extractive Industries Transparency Initiative	TI	Transparency International
EPL	Exclusive Prospecting Licence	UK	United Kingdom
EPRC	Economic Policy Reform and Competitiveness	UNICEF	United Nations Children's Fund
EU	European Union	UNGC	United Nations Global Compact
FPIC	Free, Prior and Informed Consent	UN-REDD	United Nations (UN) Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
GDP	Gross Domestic Product	VP	Voluntary Principles
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit	WWF	World Wildlife Fund
GRI	Global Reporting Initiative		
IADB	Inter-American Development Bank		
ICMM	International Council on Mining and Minerals		
IFC	International Finance Corporation		
ILO	International Labour Organisation		
IWGIA	International Working Group for Indigenous Affairs		

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SUMMARY AND RECOMMENDATIONS



By **Graham Hopwood**

Namibia is not usually associated with the term ‘resource curse’ (otherwise known as the ‘paradox of plenty’) which is used in connection with countries with an abundance of natural resources, particularly minerals and hydrocarbons, but extreme poverty due, at least in part, to the diversion of extractive industry revenues to a politically-connected elite.

Corruption is not rampant in Namibia’s extractive industries. In fact, confirmed cases of corruption are few and far between.

Namibia’s reputation for mostly sound custodianship of its extractive sector was evidenced in the 2012/13 Fraser Institute index which ranks the world’s best mining jurisdictions for mining companies¹. Namibia came 30th on the index – the second best score for sub-Saharan Africa (Botswana came 17th). Namibia’s position was a 15 place improvement on its 2011/12 performance. The country received particular praise for providing high-quality data on mineral resources at a reasonable price. The Fraser Institute did reserve some critical remarks for Namibia’s unclear Black Economic Empowerment (BEE) policy.

Namibia has not featured in the campaigns of international NGOs like Global Witness, Publish What You Pay, and the Revenue Watch Institute – which seek greater accountability and transparency in the management of oil, gas and mineral

resources so that natural resource wealth translates into national development.

In the 2013 Resource Governance Index released by Revenue Watch, Namibia does not feature among the 17 countries assessed for their extractive sector governance records. However, the four areas of transparency and accountability that the Index examines are highly relevant to Namibia:

- Institutional and legal setting – the degree to which laws, regulations and institutional arrangements facilitate transparency, accountability and open, fair competition.
- Reporting practices – the extent to which government discloses information.
- Safeguards and quality controls – the presence of checks and oversight mechanisms that encourage integrity and guard against conflicts of interest.
- Enabling environment – the broader governance environment, based on external measures of accountability, government effectiveness, rule of law, corruption and democracy.

Namibia’s absence from these ‘halls of shame’ should not be a reason for complacency. Indeed there are aspects of Namibia’s management of its oil, gas, and mineral resources that are at best opaque and at worst highly secretive. In terms of exploration licensing, the focus of this study, transparency is more of an optional add-on than a core feature of the system. In addition there is a growing perception that the playing field is not completely level and that potential and existing players in

¹ The index is based on a survey of mining and exploration companies. It can be downloaded from <http://www.fraserinstitute.org>

the extractive industry are not always treated in a consistent and fair manner. Some of these concerns arise because Namibia lacks clear policies and laws in certain areas. For the example, the absence of a Black Economic Empowerment policy or framework (and law) means that the ‘positive discrimination’ associated with BEE can be applied in an *ad hoc* and arbitrary manner. On top of this the role of the state-owned mining company, Epangelo, has not been legislated for.

During 2011 and 2012, the IPPR published a series of 14 papers on anti-corruption themes – several of which inform this publication. In particular, these are the need for laws, regulations and guidelines that address conflicts of interest, the need for codes of ethical conduct for both public and private officials, and the need for greater transparency and access to information.

An IPPR paper published in 2012 noted that “disturbing occurrences over the years within the exploration and mining/production licensing sphere have raised concerns that corruption could become a substantial threat to the future prospects for the extractive sector itself and broader socio-economic benefits.”

Accessing information

The focus on transparency and accountability in exploration licensing in this report feeds into a broader debate about the need for access to information (ATI) legislation in Namibia. When government and leading figures in Namibia sat down in the late 1990s to discuss an effective anti-corruption regime for Namibia, they came to two conclusions: Namibia needed both a dedicated anti-corruption law and a law on access to or freedom of information. The two legal reforms were seen as going hand-in-hand if Namibia was to tackle corruption effectively. The Anti-Corruption Act was passed in 2003 and implemented in 2006, but there has been little sign of an ATI law emerging even though government remains committed to the idea in principle. Partly at the urging of the Anti-Corruption Commission, the Law Reform and Development Commission (LRDC) has stated its commitment to developing draft ATI legislation for Namibia. The IPPR remains convinced, as per the title of its 2012 research paper on ATI as a means of tackling corruption, that “sunshine is the best disinfectant”². A culture of openness within the extractive industry will not simply develop on its own – it will

need legal underpinning through a number of legal reforms including ATI legislation.

It is fair to say that so far calls for more transparency and accountability in the extractive sector have been muted in Namibia. The current issues of concern are:

- Demands from government that companies pay their fair share in terms of taxes, royalties and levies and promote value addition (beneficiation) within the country
- Calls for caution from extractive industry companies and bodies over the arbitrary imposition of taxes, levies and royalties that could drive down investment, lead to mine closures and scare off would-be investors
- Government’s plans for an increased state role in the extractive sector through state-owned companies like Namcor and Epangelo

However, if government is serious about ensuring that Namibia’s natural resources produce development gains for the mass of the population, then more accountability will be a prerequisite. Only by ensuring information about extractive industry revenues is released will all stakeholders – including government, private sector, and civil society – be able to monitor and ensure that the Namibian people are getting their dues in terms of the development benefits that should flow from natural resource wealth.

Government concern

In May 2011 Minister of Mines and Energy Isak Katali said Namibia had become an “Eldorado of speculators and other quick-fix, would-be mineral explorers and mining developers”³. He was speaking at a press conference to justify the creation of state-owned mining company Epangelo and the Cabinet decision that uranium, gold, copper, coal, diamonds and rare earth metals be declared strategic minerals. The Minister said the extractive industry was “dominated by foreign multinational corporations – a disturbing phenomenon has developed whereby ownership of the Namibian resources is sold through licences internationally ... without government deriving any benefits through sales taxes, value added taxes, or stamp duties”.

In April 2010 Katali told *New Era* newspaper that he wanted to curb the sale of exploration licences, especially to individuals whose real aim was not to explore but to make quick

² Attributed to Louis Brandeis, an associate justice of US Supreme Court (1916-39).

³ See http://www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=81440&no_cache=1

money by selling off licences to interested buyers, mainly foreign-owned mining, oil and gas exploration firms⁴.

“EPLs are being abused. People buy them from the Ministry and then sell their rights on stock exchanges and we want a stop to such practices, because this does not serve the purpose for which EPLs are sold to Namibians,” Katali told *New Era*. In June 2010, Katali was reported to be meeting Attorney General Albert Kawana to discuss introducing legal measures for preventing these sell-offs. At the time Katali suggested that Namibian entrants into the extractive sector could be required to keep their ownership stakes in licences at least for a certain time period rather than selling out to foreign buyers.

This is not a purely Namibian phenomenon. The international pressure group Global Witness, in its report *Rigged: The Scramble for Africa’s Oil, Gas and Minerals*⁵, points out that:

“Too often private ‘shell’ companies with opaque ownership structures are awarded lucrative concessions, with little information available as to who the beneficial owners of the company are, how much (if anything) the company has paid for the licence, and what the country has gained in return. If these companies do not have the technical capacity or financial resources to develop the asset themselves, they may end up being carried by international and national operators. Alternatively, they may squat on lucrative concessions by acquiring them from government before ‘flipping’ them quickly to other investors who actually have the capacity to develop the licence.

“It is our view that joint ventures with such shell companies, while not necessarily breaching anti-corruption laws ..., could be indirectly sustaining a system in which resource revenues are being siphoned off by corrupt elites. Whilst foreign investors may be fully compliant with the local and international laws, in effect, they are paying huge fees to elites in order to access the local market.”

Despite the Minister’s opposition, the current system in Namibia does allow such practices to happen and even encourages them. The role of middlemen who play a connecting role between international oil companies and government has been debated in Namibia. On the one hand these middlemen are credited with attracting serious petroleum companies with serious cash to invest in the country. Alternatively, they are criticised for peddling their political connections in return for huge pay-offs from these international companies (which take place when the Namibians sell or reduce their shareholding in a

licence block). It is the alleged peddling of political influence which has prompted some concern in Namibia, particularly when senior officials have a great deal of discretionary power over the allocation of licences and rights. Links between one such middleman and an official in the MME have already been the subject of investigations by the ACC⁶ although no charges have been brought.

In this report the Petroleum Commissioner notes that while Namibians selling stakes in exploration blocks early in the process may not be desirable from the Ministry’s point of view, it is still a normal way of doing business and there is little government can do to stop it.

Aside from the political considerations about foreign and Namibian ownership, it is clear from the Minister’s statements that government itself needs clear information about who is who and what is what concerning the plethora of exploration firms and larger extractive companies involved in the Namibian extractive sector. It is equally clear that government needs to ensure transparency and accountability are the watchwords when it comes to the legal reform of extractive sector governance. Oversight of governance procedures cannot be left solely in the hands of one or two top officials and a number of non-statutory advisory committees. Something more rigorous is required, involving third parties who can act as a check on any possibility of corruption.

Awaiting clarification

The exact role and function of Epangelo has not yet been set down as it has no basis in law. There was an early presumption that the new company would automatically be granted Exclusive Prospecting Licences for exploration and that private sector companies would then have to negotiate joint ventures with Epangelo. The Mining Commissioner is quoted in this report as saying that Epangelo applies for its licences in the same manner as private sector companies. However, he does make clear that the Ministry is likely to advise companies looking for EPLs to consider partnering with Epangelo. The Ministry has conceded that Epangelo had no funding formula when it came into being in 2009 and has since had to survive on relatively small amounts from the national budget (N\$5 million in 2011 although it has said it needs N\$400 million for its planned capital projects⁷). The private sector inevitably interprets this lack of financing as

4 See <http://www.newera.com.na/articles/33846/Katali-engages-AG-on-EPLs>

5 See <http://www.globalwitness.org/library/rigged-scramble-africas-oil-gas-and-minerals>

6 See ‘Business unbecoming’ in June 2012 edition of Insight Namibia magazine

7 See [http://www.namibian.com.na/index.php?id=28&tx_ttnews\[tt_news\]=106700&no_cache=1S](http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=106700&no_cache=1S)

meaning that Epangelo expects to have ‘free carry’ in any joint venture arranged with a private company, although this is not explicitly stated in any policy document or law. This is just one of several grey areas concerning Epangelo which require legal or policy clarification.

The Minerals (Prospecting and Mining) Act 1992 is due to be revised but amendments are not likely to come to parliament until 2014⁸. However, there is a prospect that the existing Act will be amended sooner to incorporate and elucidate on Cabinet’s 2011 decision to declare certain minerals as “strategic” and possibly to define Epangelo’s exact function.

Winds of change

In April 2013, the European Union (EU) agreed on the text of a law that will oblige EU-listed and non-listed large oil, gas, mining firms and the logging industry to declare payments they make in resource-rich nations. The agreement paves the way for the formal adoption of the new directive by the European Parliament and the Council during 2013. Under the new law, companies will have to disclose details of tax, bonus and other payments made to governments for every project they operate, over a threshold of €100,000. The rules will apply to all listed and large unlisted companies registered in the EU without exemption. Although criticised for not going far enough in ensuring companies pay appropriate taxes, the planned law is designed to assist citizens in resource-rich countries like Namibia to make sure companies pay their dues and also to hold governments to account for their use of natural resource revenues so that these benefit the broad populace and not just a politically-connected elite.

The draft EU law bears comparison to the 2010 Dodd-Frank Act⁹ in the United States which requires all companies registered with US stock market authorities to publicly report their payments related to oil, gas or mineral extraction to governments on a country-by-country basis. The law also applies to non-US companies that are listed on its stock markets.

Clearly, the winds of change are starting to blow through the extractive industry – as evidenced by these new laws and regulations on transparency and accountability. There is now talk of a domino effect – with G20 nations such as Canada, South Africa, China and Australia also under pressure to intro-

duce such legislation. The Hong Kong Stock Exchange has already instituted similar rules.

Most of the world’s large, well-known extractive industry multinationals will be covered by the Dodd-Frank Act, the new EU regulations or both. In fact there is some fear of duplication, with extractive sector companies arguing that the EU and US initiatives should cooperate on reporting requirements so that companies do not face a heavy administrative burden. Perhaps unsurprisingly, there has been dissent from some large mining houses and oil and gas firms, which have argued that the new regulatory environment could leave them at a competitive disadvantage. Ted Moran, a non-resident fellow at the Center for Global Development, has pointed out that of the 16 largest Chinese mining groups operating overseas, 11 do not have stock exchange listings outside of China. These companies would not have to report on their payments under the new rules¹⁰. As a result it would be possible for companies based outside the Organisation for Economic Cooperation and Development (OECD) to engage in illicit payments without any method of tracking culpability. The unintended effect could be that non-transparent governments will prefer to do business with companies that fall outside the Dodd-Frank and EU initiatives and vice-versa.

Namibia should certainly avoid falling into this trap. Companies that want to work behind the scenes and ‘off the books’ should be rejected. At the same time government should ramp up its transparency efforts and apply such mechanisms consistently across the board. One of the central arguments of this report is that Namibia, given its track record of avoiding large-scale corruption in the extractive industry so far, could play a leading role in raising standards of transparency and accountability.

Recently introduced national anti-corruption legislation that is increasingly robust has also helped to focus the minds of multinationals on how important it is to prevent corrupt relationships with public officials developing. For example, the UK’s Bribery Act, which came into force in 2011, is among the toughest anti-corruption legislation laws in the world. The Act allows for the prosecution of an individual or company with links to the United Kingdom regardless of where the crime occurred. This means that any UK-linked business or individual engaged in corrupt activity in Namibia could be prosecuted and imprisoned in the UK.

In Namibia the effect of the emerging global regulations on extractive industry transparency is that companies that fall

⁸ See the interview with Mining Commissioner Erasmus Shivolo in this report.

⁹ Its full name is The Dodd-Frank Wall Street Reform and Consumer Protection Act. For more details see <http://www.sec.gov/spotlight/dodd-frank.shtml>

¹⁰ See Africa: The Dodd-Frank Effect - <http://allafrica.com/stories/201203081041.html?page=1>

under these pieces of legislation will be obliged to publish details of all payments made to the government in relation to every project that they operate here. Since the extractive industry in Namibia has often argued that it pays government ‘over the odds’ in terms of tax, royalty and levy commitments (and therefore should not be asked to pay new levies) it would appear to be in their interests to publish details of exactly how much they hand over to government. However, for the payment records to make complete sense it would be important for government to also release its records of payments for extractive industry companies.

EITI significance

The developments outlined above have made the role of the Extractive Industries Transparency Initiative (EITI)¹¹ even more important. EITI is an international standard for improving transparency in countries’ extractive sectors. It improves governance and accountability through the verification and full publication of company payments and government revenues from oil, gas and mining. Unusually, the EITI is an example of a coalition of governments, companies, civil society groups, investors and international organisations.

Namibian officials have thus far not recognised the relevance of joining the EITI. In this report, the Mining Commissioner Erasmus Shivolo indicates that Namibia does not need to join the EITI at the moment as government is already “fairly open” regarding the issuing of licences while extractive sector corruption is not institutionalised. The Petroleum Commissioner Immanuel Mulunga indicates that membership of the EITI could be considered in the future, and may indeed be necessary, but only after the discovery of oil off the coast of Namibia. The Mining Commissioner also indicates that formal support for the EITI could be costly since a local office would have to be set up and staff appointed. However, it is also important for Namibia to send a signal that it is a world leader on transparency and accountability issues and the costs associated with EITI membership (estimated as between N\$2 and N\$3 million per year) would seem to be a relatively small price to pay for taking up this challenge (aside from which international funding is likely available to cover most of these costs).

While the MME does make some information available and senior officials are willing to talk openly about the issues (as indicated by the cooperation of both the Mining and Petroleum commissioners with this study), there is little in the laws

and regulations that requires the public release of information. In this sense, a move towards greater transparency would seem to be in keeping with government’s stated commitment to access to information and the emerging global standards in the extractive industry.

Complementary roles

Most of the onus of these recent initiatives is placed on multinational extractive sector companies. According to a Transparency International (TI) report on the oil and gas sector, companies should promote the fair sharing of revenues from oil and gas through greater transparency in three ways:

“First, companies should implement and promote sound, anti-corruption programmes to prevent individuals from misappropriating revenues. Second, companies should disclose the financial relationships they have with their partners and their operating subsidiaries. Lastly, companies should publish precise information about how much revenue goes to state budgets and how much is retained by companies.”

The TI report¹², which rated 44 companies on their levels of transparency, indicated that companies performed particularly poorly on country-by-country reporting. The average score for this category was a low 16 per cent, meaning that companies published only limited or no data about their operations on a country-by-country basis. For the most part, if the data was published, it was aggregated for a region so there would be no way for citizens and civil society to hold their governments to account for the money received from these companies.

Clearly companies could go much further in terms of releasing relevant information about their in-country projects, without necessarily being obliged to by government or stock market regulations or membership of the EITI.

In Namibia it is difficult to trace the exact ownership of petroleum exploration licences. The MME could clarify this by announcing when it approves an ownership change concerning an exploration licence and introducing a number of transparency measures, outlined in the recommendations of this report.

If Namibia is to move to a more transparent and accountable system of dealing with exploration licensing then it is vital that the industry work together with government and other players, including civil society. A multi-stakeholder approach is required. This will necessitate that the traditional polarities of government versus business are minimised. Instead both need

11 See <http://eiti.org>

12 Promoting Revenue Transparency: 2011 Report on Oil and Gas Companies published by Transparency International and the Revenue Watch Institute.

to recognise that they have complementary roles to play. Too often, the private sector automatically assumes the worst of government while the government too easily lapses into rhetoric that depicts the private investor, particularly the foreign investor, as ‘the enemy’ in Namibia – here primarily to rip off the country and its resources.

These divergences are not unique to Namibia. The African Development Bank, in its report *Oil and Gas in Africa*, calls on governments to devise and implement appropriate and modern tax regimes for mineral resource extraction, adding:

One of the challenges is that governments rarely believe that companies pay too much tax; companies rarely believe they pay too little tax; and citizens rarely believe that they actually see the full benefits from the taxes that are paid.¹³

Overcoming the current suspicions and stand-offs on taxation and levies would appear to be a key element in establishing relationships of trust through which a multi-stakeholder approach to transparency and accountability can be developed.

Structure of the report

This report is split into three main chapters. Chapter 1 - Exploration Licensing in Namibia - examines the current regulatory environment in Namibia in terms of exploration licensing and the reform issues that arise from a legal framework that most stakeholders concede is out of date.

Chapter 2 explores the current trends in terms of International Standards impacting on the extractive industries and how Namibia’s present dispensation on managing minerals and hydrocarbons compares.

Chapter 3 analyses Perceptions of Extractive Industry Governance in Namibia that arise in a company survey carried out by the IPPR.

Interspersed between these chapters are in-depth interviews with Mining Commissioner Erasmus Shivolo and Petroleum Commissioner Immanuel Mulunga, along with a breakdown of Key Players in the Petroleum Sector.

Although this particular study looks at the issue of exploration licensing in Namibia, it points to the need for more wider-ranging research on the extractive sector. The decisions Namibia takes in the next few years relating to the management of its natural resources will determine whether the country will be able to derive long-term benefits for the vast majority of its people or will descend into a spiral of worsening corruption,

widespread misappropriation and skewed development priorities. There is a need for a broad and deep engagement with the issues raised in this report as part of national conversation about how Namibia can utilise its natural resources responsibly for the benefit of all its citizens. It is to be hoped this study will act a starting point for such a national conversation.

Recommendations

1. Align national laws and regulations with international extractive industry standards

National laws and regulations should meet international standards, guidelines and requirements. Government should establish a multi-stakeholder body of legal and extractive industry expertise, including community engagement experience, to prepare amendments. It could also call on World Bank or other institutional bodies, for their expertise in extractive sector development. Measures to deter and punish corruption, fraud, bribery and extortion must be included in the policy and laws. Specific attention should be paid to the international standards relating to indigenous peoples and clear descriptions of assessing social impact along with environmental impact. The Minerals Policy rightly states that it needed to be ‘home grown’¹⁴ to have relevance to the Namibian context. However, in a globalised world, where generic lessons have already been shaped into international standards, a legal review focused on removing discretionary powers, verification of transparency and entrenching socio-economic and environmental best practice is highly recommended.

2. Emphasise the anti-corruption approach in licence allocation

Develop mechanisms for the allocation of exploration licences that ensure that companies that win concessions are qualified to do so, have done so honestly and fairly, do not represent the interests of corrupt officials and will actually meet the terms of their licences rather than simply squatting on them with the aim of selling on the licences for easy profit. Government should ensure that the allocation of licences does not remain within the discretionary power of individual officials. Effective codes of conduct should be introduced to guide the actions of senior officials and prevent conflict of interest situations developing. Government should ensure that all public officials involved in key decision-making regarding the extractive

13 African Development Bank and African Union. 2009. *Oil and Gas in Africa*. Oxford: Oxford University Press

14 Minerals Policy of Namibia, 2002 1.3 Minerals Policy Formulation Process

industry declare their assets and subject their declaration to verification. The introduction of lifestyle audits for senior officials should also be considered. A third-party, oversight body should be used to check on the fair and appropriate allocation of licences. Companies that have been responsible for corruption, human rights abuses or the illegal destruction of the natural environment or any other criminal activities in Namibia or elsewhere in the world should not be allowed to bid or apply for licences. These reforms should be developed in consultation with the Anti-Corruption Commission.

3. Clarify the roles of state institutions and state-owned companies

The role of key government institutions, agencies and companies involved in the extractive sector should be clearly defined in both policy and law. This is particularly the case with Epan-gelo which has operated since 2009 without legal underpinning.

4. Introduce an Access to Information law and ATI components in legislation related to the extractive sector

A law guaranteeing Access to Information should be passed. Openness should be mainstreamed in minerals-related legislation. Contracts and details of payments between extractive sector companies and companies should be made public in keeping with emerging international regulatory standards. Companies should also be required to publicly disclose their relationships with any agents, consultants, local partners or other third parties that help them to win access to oil or mining rights.

5. Develop a civil society with extractive industry expertise

Civil society should be involved at the heart of anti-corruption efforts, poverty alleviation, public education and sustainable development. Through engagement with the industry, via activism, philanthropy, partnerships, thought leadership, or service provision, civil society has a critical role to play in shaping the future legacy of the extractive industries. This could be developed through scholarships to study sustainable development and the extractive industry and the establishment of a NGO to provide a focus for public education and advocacy and the training of community relations personnel. Multi-national companies could be asked to support such an independent responsible mining NGO.

6. Provide public education and capacity building

Developing a natural resource bounty in the interest of a whole population requires more than government legislation and regulation, extractive expertise and financing. In terms of good governance, it requires a national consensus about how the resource endowment will be developed, managed and monitored. That consensus must involve multiple stakeholders including various levels of government, business, and both local and international and civil society. It should include the citizens whose lives will be directly impacted by mining. A national consensus can only be built from an understanding of how the extractive industry works, agreement about how the benefits could be used and by setting boundaries that prevent harm to livelihood, culture, environment or public trust. Training modules for delivery at community level and training of trainers could be developed as a starting point for the strengthening of civil society capacity's to educate the public about the extractive industry.

7. Require extractive companies to meet international standards

Government's due diligence processes linked to licence approval should ensure that companies applying for licences are signatories to international standards and that companies have integrated these into their corporate policy. The International Finance Corporation (IFC) and European Bank for Reconstruction and Development (EBRD) standards are among the strongest standards referred to in this study.

8. Companies should adopt specific anti-corruption and transparency measures

Extractive industry companies should introduce their own specific anti-corruption policies, which would include procedures to eliminate bribery and conflicts of interest, and adopt transparency measures. Company personnel should be trained on how to properly handle situations in which bribes are suggested, requested or demanded, or where a conflict of interest may arise. Companies should disclose and make transparent any payments to third parties and all agencies of government. In addition, companies should publish details of their subsidiaries and fields of operations and maintain up-to-date comprehensive websites.

9. Require companies to employ community relations personnel

Stakeholder engagement requires skills, local knowledge and time. It is a specialist role that adds value to the entire mine

life cycle and should be in place ahead of the earliest activity on the ground activity. Community engagement personnel will require training that could be kick started by appropriate local or international expertise and sustained through a local NGO.

10. Apply the E3 Plus Principles to the exploration phase

As the only global standard to draw on for the exploration phase, Canada's E3 Plus and associated guidance notes are an excellent model for Namibia to draw on. Government could require companies to agree to the standard's clauses or use the document to draw up a national exploration code. While E3 Plus is aimed at companies it may also act as a driver for improved national governance.

11. Open a Namibian Chapter of the EITI

By establishing an EITI Chapter in Namibia, government will send a message to business and society that Namibia is committed to transparency. Not doing so is sending the opposite message. Bilateral organisations commonly support EITI establishment, but it must be government driven in the first instance.

12. Build government employee capacity

International expertise could be called upon to train government employees in international standards and a responsible mining environment. Technical inspectors and security forces also need training to ensure they can engage on the ground, in an informed and human rights framed manner.

13. Develop a national grievance and dispute resolution mechanism

Taking the Minerals Ancillary Rights Commission (Marc) as a basis, include wider representation to enhance the identification and resolution of conflict of interest and corruption. Broadening the skill base will enable the application of relevant skills to contextualise and manage dispute resolution. The body will require the 'detailed' guidance promised by the Minerals Policy of Namibia. The body should be tripartite, involving government, business and civil society with a relevant mixed skill base that includes the social and environment sectors.

14. Be pro-active about local involvement in all levels of mining, oil and gas extraction

There will be many opportunities revealed through exploration that will not be viable for large-scale companies but which could be declared and channelled to smaller operations including small and medium-sized local companies. Where

nationals seek to be involved this should be facilitated by legislation and investment agreements with multi-national companies or by start-up capital for medium-scale mining companies. These companies would need to be supported to meet international standards, possibly through civil society-delivered training.

15. The Chamber of Mines of Namibia should directly join the ICMM

The International Council for Mining and Minerals (ICMM) consists of twenty-two mining companies and thirty-four national and regional mining associations who, through their membership, are committed to "transparent and optimal exploitation of mineral resources". The resources available from the ICMM to guide sustainable mining are outstanding and could help the Chamber of Mines in building a responsible mining environment, including ensuring ethical and sustainable behaviour among its members.

16. The Chamber of Mines should encourage member companies to sign and adhere to the Voluntary Principles on Human Rights and Security

It is in the national interest to minimise harm to citizens by ensuring that strong-arm tactics are replaced with more humane responses to conflict over resources.

EXPLORATION LICENSING IN NAMIBIA



By Graham Hopwood and Ellison Tjirera

The Namibian Context

Namibia is rich in a variety of minerals. The country has deposits of diamonds, uranium, gold, silver, copper, lead, zinc, iron, salt, graphite, fluorspar and limestone. Semi-precious stones such as rose quartz, amethyst, agate and tourmaline and the dimension stones such as granite and marble can also be found.

The extractive industry remains an important pillar of the Namibian economy having consistently been a significant contributor to gross domestic product (GDP). In 2012 mining contributed 11.5 percent to GDP with mineral exports accounting for over 55 percent of all foreign exchange earnings. In 2011, mining contributed 8.2 percent to GDP. In 2012, the mining sector generated N\$17 billion in export earnings.

Mining and exploration companies provided 14,328 jobs in 2012, inclusive of permanent and temporary employees and full-time contractors. The Namibian Chamber of Mines estimates that it is likely that mining industry directly and indirectly provides income for some 100,000 people in total.

The Kudu gas field, 170 km off the south coast of Namibia, was first discovered in 1974. Attempts to develop the 1.3 trillion cu ft gas reserve since 1990 have foundered over financing problems and disputes among partners. Since late 2012 govern-

ment and electricity utility NamPower have signalled their readiness to prioritise Kudu's development, including a 800 MW combined cycle gas power plant at Uubvlei, 25 km north of Oranjemund.

Since 1990, less than 20 oil and gas exploration wells have been drilled – eight of them in the Kudu gas area. In July 2011, Mines and Energy Minister Isak Katali told parliament that Namibia had nearly 12 billion barrels of offshore oil reserves (similar to Angola's). The claim was based on 3D seismic data rather than actual drilling. Since then two offshore wells drilled by Chariot Oil & Gas have come up dry. However, optimism that Namibia is indeed the 'new frontier' in the oil and gas world has been spurred by Brazilian explorer HRT's plans to drill three more wells in 2013. Much of the hope is based on the geological similarity in Namibia's licence blocks to the oil-rich Campos and Santos basins off Brazil.

Exploration

Namibia's extractive industry is expanding. Three mining licences were awarded in 2012 to Auryx Gold (Pty) Ltd for the development of the Oshikoto Gold (B2Gold) project in the Otjozondjupa region, Shiyela Iron (Pty) Ltd for its iron project

and Zhonghe Resources (Pty) Ltd for a uranium project, both in the Erongo Region. In addition, interest in Namibia's oil and gas sector is strong with exploration wells being drilled offshore in both 2012 and 2013.

The MME issued 230 EPLs in 2010 and 402 in 2011. This has taken place even though there has been a moratorium on new uranium licences since 2007. As of early 2013, 57 petroleum exploration licences had been issued and were in operation.

If Namibia's extractive industry is to continue to develop, exploration for a range of minerals and oil and gas deposits will need to continue. But exploration is high-risk, sometimes expensive, and oftentimes fruitless if it does not uncover commercially viable deposits. As a result, exploration is often left to foreign companies which have the ability to raise the necessary finance on international markets.

Namibia's Minerals Policy of 2003 specifically recognises the role of the private sector in exploration and mine development:

The Government of Namibia recognises that the exploration and development of its mineral wealth could best be undertaken by the private sector. Government therefore focuses on creating an enabling environment for the promotion of private sector investment in the mining sector. This will include competitive policy and regulatory frameworks, security of tenure and the provision of national geo-scientific data to further stimulate exploration and mining. In the same vein the government will expect the industry to take the challenge of social responsibility in terms of planning for closure, community involvement and empowerment of formerly disadvantaged people.

Exploration is extremely vulnerable to the fluctuations in commodity markets. When metal or mineral prices fall, the first cut imposed by mining companies is likely to be in exploration expenditure. Due to its high-risk nature, exploration can take place in a haphazard, stop-start fashion often depending on market conditions. Exploration can also be a very slow process. It has been reported that, on average, it takes 20 years from first discovery to first mine production, if mine development takes place at all.¹ Namibia's current operational mines are the result of at least forty years of exploration efforts (hence the importance of continued investment in exploration).

In April 2011, when Cabinet announced its plan to declare uranium, gold, copper, coal, diamonds and rare earth metals as 'strategic minerals', it also stated that in future exploration and mining licences for these minerals would be reserved for state-owned mining company Epangelo, which could then negotiate joint ventures with private companies. At the time, the government expressed frustration that a copper deposit found at Haib and potential coalfields at Aranos had never been developed by private mining companies. Oil, gas, manganese, fluor spar, tin, dolomite, granite, sodalite and all semi-precious stones were not declared to be 'strategic'.

Understandably, mining authorities can become impatient with the drawn-out nature of some exploration work, particularly if they have to constantly grant extensions to exploration companies that hold the rights to investigate a certain area. However, it would be difficult to establish a more predictable system for exploration due to the volatile nature of the commodities market. The option of governments putting their own funds into such a high-cost, high-risk venture as minerals, oil and gas exploration would appear to be highly prejudicial to the ordinary taxpayer.

Vulnerability to corruption

Even at exploration stage it is important to have clear, fair, and effective regulations. Weak governance systems and enforcement tend to encourage two possible outcomes: either front/shell companies that would never have the capacity or expertise to undertake actual exploration or irresponsible exploration leading to pollution, serious environmental degradation and negative social and economic consequences.

Controls, backed up in law, should be in place to ensure exploration licences are granted to companies that genuinely can undertake responsible exploration. In addition, details of the ownership and operating arrangements for each licence block should be made public in a manner that makes it possible for citizens to check the *bona fides* of the companies involved, their track records in Namibia and beyond, and their capacity and appropriateness for undertaking exploration work. The relationship between these private companies and government (including state-owned companies) should be clearly defined – particularly in terms of the processes to be followed for applying and reporting, the way in which key decisions will be taken and the timeframes that are applicable for various decisions. In particular any financial transactions between companies and the state should be clearly delineated in the manner in which

¹ 'Mining in Namibia: where is it heading?' by Roy Miller In Mining: Exploding the Myths, Insight Mining Brief 2012.

they are to take place, the purpose of such payments, and the amounts involved. This information should be publicly available.

At the moment, the Ministry of Mines and Energy (MME) commendably makes a lot of information available via its website (www.mme.gov.na) including various application forms; licence maps for base and rare minerals, dimension stone, industrial minerals, nuclear fuel, precious metals, and precious stones; lists of various licence holders including EPL and Mining Licence holders as well as a map of petroleum exploration licence holders. However, this information is not made public in terms of the law. Nor is the timeliness of the information regulated. The information can be lacking as in the case of the Hydrocarbon Map on which it is unclear which companies are owners and/or operators of licence blocks or when their licence rights run out. In addition companies with minority stakes are usually not listed while ownership changes are not confirmed by the MME (even though the Ministry has to sanction such changes). This means that a lot of information about exploration in Namibia is either impossible to obtain or it has to be gleaned from occasional corporate press releases and announcements from overseas stock exchanges.

The information provided by Namibia's Geological Survey is widely praised internationally. The Ministry charges for some of this information at prices that have been commended for being fair and competitive.

Legal environment

Article 100 of the Namibian Constitution states that Namibia's mineral resources belong to the State: "Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned."

The extractive industry in Namibia is governed by a whole raft of laws, most of them enacted in the first years after Independence in 1990. In terms of the Minerals (Prospecting and Mining) Act² (henceforth 'the Minerals Act') – no person shall carry any reconnaissance, prospecting or mining operations in Namibia except in accordance with licences granted.

One of the intentions of the various laws relating to the minerals sector appears to be to create a level playing field for all mining investors so that they compete on an equal basis.

This approach, if followed through in implementation, would tend to indicate that the possibilities for corruption are limited.

The Minerals Act stipulates five types of licences for which prospective miners can apply, namely:

Mining Claims – These are available to Namibian citizens only and concern small-scale mining operators. This licence has a duration of three-years, with a further two-year extension a possibility.

Reconnaissance Licence – These licences are granted for six-months, with possible extension of another six-months, for the purpose of conducting a preliminary exploration of a considerable expanse of land in order to determine where prospecting should be focused once an exclusive prospecting licence (EPL) has been obtained.

Exclusive Prospecting Licence (EPL) – Sherbourne³ defines this licence as being "available to enable the systematic prospecting of areas up to 1,000 km² for a period of three years with the possibility of up to two two-year extensions provided sufficient progress can be demonstrated".

Mining Licence – This licence is valid for 25 years and in this regard Sherbourne states "mining licences are granted to applicants who can show sufficient technical and financial capacity to develop and operate a mine." A licence holder also has the right to "approve the development of other mines on the same area".

Mineral Deposit Retention Licences – In this regard Sherbourne states that these licences "allow exploration companies to retain their rights on prospecting licences, mining licences or mining claims without mining obligations recognising that the commercial prospects of a mineral may change over time."

The Minerals Development Fund Act⁴, which establishes the Minerals Development Fund, is another important piece of legislation governing mining activities in Namibia. Its main purpose is to safeguard the production and earning power of the mining sector through, amongst others, diversification of the production base and supporting the sector through improving national geological and mineral data and expanding training facilities and programmes.

The most recent guiding instrument for the mining sector came in a form of Minerals Policy. Roughly thirteen years after independence, Namibia's Minerals Policy was approved by Cabinet in March 2003⁵.

2 Act No. 33 of 1992.

3 *Guide to the Namibian Economy 2010*, Institute for Public Policy Research (IPPR).

4 Act No. 19 of 1996.

5 <http://www.mining-journal.com/production-and-markets/namibias-new-minerals-policy>

Minerals Policy

In recognition of the important role played by mining in the Namibian economy, the Ministry of Mines and Energy approved the Minerals Policy of Namibia in 2003. As a set of guiding principles governing the development of the mining sector, the Minerals Policy is based on twelve main objectives that are by and large geared towards attracting investors by creating a conducive environment for mining activities while at the same time maximising economic benefits to Namibian citizens. The policy objectives are:

1. Promote and stimulate investment in exploration and mining so as to discover new ore deposits that will lead to the development of new mines and also to maintain the existing ones;
2. Promote a conducive environment for the mineral sector that encourages and facilitates the active participation of all stakeholders;
3. Promote and encourage local participation in exploration and mining;
4. Promote and encourage maximum local beneficiation of mineral products to ensure that as many of the economic benefits as possible are retained in Namibia for the benefit of all its citizens;
5. Regularise and improve artisan and small-scale mining so that it becomes part of the formal mining sector;
6. Promote research and development for improving technology in exploration, mining and mineral processing operations;
7. Ensure the establishment of appropriate educational and training facilities for human resources development to meet the manpower requirements of the minerals industry;
8. Promote and facilitate marketing arrangements to increase the economic benefits of the sector;
9. Ensure the adherence to the principle of socio-economic empowerment through appropriate measures;
10. Ensure compliance with national environmental policy and other relevant policies to develop a sustainable mining industry;
11. Review on a regular basis the legal, economic, social and political aspects of the Minerals Policy, to ensure that it remains internationally competitive, that it adequately addresses the mining industry's volatility and that it serves the common good of Namibians; and
12. Ensure mining operations are conducted with due regard to the safety and health of all concerned.

The Policy spells out in some detail what needs to be done to achieve the objectives set.

On exploration, the Policy does acknowledge that the continued growth in mining depends on continuous exploration.

Recommendations of the Africa Progress Panel 2013

Transparency and accountability

Adopt a global common standard for extractive transparency: All countries should embrace and enforce the project-by-project disclosure standards embodied in the US Dodd-Frank Act and comparable EU legislation, applying them to all extractive industry companies listed on their stock exchanges. It is vital that Australia, Canada and China, as major players in Africa, actively support the emerging global consensus on disclosure. It is time to go beyond the current patchwork of initiatives to a global common standard.

Realise the Africa Mining Vision: Adopt the Africa Mining Vision's framework for "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development" as the guiding principle for policy design.

Immediately equip the African Minerals Development Centre with the technical, human and financial resources it needs to help governments develop national strategies. Implement the Africa Mining Vision at country level, including a strengthened EITI provision.

Use the African Peer Review Mechanism: Assert African leadership in reforming the international architecture on transparency and accountability by implementing the African Peer Review Mechanism's codes and standards on extractive industry governance.

Distribution of benefits

Build a multilateral regime for tax transparency: The G8 should establish the architecture for a multilateral regime that tackles unethical tax avoidance and closes down tax evasion.

Companies registered in G8 countries should be required to publish a full list of their subsidiaries and information on global revenues, profits and taxes paid across different jurisdictions. Tax authorities, including tax authorities in Africa, should exchange information more systematically.

Economic transformation

Boost linkages, value addition and diversification: Add value by processing natural resources before export. Forge links between extractive industries and domestic suppliers and markets to contribute towards value addition. Structure

incentives to favour foreign investors who build links with domestic suppliers, undertake local processing and support skills development. Use linkages to diversify national economies away from dependence on extraction.

Resource revenues and public spending

Ensure equity in public spending: Strengthen the national commitment to equity and put in place the foundation for inclusive growth: African governments should harness the potential for social transformation created by increased revenue flows. Finance generated by the development of minerals should be directed towards the investments in health, education and social protection needed to expand opportunity, and towards the infrastructure needed to sustain dynamic growth.

Social and environmental sustainability

Protect artisanal mining: Support artisanal mining, which is labour-intensive and provides precious jobs. The formal extractive sector and informal artisanal mining both stand to gain from constructive arrangements that recognize the rights of artisanal miners and protects the interests of all investors.

From *Equity in Extractives: Stewarding Africa's Extractive Resources for All*. Africa Progress Report 2013

Minerals Licensing Regime

Rights pertaining to minerals are specified in the Minerals Act of 1992 providing for aspects such as the granting of licences and the prohibition of carrying out certain operations without a necessary licence.

What are the steps involved in applying for an exclusive prospecting licence (EPL)? Section 68 of the Minerals Act⁶ narates what an application form for an exclusive prospecting licence should include. The requirements are comprehensive and are comparable with neighbouring countries such as Botswana and South Africa⁷. Whether or not they are followed consistently is another question. Notably, there is a pervasive practice of same companies applying for and holding licences under different names.⁸

6 Act No. 33 of 1992.

7 Cf. Republic of Botswana – Mines and Minerals Act No. 17 of 1999; Republic of South Africa – Mineral and Petroleum Resources Development Act No. 28 of 2002.

8 During the process of verifying contact details of companies with pending and granted licences compiled by the Ministry of Mines and Energy, different companies often had the same contact number and confirming the contact details led to the same person.

UK government should act on tax havens

The British government could do more to fight corruption in the African mining sector. It could stop secret bank accounts residing in its overseas territories such as the Virgin Islands from being used to transfer illicit monies, says University of the Western Cape political scientist Keith Gottschalk. He was reacting to the release of the African Progress Panel report “Equity in Extractives — Stewarding Africa’s natural resources for all”. The report cites the use of offshore registered companies, mostly located in tax havens, as being a leading conduit for hiding earnings from mining ventures on the continent. It further identifies the lack of transparency mainly by state-owned entities and some multinationals as a large contributor to the pilfering of profits and those monies not being used for development. The report recommends that the Group of Eight and Group of Twenty groups of nations establish common rules requiring full public disclosure with no exceptions. It calls for bidders for resource concessions to disclose the names of people who own and control them. Gottschalk said national parliaments had to provide robust oversight. “The ruling parties in those countries have to encourage proper executive oversight, otherwise transparency just will not happen.”

Adapted from:

<http://www.bdlive.co.za/business/mining/2013/05/14/uk-urged-to-help-end-graft-in-african-mining-sector>

Africa Mining Vision

The Africa Mining Vision (AMV) was adopted by African Heads of State at the February 2009 African Union summit following the October 2008 meeting of African Ministers responsible for Mineral Resources Development. It is Africa’s own response to tackling the paradox of great mineral wealth existing side by side with pervasive poverty.

The AMV is holistic. It advocates thinking outside the “mining box”. Accordingly it’s not just a question of improving mining regimes by making sure that tax revenues from mining are optimized and that the income is well spent – although that is clearly important. Rather it’s a question of integrating mining much better into development policies at local, national and regional levels. That means thinking about how mining can contribute better to local development by making sure workers and communities see real benefits from large-scale industrial mining and that their environment is protected.

It also means making sure that nations are able to negotiate contracts with mining multinationals that generate fair resource rents and stipulate local inputs for operations.

And at regional level, it means integrating mining into industrial and trade policy. Most of all it’s a question of opening out mining’s enclave status so that Africa can move from its historic status as an exporter of cheap raw materials to manufacturer and supplier of knowledge-based services.

68. Applications for exclusive prospecting licences

“An application by any person for an exclusive prospecting licence - (a) shall contain -

- (i) in the case of a natural person, the full names, nationality, date of birth, postal and residential address of such person;
- (ii) in the case of a company, the name of such company and particulars of its incorporation and registration as a company, the registered address and principal place of business of the company in Namibia, the full names and nationality of the directors of the company, the share capital of the company and the full names and nationality of any person who is the beneficial owner of more than five per cent of the shares issued by such company; or
- (iii) in the case of any person represented by an accredited agent, the full names and address of such accredited agent;
- (b) shall state the period for which such exclusive prospecting licence is required and the mineral or group of minerals to which such application relates;
- (c) shall be accompanied by a detailed plan of the area to which the application relates drawn according to scale of such area which shall not exceed 100 000 hectares in extent indicating -
 - (i) its location with reference to magisterial districts;
 - (ii) the name and number of any farm situated therein; and
 - (iii) the extent of such area defined by reference to identifiable physical features or co-ordinate reference points”.

In terms of Section 71 of the Minerals Act, EPLs shall be valid for a period not exceeding three years with a possibility of renewal for a period not exceeding two years. EPLs cannot be renewed more than twice unless the Minister deems the renewal desirable in the interest of development of mineral resources in Namibia. The existence of companies with the same principals and contact details as other companies on the MME list may be a means of getting around such time limits i.e companies simply apply under a different name.

Granting of EPLs

The issuing of EPLs falls under Section 70, read with subsections 4 and 5 of Section 48, of the Minerals Act. The prerogative

to grant or refuse a licence lies with the Minister of Mines and Energy.⁹ The decision to grant or refuse a licence is by and large subject to meeting general terms and conditions of mineral licences.¹⁰ Amongst others, an environmental impact assessment indicating the extent of any pollution of the environment must be undertaken before any prospecting or mining operations take place. Though the Minister is empowered to grant or refuse licences, he/she cannot issue them. Issuing of licences is the work of the Mining Commissioner who nonetheless exercises and performs his or her duties at the behest of the appointing authority, i.e. the Minister. Upon the granting of an application of an EPL, the Minister is empowered to direct the Commissioner to issue a licence to the applicant.¹¹ The Mining Commissioner is appointed in terms of Section 4(1) and is empowered by Section 5 of the Minerals Act to:

- (a) at all reasonable times enter any land or place where any reconnaissance operations, prospecting operations or mining operations have been, are or are to be carried on, including any accessory works, or land to which any such operations or accessory works relate;
- (b) take or remove, for purposes of mineralogical examination, assaying, test work or marketability surveys from –
 - (i) any land, place or accessory works referred to in paragraph (a), any sample of any mineral or group of minerals; or
 - (ii) any such land, place or accessory works, a sample taken of any sample, or taken of any mineral or group of minerals won or mined, in the course of any operations referred to in paragraph (a);
- (c) seize any sample referred to in paragraph (b) or any book, record or document which may in his or her opinion be used in evidence in connection with any offence in terms of this Act;
- (d) inspect, make extracts from, and make copies of any book, record or document in relation to any operations or accessory works referred to in paragraph (a);
- (e) may make such investigations and inquiries as may be necessary to determine whether the provisions of this Act or any term and condition, direction or order determined, given or made under this Act is being complied with.

⁹ Id., Sections 48, 92.

¹⁰ Id., Section 50.

¹¹ Id., Section 70.

Need for clarification

In 2011 Cabinet declared uranium, gold, copper, coal, diamonds and rare earth metals as 'strategic minerals' adding that exploration and mining rights for these minerals would be reserved for state-owned mining company, Epangelo.

However, as of mid-2013 the status of these minerals had not been confirmed in law. Similarly, Epangelo's status as the automatic recipient of licences has not been formalised. In fact, in this report Mining Commissioner Erasmus Shivolo states that "there is no specific special treatment for Epangelo, it applies like any other applicants and its applications are treated in the same way and processed like any other." However, later in the same interview the Mining Commissioner says his personal preference is for companies to partner with Epangelo.

The Commissioner also indicates that the strategic minerals issue will be dealt with by an amendment to the existing Minerals (Prospecting and Mining) Act of 1992. A major overhaul of the Act will come later.

The initial expectation, after the 2011 announcement, was that Epangelo would receive all newly available licence blocks and then negotiate with private mining companies about forming joint ventures for exploration or mining.

Epangelo has been given minimal funding – initially N\$5 million a year rising to over N\$11 million in the 2013/14 budget, indicating that it expected to be given 'free carry' interest in any exploration or mine development project. The state company was reported to be seeking between 10 and 20 percent free carry, while also wishing to raise capital for further investment. It was not clear how Epangelo would raise this further capital.

In August 2012 a deal with Australian miner Bannerman Resources, which is developing the Etango mine in the Erongo region, fell through after the two parties could not agree on a price for a 5 percent stake in the uranium project. Later in 2012 Etango also conceded that it did not have the funds to buy into the Otjikoto Gold project. Instead of buying into existing projects, Epangelo seemed set on starting its own exploration work on EPLs it has been granted and then, depending on results, looking for partnerships with investors.

However, Epangelo had been granted 39 EPLs by the end of 2012 and had negotiated a 10 percent stake in Swakop Uranium which is developing the Husab uranium project while entering a number of other joint ventures.

The problem with Epangelo is not the principle of a state-owned company playing an active role in the mining sector (this is a common practice around the world) – rather it is a lack of clarity about its role and purpose which can unsettle existing and prospective investors. There is a feeling among some investors that they could be punished if they do not accommodate Epangelo by losing licences.

Epangelo's role, along with the strategic minerals policy, should be clarified through an amendment to the Minerals act.

As the Mining Commissioner acknowledges in this report, there is no formal black economic empowerment or indigenisation policy guiding the allocation of EPLs. The Petroleum Commissioner says that the Ministry keeps a list of interested Namibian partners to suggest to foreign investors seeking minority local ownership in their blocks. The lack of a formal policy or any legal underpinning means that the empowerment or indigenisation element within licence allocation appears very opaque and arbitrary. The New Equitable Economic Empowerment Framework (NEEF), Namibia's latest version of its empowerment policy, remains in draft form, having not been formally adopted by parliament. Therefore, it offers little if any guidance to officials making decisions about which companies should receive licences and which ownership changes should be approved. It is unclear why Namcor represents a significant Namibian stake in some oil and gas blocks and not others. Oil and gas were not declared as strategic by Cabinet in 2011. Hence there does not seem to be an official policy of ensuring Namcor gets first option of being involved or even owning blocks (as appears to be the plan for Epangelo).

The lack of clarity and guidelines surrounding the way in which Namibian involvement in the extractive sector is decided upon and allocated does not help to promote genuine indigenisation and broad-based empowerment and tends to raise suspicions about possible favouritism and influence-peddling. The reform of the Minerals Act and the Petroleum Act in tandem with the formal adoption of a BEE policy framework would appear to be necessary to ensure genuine empowerment takes place.

Minerals Ancillary Rights Commission

Extractive industry activities can inevitably bring land owners and licence holders into conflict. Since licence holders often do not necessarily own land on which their mining activities are going to take place, they must obtain permission and/or the right to exploit privately owned land. Part 15 of the Minerals Act establishes the Minerals Ancillary Rights Commission to deal with issues likely to transpire between licence holders and land owners. If the holder of a non-exclusive prospecting licence, mineral licence or a mining claim is unable to obtain a right to enter a piece of land to carry operations authorised by such licence or mining claim – s/he may apply in writing to the Commission to grant any such right to him or her. Composition of the Commission is provided for under Section 108 of the Minerals Act – a chairperson and two other members appointed by the President. The term of the previous commission expired in mid-2012 and a new one was appointed in early 2013. It is not clear what process would be followed if a dispute over land access arose in communal area.

Fees payable

Various application, licence and registration fees apply to different type of licences. With regards to minerals prospecting and mining, Section 123 of the Minerals Act empowers the Minister to determine by a notice in the Government Gazette¹² the amount of fees for any application, licence, and inspection. Schedule 1 of the Petroleum Act (Exploration and Production)¹³ provides for fees payable in respect of application, licences, and inspection. Section 77 of the same Act permits the Minister to amend Schedule 1 and increase the fees from time to time. The petroleum licences application and related fees¹⁴ are quite expensive and as such ‘exclusionary’ compared to nominal fees applicable to minerals mining.

12 Application, licence and registration fees – Minerals (prospecting and mining) Act, 1992 are published in Government Gazette No. 828, Notice No. 42 of 28 March 1994. See Appendix A.

13 Act No. 2 of 1991.

14 See Appendix B.

Award of mining licences best practice

“Transparency is at the core of good practice when it comes to award procedures. Whether acting individually or as participants in a competitive bidding round, licence applicants – on a non-discriminatory basis – should be made fully aware of the procedures to be followed. They should also be provided access to all available data, whether on a free or purchase basis, and be informed of all applicable legal and fiscal regimes (including model contracts). Documentation should also provide assurances that areas offered for license are currently unlicensed and that proper authority exists for their licensing. With the possible exception of specific technical data, this information should be available in the public domain.

It is desirable, and now increasingly common practice, that applications for awards should be prequalified. Bidders are prequalified to ensure that they have the financial and technical capacity to undertake a substantial exploration or mine development program. Where geological information is limited or not immediately encouraging governments may decide to adopt an open door, first-come-first-served licensing procedure or direct negotiation with a limited number of prequalified companies. Where significant geological data is available and investor interest is high, competitive auction is generally considered the best option”.

* <http://www.eisourcebook.org/65056TheAwardofContractsandLicenses.html>

Licence confusion

Two companies locked horns in the court of law – the bone of contention being who should get an exclusive prospecting licence. In 2009, Samicor Diamond Mining felt short-changed by the Ministry of Mines and Energy after it granted another EPL over the exact same area covered by the EPL that Samicor had applied for and was still waiting to receive¹. Arguably, “while no decision was taken on Samicor’s application for about a year and a half, Baobab’s EPL was granted three months after it had been applied for”². Samicor lost the case in February 2013 partly because it took more than two years to act on its intention to file a review application against the minister of mines and energy, the mining commissioner and rival prospector Baobab Equity Management (Pty) Ltd³.

1 Menges (2013).

2 Ibid.

3 Ibid.

Oil & Gas Legislation

Licences specifically dealing with oil and gas are provided for under the Petroleum (Exploration and Production) Act¹⁵. There are three types of licences¹⁶ of which the longest has a lifespan of 25 years, i.e. a Production Licence. The requirements are similar to those of licences provided for under the Minerals Act but because of the huge costs involved in oil and gas exploration, the Petroleum Act requires applicants to furnish details of minimum operations and expenditure proposed to be carried out or expended in respect of the block or blocks to which the application relates. Unsurprisingly, oil and gas reconnaissance and exploration activities are dominated by well-established foreign companies partnering with locals who in most cases if not all the time lack the necessary expertise and capital but are seen to have political connections or influence.

Model petroleum agreements

As a way of safeguarding the interests of the State while at the same time ensuring environmental protection, an applicant for an exploration or production licence is required to enter into a binding agreement as provided for by the Petroleum Act¹⁷. Other matters covered by petroleum agreements include royalty and annual charges, accounts and audits, employment and training, use of Namibian goods and services, domestic supply obligation, etcetera. Section 14 of this Act was amended in 1993 “to provide for agreements to be concluded between the Minister of Mines and Energy and licence holders relating to training programmes and contributions to the Petroleum Training and Education Fund”¹⁸.

It is encouraging that model petroleum agreements covering oil and gas are already in place although Namibia is yet to strike commercial quantities of oil. To avoid the seemingly pervasive African phenomenon of resource curse, Namibia must tighten the screws well ahead of time before oil is discovered.

The role of Namcor

The National Petroleum Corporation of Namibia (Namcor) is a statutory entity established in terms of Namibian Companies Act of 1973¹⁹ solely owned by government. Functions of Namcor are provided for by the Petroleum Act²⁰ and include, but not limited to, carrying out any reconnaissance, exploration and production operations on behalf of the State together with any other person. Namcor is also empowered to assist in negotiations regarding petroleum agreements in an advisory capacity. “Its main business is to ensure the optimum exploitation of Namibia’s petroleum resources and meaningful Namibian participation (...)”²¹.

Namcor has struggled to fulfil its mandate. To ensure the security of supply, Namcor entered into a business partnership with PetroNef, a subsidiary of Glencore Energy in 2008 to fulfil the country’s petroleum needs. Namcor is understood to have suffered heavy financial losses in fuel importation a year after signing this joint venture. In late 2010, Cabinet decided to terminate Namcor’s mandate of importing half of country’s fuel requirements, effectively ending the joint venture between Namcor and Glencore Energy²². A court case followed, Glencore challenged Cabinet’s decision in 2011 and the High Court ruled that this decision be set aside – meaning that the fuel supply agreement between Namcor and Glencore Energy remains valid and in force²³. Government appealed the High Court ruling and in 2012 the Supreme Court ruled that Cabinet acted well within its mandate to resolve the problem which could otherwise have had serious financial implications for the country²⁴.

Exploration vs Conservation

Some of the problems regarding protection of the environment are acknowledged in the Minerals Policy of 2003:

There is little effective environmental management within the Namibian mining industry. This is the result of inadequate co-ordination between the MME and the MET in relation to environmental legislation; a lack of public awareness, capacity weaknesses and

15 Act No. 2 of 1991.

16 Id., Sections 24, 32, 46.

17 Id., Section 13.

18 Act No. 2 of 1993.

19 Act No. 61, repealed by Companies Act of 2004, Act No. 28 of 2004.

20 Section 8.

21 <http://www.Namcor.com.na/about-us>

22 Heita (2011).

23 Menges (2011).

24 Duddy (2012b).

What if we discover oil?

A number of African countries have discovered oil deposits in recent years and are now grappling with governance issues – some more successfully than others.

In Uganda - which has confirmed deposits of 3.5 billion barrels – allegations are already swirling about corrupt officials and presidential interference. It is said that the country's political set-up is not in a strong position to avoid making the same mistakes as other oil-rich but otherwise poor countries. While President Yoweri Museveni wants to have the final say on oil deals – such an approach (the vesting of discretionary power in an individual) is undermining the development of credible, transparent institutions to manage the oil wealth.

Equatorial Guinea discovered oil in the early 1990s. With a population of just 650,000 Equatorial Guinea has become the richest country per capita in Africa on the back of its oil wealth. Despite gross domestic product (GDP) increasing by more than 5,000 percent, living standards for the general populace have not substantially improved and the country still languishes in the lower reaches of the UN Human Development Index. Corruption and mismanagement have become the order of the day. It has been widely reported that oil wealth has been diverted to fund the private projects of President Teodoro Obiang Nguema Mbasogo and his family.

Ghana discovered oil in commercial quantities in 2007 and started producing from these fields in late 2010. Ghana introduced a Petroleum Revenue Management Act in 2011 which makes sure oil revenue is available to finance the development of sectors like agriculture, health and education for a diversified economy that supports poverty reduction efforts. The Act sets up a Public Interest and Accountability Committee (PIAC) to ensure transparency and compliance with accountability in managing oil wealth. PIAC monitors and evaluates compliance with the law by the government and other institutions, provides an independent assessment of petroleum production and receipts, and publishes its findings in half-year and annual reports. PIAC's membership is drawn from professional bodies, think tanks, pressure groups and

traditional institutions, among others. The body serves as a platform for public debate on how petroleum revenues are spent. Drawing on Norway's experience the Ghanaian government has focused on developing and improving relevant legislation, establishing and developing institutions, and building competence. While it is early days (and there are already worries over whether institutions set up to deal with oil wealth are strong and independent enough) it does seem that Ghana is going in the right direction.

While oil has often referred to as 'black gold', Venezuelan politician Juan Pablo Pérez Alfonso, a founder of OPEC, had another term for it. In 1975 he complained: "I call petroleum the devil's excrement. It brings trouble... Look at this locura — waste, corruption, consumption, our public services falling apart. And debt, debt we shall have for years." His comments have proved to be prescient in terms of most of the oil discoveries in Africa.

At present, Namibia is not prepared to manage an oil boom. Elsewhere it is reported in this study that Namibia needs to overhaul its legislation to ensure corruption does not develop in exploration licensing. Even more robust measures and stronger institutions would be required to deal with the consequences of an oil discovery. It is argued that Namibia would have time to develop the necessary controls and institutions after oil had been discovered, as it could take five to seven years before production can start. However, it would seem wiser to start thinking now about what would be required to ensure Namibia can harness its natural resource wealth for national development. Government alongside civil society groups and academics should be contributing ideas that would ensure the responsible management of oil resources in the future. Introducing transparency and accountability measures, establishing institutional structures that can manage oil wealth in the best interests of all Namibians, foreseeing environmental impacts and planning to avoid them or mitigate them, and limiting the possibility of 'Dutch Disease' (a decline in exports due to a strong currency arising from oil wealth) developing in Namibia. All these issues are ripe for discussion and would be key areas for future research.

What Norway did right

Norway has been praised for managing to avoid the 'resource curse' often associated with discoveries of oil and gas. It did this by taking a long-term view on dealing with oil and gas revenues and through ensuring such wealth is shared among the broad population rather than going to short-term spending splurges and being devoted to private profit.

- Norway was already a functioning democracy with strong institutions before it discovered oil and gas. Corruption was low and political leaders were accountable.
- Before oil was discovered, Norway already had legislation in place (Act 21 of 1963 which later became the Petroleum Act) for managing such resources, which included protection for fisheries, communities and the environment.
- Norway's Petroleum Directorate was set up expressly to "create the greatest possible values for society from the oil and gas activities by means of prudent resource management."
- Norway set up a state-owned oil company with a clear mandate and role (now known as Statoil) which now pays huge dividends to the government.

- In 1990 Norway set up a sovereign wealth fund – now known as the Government Pension Fund – Global (GPF), for surplus oil revenues. The GPF is worth more than US\$700 billion. The fund invests exclusively abroad to shield the economy from the effects of oil price.
- Central government's net cash flow from petroleum operations is transferred in its entirety to the GPF via the state budget and only the expected real return on the Fund can be returned to the budget for general spending purposes. In this way the GPF serves as a long-term savings vehicle for Norway.
- Norway has minimised rent seeking and corruption in its oil and gas sector.
- Norway invested its petro dollars in such a way as to create and sustain other industries where it is also globally competitive and in so doing created employment and increased skill levels beyond the petroleum industry.

In short the lessons from Norway appear to be – recognise hydrocarbon resources are finite; plan for long-term development rather than short-term profit; develop a diversified rather than an oil-dependent economy; and make the people's needs paramount over the greed of a narrow band of connected individuals and business interests.

education programmes focused on environmental issues; the absence of an environmental budget, and the public antagonism towards mining activities because of its negative effects on the environment. The problem is compounded by the fragmentation of environmental capacity throughout the various government ministries.

One of the pressing issues concerning exploitation of natural resources is sustainable use. Section 50 of the Minerals Act empowers the Mining Commissioner to request mineral licence applicants to undertake and submit an Environmental Impact Assessment report (EIA) as well as Environmental Management Plan (EMP). This is to minimise degradation of the environment and promote sustainable use of natural resources. However, guidelines for developing and reviewing required EIAs and EMPs are not stipulated in the Minerals Act and to this end the Ministry of Environment and Tourism (MET) drafted the Environmental Assessment Policy which was adopted by the Government in 1994.²⁵ Policy for Prospecting and Mining in Protected Areas and National Monuments (henceforth “the mining policy”) is another instrument in the raft of measures aimed at sustainable use and protection of natural resources. A triumvirate comprising of the Ministry of Environment and Tourism, the Ministry of Mines and Energy, and the National Monuments of Namibia approved this policy in August 1999. The policy was developed against the backdrop of increasing demand of mining companies to explore and mine

in protected areas and national monuments in Namibia. However, this policy is yet to be adopted by parliament. Admittedly, the Mining Policy has found expression in other environmental management and protection legislation making its adoption by parliament a redundant exercise.

The Environmental Management Act²⁶ and its attendant regulations contain a list of activities that may not be undertaken without environmental clearance certificate. Mining and quarrying activities as they relate to the Minerals Act are among the activities requiring an environmental clearance certificate before commencement. Similarly, Part 6 of the National Heritage Act²⁷ provides for the protection and management of certain heritage resources such as conservation areas and paleontological sites. Despite this good number of laws and policies in addition to protocols and conventions Namibia signed and/or ratified, there are problems. As Willem Odendaal²⁸ puts it, “(...) Namibia's regulation of mining include overlapping jurisdiction between ministries, a lack of legal authority for the MET's role in the licensing process and a lack of transparency in the award of EPLs and MLs”. On the issue of transparency, Odendaal partly lays the blame on Section 6 of the Minerals Act which in his view discourages openness – “S6 calls for the preservation of secrecy by the MME of all matters pertaining to compliance with the provisions of the Minerals Act. This provision protects the mining companies and inhibits public awareness and participation in decision-making relating to prospecting and mining operations”.²⁹

25 Legal Assistance Centre (LAC)/Mills International Law Clinics (2009).

26 Act No. 7 of 2007 which came into force in 2012.

27 Act No. 27 of 2004.

28 Insight Mining Brief. (2012, p. 29).

29 Ibid. p. 30.

Kunene – Environmental and Social Frontiers

So far the Kunene region has not been the location for large-scale mining developments. This could change in the next few years. At the moment some mining takes place on a small scale – mainly the extraction of crystal rocks which are then fashioned for the local tourism market. The lack of infrastructure and services has no doubt acted as a disincentive to the development of the region's mineral resources. Yet the area's rich mineral profile is widely acknowledged. Even offshore, the Namibe Basin is believed to hold great potential for oil and gas while the extraction of onshore and offshore diamonds has been investigated in the past.

Dozens of companies have exploration licences for the Kunene region and while many of these remain dormant or only in the planning stages, several companies have been undertaking active exploration in recent times. The future development of Kunene has been brought into focus by the recent discovery of several large iron deposits in an area about 30 to 40 kilometres south of Opuwo stretching to the border with the Omusati region. The Kunene river marks the region's northern border with Angola. To the east is the Ruacana hydropower scheme, while the Skeleton Coast National Park dominates the west of the region. There has been some discussion, prior to the recent iron ore discoveries, of creating a new national park in the Kunene – linking the Skeleton Coast to the Etosha National Park.

The Orumana prospect, some 30km south of Opuwo, is the most high profile of these developments, having been discovered by Eastern China Non-Ferrous Metals Investment Holding (ECE). The prospect has a deposit of 3.2 billion tonnes at 22 percent iron. It is also reported to have a strike length [the distance and direction along which drilling results have established mineralisation] of over 20 kilometres. ECE has proposed an iron ore mine and an associated industrial park which would focus on steel smelting but would require a number of service industries to be developed in the area. The project has the potential to create between 5,000 and 10,000 jobs, according to ECE. Australia's Avonlea Minerals is working on the development of the Ondjou prospect, also south of Opuwo, and is hopeful of bringing in partners for mine development. The Ondjou prospect consists of about 693 million tonnes at 24 percent iron. Another prospect with great potential lies at Otjondeka, which is said to have a deposit of 1.05 billion tonnes, at 24 percent iron.

ECE has spoken of targeting 2016 to get its mining development underway, although this may depend on government's response to the company's request for a series of concessions and assistance, including tax relief and exemption from import tariffs.

The establishment of mines and linked industries in Kunene would inevitably require major infrastructural development. Already plans for a new port on the north-western coast are back on the agenda. In 2012 the Tender Board sought bids a feasibility study for the creation of a new port at Cape Fria or Mowe Bay on the Skeleton Coast. An envisaged rail link would stretch from Katima Mulilo to Ondangwa and then to the new port. The construction of these major mining and infrastructure projects will pose major environmental, social and cultural challenges. We know from local communities' reaction to the planned Epupa hydropower project in the 1990s that there is likely to be community suspicion about these developments. The same communities remain opposed to the latest plans for a hydropower plant in the Baynes mountains.

The Himba people, who still live a largely traditional lifestyle, have rejected major developments, arguing that their centuries-old way of life would be disturbed and possibly destroyed if there was industrial development of any sort. One of their main fears is a possible influx of workers from other regions who would undermine the local culture and exacerbate alcohol abuse and other health risks. They also fear that their young men would be lured away from cattle herding and into formal employment on mines or industrial projects. Another concern is that developments would disturb important cultural sites such as burial grounds.

In January 2013 Himba communities in the northern Kunene region issued a statement which condemned a lack of consultation relating to mining and other construction projects in their traditional areas, among other issues such as land and cultural rights. Specifically the Himba demanded that "mining companies be removed from our territory or otherwise we must be included in the entire process of giving out the mining permits."³⁰ Several hundred Himba and Zemba people held a protest march in Opuwo in late March 2013.

30 See http://www.osisa.org/sites/default/files/statement_by_himba_leaders_in_namibia.pdf

Environmental concerns are also paramount in a region that prides itself on being one of the last pristine wildernesses in the world. The area has a wide variety of flora and fauna (including black rhino, desert elephants, and black-faced impala). There are fears that major industrial and infrastructure developments will undermine biodiversity and damage the tourism potential of the region.

The potential for such major developments in Kunene poses challenges for both the companies involved in exploration and mine development and the government, which has to oversee a rigorous process that will assess environmental and social impacts. There is also a risk that conflict between local communities and the authorities will develop. Although Namibia has no recent history of such conflicts, it is a prospect that cannot be regarded with complacency. In other countries, such stand-offs have resulted in violence and fatalities. On May 22 2013 protests and street battles erupted in the southern Tanzanian region of Mtwara over the government's handling of mineral resource wealth, in this case natural gas resources, and the contracts it has signed with various international actors. The Niger Delta in Nigeria is perhaps the worst-case scenario for conflict between locals and foreign companies. Competition for oil wealth has fuelled violence between ethnic groups since the early 1990s leading to the creation of local militias as well as the heavy presence of the Nigerian army and police.

It is important to review Namibia's laws and policy implementation to check that they are 'fit for purpose' in terms of limiting negative social impacts, preventing conflicts with communities and mitigating damage to the environment. Namibia's Environmental Management Act, which came into force in early 2012, stresses the importance of consultation with interested and affected parties (Section 44). The Minerals (Prospecting and Mining) Act of 1992 requires that every licence holder must conduct an environmental impact assessment. The Ombudsman, in Article 91 of the Constitution, is also given the duty to "investigate complaints concerning the over-utilisation of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia".

There is a need for greater coordination. The Environmental Commissioner, a post established by the Environmental Management Act, the Ministry of Environment and Tourism, the Ministry of Mines and Energy, and the Ombudsman should work together to ensure the fair and effective application of the law and associated regulations. One of the issues these agencies need to collectively address are the conditions and limitations under which any prospecting and mining activity should be allowed in national parks, such as the Skeleton Coast Park.

In addition, there is a potential conflict over who has jurisdiction over communal land. In law, communal land belongs to the state. However, traditional authorities often see themselves as the true custodians of the land with, if not the final say, then a huge influence on decisions about land use. There is a societal norm if not a legal reality in many areas of Namibia that any land use that deviates from traditional usage should be negotiated with traditional as well as political authorities in the area. These potential tensions need to be addressed and resolved so that communities do not feel they are being imposed upon by remote and insensitive authorities.

It is also vital that extractive industry companies develop good practice guidelines that cover environmental impact as well as community engagement and development. Exploration companies operating onshore should be required to employ community relations personnel. Stakeholder engagement requires skills, local knowledge and time. It is a specialist role that adds value to the entire mine life cycle and should be in place ahead of the earliest on the ground activity. In addition, the extractive industry should draw up a national exploration code, such as the Canadian Prospectors and Developers Association E3 Plus: A Framework for Responsible Exploration.

Most of Namibia's working mines are located in sparsely populated areas where commercial farming is the most common economic activity. Although there are challenges concerning appropriate land use, environmental protection and community impact in these areas, such factors are likely to be more complex if major extractive projects get underway in the more populous regions of Namibia where communal farming is predominant. It is not only the Kunene region that is a focus for these concerns. The search for oil is now also taking place in communal areas north of the Etosha Pan while exploration licences have also been allocated for the Kavango.

Change is inevitable and no community or environment can be preserved in aspic. However, change has to be managed and the kinds of changes in prospect for Kunene need to be especially carefully managed so that any negative impacts are avoided or at least minimised.

Conclusion

The Namibian mining industry remains relatively well managed and is not infested with corruption. Transparency is lacking in many respects, while key decisions are left in the hands of one or two individuals. This type of discretionary power has little place in modern, accountable mining licensing systems. The identities of various companies involved in exploration are hard to pin down. They may be known to the Ministry but they are not clear to the public, despite the commendable efforts to publish lists of EPL and other licence holders on the MME's website. In addition, the formal publication of payments made by companies is necessary rather than simply the publication of licence fees. Namcor's role remains unclear and needs to be clearly defined. Coordination of roles between MME and MET needs to be strengthened, particularly with regard to environmental protection and management.

The Need for Community Consultation

On March 27 2013, *The Namibian* reported the following:

People living in the Ovitoto area are furious with a mining company which started with exploration work in their area, claiming they were not consulted beforehand and that the operations will affect their farming.

Senior councillor Daniel Tjiuma, who is representing the concerned group of residents, said the Ovitoto community was never informed that Bulskop Mining Company would move in to do prospecting for copper despite the fact that their farmland would be affected directly.

"I feel it was just not fair that we were not informed that a company will come and do exploration without us being consulted. We just saw big trucks passing by and it got us worried just to hear that there is mining exploration taking place," said Tjiuma.

He said the director of the company, Theofelus Benestus Uahongora, could have notified him so that he could inform the community members. He also said a meeting they tried to have with the Omatako Constituency councillor, Issaskar Kaujeua, did not materialise.

Uahongora, on the other hand, said he did not understand why the community members were unhappy about the exploration as it would bring development to Ovitoto and its people.

"There is no official complaint about the exploration from the members of the community but I heard this story over the radio and from people. As far as I know there is nothing written that requires me to inform the people about my mining licence," Uahongora said.

Bulskop Mining Company will be exploring an area of 20,000 hectares and they have started already.

Erasmus Shivolo, mining commissioner at the Ministry of Mines and Energy, told *The Namibian* that the exploration would cause very little disturbance.

"If a company gets an exploration licence it's really not that hectic. There is very little disturbance. Sometimes it takes years before they find anything. But the ministry always encourages the licence holders to inform communities in the respective areas. Community members should not really see the exploration as a bad thing," said Shivolo.

Appendix A – Fees payable in Terms of Minerals Act, 1992

LICENCE AND CLAIM REGISTRATION FEES PAYABLE IN TERMS OF THE MINERALS (PROSPECTING AND MINING) ACT, 1992 (ACT 33 OF 1992)

SECTION	NATURE OF FEE	AMOUNT OF FEE
18(1)	Licence fee in respect of a non-exclusive prospecting licence	N\$50,00
33(1)	Annual mining claim fee in respect of a registered mining claim	N\$50,00
47(1), 60	Licence fee in respect of a reconnaissance licence without exclusive rights	N\$250,00 per quarter degree square or part thereof
	Licence fee in respect of a reconnaissance licence with exclusive rights	N\$500,00 per quarter degree square or part thereof
47(1), 68	Annual licence fee in respect of an exclusive prospecting licence	N\$1 000,00 per 10 000 hectares or part thereof, subject to a minimum of N\$2 000,00
47(1), 79	Annual licence fee in respect of a mineral deposit retention licence	N\$5 000,00
47(1), 91	Annual licence fee in respect of a mining licence	N\$1 000,00 in respect of a mine earning gross annual revenue up to N\$10 million N\$5 000,00 in respect of a mine earning gross annual revenue in excess of N\$10 million

APPLICATION FEES PAYABLE IN TERMS OF THE MINERALS (PROSPECTING AND MINING) ACT, 1992 (ACT 33 OF 1992)

SECTION	NATURE OF FEE	AMOUNT OF FEE
39(1)	Application for the approval of the Minister for the transfer of any mining claim, or the grant, cession or assignment of an interest in any mining claim, or for the joinder of any person as joint holder of any such claim or such interest	N\$25,00 per application
47(1)	Application for the approval of the Minister for the transfer of an exclusive prospecting licence, a mineral deposit retention licence or a mining licence, or the grant, cession or assignment of an interest in any such licence, or for the joinder of any person as a joint holder of any such licence or such interest	N\$250,00 per application
	Application for the approval of the Minister for the amendment of an exclusive prospecting licence, a mineral deposit retention licence or a mining licence.	N\$250,00 per application

Appendix B – Fees payable in terms of Petroleum Act, 1991

**Fees payable in respect of application for, and renewal of,
licences, and for inspection of, or obtaining of copies
of entries in, the register**
(Sections 11, 15 and 77)

Column 1	Column 2
Nature of application	Amount of fee
Application for reconnaissance licence	R 15 000
Application for renewal of reconnaissance licence	R 3 000
Application for exploration licence	R 30 000
Application for renewal of exploration licence	R 15 000
Application for production licence	R 30 000
Application for renewal of production licence	R 15 000
Application for transfer of reconnaissance licence	R 30 000
Application for transfer of exploration licence	R 30 000
Application for transfer of production licence	R 30 000
Inspection of register	R 300
Obtaining copy of entry in register, per copy	R 150

INTERVIEW WITH MINING COMMISSIONER ERASMUS SHIVOLO



Supposing that all requirements have been met by an applicant, how long does it take for an Exclusive Prospecting Licence to be issued?

We have set ourselves an internal deadline, which is not statutory, of about four months to reply to an application. All things being equal, being that we have got enough human

resources, the volumes are manageable and the other workload is not there – we would normally meet the four months we set ourselves. There are times when we do not formally communicate with the applicant – we tell them, look, there is something additional you need to supply to us which was not there. So, it might take longer than four months.

Who takes the final decision on which companies receive EPLs? What kind of formal or informal advice is received before the decision is taken and who gives this advice?

The law is very clear – it is only the Minister who grants licences. Licences are granted according to application – we do not look at Company X or Y, it is strictly based on the application. Of course there are times when the Minister must take a decision. The Minister has certain discretionary powers in the Act that he can use. He receives advice from the Commissioner, who is a principal advisor to the Minister in terms of the Act. But the PS as the accounting officer of the Ministry and other staff members also play a role.

Is there a formal committee that sits in an advisory capacity?

There is a committee that is not statutory. But because of particularly the lawyers and the media who think that this Ministry is not so transparent – we have decided that, ok fine – let there be a committee that would look into applications, deliberate on them and then they make a logical conclusion on what should

be submitted to the Minister. The Commissioner sits on this committee but can actually advise differently from what comes from the committee. The Commissioner presents the applications to the committee, normally with a recommendation. The committee might think differently and conclude differently, but both those different opinions go to the Minister. Senior staff of the Ministry of Mines, the Ministry of Finance, the Ministry of Environment and Tourism as well as the Ministry of Fisheries and Marine Resources make up the committee.

Do factors like black economic empowerment (BEE) or affirmative action influence decision-making regarding the allocation of EPLs?

As far as the Minerals Act is concerned, I have not come across a section or provision that talks about black economic empowerment. But the affirmative action part – I think there is some reference to it though not specific. There are things such as “priority should be given to Namibians” to work on licences. However, strictly speaking for the purpose of granting licences, there is nothing. You would be aware of what used to be the black economic empowerment policy – TESEF – that transformed into NEEEF – that would probably be the only legal instrument that one can use to issue licences in favour of previously disadvantaged Namibians [it is not yet a law]. But the law that we use as it stands, there is no specific reference to a BEE component and you would appreciate that the Minerals Act is a law of 1992 and at that time I do not think there was anywhere in the world where there was a talk of BEE.

In terms of the (state-owned) Epangelo Mining Company, do licences go automatically to Epangelo or are these allocations also decided upon by the Minister?

There is no specific special treatment for Epangelo, it applies like any other applicants and its applications are treated in the same way and processed like any other.

Is there a limit with regards to the number of licences an individual or a company can hold?

Strictly speaking, no. Practically, the applicant might subject him/herself to the limit of how many licences he/she can get. I do not see why the Minister should grant you 40 or 50 licences when you are not performing on 25. We as advisors to the Minister should look at the logical way of doing things. If you cannot service 10 and you have 5 more pending, it's logical that maybe you do not have enough funds or capacity. So, why should a Minister grant you licences just for you to sit on them while somebody else might want to work on them – the Minister might refuse on these grounds.

When we were looking at the list EPL holders on the MME's website, we found examples of companies with different names but with the same contact person or owner – is that a problem or an issue?

To an extent it is an issue, but if you talk to the lawyers they will tell you that it is a separate 'juristic person' from the other. Sometimes, on the basis of this reason you cannot tell someone that you have these many licences already and we cannot give you more. But what very often happens is that – these different companies would have different programmes for different mineral commodities for example – and because of that, they would have different investors and partners in different EPLs. If you restrict them to just what they have, for example they have licences in company X with interest in nuclear fuels but they also see a potential in precious metals. If they look around and find an area where precious metals mineralisation is present – there is an opportunity there and maybe they are being approached by another investor whose interest is only in the precious metals. As a businessperson, you might want to form a different company with your same people that you are working with already so that you can explore in that other area. But it is true, there are licences with different companies where you can call and get exactly the same person.

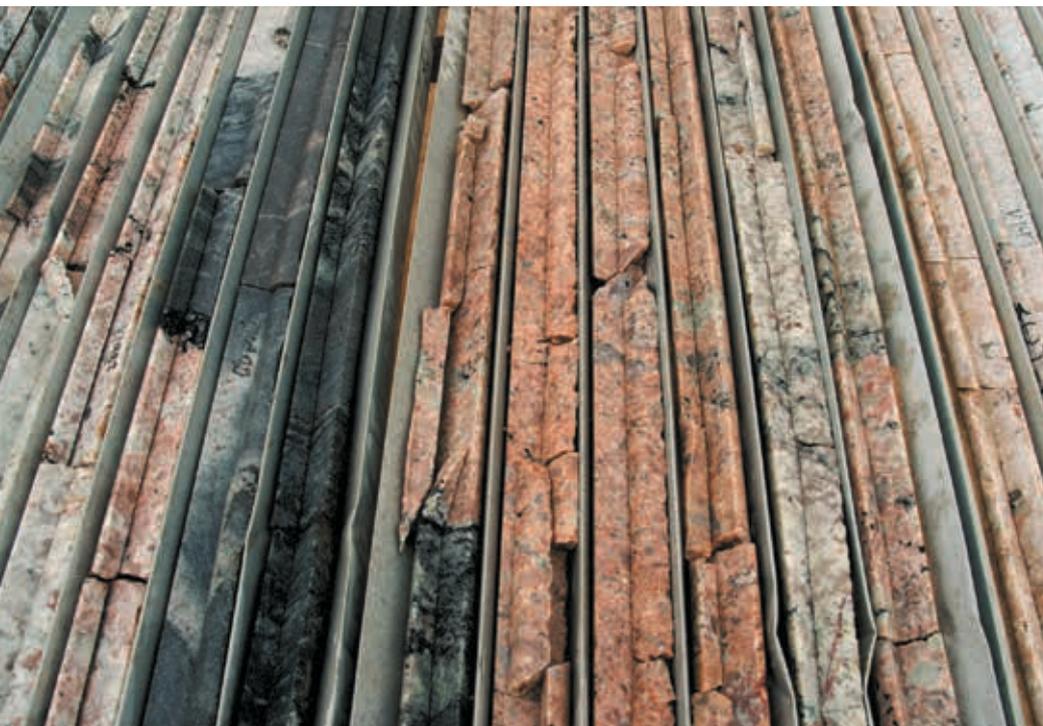
With regards to openness, Section 6 of the Minerals Act arguably runs in the face of transparency. What is your take on this?

As far as I know, Section 6 refers to the preservation of secrecy and my interpretation of that section is that when an applicant has been granted a licence and you have submitted your reports, the file is closed to the public. All information contained in there is only between the applicant as a client and the Ministry. I do not know of anybody's information we have given away from a closed file. What I know happens very often is that – somebody having a licence on which some work was done in

the past and that information is in the library, particularly in a volume called 'Minerals Resources of Namibia'. It is an open file which is everywhere and people have purchased it all over the place – sometimes we are unfairly accused of giving out this information. This is simply because the person who brings this to the media and to the public has some issues elsewhere. They try to justify why they have not done this or that (on their licences). Very often, it is people who have not performed on their licences and someone comes and says 'well, I think you have not performed on these licences'. The question is – how do you know I have not performed? It is not necessarily that this information is always obtained from the files. If you have a mining licence out there and no work has been done, people actually just drive there because it is not barricaded off and see for themselves that no work took place for a licence that has been granted for quite some time. People then think that this information came from the file. But I think that it is in the public interest – if someone comes and ask what is happening at a certain mine, I should not hide it that it was granted a mining licence and up to today no development has taken place.

Internationally, there is pressure for governments to be more open about financial transactions – amounts of money that the companies might have paid to the Ministry or the government, maybe in the form of registration or licence fees. Is there a possibility that such information could be made public in Namibia?

I do not think it is controversial here. Application fees for mineral rights are public. If you want to apply for registration of mining claims, it is in the law. For example, an application for a mining claim costs N\$50 and everybody knows; for EPLs the list is there. For an area from the very minimum up to an area of 2,000 hectares, it is N\$2,000; between 2,000 and 3,000 hectares the cost is N\$3,000. It is public information. If you have informed the Ministry that your mine will be generating a certain amount of money per annum, the annual fee and the application fee is gazetted. Royalties are paid according to a formula – it is not always that they are collected by the Ministry. There are direct payments to the Bank of Namibia for the benefit of the State Revenue Fund. If a company says it produced a certain amount of ounces of gold – it is 3 percent of that amount that needs to come to government and as far as I know they have always been paid.



What is the Ministry's current position on the Extractive Industries Transparency Initiative (EITI)?

There are mining jurisdictions in the world, particularly in Africa and some other non-European countries – places like Canada, Australia – which are fairly or unfairly considered corrupt. I think in Namibia maybe there is corruption here and there – but my position is that it is not institutionalised. I know of countries in the past where it was clear that if you want to get a licence, you must oil the hands of the lowest official all the way up to the Minister. I do not think this is the case in Namibia. Some time back, EITI contracted a local consultant and we had a whole day session including with the Chamber of Mines and other institutions. What was decided at the time was that it was not necessary for Namibia to sign up for EITI because there is cost involved (a contribution to the initiative as a member) and you would also be required to set up an office and all sort of structures. Since we believed the issuing of licences in Namibia is fairly open, there was no need to be part of the initiative. In some countries applications are made directly to the Minister who then just decides perhaps with a small committee of people. In some places, you do not even have applications – but there is the system of auctioning or bidding for areas. In Namibia, you choose where you want to work and we give you the area and you go and find something – if you do not find something it is your problem as you took the risk to go there.

Taxes are one of the things they talk about in the transparency initiative – taxes in Namibia are statutory and everybody knows who should pay. I actually think that in the Minerals Act there is a provision that the Minister of Mines and Energy has not carried out (I think he had, but maybe not in detail as it should be) – there is a section there that says: in June of every year the Minister should go to Cabinet and make a presentation on licences granted as well as finances accrued or collected by the Ministry). But there is a bit of a problem there as far as I am concerned, because there are some transactions that go directly to the Ministry of Finance – some do not come through here and maybe we are notified or not notified. Maybe it

was good to put it there (S116(2)) or maybe it is not the most practical thing because we have the Ministry of Finance responsible for the finances of this country – whether they come from different sources or not. We all report to the Ministry of Finance, to the Bank of Namibia and to the National Planning Commission.

When licences are allocated, sometimes after the allocation the nature or ownership of the company that holds the licence changes (so-called licence trading) – do you monitor that and is it a concern?

It is a concern, particularly when the new entrants are not known. We have the obligation to check and verify who the new entrants are to the best of our ability (and we do) – the law requires that we are notified and we do our due diligence. Specifically, the law says that if there is a change of more than 5 percent in shareholding – the Ministry must be notified and the Minister has to approve such a relationship. But before the Minister approves, we do our homework to establish who the new entrants are and we do a submission to the Minister.

Does the Ministry ever suggest to a company that wants a licence that it should partner with this group or that company?

It is dangerous! It is not in the law that the Ministry should advise the applicant on who to partner with. Personally, what I

do and this is in the interest of the country – if you ask me who you should partner with I will refer you to Epangeto Mining. To me, Epangeto is there for the whole people of Namibia and not individuals who would benefit from any such relationship.

Some companies have claimed that they have been told that if they want a licence they should call a certain person and enter into a joint venture or partnership – would you say this does not happen?

I would never do that personally and I have never done it and of course I do not argue that nobody else would have done it, but I can only talk for myself and I have never done it and I will never do it.

Are there any codes of conduct or rules in the Ministry that says this is what an official can or cannot do?

All of us are subject to the public service conditions of employment. There might be no direct reference to licences, but certainly the conduct and ethical behaviour of staff members is clearly spelled out there. Personally, I think if an applicant has been referred to a certain person or a potential partner and that is not his or her wish – there are avenues for launching a complaint. If an applicant is aggrieved, relevant institutions are there for complaints.

What is the role of the Minerals Ancillary Rights Commission and how has it operated over the past five years?

In brief, the role of the Minerals Ancillary Rights Commission is to resolve problems or disputes between mineral rights holders and private land owners. They meet when there are problems submitted to the secretariat which is hosted at the Ministry of Mines and Energy consisting of two staff members. Generally, they have done a good job – but the problem is that, with all the wisdom of the commissioners and this country being a democracy, everybody comes here with a private lawyer and lawyers are in there to make money. Private land owners have more



money than a simple small-scale miner who wants to have access to a piece of land and therefore they will try by all means to delay and prolong any sort of decision. The absentee landlords are the most difficult people because they are based there in Europe and they just deliberately frustrate the process by not allowing anybody on their farms. Some of the explorers, miners and prospectors are also guilty of a number of things – some go there and poach, some set fires deliberately or otherwise and this is a cause of concern for private land owners. But generally there has been a good level of success [in terms of the Commission's operations].

The term of the Minerals Ancillary Rights Commission came to an end mid-2012. When is the new one going to be appointed?

The new commission has been appointed - I think around February or March 2013. We did our work on time and I think the delay was with the appointing authority. I am not sure if the names have been gazetted – but I know that the same commissioners who have been there were re-appointed. I think we are fortunate enough to have such patriotic Namibians who take on that challenge. Many others who served on the Commission in

the past did not stay long – they would resign citing very low sitting fees. But the three that we have had I think for almost nine years – have been very dedicated and committed and they have done a fantastic job.

Are there any international or UN conventions that influence the allocation of licences in Namibia from a corruption and environmental point of view?

I am not aware of a specific international or UN convention with regards to allocating mineral licences. But of course there are linkages, for example the World Summit for Sustainable Development – there is a component on mining and how it should contribute to sustainable development. Technically, licences should be allocated or approved after one has demonstrated that there are minable reserves there and economic feasibility. Moreover, one should have taken into consideration the environment and the economics of the project. The environment is one of the most topical issues nowadays – everywhere you go. We are fortunate to have established a committee long time ago with the participation of the Ministry of Environment and Tourism – there are areas that we have not allowed exploration mining into. You will not find a single licence in Etosha National Park for example. There are areas on the Skeleton Coast where you would not find a licence there. Depending on the sensitivity of the area we can allow exploration and mining but if the area is highly sensitive or has been declared under certain conventions as a sanctuary area – then we do not issue licences.

Is the new Environmental Commissioner involved in making these decisions?

He used to sit here with us, but now they have appointed someone to represent their Commission.

Are companies required to do Environmental Impact Assessments (EIAs) before they start exploration?

That is one of the conditions, particularly in sensitive areas. However, there are certain areas where we think it is not a must and also depending on the exploration programme that the applicant put forward to the Ministry. For example, if for the three years that you have been issued with exploration licence you do not intend to do any significant surface damage – it is not urgent or important that an applicant do an EIA and EMP. There are programmes where for a year, they might only visit the area three or four times or fly over the area and collect aerial information – and it could only be in the second or third year

that they start getting on the ground to do some soil sampling, for example, or do some trenching and eventually drilling. Normally they only start drilling in the fourth or fifth year after the first renewal.

What about the community impact in communal areas? We hear sometimes, for example, the Himba people complaining about mining companies coming and starting to dig holes while the local community have not been informed. Is there a requirement for community consultation?

Community consultation is not specifically covered in the law, but for the sake of good relationships we very often encourage licence holders to at least talk to people in the community before they start operating. Many of those communities are very ignorant; there are many who think that if there is a deposit in their community – then that deposit belongs to them. Under our law it is only the Minister of Mines and Energy who is allowed to grant licences to applicants. But there are those who think that they must be involved. Many people who would complain are those who do not even know the difference between exploration and mining. An applicant would be granted a licence and go into the area s/he applied for and dig a trench of an insignificant size to take samples for laboratory analysis – next thing you would hear is the community reporting to the media that mining is taking place. Sometimes it does not matter how much you explain that it can even cost half a billion Namibian dollars and take 10 to 12 years and even then you do not have a mine. The people in Kunene for example, I know that they are very vocal about mining activities but I think that there is a lot of misunderstanding and a lot of belief that ‘this is ours’. There is also a lot of belief that mining comes with a lot of destruction and people stealing the animals of community members or being chased away to make way for mining activities. The same thing with the Epupa hydro project – sometimes there is politics involved. Political parties, particularly the opposition pushing an agenda and telling community members not to agree on some terms. But at the same time you find people saying they want development – they want schools, clinics – and a mining project can directly contribute to the development of the area and indirectly when they pay taxes and royalties enabling government to get more money to develop the whole country. Unfortunately, some people are so narrow-minded and they tend to want to chase you away. You also find people who say that if you want to develop a project here – you must give us a certain percentage in the project, but there

are no legal instruments to force people who invest their money in a project to share a certain percentage with locals.

Are there any plans to reform legislation pertaining to the mining of minerals?

There is a Minerals Bill – it is a bill that has been around for a very long time. I have given myself time to finish it – and it has to get off my desk during the course of this financial year. There are a number of changes we have proposed – such as smoother administration of the law and making the law a bit more user-friendly. We are talking about a law of 1992 and there are a lot of things that have changed – the mining industry is one of the most dynamic industries in the world. There are a few things that need to be changed – in 1992 it was immediately after Independence and there were some white people who thought that a new communist government was coming in. Many started to run away and I think the government was smart to make a law that is very investor-friendly. There are certain hurdles that we have passed – for example the requirement of being technically and financially sound to be given a licence which excludes ordinary Namibians from acquiring a licence without going to ‘Mr. van der Merwe’ who was previously advantaged and has the money. These are some of the things we are aiming to reform.

On the strategic minerals issue, with all its good intentions – you would recall that the Minister made a very detailed explanation on how this policy will be implemented – the law has not been changed yet. We are working on it and we discuss it every time at senior level management and I think the Minister is in constant engagement with the Ministry of Justice and the Attorney General. The law will be changed in the near future. Cabinet has made the decision already that the law should be changed. I think there is a slight problem frustrating the process – the general public feels excluded from participation if those licences are only to be granted to Epangelo Mining. They feel they cannot participate anymore and I think there is a misunderstanding. The intention is, if an ordinary Namibian finds an area where there is potential for gold (for example), one can go to Epangelo Mining and maybe get into some nondisclosure agreement and apply together with Epangelo which would allow you to participate – but people think it is completely closed.

Time will come for the public to comment on the Bill, but for now I do not think that we should be sending it out while it is a work in progress. There is no separate strategic minerals policy. There was, however, a submission to the Cabinet recognising the importance of strategic minerals to Namibia and to the world and therefore there should be limitations as to who gets these rights – and that the government must participate in the exploration and exploitation of these minerals.

INTERNATIONAL STANDARDS AND GOOD GOVERNANCE IN NAMIBIA'S EXTRACTIVE INDUSTRIES



By Tracey Naughton

Introduction

When a developing nation decides to exploit its endowment of natural resources, it is exposing a sovereign wealth reserve held in trust by the state on behalf of its peoples to a wide spectrum of risk and potential. The Minerals Policy of Namibia states that minerals and hydrocarbon development will be 'for the benefit of the nation' and this is enshrined in law.¹ As the extractive industries scale up in Namibia there are growing concerns about the distribution of benefits and how the increased revenue will be applied to national development.

Global experiences of extractive industry expansion have produced mixed results. Too often, factors have combined to turn an anticipated resource boom into a 'resource curse'. In developing nations the resource curse has come to refer to broad negative impacts, including a failure to develop or improve the living conditions of the population.

Developing nations or emerging markets have a tendency towards weak governance. Laws and regulations can inadvertently provide scope for improper practice. This is often coupled with inadequate capacity or incentives to implement, monitor and manage opportunistic, negative and unethical business

practice among the private sector, government and local governance and individuals.

In Namibia there are questions about the distribution of benefits, resulting from allegations of corrupt practice.² Unfortunately, this is not an uncommon story, even in developed nations where the rule of law appears to be firmly in place. In a current case exposed in Australia it is alleged that a political insider and a minister colluded around the issuing of coal exploration licences for land the insider had recently purchased. It was thought he took profits in excess of sixty million dollars as a result.³ An enquiry currently underway has revealed the figure to be far higher. Natural resources are finite and if they are to be exploited in an effort to develop a country it is essential to strike the right balance between good legislation and governance, companies that adhere to international standards and a civil society that can build knowledge in affected communities and monitor the flow of revenues to enable widespread benefits.

For centuries, stakeholders impacted negatively by extractive activity have protested through songs, strikes and street

¹ <http://landlawwatch.co.za/download/MPL/MP-VdBerg-Mineral%20Rights%20under%20Development-LLM.pdf>

² See for example, September 2012 Links, F. On a Slippery Slope: Corruption and the Extractive Industries in Namibia, Legal Assistance Centre of Namibia & Stanford Legal School, 2009 Striking a Better Balance: An Investigation of Mining Practices in Namibia's Protected Areas

³ <http://www.abc.net.au/news/2012-11-12/icac-inquiry-to-focus-on-coal-licence-allegations/4366042>

protests. In the late twentieth century social movements began forming to focus on the environmental and social impacts of mining natural resources. As South African Kumi Naidoo, International Executive Director of Greenpeace, put it recently in a lecture at the London School of Economics, concerns about sustainability and the environment have gone from ‘hippy to hip’.⁴

This growing awareness triggered the emergence of global treaties, declarations and conventions to frame ethical standards for good governance and business ethics designed to protect human rights, the environment and sustainable development. The early 21st century has seen further progress in a drilling down into these global standards to produce detailed guidance that describes best practice for the hydrocarbon and minerals industry. There are now global institutions to monitor and support best practice and a plethora of principles, standards and detailed guidance available. There is no longer any valid excuse for poor practice in governance or environmental and social practice in the extractive industry. However, progress towards best practice lies in the challenges to implementation including the capacity and incentive of all players to accept, apply and monitor responsible practice.

Most of the principles articulated in the now large number of sets of principles, guidance and standards are intended for application at all phases in the mine life cycle. Few specifically address the exploration phase. Exploration is the entry point, where relationships and reputations are established. Junior or small exploration companies, which are usually not involved should their findings ever be converted to a mining project, often carry out exploration. Hence, they may not consider reputational risk as a key issue. The larger multi-national companies with their own exploration departments have a greater incentive to ensure best practice from the outset. Even so, in the isolation of an exploration field, much can and does, go unseen.

This chapter will examine the need for tight and comprehensive national legislation, regulation and policy that aligns to international standards and expectations of best practice. It will look at the stages and success rates of the exploration phase of an extractive project. It will identify some key terms used in best practice and outline and review the key international standards and accompanying implementation tools. It will recommend key instruments that could be applied to the exploration phase in Namibia and look at how the development of an informed multi-stakeholder environment could mitigate the

risks and negative impacts of corruption in the issuing of exploration licences.

The chapter will make occasional reference to the current white-hot mining boom unfolding in Mongolia. There are numerous parallels between Mongolia and Namibia, including extremely fragile dry environments, small population size, and governments that are not always inclusive of civil society.

It should go without mention that in issuing exploration licences, the Namibian government would want to attract companies and individuals that align themselves to best practice principles. The application of international standards should be used in due diligence to determine which companies will act in a responsible manner and in both company and national interests as defined in the Minerals Policy of Namibia. Given the frequency of concerns about transparency in the issuing of exploration licences in Namibia, it seems clear that attention must be paid to the alignment between international standards, national legislation and regulation and actual practice. The question is how will the incentive and capacity to do this be galvanised?

Scaling up the Extractive Industry – for better or for worse?

At a national level, realising the value of minerals, metals and hydrocarbons can increase gross domestic product (GDP), stimulate foreign and domestic investment, generate taxes and royalties and enhance quality of life by enabling long-term planning and the capacity building of people and institutions.

Locally, the extractive industries can boost local economic activity, improve infrastructure such as roads, energy and water supply, sanitation, provide training and employment and improve public services. Minerals trade affects national stability and development. There are potentially significant and sustained benefits, but these are not guaranteed.

The outcomes, positive or negative, depend to a large extent on the quality of the legislation, regulation and policy in place to ensure good governance and facilitate equitable distribution of benefits between the national population and investors.

Equally important are the policy driven and real ethics of stakeholders involved at each stage of the mine life cycle. Ethics cannot be legislated for but monitoring processes and practices to mitigate ruthless and unethical behaviour can and must be described to minimise the potential for corruption.

The success of such measures is to a large extent, reliant on the presence of an engaged multi-stakeholder environment

⁴ <http://www2.lse.ac.uk/newsAndMedia/videoAndAudio/channels/publicLecturesAndEvents/player.aspx?id=1621>

including ethically tight national governance, a responsible private sector, an active civil society, and informed communities willing and able to call players to account when activity does not appear compliant with laws, regulations or standards. Such an environment takes time to evolve, especially in a developing nation. Fortunately there is now, more than ever before, an enormous body of knowledge, institutional support, standards and precedence to support this development. Institutional support could be in the form of expertise from the mining section of the World Bank. Other donor support will also be required to build mining expertise in civil society and in turn, among impacted communities.

Currency of Namibian Extractive Laws and Policy

The foundation legislation governing the extractive industry in Namibia was developed soon after independence.⁵ This was a logical step in order to prepare to further develop the extractive industry as a major future revenue source. However, the Namibian laws were developed prior to the global emergence and growth in importance of international standards. These standards were developed in response to negative impacts of extractive activity experienced by nations, extractive companies, communities and environments.

In terms of transparency and corruption, the gaps between international standards and the legal requirements for the extractive industry in Namibia are most obvious in a discretionary looseness that could tempt those with direct access to information into conflict of interest scenarios. Behind every exploration licence are numerous risks and impacts for all stakeholders. These begin with the way the licence is obtained and any perceived conflict of interest involved. The bad will generated in the early stages of a licensing process all too often permeates what can be a decade or more of operations both on the ground and in the political, social, environmental and economic spheres.

The Minerals Policy rightly states that it needed to be 'home grown'⁶ to have relevance to the Namibian context. However, in a globalised world, where generic lessons have already been shaped into international standards, a legal review focused

on removing discretionary powers, verifying transparency and entrenching socio-economic and environmental best practice is highly recommended.

The Minerals Policy of Namibia 2002 and follow-on governance documents

The Minerals Policy of Namibia 2002 is clear that the national interest is served by encouraging exploration to build the geological database and quantify the value of mineral and hydrocarbon assets. It has been argued, however, that the policy lacks the social dimension that would qualify it alone as acting to the benefit of the entire nation.⁷ This picture improves when read in combination with the Minerals Act and relevant clauses of the Constitution. That said, from the perspective of international standards, the socio-economic potential of mineral exploitation, highlighted in the policy vision and objectives, requires further emphasis, detail and regulation across the governing documents. Responsible mining companies expect to meet national empowerment and upliftment requirements, especially in developing countries dealing with pressing poverty-related issues.

The Minerals Policy goes a long way in filling the gaps in the original Mining Act. It covers many of the critical issues. It refers to concepts of responsible mining, but the policy is permeated with an intention to encourage rather than require the extractive sector to act responsibly. It is weighted towards being investment friendly and whilst this is an essential aspect, a country only has one chance at development through its finite natural resources. The Policy states that community expectation of a share of fees paid to government for land use 'creates insecurity in mining rights from the point of view of new investors.'⁸ Responsible mining companies expect to meet local statutory fees, infrastructure costs and to be engaged in community development. It is commonplace to pay legitimate fees, taxes, royalties and community contributions at different levels of governance. Corporate Social Responsibility (CSR) programmes in affected communities are a best practice norm. The policy's stated intention of an alignment to international standards would not alarm or deter responsible mining companies. A community engagement and development process should be in place from the outset, although this would be

5 Minerals Development Fund of Namibia Act, 1996
Minerals (Prospecting and Mining) Act, 1992
Petroleum (Exploration and Production) Act, 1991
Petroleum (Exploration and Production) Amendment Act, 1993
Petroleum Products and Energy Act, 1990

6 Minerals Policy of Namibia, 2002 1.3 Minerals Policy Formulation Process

7 Mineral Rights under Development: A Comparative Study of the Evolving Nature of Mineral Rights in South Africa and Namibia 2009. By Student: Hugo Meyer van den Berg, faculty of Law, University of Cape Town

8 Minerals Policy of Namibia, 2002, 2.2.3 Land Access

smaller at the exploration stage. The engagement should strike a balance between the scale of the exploration activity and the findings of a local socio-economic needs assessment. Finance managers may wish to avoid such costs but the lessons learnt over recent decades clearly point to early engagement as an efficient and effective risk mitigation strategy.

The Minerals Policy promises that government will provide further guidance and implementation detail. The Environmental Management Act of 1997, promulgated in 2012, and the Model Petroleum Agreement of 2007 both address key gaps in the early legislation. These include:

- participation by impacted communities through consultation and comment on assessments and plans
- formulas for the calculations of payments to government by companies that take into account commodity market fluctuations
- requirement of competitive tender for purchases over US\$250,000
- the requirement for environmental impact assessments
- coordination between relevant ministries
- requirements for accounting procedures
- local content that includes favouring Namibian suppliers and where possible Namibian employees
- specified company contributions to in-house and external training by national institutions and global scholarships
- pollution risks mitigation measures, waste management and rehabilitation of the land.

Whilst these more recent documents and their affirmation of the need for Environmental Impact Assessments should come as a great relief to those interested in the preservation of the environment, there remains a lack of detail on the potential social impact, whether on land or sea, where fishing communities may be impacted. More detail is needed to describe information and disclosure and community engagement processes.

The local employment and training requirements in the Model Petroleum Contract are notable for supporting the Fourth National Development Plan and its emphasis on reducing unemployment especially through the private sector. At the launch of NDP4, President Hifikepunye Pohamba described the national plan as the subsequent war – following the war of political independence - of economic development, and urged everyone including the private sector to assume battle positions by saying,

“We, the Namibian people, fought a long and bitter struggle in order to create a better society characterised by social justice and equity. It is therefore our

duty to uphold the ideals that thousands of our compatriots fought and died for. It is a moral imperative of our time. It is now time we again start to bravely wage this war for our economic development,” said Pohamba.⁹

The Minerals Policy allows for a consultative and cooperative process between mineral explorers and landowners in the event of disputes. Such disputes are considered inevitable in the extractive industry and responsible companies and international standards and guidelines exist to address them. The Minerals Policy states that one purpose of the Minerals Ancillary Rights Commission (MARC) is to deal with disputes, but it has yet to develop the promised ‘clear guidelines’. As the policy correctly states, critical aspects of the guidelines should establish consent and compensation for social and livelihood disruption and land use. Particular attention, and international guidance, should be applied to indigenous communities who have special relationships to the land, including spiritual and livelihood aspects. The policy calls for social responsibility and empowerment, but is short on how this will be implemented or monitored.

Reality at the time of writing indicates a wide gap between the policy’s stated intentions, including benchmarking against international standards and MARC’s actual practice. MARC was not operating for some time because its term of office has expired. The President is the appointing authority. The commission consists of three members with a legal background and two administrative staff from the Ministry of Minerals and Energy. Meetings have tended to take place after a round of licence applications. It is difficult to see how local socio-economic and environmental impacts of exploration could be represented without the inclusion of members with relevant skills to examine applications from this perspective. Wider representation may enhance the identification and calling of conflict of interest and corruption.

In the policy, Namibia is projected as one of the least corrupt countries in Africa. Given these claims versus recent and growing concerns about the enrichment of the political class and associates through exploration licensing, it seems odd that Namibia has not invited the Extractive Industries Transparency Initiative (EITI) to transparently monitor and publish company payments to government. The Ministry of Mines has expressed some scepticism about EITI – arguing that there is already adequate transparency about Namibian extractive payments and secondly that the costs of establishing an EITI Secretariat

⁹ <http://www.inamibia.co.na/news/local/item/18493-fourth-national-development-plan-ndp4-launched.html>

would be prohibitive.¹⁰ This could cause frustration in Namibia because without detailed information on entitlements to and actual revenue distribution civil society, local governments and affected communities have a diminished role in articulating revenue gaps and local development priorities.

Responsible companies expect to meet standards, have signed on to them, reflect them in their corporate governance documents and carry out monitoring and reporting. Disputes can halt exploration and the costs can constitute a material risk to company resources and reputation. Risks for all parties are minimised by clear and comprehensive standards to be met by each applicant for an exploration licence.

Overall, the Minerals Policy of Namibia is a good foundation document that covers many important aspects of a healthy mining environment set in a developing nation with specific issues to contend with. The most glaring policy gaps concern the failure to mention indigenous peoples, the lack of anti-corruption and transparency measures, and the absence of a multi-stakeholder approach to implementation. In addition, monitoring and public education and revenue distribution from the national fiscus to local government do not feature in the policy.

While the Minerals Policy of Namibia explicitly seeks to bring international standards to bear, it is shy about regulating standards for fear of losing investors. By their very nature the extractive industries deplete natural resources, are energy intensive, and emit CO₂ into the atmosphere. These forces are inextricably linked with the issues of climate change, the loss of forests, biodiversity and wildlife, scarcity of potable water, and desertification. Ensuring responsible conduct and sustainable development is a responsibility no state should shy away from. If some investors are deterred by tighter regulations, it will not be because they are shocked by such stipulations being in place. Some unscrupulous companies will seek to exploit nation states where the legal environment for the extractive industry is not benchmarked to international standards. Working with such companies is not in line with the Minerals Policy's vision of 'ensuring maximum sustainable contribution to the socio-economic development of the country.'¹¹ Fortunately, recent legislation and plans have addressed the gaps regarding environmental protection. It is now time to address social impact at the site level.

10 See interview with Mining Commissioner Erasmus Shivolo in this publication

11 Mineral Policy of Namibia, Ministry of Mines and Energy 2002, 1.2 Vision

Mining solidarity programme¹

Many developing countries hosting multinational mining projects are negotiating larger shares in joint ventures, higher royalties, and windfall taxes. They are also encouraging and mandating companies to contribute to social development. Demonstrative of this trend is the *Programa Minero de Solidaridad con el Pueblo* in Peru. This so-called 'voluntary' programme is a social development fund that companies are contributing to instead of paying a windfall tax on their recent profits.

In 2006, the government of Peru and mining companies operating in Peru created the Mining Solidarity Programme (PMSP by its Spanish acronym). The programme creates a mechanism for a five-year voluntary financial contribution above and beyond the taxes and royalties paid by the companies, in order to alleviate the effects of poverty.

Annual contributions to the fund are dependent on global mineral prices and the profit made by a company in a given year. A Technical Coordination Committee administers funds. At least 30% of the funds must be used on health, education and nutrition projects. Other priorities include strengthening local governance, supply chain improvement, and local infrastructure. In 2007, nearly US\$177 million was contributed by companies to the programme.

1 Sociedad Nacional de Minería, Petróleo, Y Energía, 2008

Small-scale Mining in the Minerals Policy

In global terms, a very positive aspect of the Minerals Policy is its acknowledgement and attention to detail of the small-scale mining sector, often referred to as artisanal mining. Small-scale mining is a worldwide phenomenon usually taking place in areas that are uneconomical for large scale mining such as at the end of seams of gold or coal or in small deposits of semi-precious stones.

Large-scale mining companies, including responsible companies, often have negative attitudes to small-scale mining. Reasons include encroachment onto licence areas, conflicts between company security forces and small-scale miners, environmental damage that is left for the company to remedy and the use of toxic chemicals such as mercury to extract gold from

ore, which causes pollution for which the company is blamed. Namibia's mining policy takes a progressive approach to small-scale mining enabling citizens to generate income from their finds. There is appropriate provision for a simplified application process, training and financial support.

According to the Ministry of Mining and Energy website¹², the Minerals Development Fund does offer financial support to small-scale miners. The fund enjoys a high rate of repayment, which correlates with many global experiences in the micro-financing sector. The fund has evolved and selection, evaluation and monitoring criteria have been strengthened through experience. This is a positive and progressive scenario that has emerged from the Minerals Policy, one that directly impacts on poverty alleviation.

Small-scale mining can be seen in action in the Namib Desert where children sell crystals and semi-precious stones along the roadside. These will have been harvested by their families due to their local knowledge of specific deposits. Although this activity is enabled through relatively progressive policy an estimated 80 percent of small-scale mining in Namibia is conducted illegally without a licence¹³. The minerals policy identifies the need to improve working conditions. Common issues are the environmental and human health hazards of the use of mercury to extract gold from ore. This can be avoided through the introduction of safe technology.

In Mongolia, an international NGO conducted a campaign to eradicate the use of mercury among small-scale miners. A booklet containing designs for alternate technology was developed and distributed. The construction from locally available materials, of two sluices, one using water, one not, were described in detail. Monitoring and evaluation of the project revealed numerous sluices in use based on the booklet, one component of a larger project funded by the US State Department. Child labour and inadequate structural support for tunnels and holes that can collapse killing miners inside, are other major common problems in this sector.

Of some concern, based on global experience, is the use of monitoring and inspection to enforce standards in small-scale mining. Whilst this in itself is entirely reasonable it is important that inspectors are aware of the governments' progressive attitude to small-scale mining as a poverty reduction strategy.

Global experience has shown that simply shutting down operations is not effective and leads to continued dangerous working conditions, fatalities and environmental and human

health degradation. A typical problem and one referred to in the Namibian policy, is the dire shortage of and low skill base of inspectors. This can result in the use of unnecessary violence as a means to carry out their job. In Namibia, inspectors require training to understand the law allowing small-scale operations and how they can be part of improving the sector rather than destroying operations that will typically re-emerge the following day when the inspectors are long gone.

Globally, the World Bank supported the Communities and Small Scale Mining (CASM)¹⁴ organisation and a number of international NGOs and consultants provide various forms of support for artisanal mining. The German Technical Assistance organisation – Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) – has provided valuable input to mining ministries in this area in developing countries including Mongolia. International NGOs, such as Pact in the DRC, have run valuable programmes working with small-scale mining communities.¹⁵

This sector appears to be reasonably organised in Namibia, though under-resourced to build capacity, monitor and improve the sector. At least three centres of support are in place - the Association of Prospectors and Miners of Namibia, the Small Miners Association of Namibia and the Ministry of Mines and Energy established Small Miners Assistance Centre (NSMAC).

Partnership on Artisanal Mining in the Congo

In 2003, AngloGold Ashanti (AGA), the world's second largest gold producer, began exploration in the Mongbwalu region of the Democratic Republic of the Congo. One of its immediate concerns was that 1,500 artisanal miners, some of whom were children, were putting their lives at risk by venturing into the dangerous abandoned Belgian Adidi mine while working for a wage of about US\$6 a day. The mine was structurally unsafe, as desperate miners had removed much of the original support structure within the mine in the search for gold deposits.

Working alone, AGA could have closed the mine but that would have involved a strong arm approach with a private security team that would have likely provoked a backlash in the community. As an alternative, AGA partnered with Pact (an International NGO with DRC offices) in order to

12 <http://www.mme.gov.na/MDF/index.htm>

13 Mineral Policy of Namibia, Ministry of Mines and Energy 2002, 2.3 Small-Scale Mining

14 <https://www.artisanalmining.org/casm/>

15 See for example http://www.pactworld.org/cs/pact_promines

reach local community groups. Regular meetings were held with village leaders, whose main concern was replacing the source of income for the 1,500 artisanal miners.

AGA, Human Rights Watch, Save the Children, and the United Nations Children's Fund (UNICEF) applied pressure on the mayor and city government, but after eight months it became clear that the process was moving too slowly. AGA and its partners re-focused its efforts at higher levels in the government, lobbying the district and provincial authorities and eventually prompting an investigative team to visit the Adidi mine. One year after AGA first raised the issue, the provincial governor visited the mine. Within three days it was barred shut for good.

Success was achieved in this case not only because of multi-stakeholder cooperation, including support from DFID, but also due to a good deal of perseverance and patience. AGA took seriously their corporate social responsibility to act while remaining sensitive to Congolese needs. Pact, in turn, kept AGA focused on the goal of closing the Adidi mine and provided programs for which the 1,500 artisanal miners were eligible. Most of the miners transitioned to safer mining sites and other income-generating activities, including security, construction, and small businesses¹⁶.

Opening the Doors to Global Investors – first in first served or by invite only?

Developing nations tend to lack both the capital and experience to move an extractive project forward through the stages of a mining project. Global capital and expertise is imported and agreements are made about how a project will develop, who will invest in it and the proportional profit sharing and ownership arrangements. Agreements made in the context of loose regulation and lack of transparency between public servants or politicians and companies can have devastating impacts on society, communities and the environment. This is a real danger in Namibia where senior officials have a lot of discretionary power. The effects could be highly negative – society can lose faith and trust in their representatives, communities can suffer

human rights abuses, and environmental destruction can ensue when best practice is ignored. International standards exist to set frameworks for equitable, responsible and human rights based exploitation of natural resources. There can be gains for all involved.

At the exploration stage of mining, it is common for nationals in the know to acquire exploration licences. While the 'first come, first served' principle is the norm, the provision of information about opportunities and prospects by those with detailed access to the State's geological and licensing data base, can be corrupt. Based on publicly available state geological data and local knowledge it is not too difficult to select licence areas with a high rate of known mineralisation. Typically, few nationals will have the expertise and equipment to move through the ensuing phases of exploration. National licensees might retain the license and farm-in international expertise within an agreement about exploration costs and profit sharing in the event of a significant find. Others will choose to sell their licence and take a smaller profit earlier in the mine life cycle, passing on the exploration costs and risks to a larger company.

Governments grant hydrocarbon or minerals exploration, development, and production rights in particular areas or blocks by means of concessions, leases, licences, or contracts, depending on their legal systems.

According to the World Bank¹⁷, efficient and effective award policies exhibit the following characteristics:

- Transparent, competitive and non-discretionary procedures for the award of exploration, development and production rights
- Clear legal, regulatory, and contractual framework
- Well defined institutional responsibilities
- The sector law and regulations should define the legal and institutional framework for the exploration and exploitation of a country's hydrocarbon and mineral resources
- The role of state companies should be defined in the sector law, ideally separating commercial activities from the state regulatory functions
- Licensing procedures and contract terms should take into account the geological, financial, and country risks. Country, sector, and market knowledge is needed to define appropriate licensing and contractual terms
- Transparent and non-discretionary procedures should be defined to attract investors.

16 Promines Artisanal Mining Study 2009: The Study is part of the PROMINES project of the Government of the DRC, the World Bank, and DFID. PROMINES is an integrated, multi-sectoral program to enhance governance and development in the mining sector of the DRC. It is a technical assistance program with multiple components. <http://www.pactworld.org/galleries/resource-center/PROMINES%20Report%20English.pdf>

17 Extractive Industries Value Chain, Elodoro Mayorga Alba, for the World Bank - A working paper by the Oil, Gas and Mining Policy Division and the Africa Poverty Reduction and Economic Management Department

Exploration and production rights are:

- often awarded through licensing rounds in the hydrocarbon sector
- normally awarded on the basis of the “first-come, first-served” principle and are subject to minimum work commitments in the mining sector
- The fiscal terms that determine the sharing of benefits between the government and the investors should be progressive and preferably linked to specific project profitability to cope with changes in prices and different site conditions throughout the project life
- The development of “local content” – including local consultations and the use of local labour, goods and services – are key aspects of hydrocarbon and mining projects. When properly defined, local content obligations improve projects’ economic and social benefits, and help minimise their long-term risk.

Brokers

To be present at this stage in a nation’s development is to be aware of new arrivals of ‘men in dark suits’, ‘strangers in town’, self appointed to act as brokers between high-profile licence owners and potential buyers. If not strangers, these brokers might be local well-connected, often high profile operators.

When in 2010 the Mongolian government froze the issuing of licences in order to improve the legislation and regulations, first-hand accounts from exploration geologists followed of shady back-room deals offering licences owned by politicians who had handed power of attorney to the shady operators. Brokers appeared and were conspicuous as they rapidly networked the ex-pat scene to identify key public and private sector players and potential deals. Currently, there is still no way of getting a licence in Mongolia other than joint-venturing with a company which already has one or through these back-room deals. Neither the private sector nor the political actors who owned licences complied with the suspension. The trade simply moved behind closed doors. Individuals took huge illegal profits. Licences were over-priced and none of the fiscal benefits went to the state coffers on behalf of citizens.

Another critical feature of developing nations is a society that has limited understanding of the stages of mining, their

rights and if or how these are protected. In the absence of such knowledge some may suspect events are not unfolding to the nation’s benefit, but have no capacity to articulate or to challenge the status quo. At a local level people will often demand compensation although not be aware of what forms that could take. They may not realise they can ask for a multi-stakeholder forum to be formed for negotiation and planning.

Namibia could potentially be affected by a combination of issues. Firstly, the legislative and regulatory framework is still developing and does not include governance legislation on transparency and corruption for the extractive industry. Less simple to correct is a culture of corruption where greed overwhelms ethics and internal and external stakeholders flaunt the rules. Then there is the global industry driven by the need for viability and profitability. If companies can, they may orientate to the host country’s rules and culture, rather than international standards, because they can. Finally, the citizenry may not have knowledge of the mine life cycle or their rights including access to information and consultation. This combination can turn hopes of development through natural resources into a devastating conflagration of poor outcomes, including a failure to develop.

Exploration – not just spitting on rocks

The exploration phase and the procurement of exclusive licences to explore for mineralisation or the presence of hydrocarbons is highly competitive, extremely secretive and holds the potential for large rewards as well as enormous risks for all stakeholders. This is exacerbated in developing nations with capacity and fiscal constraints. Secretive environments are ripe for corrupt behaviour. It is important to acknowledge that geologists, who are often neither business people nor sociologists, conduct exploration. Exploration geologists want to be in the field spitting on rocks (a very basic technique for mineral identification) or on the sea sending out seismic waves seeking underwater deposits of gas, petroleum and other riches including diamonds in Namibia’s case.

Exploration companies are often small and do not employ community liaison expertise, though some do and it is arguable that all should. This can go a long way to mitigate social, economic, cultural, environmental and corruption risks at the local level. Geologists are generally trained in land reclamation but the extent to which this is addressed can depend on national regulation and enforcement. They may be trained in good business practice too, but that may not be paramount when bribery



is possible and the emphasis is on obtaining exploration licences from government, so geologists can get into the field.

Exploration in itself is more complex than many will be aware and will be examined here. There are four phases in the overall mine-life cycle. These are:

1. Exploration
2. Mine development
3. Mine operation
4. Mine closure

The exploration phase is where minerals and hydrocarbons are searched for and assessed in terms of the size and value of the deposit. Geologists, machinery operators and labourers usually work at a fast pace with tight work schedules. The exploration phase can last for ten years before the project is converted to a mining licence. A lot can happen in a decade – to people, to the environment, to the local economy and culture. There are risks and opportunities that can be positive or negative. A foundation for sustainable development can be laid, cultures can be irrevocably damaged, significant history can be preserved or lost, and waterways can be improved or polluted for decades to come.

A high number of investments yield no economic return because exploration is unsuccessful – success rates in the extractive industry are very low.¹⁸ Extractive industry professionals regularly state that only 1:10,000 ‘finds’ or ‘prospects’ will be developed into a mine. A great asset alone doesn’t guarantee economic viability. The other 9,999 sites, among other reasons, may be too small to make into a viable operation of benefit to all parties. The deposit might be located in an area that is too sensitive to mine because it will impact negatively on the local community or environment. The project may not be viable because the cost to supply water or energy to the site cancels out economic feasibility. Extensive geological knowledge and heavy equipment is required to scale up exploration often making advanced exploration impossible for local entrepreneurs. Small finds may be of interest to small-scale miners and should favour nationals.

The extractive industry understands that there is no income generation at the exploration stages and that costs may never be recovered. Major costs involved in exploration are operations – human resources and logistical contract services, technical, commercial and socio-political feasibility studies, paying for mineral exploration rights and corporate social responsibility.

Feasibility studies look at the potential value of a mineral resource. They will be initiated during advanced exploration over a one to five year time frame. They will involve public consultation and may have to meet multiple regulatory requirements that differ from country to country. In summary, feasibility studies may include:

- Technical – engineering, metallurgical, geographical, environmental, hydrological
- Commercial – capital expenditure, production costs, supply and demand, marketing
- Socio-political – licensing, permitting, taxes, royalties, risk assessments, compensation

A project will only enter the development phase when:

- Pre-feasibility studies affirm economic potential
- Stakeholders support developing the resource (including government, local community, investors)
- Commodity prices outlook is positive
- Financing is available

¹⁸ Capturing a fair share of fiscal benefits in the extractive industry, Bryan Land, Transnational Corporations, Vol. 18, No. 1 (April 2009) http://unctad.org/en/docs/diaeiia20097a7_en.pdf

Monks Halt Exploration in Eastern Mongolia



Buddhists hold strong views on the environment including that 'breaking the ground' is disrespectful to nature. Exploration geologists in eastern Mongolia consult only with local political leaders before commencing operations but neglected the wider community including the influential monks at the nearby temple. It is likely that given the right approach, a way for the monks to consent could have been found. For example the construction of a stupa (a Buddhist shrine) and an appropriate ceremony, may have evoked consent. In the end the monks resorted to physical protest. In 2010 they managed to halt exploration by a Canadian gold mining company. The company has not resumed exploration despite known gold deposits in the area. While it holds a valid exploration licence, it failed in its social communication.

Impacts at the Exploration Phase of the Mine-Life Cycle

Whilst the impacts of exploration are usually very low, especially in the early phases, they do exist and best practice insists that they be planned for, monitored and mitigated. The following table looks at the potential environmental, social, economic and cultural impacts and possible mitigation in direct relation to the different types of exploration licences available in Namibia. The table demonstrates both positive and negative impacts. For example, an impact of local employment that leads to a family moving away from their community to seek more lucrative mining jobs can be seen as a positive outcome for the rural poor who once eked out a living from the dry land around an advanced exploration site. Equally, for the community that remains, it may mean the loss of skills, depletion of population and the threatened existence of a fragile culture and way of life that they want to preserve. The point of the table is to examine the potential impacts behind every exploration licence, as a means to explain the significance of due diligence, transparency and meeting best practice standards. The table seeks to emphasise the need to be aware of the impacts and to require companies to act in responsible ways to ensure that the positive

progress that can be associated with exploration, is based on an agreed framework developed from an informed basis, where power is shared.

Concepts for Best Practice

Ahead of looking at the current sets of international principles, standards and guidance for the extractive industries, it is worth reviewing some key terminology and ideas that permeate most standards and are the *lingua franca* of a healthy and accountable extractive industry.

Responsible mining is a term used to refer to the overall ecology in a mining project and national context that is responsible to local communities, mining workers, the environment and which leaves a positive legacy in all regards. The word 'responsible' is used in the vision statement of the Minerals Policy of Namibia.

To achieve a high level of responsible development of national resources in which Namibia becomes a significant producer of mineral products while ensuring maximum sustainable contribution to the socio-economic development of the country.

To further attract investment and enable the private sector to take the lead in exploration, mining, mineral beneficiation and marketing.

Responsible mining companies not only aspire to meet international standards but they have articulated corporate responsibility policy and practice. They have trained employees, at all levels, to conduct themselves according to company policy.

In the past decade, the word ‘responsible’ has been used with increasing frequency in relation to best practice within the extractive industries. It is used to describe ‘responsible stewardship’ of mineral wealth by the state, ‘responsible exploitation’ of sovereign mineral endowments by companies, ‘responsible environmental management’ and ‘responsible social development’.

The term ‘responsible mining’ permeates standards that apply to the entire mine life cycle. At later stages it could be applied to local supply chain sourcing through local business start up support, training of local employees, occupational health and safety for workers, long term planning of water supply, rehabilitation of land with local genus plants that should have been cultivated through the life of the mine and responsible treatment of waste, including tailings.

Due to its speculative and secretive nature, responsible mining can be neglected at the exploration stage. Risks can occur in business ethics, environmental damage and in social expectations. Exploration managers will typically have a budget to smooth the way as required. Harmful impacts, even if unintentional, can leave a lasting negative legacy. Socially, particularly where there are a small number of people in the vicinity, the exploration budget might be deployed to give every household something – such as a plasma TV. This is bribery, not best practice. Good practice would follow initial disclosure processes and if the community is willing for the exploration to continue, have the community define a public good the company could contribute. Examples are the renovation of a sacred site or community space, a public well or a road grading. Environmentally it is important to ensure reparation of any land disturbance to original or better condition. Most importantly it is considered very poor practice to bribe local officials or residents through personal gifts or cash. In reality, in isolated locations, the temptation for the exploration manager to facilitate work and to use the budget in unsustainable ways, is high.

The concept of **sustainable development** remains subject to discussion and integration into extractive company policy and practice. The term draws on the work of the Brundtland Commission, formerly known as the World Commission on

Environment and Development (WCED). The commission was established by the United Nations in the early 1980s when the deterioration of the human environment and natural resources was becoming increasingly evident. The aim was to galvanise global efforts to halt environmental destruction whilst recognising the economic, environmental and social dimensions of the problem. The Commission’s key report ‘Our Common Future’ fed into the Rio Earth Summit in 1992, which produced a plan of action, Agenda 21. The plan of action laid out actions to be taken at global, national and local levels to support a sustainable future for the earth and future generations. Ten years later in 2002, the World Summit on Sustainable Development was held in Johannesburg to review progress and move the agenda further forward.

The Brundtland Commission produced a definition of sustainability that is widely used and has influenced the development of standards specific to the extractive industries. The Commission’s conceptual framework sought to push back on the emphasis on economic development and combine public policy on economic growth and social and environmental well being. The Commission’s definition as follows, encompasses people, profits and planet.

‘Forms of progress that meet the needs of the present without compromising the ability of future generations to meet their needs.’

Free, Prior and Informed Consent – FPIC, was initially used to describe responsible interaction with indigenous communities who have a spiritual and livelihood connection to land. FPIC is now considered best practice for companies interacting at any stage of the mine life cycle with any residents whose livelihood may be affected by mining, including at the exploration stage. Many communities want mining related development, for others it is out of the question that, for example, a sacred mountain would be destroyed simply because it contains gold.¹⁹

Obtaining FPIC requires companies to engage early, honestly and non-coercively with local stakeholders to obtain consent for the mining activity, before the official granting of a license. Practical ways to engage include community disclosure meetings, house to house visits, guided site visits and possibly, training of community based environmental monitors to test for chemical contamination before during and after exploration disturbance. Since Namibia is home to a number of indigenous populations FPIC should be a requirement for exploration in

¹⁹ Tibetan villagers have successfully halted a controversial mining operation that threatened Kawagebo, one of the most sacred peaks in the Tibetan world January 2012 <http://intercontinentalcry.org/tibetan-villagers-halt-mining-project-on-sacred-mountain/>

tribal land use areas. The United Nations (UN) Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD) provides guidelines for FPIC.²⁰

The elements of free, prior and informed consent – FPIC:

- Free from force, intimidation, coercion, or pressure by anyone (it can be a government, company, or any organisation).
- Prior implies that consent has been sufficiently sought in advance of any authorisation or commencement of any project. Also, local communities must be given enough time to consider all the information and make a decision.
- Informed means that the community must be given all the relevant information to make its decision about whether to agree to the project or not.
- Consent requires that the people involved in the project must allow indigenous communities to say “Yes” or “No” to the project. This should be according to the decision-making process of their choice.

The term **Social Licence to operate** refers to a social agreement for the mining company to operate in the area. A social licence to operate cannot be obtained through an application process. It must be earned and maintained through sincere and thorough stakeholder engagement practice that results in an acceptance by the local community of the company’s presence in the area. This term was coined by the extractive industry about fifteen years ago but has since been adopted by other industries and corporations. Canadian Dr Robert Boutiller is credited with a widely used definition:

The social licence is the level of acceptance or approval continually granted to an organisation’s operations or project by the local community and other stakeholders. It varies between stakeholders and across time through four levels from lowest to highest: withdrawal, acceptance, approval and psychological identification.

The social licence to operate is inversely correlated with social risk – the higher the social licence, the lower the social risk.

Evolution of International Standards

Large-scale mining fuelled the industrial revolution that in turn altered human and environmental development completely. Big

mining arrived in the coal-rich Appalachian mountain area of Kentucky USA in the late 19th century. Before long, the social, economic and health impacts experienced by mine workers and their families as they left small holdings and moved to mining settlements gave rise to protest and what is now a large heritage of coal-related protest songs. These built on the hymn like protest songs sung by slaves in the southern states.

A century later the 1960s and 70s saw global protests about the mining of uranium and the potential for nuclear war. As attention on the impact of mining grew, the focal points were the environmental destruction often left in the wake of a closed mine, the impact on indigenous people when mining activity was layered over traditional hunting and ceremonial land and occupational health and safety. This was an era when the accident rate was high, health impacts for workers were severe and holes in the ground were simply abandoned after mine closure. Southern Africa is littered with abandoned mines. Namibia is home to over two hundred and forty.²¹

The 1980s saw the beginnings of the development of declarations and goals aimed at entrenching human rights and sustainable development globally in many areas of human endeavour. The momentum continued in a series of conferences and focused declarations to set standards for the environment, globalisation, good governance, ethical business practice and labour and social rights.

The first decade of the 21st century has seen an emerging importance of extractive industry standards coupled with global and national efforts to legislate for and encourage what remains a largely voluntary set of standards.

The following table sets out this broad development of the key global agreements and institutions that have and continue to develop international standards that determine best practice in the extractive industry.

Applying Standards in Namibia – which ones and why?

The standards landscape is broad and is continuously developing and being refined and adapted for national and company settings. Aiming to meet global standards requires stakeholders in national and corporate settings to benchmark corporate and legal standards against the principles and practices to be upheld. In sovereign terms these should be framed in Namibia by whole

²⁰ http://www.un-redd.org/Stakeholder_Engagement/Guidelines_on_FPIC/tabid/55718/Default.aspx

²¹ Mineral Policy of Namibia, Ministry of Mines and Energy 2002, 5.1, The Mining Industry and the Environment

DEVELOPMENTS TOWARDS A FRAMEWORK FOR RESPONSIBLE MINING 1976 - 2011		
1976		Organisation for Economic Cooperation and Development developed the first iteration of Guidelines for Multi-national enterprises.
1987	 United Nations	'Our Common Future' introduced the notion of sustainable development
1992	 Rio Earth Summit	The United Nations Conference on Environment and Development produced the Rio Declaration, several important treaties and Agenda 21
1992 – 1998	ESIA	Environmental and Social Impact Assessment became established as a key tool for environmental and social decision making throughout the world
1998	 International Labour Organisation	Several ILO Conventions were recognized as standards of fundamental importance from a human rights perspective
2000	 United Nations	The United Nations Millennium Declaration was produced and set global targets for poverty reduction
2000		The United Nations Global Compact was officially launched to urge business to participate in globalisation within a framework of ten principles drawn from major UN agreements and conventions
2000	The Voluntary Principles on Security+Human Rights	The Voluntary Principles on Security and Human Rights were launched
2001		The International Council on Mining and Minerals was formed to improve sustainable development performance in the mining and metals industry
2001 – 2002	 United Nations	The Millennium Development Goals were published
2002		The Global Reporting Initiative was officially launched to make sustainability reporting standard practice for all organisations
2002		Global Mining Initiative and the Mining, Minerals & Sustainable Development projects culminated in the production of the 'Breaking New Ground' report & global mining conference called 'Resourcing the Future'
2002		The Extractive Industry Transparency Initiative was launched to enable companies to publish payments made to all levels of government as part of national operations
2003		Several private banks published the Equator Principles which set standards to met and monitored for companies seeking finance for mining projects
2003 – 2008		The ICMM established a Sustainable Development Framework for mining companies

2004		The World Bank's extractive industry review was completed
2005	 United Nations	United Nations Convention against Corruption
2006		The IFC Performance Standards were published
2006		The Equator Principles were revised, increasing their scope and strengthening their processes
2007	 United Nations	The Declaration on the Rights of Indigenous People's was adopted by the United Nations General Assembly
2007		The IFC Performance Standards are matched with corresponding Guidance Notes. New versions of the World Bank Group Environmental, Health and Safety Guidelines (known as the EHS Guidelines) were published
2008	 United Nations	UN Human Rights Council accepts "Protect, Respect and Remedy" Framework to guide corporate responsibility for human rights
2011	 United Nations	UN Framework Guiding Principles for the Implementation of the UN "Protect, Respect and Remedy" Framework (often referred to as the 'Ruggie' Framework)

of government frameworks such as the constitution, Vision 2030 and the Fourth National development Plan.

The Namibian Minerals Policy is ambivalent and contradictory on international standards. International standards or best practice are referred to in relation to environmental protection. The Policy notes that 'environmental specifications can be a constraint in specific cases and can create problems for developing countries, as they attempt to comply with international standards'. Alternately, it identifies increasing regional benchmarking to international standards for environmental protection, as important to the creation of an investor friendly environment. The role of international 'watchdog' organisations in identifying environmental harm is cited as a deterrent to investors. This is a negative view of sovereign protection of the environment.

The policy was reportedly arrived at through a well-attended set of stakeholder discussions, which is a promising start to multi-stakeholder engagement, given adequate resources to continue. Governance documents for exploration in Namibia

have improved with recent legal developments but still don't set objectives for good governance or transparency.

Whilst the focus of this chapter is the exploration phase, the majority of global standard sets are designed to cover the entire mine-life cycle. The only global CSR framework specifically geared to exploration is the Canadian Prospectors & Developers Association of Canada (PDAC) generated, E3 Plus: A Framework for Responsible Exploration. It is highly applicable to the issues being addressed in exploration licensing in Namibia. It provides a set of principles and guidance notes for implementation that all explorers should aspire to and which Namibian exploration licence applicants could be required to adhere to. The same organisation has developed three practical toolkits to date on social responsibility, environmental stewardship and health and safety.

E3 Plus defines sustainable development as:

'Those actions and activities that minimise harm to the environment and improve the wellbeing of the community or the ability of the community to manage

and sustain its own affairs, now and into the future, without depending on external sources for ongoing maintenance.'

In terms of corruption E3 Plus second principle is:
Apply ethical business practices

Objective: To have management procedures in place that promote honesty, integrity, transparency and accountability.

Specifically on bribery, corruption and conflict of interest E3 Plus says:

Explorers should not offer, promise or give a bribe to, or demand or accept a bribe from any government, public or elected official, member of the armed forces, police, or any other individual or organisation. Explorers should also not condone or knowingly benefit from a bribe or other improper advantage. Similarly, explorers and the officers and employees of exploration companies should declare and remove themselves from any real or apparent conflict of interest. It is recommended that explorers:

- a. Adopt, and make public, policies and procedures to eliminate bribery, corruption and conflict of interest
- b. Provide instruction and training to personnel on how to properly handle situations in which bribes are suggested, requested or demanded, or where conflict of interest may arise; and
- c. Promote and apply practices that disclose and make transparent any payments to third parties and all agencies of government.

The other international standards that are directly referred to in E3 Plus all have relevance to Namibia. To follow is a description of these and other relevant standards, their content and reputational strength and any direct reference to corruption and transparency contained within them.

Some of the documents to be examined are a set of principles that represent universal truths that are not enforceable and offer little practical advice on how they might be applied. Others offer guidelines and specific steps that users can implement or adapt to their specific setting. These too are not enforceable. Standards, such as those set by the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD)²² are more authoritative and prescriptive

and include performance indicators that can be measured internally and often require external independent verification of compliance. These are very effective because they are tied to project finance. Others can be used to strengthen national legislation and regulation through a requirement for companies to be signatories to, or compliant with, particular standards and to reflect these in corporate governance documents and past reporting.

United Nations Declaration on the Rights of Indigenous Peoples²³

According to the International Working Group for Indigenous Affairs (IWGIA), an international human rights organisation that gathers information from researchers in the countries they report on, the indigenous peoples of Namibia represent some 8 percent of the national population.

It is generally accepted that the San (Bushmen), who number between 32,000 and 38,000, are indigenous to the country. There are six different San groups in Namibia, each speaking their own language and with distinct customs, traditions and histories. They include, among others, the Khwe, 4,400 people mainly in Caprivi and Kavango Regions, the Hailom in the Etosha area of north-central Namibia (9-12,000), and the Jul'hoansi (7,000), who live mainly in Tsumkwe District in the Otjozondjupa and the Omaheke Regions. The San were, in the past, mainly hunter-gatherers but, today, many have diversified livelihoods, working as domestic servants or farm labourers, growing crops and raising livestock, doing odd jobs in rural and urban areas and engaging in small-scale businesses and services. Over 80 percent of the San have been dispossessed of their ancestral lands and resources, and today they are some of the poorest and most marginalised peoples in the country.

Other indigenous peoples are the Himba, who number some 25,000 and who reside mainly in the semi-arid north-west (Kunene region). The Himba are pastoral peoples who have close ties to the Herero, also pastoralists who live in central and eastern Namibia. The Topnaars of the Kuiseb River valley and the Walvis Bay area in west-central Namibia, a group of some 1,800 people who live in a dozen small settlements and depend on small-scale livestock production, use of !nara melons (*Acanthosicyos horrida*), and tourism.

²² The EBRD standards have not been reviewed as it does not work in Namibia

²³ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples but has no national legislation dealing directly with Indigenous Peoples. The indigenous population is not specifically mentioned in the Constitution. In 2010, the Namibian Cabinet approved a Division for San Development under the Office of the Prime Minister, which is an important milestone in promoting the rights of indigenous peoples/marginalised communities in Namibia.²⁴

Given the indigenous population's lack of specific mention in Namibian minerals legislation, exploration companies should be expected to adhere to this international standard.

International Labour Organisation Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169)²⁵

Namibia has not signed on to this convention though it has to eleven other ILO labour rights conventions, the contents of which should be reflected in employment contracts and informal arrangements between mining companies and Namibian indigenous employees.

The convention came into force in 1991 and protects the rights of indigenous people who are defined by this convention as 'tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.'²⁶

UN Guiding Principles on Business and Human Rights²⁷

The UN Protect, Respect, Remedy framework is included in a comprehensive examination of business and human rights developed by Business for Human Rights.²⁸ It includes a checklist of human rights for business applications.²⁹

Since the development of the Protect, Respect, Remedy framework it has been shaped into the UN Guiding Principles on Business and Human Rights³⁰ that were endorsed by the UN Human Rights Council in June 2011. John Ruggie worked as UN Special Representative on business and human rights (mandate: 2005-2011) and his name is often quoted informally in reference to the principles.

The principles are the first global standard for preventing and addressing the risk of adverse human rights impact linked to business activities. They provide a sound basis to guide companies, governments and citizens on good practice.

The Guiding Principles apply to all states and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

The Guiding Principles are grounded in recognition of:

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms
- (b) The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.³¹

In November 2011, the Office of the UN High Commissioner for Human Rights issued 'Implementing the United Nations Protect, Respect and Remedy Framework'. This guide provides very helpful commentary about the role of the state, business and civil society, in the protection of human rights. It argues the state should not assume that business either prefers or benefits from a legal environment that is incoherent, does not adequately address human rights or one that fails to take action to actively prosecute breaches.

Business is asked to 'know and show' how they respect human rights and calls for due diligence and advance risk

24 <http://www.iwgia.org/regions/africa/namibia/881-update-2011-namibia>

25 <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

26 http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312314

27 <http://www.business-humanrights.org/Documents/UNGuidingPrinciples>

28 <http://www.businesshumanrights.org/Documents/RuggieHRC2008/>

29 <http://www.business-humanrights.org>

30 <http://www.business-humanrights.org/Documents/UNGuidingPrinciples>

31 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf



assessment. Extractive companies undertake many different risk assessments at different stages of an extractive project. In traditional risk assessment, risk factors in both the consequences of an event (its severity) and its probability. In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritise the order in which potential impacts are addressed.

Companies are encouraged to involve non-government institutions, in particular those that adhere to the Paris Principles,³² which relate to the status of national institutions and legislation on human rights. The Paris Principles are a way of benchmarking the national human rights context. NGOs well versed in them are also likely to be practiced in inclusive reform strategies.

Guidance is provided on the establishment and pros and cons of judicial and non-judicial grievance mechanisms.

32 <http://www2.ohchr.org/english/law/parisprinciples.htm>

Responsible mining companies should already have a grievance mechanism, but these should be adjusted to the context of countries of operation and the existence of external mechanisms. The dispute resolution mechanism offered by Namibia's Minerals Ancillary Rights Commission could be the basis for a tripartite grievance mechanism involving government, business and civil society representatives. The current skills set of members would need to be widened to include not only the legal profession and government, but also business, civil society and professionals able to assess grievances in terms of sociological, environment, health and safety and economic development perspectives.

The UN Guiding Principles on Business and Human Rights were built on five years of strong participation from the public, private and civil society sectors. Whilst it is too soon to evaluate their use, business participants have begun using the framework in reviewing corporate CSR policy and practice.

Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises³³

The guidelines are far-reaching recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. The guidelines have been described as the only multilaterally endorsed and comprehensive business code that governments are committed to promoting and the principal inter-governmentally agreed soft law tool for corporate accountability.

Whilst the guidelines cover many relevant topics including disclosure of company information, taxation, and competition, chapter VII covers the role of multi-national companies in combating bribery, bribe solicitation and extortion. The chapter recognises that corruption impacts negatively on the development of a nation and its democratic institutions and directly impedes poverty reduction. It provides practical strategies for companies in order to combat and take a stand on corruption in their business practice.

33 <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/oecdguidelinesformultinationalenterprises.htm>

The guidelines were updated in 2011 for the fifth time since they were first adopted in 1976. The official text is complemented with implementation procedures. All thirty-four OECD member states and ten non-members have subscribed to the OECD Declaration and Decisions on International Investment and Multinational Enterprises, which the guidelines elaborate.

Namibia is not a member of the OECD or a signatory to the guidelines. However, revisions adopted in 2000 included the key clarification that the guidelines apply beyond the territories of the adhering countries in relation to the activities of the enterprises that they address wherever they operate:

Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.³⁴

Namibia could opt to sign on as a non-member adhering country. Among other areas addressed the guidelines offer a mechanism to match supply chain operations with public policy goals such as local supply to mining operations, of goods and services. They offer an opportunity to align corporate social responsibility with actual national needs and issues. Becoming an adhering country participant would require public expenditure that has to be balanced by the government's assessment of what it would gain from membership.

The OECD also offers a risk assessment tool for use by companies operating in weak governance zones where governments are either unwilling or unable to enforce laws, uphold international standards or prevent corruption. The tool takes the perspective that multi-national corporations can still, and must, make a positive contribution to national development in spite of having to apply heightened managerial effort.

United Nations Global Compact (UNGC)³⁵

The United Nations Global Compact (UNGC) was designed in 2000 by the United Nations as a broad set of principles that applies to all industries and to projects at all stages of operation. The UNGC is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles.

The UNGC was designed to encourage businesses to align their operations and strategies with ten universally accepted

principles in the areas of human rights, labour, environment and anti-corruption.

The UN Global Compact has two objectives:

- 1) Mainstream the ten principles in business activities around the world; and
- 2) Catalyse actions in support of broader UN goals, including the Millennium Development Goals (MDGs).

The UNGC is comprised of ten general principles. Some management tools and resources are made available to members as well as opportunities to engage in specialised environmental, social and governance work streams with company and civil society participation.

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption. Its ten principles in the areas of human rights, labour, the environment and anti-corruption are derived from:

- The Universal Declaration of Human Rights
- The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

An accompanying 'Inspirational Guide'³⁶ provides detailed advice on human rights, labour, environment, anti corruption and partnerships for development. It includes a number of case studies including several on company internal approaches to combating corruption. A number of other corruption-related guidance resources have been produced by the UNGC and partners.³⁷

The compact is monitored through the annual provision of short Communication of Progress (COP) reports by participating bodies. Seven hundred and seventy nine reports have been received since 2005, relatively few given the reported participation of 8,700 corporations and others stakeholders from 130 countries.

Principle 10 of the Compact addresses corruption:

Businesses should work against corruption in all its forms, including extortion and bribery.

The United Nations Convention against Corruption was developed in Merida, Mexico in December 2003. It is the underlying legal instrument for the 10th principle in the Global Compact, against corruption. The convention entered into force on 14 December 2005.

³⁴ Guidelines, Section I, Concepts and Principles, paragraph 2.

³⁵ <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html>

³⁶ http://www.unglobalcompact.org/docs/news_events/8.1/Inspirational_Guide.pdf

³⁷ http://www.unglobalcompact.org/AboutTheGC/tools_resources/anti_corruption.html

The compact has been criticised by NGOs for being too easy to join, enabling non-compliant companies to ‘blue wash’ by association with the UN.³⁸

International Finance Corporation IFC³⁹ Performance Standards on Social and Environmental Sustainability and the Environmental Health and Safety Guidelines

The IFC, a member of the World Bank Group, is responsible for one third of finance provided to the private sector in developing countries through direct loans or via financial intermediaries. Namibia became a member of the IFC in September 1990, making it possible for mining companies who meet the eight rigorous and verifiable IFC performance standards to raise IFC finance for in-country projects with a value above USD 10 million.

The objectives of the IFC standards are to ensure to the maximum degree possible that local impacts of the extractive industry are thoroughly assessed and mitigated in an action plan that is continuously reviewed. Adherence to the standards requires considerable resources and effort by companies but increases access to the currently seventy-nine Equator Banks. South African banks ABSA, Nedbank, Standard Bank and First Rand, some of which have a presence in Namibia, are among the Equator Banks. A Namibian Bank willing to subscribe to, implement and monitor the Equator Principles could join this growing group of financial institutions. These institutions have signed up to the Equator Principles,⁴⁰ which make project financing subject to sustainable development criteria. The adoption of the IFC Performance Standards by Equator Banks has made the Standards the most important corporate CSR Framework today.

To be eligible for IFC funding, a project must:

- Be located in a developing country that is a member of IFC
- Be in the private sector
- Be technically sound
- Have good prospects of being profitable
- Benefit the local economy

38 2011 University of Toronto Press -Relations of Global Power – Neoliberal Order and Disorder, Edited by Teeple, G. and McBride, S. Chapter 4 Singh, J. Corporate Accountability: Is Self Regulation the Answer?

39 http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps

40 http://www.equator-principles.com/resources/equator_principles.pdf

- Be environmentally and socially sound, satisfying IFC environmental and social standards as well as those of the host country [whichever is the most stringent]

The IFC Mining and Oil and Gas Teams do support projects in the exploration stage, including through purchasing equity, though it is more common for exploration companies to be deploying their own funds until a viable deposit is confirmed. No mining, oil or gas projects are currently listed on the IFC project database.

Compliance with IFC standards adds strong reputational value to companies. Companies are required to disclose potential social and environmental risks and impacts and proposed mitigation, before the start of a project. The advance disclosure and annual reports are independently verifiable.

Of interest to Namibia at the exploration phase is the detailed guidance on free, prior and informed consent (FPIC). In later stages, Namibia could consider requiring companies applying for Mining Licences to meet IFC performance standards, whether or not the IFC or another of the Equator Banks finances them.

Extractive Industries Transparency Initiative (EITI)⁴¹

In their 1999 exposé, *A Crude Awakening*, Global Witness (an international watchdog NGO) called for oil companies to ‘publish what you pay’ to the government of Angola. In June 2002, Global Witness teamed up with Amnesty International UK, the Catholic Agency for Overseas Development (Cafod), George Soros and the Open Society Institute, Oxfam Great Britain, Save the Children United Kingdom (UK), and Transparency International UK to launch the Publish What You Pay campaign, which called for all extractive companies to disclose payments to host governments. Their advocacy campaign quickly began to see results. In October 2002, then British Prime Minister Tony Blair unveiled the Extractive Industries Transparency Initiative (EITI) at the World Summit for Sustainable Development in Johannesburg. The EITI is based around the premise that, given good governance, revenue from natural resources can be a powerful anti-poverty agent for the 3.5 billion citizens who live in resource-rich developing countries.

National EITI Secretariats are implemented by governments, and steered by a multi-stakeholder advisory group com-

41 <http://eiti.org/>

prised of government, civil society and the private sector. The in-country Secretariat collects data from extractive companies and government on the revenue and material (e.g. oil) paid to the state, such as taxes, royalties and other fees. The aggregated information is compared and checked for disparities, which can then be investigated. An annual report is released with the results, which are then tracked over subsequent years to assess improvements or decline in transparency.

Companies that report to the EITI are sending a signal about their commitment to transparency and accountability. Conversely, it could be argued that in not establishing a branch of the EITI, the Namibian government is not committed to verification of its claims about the presence of transparency and accountability in the extractive sector.

Extractive companies operating in EITI implementing countries are obliged to submit reports. Companies in non-EITI countries with high levels of perceived corruption, as is the case in Namibia, could encourage the initiative, as a means of managing risks associated with accusations of financial corruption. Responsible companies want the political stability and good governance that country membership of EITI implies.

Where a government is reluctant to set up EITI, a lobby group can be formed to campaign for implementation. In that case the advocacy group could be supported by the global network of 650 civil society organisations, Publish What You Pay Coalition (PWYP). Based in London PWYP has a set of principles and standards that all members must adhere to. The objective of PWYP is:

Publish What You Pay campaigns for a world where all citizens benefit from their natural resources, today and tomorrow.

We believe that increasing transparency in the extractive sector will enable citizens to hold governments and companies to account for the ways in which natural resources are managed.

In total twenty-three African states are linked to the EITI process and the regional trend is to seek membership. SADC countries that are compliant with the EITI requirements are Mozambique and Zambia. The DRC and Tanzania are implementing the EITI but are not yet fully compliant. Madagascar was compliant but has been suspended. Other compliant African states include Ghana, Nigeria, Mauritania, Central African Republic, Mali and Niger. Implementing but not yet fully compliant African states are Cameroon, Chad, Guinea, Burkina Faso, Cote d'Ivoire, Gabon, Republic of the Congo, São Tomé and Príncipe, Sierra Leone and Togo.

According to Transparency International and Open Society Foundations, in 2008, exports of oil, gas and minerals from Africa were worth roughly nine times the value of international aid to the continent (US\$393 billion vs. US\$44 billion).⁴²

The fact that mining communities are beset with intractable poverty levels is an indication that revenue distributions have not served their intended purpose. In the same report Nana Yaw Saah Aboagye of the Ghana Integrity Initiative says, 'Either the right amounts are not made [publicly] available or revenues end up lining the pockets of corrupt officials and groups. The burning question is, after so many years of mining, why does poverty persist in communities in producing regions? What is the missing link between revenues and poverty reduction efforts?'

Civil society and communities in mining areas need detailed information to take up their role in combating corruption and the flight of capital away from development priorities.

The major issues have been the lack of monitoring of allocations and accountability mechanisms. In the face of government resistance to joining the EITI, Transparency International and Open Society Foundations are advocating that the European Union (EU) impose mandatory revenue distribution reporting requirements on a project by project, country by country basis, for EU based extractive companies.

National EITI secretariats are often funded by the Multi Donor Trust Fund (MDTF), administered by the World Bank and other bilateral institutions. These funds cover overhead and operational expenses, training, outreach and promotion activities and advertising of results. The official request for funding and establishment must be forwarded by the Government or President of the country wishing to join EITI.

In Mongolia, the EITI Secretariat is funded by the MDTF. The reconciliation of reports is funded by the Government of Mongolia.

The EITI representative in charge of implementation in Southern and Eastern Africa⁴³ and the Middle East, and Stakeholder (company, government and civil society) relations estimates the cost of running an EITI in Namibia to be US\$250,000 per annum.

His impression at this stage, is that the Namibian environment is not too complex, with few dominant companies. The costs to business are almost negligible because they collect the data anyway, though they might need to fit it into the EITI templates and get an auditor to sign off.

42 <http://www.opensocietyfoundations.org/sites/default/files/extractive-industry-transparency-20120626.pdf>

43 Eddie Rich <ERich@eiti.org>



The costs to government for such a straightforward process should be limited and include:

- one or two people in the Ministry/or agreed structure to coordinate the process and ensure that meetings are held;
- the cost of the annual reconciliation, which would be unlikely to be more than around US\$50,000 for Namibia;
- dissemination activities, especially of the reports which might be around US\$100,000
- the workshops and meetings;
- a validation once every three or so years (though that is likely to be covered centrally by the EITI in future).

Voluntary Principles on Security and Human Rights (VPs)⁴⁴

The VPs are the only CSR framework that thoroughly addresses security and human rights and place a strong emphasis on risk. Their aim is ‘transforming security from defensive reaction to inclusive pro-action.’⁴⁵ The VPs were designed to guide mining, oil and gas, and energy companies to create functioning

operations through safety and security that ensure human rights and fundamental freedoms. The primary focus is risk assessment, as well as interactions between companies and public and private security.

The VPs are only mandatory for companies who have opted in, or companies accepting finance or insurance from a source which requires the VPs, or companies accepting contracts with VP signatories. The VPs are referenced in IFC Safeguards & OECD Guidelines.

Exploration companies will commonly employ security guards to protect their licence area, equipment and employees. Exploration operations can be vulnerable to hostility from local communities, theft and damage to plant and incursions onto the licence area by small-scale miners and com-

munity members who have previously used the land for livelihood purposes. Responsible companies will have conducted due diligence including information and disclosure engagements and will have obtained free, prior and informed consent. However, given these are not required in Namibia it is likely that security incidents will occur where people are surprised by the unexpected presence of exploration activity.

The VPs describe a multi-stakeholder risk assessment process that facilitates extractive companies’ prior assessment of potential risks according to severity and probability. This drives critical thinking about security issues and their root causes, such as poverty and a lack of rule of law or lack of capacity to enforce laws. The risk assessment enables planned operational strategies to deal with security incursions from a range of viewpoints.

Security personnel are not renowned for a human rights based dimension in their work so it is essential that companies committed to the VPs are willing to provide training either directly or through an agency such as a specialist NGO. In the Democratic Republic of Congo where rule of law is at an all time low and the majority of mining is conducted by small-scale miners, an international NGO has managed constructive reforms in security practice. Large-scale companies funded training for security personnel. A well-attended fly in monthly de-briefing meeting of security personnel has had a measured

44 http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf

45 Karen Hayes, Director Extractive Industries programme, Pact Congo

impact on the reduction of brutality towards people whose livelihood may transgress large-scale mining licence areas. In these meetings, real security incidents are re-examined to see if they could have been handled differently. Feedback from security personnel has been positive and they are reported to look forward to the meetings because they deal with real life scenarios and result in improved practice that is more humane and in line with individual values.

The VPs can be used by any company or organisation and if used with skill can generate good community relations and reduced security incidents. To become a member requires that participants:

- Actively dialogue with other participant companies
- Promote the VPs; and
- Actively implement the VPs into practices and procedures related to security and human rights.

As of 2007, VP participants are required to report annually to other VP members on their progress in implementing the VPs although these reports are not made public.

Equator Principles (EPs)⁴⁶ - Financial institutions and international social and environmental standards

Increasingly, access to funding for business operations and expansion is contingent upon meeting social and environmental standards of international financial institutions. As a result of years of civil society advocacy, major lending institutions, such as the World Bank's Multilateral Investment Guarantee Agency (MIGA) the International Finance Corporation (IFC), the Inter-American Development Bank (IADB), the European Bank for Reconstruction and Development (EBRD), and the African Development Bank (ADB), have put into place social and environmental standards that must be met to win financing for a project. Following the guidelines set forth by the World Bank, a collection of the largest multinational (project financing) banks have pledged to withhold funding for projects or businesses that negatively impact society and the environment.

The Equator Principles were named as such because banks from either side of the equator can link themselves to the principles. Consisting of ten principles that are closely aligned to the IFC Performance Standards for measurement, they were developed by an initial ten banks. The current membership of financial institutions sits at seventy-nine, from thirty-eight nations. The third iteration of the Equator Principles bringing it

into line with the recent update of IFC Performance Standards is due for release in early 2013. The EPs apply to the extractive industry on-shore, off shore and include all minerals, oil and gas.

The Equator Principles enable finance institutions to manage their risk exposure to projects where significant risks need to be managed according to best practice described in the IFC Performance Standards.

Projects are given a rating according to risk and severity. The categories are:

Category A – Projects with potential significant adverse social or environmental impacts, which are diverse, irreversible or unprecedented

Category B – Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and

Category C – Projects with minimal or no social or environmental impacts.

The different categories require varying degrees of prior risk assessment, monitoring and reporting requirements. Category A projects require independent verification of assessments, practice and reports.

Equator Banks funding projects in countries that are low-income or non OECD member states, require, among other things, the development of a social and environmental management plan and FPIC – free, prior, informed consent from affected communities and an established grievance mechanism.

Standards and initiatives not referred to in E3 Plus

E3 Plus, as the only global standard exclusively related to exploration, was the basis for examining the above international standards. Several other measurement devices and institutions are worth noting for relevance to Namibia.

Global Reporting Initiative (GRI)⁴⁷

The GRI has become the global standard for reporting on sustainability. A large network of six hundred organisational stakeholders, administered in The Netherlands, the GRI seeks to encourage continuous improvements as companies critically

46 <http://www.equator-principles.com/>

47 <https://www.globalreporting.org/Pages/default.aspx>

examine their performance according to supplied reporting guidelines.

Public comments on its fourth iteration have recently closed and updated reporting criteria on corruption are expected in 2013. Although its focus is on reporting, GRI intends that this will drive on-going improvement in company practice.

Companies that report to GRI enjoy strong reputational benefit because it is the most widely used sustainability reporting mechanism. Reporting requires corporate time and resources but with a CSR monitoring program in place to track performance against a number of indicators in various standards, data gathering and verification should be straightforward for responsible mining companies.

Consistency in reporting enables benchmarking among peer companies. The initiative is supported by mining sector industry associations (such as ICMM), industry peers and NGOs through the GRI Mining and Metals Sector Working Group. This group has developed reporting tools specific to the mining and metals and oil and gas sectors.⁴⁸

ISO 26000

The International Standards Organisation is the global authority on standards that relate to a huge range of products, services and challenges. It is included here because of the weight it carries. Topics for which minimum standards have been defined are wide ranging - from food item safety, to electrical item standards, to water and sustainable development.

Late in 2011 after consultations with hundreds of stakeholders in eighty countries, ISO 26000 was released on the subject of corporate social responsibility. The full package is for sale and has not been reviewed. However the two schematic diagrams⁴⁹ have been appreciated by extractive companies as a simplified way to understand CSR.

For miners and business executives, CSR risk assessments and mitigation plans can seem to generate a quagmire of unsolvable problems, rather than a responsible and a better way of doing business. It is important to ensure that companies have a skilled CSR manager and that their in-country work involves employing and training national CSR personnel.

48 <https://www.globalreporting.org/reporting/sector-guidance/mining-and-metals/Pages/default.aspx>

49 http://www.iso.org/iso/home/store/publications_and_e-products/publication_item.htm?pid=PUB100260

CASM⁵⁰

International organisation Communities and Small Scale Mining (CASM) has been in existence for ten years under World Bank directorship. CASM has been able to achieve a great deal, including developing comprehensive strategies to mitigate the environmental impacts of artisanal and small-scale mining (ASM) developing training materials to preserve the health, safety, and environment of artisanal miners; increasing integration of awareness; and increasing implementation of 'integrated policy and practice' models by international agencies and governments.

Although there are current discussions about sustaining CASM, it and its members remain an excellent 'go to' agency if Namibia takes further steps to develop small-scale mining. Regular global meetings are held and experiences have shown that when a country hosts the meeting it results in improvements for small-scale miners who are often among the most poor and vulnerable members of society.

International Council on Mining and Minerals⁵¹

One year prior to the 2002 Johannesburg World Summit on Sustainable Development, a key standards setting institution for the extractive industry was formed, namely the International Council for Mining and Minerals (ICMM).

The ICMM comprises of twenty-two mining companies and thirty-four national and regional mining associations who, through their membership, are committed to 'transparent and optimal exploitation of mineral resources'. The ICMM website states,⁵²

'Together, our member companies employ some 800,000 of the estimated 2.5 million people working in the mining and metals sector, with interests at over 800 sites in 62 countries across the globe. Exploration activities extend this reach significantly. In addition, through our 34 mining and commodity association members, we have reach to another 1,500 companies in the sector.'

In 2003 the ICMM released its Sustainable Development Framework after consultations with representatives from unions, industry, First Nations, financial institutions, NGOs and

50 <https://www.artisanalmining.org/casm/>

51 <http://www.icmm.com/>

52 <http://www.icmm.com/members>

governments. The intention is to provide leadership on responsible mining and the impressive and growing number of toolkits available certainly does that.

Ten general principles, performance standards, management systems and processes, and industry specific toolkits, considered leading edge, are free online. The first principle relates to corruption and transparency and includes working with stakeholders to bring about good governance. This could translate for example into company support for local transparency initiatives.

Principle 1 states:

Implement and maintain ethical business practices and sound systems of corporate governance.

- Develop and implement company statements of ethical business principles, and practices that management is committed to enforcing
- Implement policies and practices that seek to prevent bribery and corruption
- Comply with or exceed the requirements of host-country laws and regulations
- Work with governments, industry and other stakeholders to achieve appropriate and effective public policy, laws, regulations and procedures that facilitate the mining, minerals and metals sector's contribution to sustainable development within national sustainable development strategies.

The 2012 Rio + 20 Summit saw the ICMM launch a new series of publications to describe mining and metals' contribution to sustainable development. The series, released between June and November 2012 seeks to set out some of the more important benefits, costs, risks and responsibilities related to mining and metals in today's world. These publications are an outstanding resource and demonstrate the rising importance of the ICMM as an industry body.⁵³ The ICMM is company led and has attracted some NGO criticism on this basis. At the same time, recent ICMM discussion events have been inclusive of NGO and other multi-stakeholder representatives.

Membership benefits are high because the ICMM is highly regarded internationally. Company members are required to participate in the Sustainable Development Framework and report on the ten principles and CSR practice. The report must meet GRI A+ standards, which includes verification by an independent body, in practice, often a consultant or consulting firm.

SADC members of the ICMM are:

- Chamber of Mines of South Africa
- Chamber of Mines of Zambia
- **Mining Industry Associations of Southern Africa (MIASA), which as of January 2012 includes:**
 - Tanzania Chamber of Minerals and Energy
 - Zambian Chamber of Minerals and Energy
 - Chamber of Mines of Namibia
 - Chamber of Mines of Botswana
 - Chamber of Mines of Zimbabwe
 - Chamber of Mines of DRC (membership application in process)

MIASA and its members should be promoting the ICMM Sustainable Development Framework and orientating national practice to the guidance provided by ICMM resources.

Applying International Standards at Corporate Level

A rapid benchmarking review of multi-national extractive company standards across nine multi-national companies⁵⁴, revealed a great deal of consistency in approach. All of the companies have established an overall corporate responsibility framework and document hierarchy in which they position their standards. All make reference to the international standards to which they are signatory or to which they adhere or draw their own standards from.

Policies, standards, procedures and guidelines are all core elements of the corporate management system. Site-level systems are used to apply these corporate elements at the local level, as appropriate to local conditions and the nature of what is being explored or extracted.

Most companies use a plan-do-check-act framework as a basis of their corporate responsibility standards, which are then integrated into their version of a continuous improvement cycle. The companies reviewed had developed between twelve and twenty-one standards or topic headings on different issues across the operational spectrum. Typically each of these is supported by detailed procedures or guidelines. Each company has its own way of establishing and communicating issue specific requirements. The term 'standards' is used quite broadly, covering higher-level standards and more detailed procedures.

⁵³ <http://www.icmm.com/library/minings-contribution-to-sustainable-development-the-series>

⁵⁴ Rio Tinto, Anglo American, Teck, Barrick, xtrata, nexen, bhpbilliton, Newmont, INMET

The list of management standards covered by the nine companies was:

- policy, leadership and accountability
- risk and change management
- legal and other requirements
- targets, planning and goals
- communication, consultation and participation
- document and data control
- operational control
- emergency preparedness
- contractors, suppliers and partners
- incident reporting and investigation
- monitoring, audit and review
- behaviour, awareness and competency
- workplace inspections
- corrective and preventative action
- management review

Taking Newmont as an example, they have an extensive list of standards, which are then elaborated in detailed procedure documents. In the environment / social responsibility area, and applicable to exploration, the following standards have been developed:

- social baseline studies
- social impact assessment
- stakeholder mapping
- external stakeholder engagement
- expectation and commitment management
- complaint / grievance management and resolution
- monitoring and evaluation
- local community investment
- security and human rights
- land access, acquisition and resettlement
- management of cultural and heritage sites
- hydrocarbon management
- chemical management
- mercury management
- tailing management
- waste rock management
- waste management
- water management

The governance standard topics across the nine companies were:

- Management systems review (site or division guidance for system quality, implementation, review, organisation)
- Business integrity

- Fraud (standards and guidance notes)
- Anti-trust (standards and guidance notes)
- Anti-bribery due diligence
- Good citizenship (principles)
- Gifts, entertainment and donations (procedures)

Responsible extractive companies have already undertaken the work to integrate international best practice into their corporate policies and procedures. Further, they should be providing employee and community training, as appropriate, to ensure that all levels of staff, including front line employees understand how to implement best practice.

The Role of Investor Nations

Though responsible mining companies should adhere to their own standards and constantly monitor, review and improve performance there have been examples where best practice is ignored resulting in disasters as big as the Gulf of Mexico oil spill of 2010. Also potentially disastrous are the consequences to society of corrupt practice at government, company and community level. The impact of non-compliance to international and home country standards and laws has resulted in significant damage to people, the environment and reputation of both the company and the country where the company is headquartered.

'Home' Country Legislation

Below are some examples of legislation in developed countries meant to hold companies accountable for their impacts on the environment and society both domestically and abroad:

- UK – The Companies Act 2006: In 2006, the United Kingdom updated its business regulations adding a requirement that publicly traded companies 'report on social and environmental matters'
- UK – Bribery Act 2010: This key piece of legislation is seen as a deterrent to British nationals and companies working both in the UK and any other jurisdiction, such as Namibia. The Act clearly defines bribery including offering and accepting bribery and the different forms of bribery
- US – Foreign Corrupt Practices Act (FCPA): The FCPA was implemented after an investigation by the Securities and Exchange Commission (SEC) found that over 400

companies had made either questionable or illegal payments to foreign officials

- US – Alien Tort Claims Act (ATCA): Enacted in 1789, the ATCA has recently been used to take domestic and foreign companies to court in the US for violating human rights abroad
- US – Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 was designed to promote financial stability and transparency in the US financial system, including in global transactions and related risks. It requires all oil, gas and mining companies listed on US stock exchanges to publish their payments to governments of all countries, for all extractive projects, without exception
- EU – The European Union is in final negotiations to legislate for oil, gas, mining and logging companies to report their payments to host countries, on a project by project basis. The oil industry is attempting to water this down by pushing for exemptions and opposing project-level reporting. If the legislation is passed it will expand and lend consistency to global transparency by imposing the same no-exception reporting as contained in the US Dodd-Frank Act.⁵⁵

In the last decade, governments of some investor nations have developed programs to support their multi-national companies to implement best practice corporate social responsibility whilst working in host countries. Examples have emerged from the United Kingdom, United States of America and Canada.

United Kingdom

Several United Kingdom government agencies collaborated on a toolkit⁵⁶ for their missions abroad to encourage business, foreign governments and civil society to apply human rights in business practice abroad. The agencies were, The Foreign and Commonwealth Office, UK Trade and Investment, The Department of Business of Innovation and Skills and The Department for International Development.

The toolkit recognises standards reviewed above, highlighting the Protect, Respect, Remedy framework – the UN Guiding Principles on Business and Human Rights and expanding on the OECD Guidelines. It provides guidance on how dip-

lomatic staff can interact with multiple stakeholders to encourage a raising of standards in host countries.

United States of America

The US Agency for International Development (USAID) provided funds to a US based International NGO with a country office in Mongolia, to take on what many on the ground referred to as ‘mission impossible’ – building national consensus on the extractive industry.

The objective of the Economic Policy Reform and Competitiveness (EPRC) Project’s public education and capacity building, national dialogue and consensus building activities was to provide multi-stakeholders with the necessary information, tools and mechanisms to create a common understanding of minerals, metals and the mine life cycle and create an environment for informed decision making. Complementary efforts worked to establish platforms for dialogue to work towards building consensus around important issues in Mongolia’s mining sector.

Among transition economies, and more broadly among lower GDP per capita countries, Mongolia has achieved remarkable progress in setting the foundations for a democratic, open market economy. Since the breakup of the Soviet Union in 1989, the country has implemented broad economic and political reforms, changing from a state controlled to a market driven economy where the private sector now accounts for more than seventy percent of GDP. With the most difficult tasks of a democratic transition largely completed, Mongolia is now focusing on a second stage of economic policy reform measures to improve its competitive participation in the world economy and provide for broad based, equitable, private sector led, economic growth.

The fast rising skyline in the capital, Ulaanbaatar is evidence that cash is flowing and investment is on the rise by nationals and internationals. One mine alone, the Oyu Tolgoi project in the arid Gobi desert, is expected to increase GDP by thirty percent as it comes on line during 2013. It is one of many large projects in construction or in early production stages.

Mongolia is in rapid transition from post Soviet poverty to a mining led boom time. Stories and incidents abound about corrupt practice not only in extractive industry licensing but also in land access for development and other areas. Politicians are seen to be enriching themselves. Against the advice of the World Bank, but true to its socialist past, cash disbursements have been made to the Mongolian population to allay concerns

⁵⁵ www.guardian.co.uk/commentisfree/2013/feb/07/oil-industry-transparency-europe

⁵⁶ <http://www.fco.gov.uk/resources/en/pdf/global-issues/human-rights/business-toolkit>

The Responsible Mining Initiative (RMI) in Mongolia - Drilling Down

Mongolia is undergoing massive economic growth spurred by a wave of mining investment. In the past, however, the mining industry has been plagued by corruption and mismanagement and resulted in environmental degradation and limited benefits accruing to Mongolian society. In an effort to break this legacy, in November 2006, ninety representatives from industry, government, NGOs, and academia joined together in multi-stakeholder meetings to establish a foundation for future collaboration in the mining sector.

After several meetings, a fourteen-member working group was tasked with creating a Declaration for Responsible Mining. This working group included members of Parliament, the World Wildlife Fund (WWF) Ivanhoe Mines, the Water Authority, the Mongolian University of Science and Technology, the Mongolian National Mining Association, and several other NGO and International Non Government organisation (INGO) groups. The Asia Foundation, through its "Securing Our Future" program, facilitated the process.

The Responsible Mining Initiative for Sustainable Development (RMI) established a set of mutual guidelines and operating practices agreed to by the Multi-Stakeholder Forum. In June 2007, the declaration of RMI and eight guiding principles were agreed upon by the multi-stakeholder forum. In January 2008, RMI was registered as a Mongolian NGO. The RMI board represents the stakeholder sectors: civil society, academia, industry and government.

Some accomplishments to date:

The RMI has worked closely with Ministry of Environment to produce a series of documentary films on responsible mining. The RMI is also part of the government's working group convened to develop reclamation standards.

The Asia Foundation in partnership with the RMI and the National University of Mongolia has hosted a year long panel discussion series on responsible resource use. These discussions are attended by the public and receive wide media coverage.

The RMI works to prepare policy analysis to inform decision-makers in the executive and legislative branches and engages foreign and domestic firms to develop national and local interests in promoting responsible mining.

The RMI has worked with the University of Queensland's (Australia) Sustainable Minerals Institute¹ to run training for company based corporate social responsibility staff who typically don't have extractive industry or community development experience.

In a relatively short period of time, the RMI has gained recognition and respect in Mongolia as one of the premier NGOs dealing with responsible mining. This is in part due to the composition of the Board, all well respected and well established in their respective fields. It is also due in part to the fact that the Board represents the spectrum of stakeholders working on resource issues.

1 <http://www.smi.uq.edu.au/>

about beneficiation. The government is coercing mining companies to build infrastructure often considered the role of government, such as maternity hospitals, border custom facilities and road and rail infrastructure. Investment Agreements are requiring companies to build roads, electricity stations and other infrastructure over and above their CSR obligations. The international mining sector, undeterred by the requirements are flocking there or expanding their in country operations following a long waiting period in the lead up to the first investment agreement for the large Oyu Tolgoi project.

Amid a backdrop of civil confusion, anger, spiritual offence and protest about the rapid encroachment of mining into people's lives the International NGO achieved several

important outcomes towards building national consensus through public education. These included:

- The production of a multi-media Mine-Life Cycle Training and community resource toolkit
- The training of trainers from civil society, government mining departments and trade unions to deliver the training to communities who are or will be impacted by mining;
- The employment and capacity building of staff to develop and localise training resources
- The establishment of a tripartite grievance mechanism signed into being by the President, Trade Union, civil society and private sector representatives
- Conducting a series of workshops and debates on key topics in the context of the resources boom.

The USAID funded toolkit is still in its first year of roll out, but has been welcomed by communities and mining companies. The trained trainers delivering the materials have been deployed by NGOs, trade unions, local government and mining companies who are increasingly hiring community relations officers to be a point of liaison and support between company and community.

In a country with a small population like Namibia, such a widespread upgrade of knowledge and improvement to quality of participation is possible.⁵⁷

Whilst the project was one among a number of useful INGO interventions, it left a legacy with which Mongolians can work together to build consensus in a variety of extractive scenarios, to ensure that mining has a positive and lasting impact and that harmful and damaging practice is minimised.

Canada

Canada is a particularly strong player in the global mining sector. Canadian financial markets in Toronto and Vancouver are the world's largest source of equity capital for mining companies undertaking exploration and development. Mining and exploration companies based in Canada account for forty-three percent of global exploration expenditures.

The Canadian government expects Canadian companies abroad to meet the high standards they would at home. It recognises though, that the extractive industry (mining, oil, gas) faces unique challenges operating in complex situations that can be found in resource rich, developing nations.

The Canadian Department of Foreign Affairs and International Trade (DFAIT) manages a programme⁵⁸ that allows extractive companies working abroad to develop CSR programmes that bridge the gap between home and host country requirements or standards. Companies can claim up to a quarter of a million dollars of expenditure on their CSR programme. Used well, these funds can train nationals in CSR, enable community engagement processes and build good working relations between the company and affected communities. It is up to the company to develop an appropriate program and apply to DFAIT. In recent examples companies have collaborated with NGOs and expert consultants to develop, implement and monitor the in-country programme.

Conclusion

The extractive industries are some of the biggest and most powerful economic entities in the world. Of the top five global companies, three are from the extractive industry. While traditionally the extractive industries have been controlled by majors and super majors from western countries, the number of extractive powerhouses coming from emerging countries, such as Brazil, Russia, India and China is increasing. Emerging countries have an imperative to acquire commodities to fuel their rapid development. This important driver often over-rides respect for standards that have emerged from western nations and institutions. The oil, gas and mining industries have a legacy of bad behaviour that includes social and environmental abuses, as well as corruption and violence. The Niger Delta is a prime example of persistent environmental and social problems that can develop through mismanagement of the sector.

However, the extractive industries also offer great potential. When well-managed, extractive projects bring financial resources in the form of taxes and royalties to the state, it creates jobs, and stimulates investment in local economies – all vital steps towards economic development. Additionally, when environmental standards are observed and reclamation best practices are followed, the environmental impact of extractives can be minimised and managed.

While the maximum potential for poverty alleviation and development through the extractive industries frequently has not been realised in the past, a different future is possible.

Sustainable economic development occurs when it 'begins with the end in mind.' Thus oil, gas, and mineral resources are best used to support economic diversification and widespread economic development that would last beyond their depletion. This requires a clear plan and implemented measures to diversify the economy and avoid over dependency on extractive industry revenues. The Fourth National Development Plan (ND4) is a good beginning.

Sustainable development requires long-term commitment to reforms and a political system that embraces good governance and transparency. Optimal expenditure and saving decisions are made within the context of an overarching multi-year fiscal framework that recognises the cyclical nature of commodity prices and the exhaustibility of oil, gas, and mining resources. Public expenditure needs to be developed in accordance with, and in support of, the priorities expressed in the country's poverty reduction and development strategy. That standard is best maintained by ensuring strong scrutiny and appraisal of public investment choices.

57 See a short video, 'Lifting Local Voices in Mining' <http://peacemedia.usip.org/resource/lifting-local-voices-mining-%E2%80%93-usaidmongolia>

58 <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx?view=d>

Sustainable development at the regional level is about rational spending choices that communities and regions make through informed consultation, including with the most vulnerable including women and youth groups, and local participation. Good spending choices rely on good governance reinforced by improvements in public expenditure management, transparent reporting and regular auditing of expenditures, and public accountability.

Governments, state-owned and private extractive industry companies, and civil society each have a role and responsibility to ensure that all efforts are made to devise and implement appropriate and sustainable development policies based on good practice and international standards. By focusing on an integrated approach to improved governance and transparency in the oil, gas, and mining sectors the value chain is a crucial step toward achieving sustainable development.

The following reference principles are designed to preserve the integrity of the value chain:⁵⁹

- Country ownership and strong government commitment to good governance and transparency
- Attention to social and environmental considerations
- Spending plans that reflect development priorities and long-term fiscal sustainability
- Sound governance translated into transparent and competitive laws, regulations, and contracts
- Capacity in line with tasks and institutional arrangements in line with capacity
- Balance between maximizing government capture of rent and attracting risk capital
- Effective accountability mechanisms

Public and private sectors, as well as civil society, have a shared responsibility to achieve sustainable development. Focusing on an integrated approach for improved governance and transparency in the oil, gas, and mining sectors along the extractive industries value chain is a crucial step in the right direction.

Namibians have a right to require more from companies to ensure sustainable development. Increasingly, host countries are taking a proactive role in regulating behaviour, and defining the role that foreign companies will play in their countries. While in the past, major multinational companies heavily influenced the terms of their production agreements and contracts, host countries are emboldened by the competition resulting from the number of companies with which to do business, and the increasing scarcity of quality reserves of natural resources.

This is leading to renegotiation of contracts in an attempt to increase the state's share. In some countries this has been taken to the extreme and host country governments have seized the assets of companies (for example: Bolivia, Venezuela, and Russia).

Not only are host countries negotiating larger shares in joint ventures, higher royalties, and windfall taxes, but they are also encouraging and mandating companies to contribute to social development. It is time for Namibia to step up its attention to detail in what is required from the private sector. Colonisation is over and should not be enabled to continue through economic exploitation.

⁵⁹ http://siteresources.worldbank.org/INTOGMC/Resources/ei_for_development_3.pdf

Exploration Activity, Environmental & Social Impacts, Mitigation and Permits

Exploration Activity	Possible Impacts	Mitigation	Licence required in Namibia
<p>Small-scale mining by individuals such as families who find and sell crystals and semi-precious stones along the road in the Namib desert. On the rise world wide, considered a means of poverty alleviation can involve dangerous, illegal chemicals. Low technology.</p>	<p>Environmental:</p> <ul style="list-style-type: none"> • unsafe working conditions with effects such as collapses of unsupported holes & tunnels • use of mercury and cyanide causes water/environment pollution and serious human health impact • excavated holes & tunnels left unfilled <p>Social/Economic Cultural:</p> <ul style="list-style-type: none"> • child labour • provides vital income benefits for families living in poverty • conflict with licensed explorers and mining companies 	<ul style="list-style-type: none"> • training in safe construction of excavation holes & tunnels • training & provision of non-chemical technology for gold extraction from ore • cooperation with large scale mining • livelihood diversification support • life skills / small business training • implementation of Voluntary principles on Human Rights & security 	<p>Minerals Act allows for simplified application process. Policy acknowledges this remains inaccessible within this predominantly poverty driven sector. Estimated to include 2000 people and often seen as a nuisance and cause of conflict by exploration and mining companies.</p>
<p>Large area (>100,00s ha) aerial sensing techniques, including geophysical surveys, photo-geological mapping or image gathering carried on from the air, to search for any mineral or group of minerals</p>	<p>Environmental:</p> <ul style="list-style-type: none"> • animal migratory and feeding patterns affected by noise from helicopters, planes and drill rigs <p>Social/Economic Cultural:</p> <ul style="list-style-type: none"> • noise pollution disrupts human activity 	<ul style="list-style-type: none"> • cooperation with wildlife authorities and NGOs to determine best time for aerial surveying & monitor impact • develop & deploy government regulations for noise & wildlife • maximise noise dulling technology • require use of modern equipment • avoid flying directly over human settlements 	<p>Reconnaissance licence valid for six months. Non-exclusive, though applicants can apply for exclusivity over particular minerals, groups of minerals. Non-transferable.</p>
<p>Narrowed area (10,000s ha) excavation, drilling, trenching, sending samples for assay tests in laboratories, evaluating market value of deposit but not mining.</p>	<p>Environmental:</p> <ul style="list-style-type: none"> • camp construction • track construction • dust • airstrip construction • line cutting (long trenches) • drilling programs • fuel and chemical storage • water quality (mud production from drilling) • animals attracted to garbage & food waste • migratory patterns of wildlife affected by human presence • tree and flora removal <p>Social/Economic Cultural:</p> <ul style="list-style-type: none"> • disruption to land use livelihood activity • unrealistic expectations develop about future mine • potential casual labour in camp & field (domestic, staking, mapping, guiding, trenching, construction and maintenance, security) • potential storage & supply chain (food, building materials) • community participation in impact monitoring – social, economic & environmental • chance cultural / historical / sacred site finds by explorers 	<ul style="list-style-type: none"> • As above and, • focus monitoring on smaller area while continuing to monitor larger area • minimize line cutting areas • establish drill waste disposal • fuel storage standards • spill recovery plans • non-toxic dust reduction treatment of tracks • carefully plan and locate drill program to prevent water contamination • burn or bury garbage & food waste • fly out/remove cans & glass items • teach wildlife awareness to crews in camps • keep aircraft away from migrating animals • instigate planting scheme of local grasses, trees etc. • consultation – formal and informal dialogue with affected communities • sensitise company to cultural life and possible impacts & cultural tolerance • determine local supply chain providers – potential & existing • engage NGOs or employ community liaison personnel to educate communities about the mine life cycle & manage expectations of exploration phase • local sourcing policy for employment and supply • start baseline study of land use and socio-economic conditions • chance find policy to stop work and consult on heritage finds 	<p>Exclusive prospecting licence for particular mineral or group of minerals. Valid for three years, renewable for two years. May be renewed a third time. Same licence can be issued in area for other minerals to other parties.</p>
<p>Smaller site (1000s ha) specific area accessing, extraction or incidental winning of any mineral or group of minerals for the purpose of mineralogical examination, assaying, and test work or marketability surveys.</p>	<p>Environmental:</p> <ul style="list-style-type: none"> • camp construction • track or road construction • dust • airstrip construction • line cutting (long trenches) • drilling programs 	<ul style="list-style-type: none"> • As above and, • alter scale and focus to match exploration area focus (may be several) • monitor impacts on environment from base line study • impact and cultural sensitivity training in community 	<p>Non-exclusive prospecting licence but not in areas where there is Reconnaissance licence activity pending. Non-renewable, valid for twelve months.</p>

<ul style="list-style-type: none"> • fuel and chemical storage • water quality (mud production from drilling) • animals attracted to garbage & food waste • migratory patterns of wildlife affected by human presence • tree and flora removal <p>Social Economic Cultural:</p> <ul style="list-style-type: none"> • disruption to land use livelihood activity • unrealistic expectations develop about future mine • potential casual employment in camp & field (domestic, staking, mapping, guiding, trenching, construction and maintenance, security) • potential storage & supply chain (food, building materials) • community participation in impact monitoring – social, economic & environmental • chance cultural / historical / sacred site finds by explorers 	<p>As above and,</p> <ul style="list-style-type: none"> • monitor socio-economic & cultural impacts which may be positive, negative or likely both, from baseline • scale up community consultation, engagement, education on mine-life cycle 	<p>Mineral deposit retention licence allows the holder to retain the area for advanced prospecting with the view to developing a mine. Valid for five years with possible two-year extension. Can be transferred, ceded or assigned to a company considered by government 'fit and proper'.</p>
<p>Smaller site (100s ha), scaled up activity that may include more extensive drilling, expanded trenching, and extensive deep and wide landscape altering excavations for core samples to determine depth, width, and quality of deposit. Project viability and partnership decisions taken at this stage.</p>	<p>As above and,</p> <ul style="list-style-type: none"> • do not fence / ensure fencing does not impact on animal migration • store any top soil removed for reclamation • develop nursery of local plants for reclamation • practice safety drills for fire, chemical spills etc • ensure rehabilitation of broken ground and altered landscape <p>As above and,</p> <ul style="list-style-type: none"> • community liaison and resource provision to develop sustainable solutions to negative impacts and reduce stress within community e.g. Addiction response program, use positive role models • change impact and management strategy understood and implemented within company in conjunction with community • company/community familiarisation policy negotiated with community to set acceptable arrangements 	<p>As above and,</p> <ul style="list-style-type: none"> • monitoring picks up new impacts, plan for and manage them in conjunction with the community with a range of sustainable responses
<p>Site specific (dependent on known accessible deposit area) operation of a mine and further prospecting that may lead to a long term mine if the resource is viable. Can enable profit taking of accessible parts of a deposit prior to the need for larger scale investment in a long term mine that would be licensed under a Mining Licence.</p>	<p>Environmental:</p> <ul style="list-style-type: none"> • permanent camp construction • track or road construction • dust • airstrip construction • line cutting (long trenches) • drilling programs • fuel and chemical storage • water quality (mud production from drilling) • animals attracted to garbage & food waste • migratory patterns of wildlife affected by human presence • tree removal <p>Social Economic Cultural:</p> <ul style="list-style-type: none"> • employment reduces time spent on traditional activities • workers & families separated for days or weeks / marital stress • increased employment levels • increased buying power • economic disparity develops within community • potential for positive role models to emerge • potential increased income results in more alcohol or drugs in the community • strangers in the community • increased population strains existing services / changes aspirations • social problems worsen 	<p>Mining claim enables short-term extraction of licensed mineral and continued advanced prospecting. Enables any operations to 'win' or extract. Valid for three years, renewable for two further years. Abandonment of site is described in the licence. Transfer is described extensively.</p>

A TO Z OF KEY COMPANIES INVOLVED IN NAMIBIA'S SEARCH FOR OIL



By early 2013 the Ministry of Mines and Energy had issued 57 Petroleum Exploration Licences mostly to Namibian empowerment companies and junior or start-up oil companies which have sought to bring in (farm in) the world's major oil companies to drive and fund drilling programmes. The hope is that Namibia's offshore oil potential will develop into commercially viable resources of the size found off Brazil. The majors are starting to consider Namibia as a 'new frontier' in oil exploration – with Brazil's Petrobras, Spain's Repsol and the UK's BP joining the oil search either as operators or partners in planned exploration work. There is no legal requirement for Namibian ownership of licences but in recent years the MME has made clear that Namibian involvement is preferred.

With Namibia becoming a focus for global oil players in the last few years licences have been acquired for many previously unoccupied blocks while there have been a series of ownership changes concerning licences for some of what are considered the prime areas for a potential oil discovery.

The following information is based on company-released information and company records as of April 2013. The MME does not announce when licences have been granted to particular companies or when ownership changes have been approved. However, the MME does publish a regularly updated Hydrocarbon Map indicating licence holders on its website. The bulk of the information below has been gleaned from corporate press releases, company websites, media articles and Namibia's Reg-

istrar of Companies. While most international companies have their details listed on their websites, information about Namibian companies is much harder to come by. The Ministry of Trade and Industry's Registrar of Companies appears to only have the records of some of the Namibian companies involved on file and available for inspection.

African International Energy (AIE) Plc announced in 2012 that it had been awarded blocks 2715A and 2715B with its local partner Petrotek. The blocks straddle the coastline of the southern Namib Desert. AIE has a 63 percent share in the blocks, Petrotek has 27 percent with Namcor carries the remaining 10 percent. AIE has offices in Johannesburg and London and is listed on the Frankfurt Stock Exchange. Petrotek was the subject of press reports in 2012 over alleged rifts between its shareholders over a payout of N\$2 million from AIE. At the time Petrotek principals were reported to include Swapo MP Juliet Kavetuna, Elvis Nashilongo, Isaiah Kavendjii, Mac Hengari, Tobie Aupindi, Kriat Kamanya, Timotheus Angula, Clive Kavendjii, and Chris Kaura.

Alphapetro Ltd, based in Windhoek, holds the exploration licence for blocks 1710A and 1710AB in the Namibe Basin. AlphaPetro operated as a subsidiary of Grisham Assets Corporation, a private company incorporated under the laws of the British Virgin Islands. During 2012 Canadian oil and gas company Petro Viking Energy Inc. entered into an agreement with Grisham to acquire 80 percent of the issued and outstanding

shares of Alphapetro for US\$2 million and 2,500,000 common shares and 2,500,000 common share purchase warrants. The remaining 20 percent is owned by Kwest Investments Holdings (Pty) Ltd. (10 percent and Ace Investments and Mineral Resources CC (10 percent). Dantagob Gurirab is the co-founder and chairperson of Alphapetro.

Arcadia Expro Namibia Ltd is listed by the MME as the licence holder for blocks 1910A, 1911, and 2011A in the Walvis Basin. The licence was originally granted to Neptune Petroleum, a subsidiary of Tower Resources Plc, in 2005. Arcadia farmed into the licence in September 2007, taking an 85 percent interest. In July 2012 Spanish oil company Repsol SA took a 44 percent working interest in and become operator of the licence. Arcadia Expro Namibia also signed a farm-out agreement with Tower subsidiary Neptune to convert Tower's 15 percent carried interest in the licence to a 30 percent working interest. Arcadia retains a 26 percent interest. As of 2013, Repsol is said to be studying rig options with plans in motion to drill a well in Block 2011A, possibly in 2014. Little is known about Arcadia Expro Namibia, although it is believed to be a subsidiary of Arcadia Petroleum Limited, which has been owned by Cyprus-based Farahead Holdings Ltd since 2006. Farahead is owned by Norwegian oil magnate John Fredriksen.

Azimuth Ltd is a Bermuda-registered exploration and production company backed by majority-owner Seacrest Capital Ltd. and Petroleum Geo-Services ASA. Azimuth has interests ranging between 10 percent and 45 percent in 13 licences off Namibia. Azimuth partners Maurel and Prom, Chariot Oil and Gas and Eco Oil and Gas. As of 2012 Azimuth has a 20 percent working interest in each of Eco Atlantic's offshore Namibia licences. Azimuth works through its Namibian subsidiary Azinam.

International oil giant **BP Plc** joined Serica Energy in its licence for blocks 2512A, 2513A, 2513B and part of 2612A in June 2012. BP's 100 percent-owned subsidiary Exploration (Lüderitz Basin) Limited acquired 30 percent in the licence after BP agreed to fund 3D seismic surveys. Serica Energy Namibia has 55 percent while Namcor retains a 10 percent interest and Frans Mushimba's Indigenous Energy has 5 percent. BP can acquire a further 37.5 percent by paying the full cost of drilling and test an exploration well.

In February 2013 **Chariot Oil & Gas** subsidiary, Enigma, received approval from MME for a farm-out agreement with BP in block 2714A in the Orange Basin. BP committed to cover Chariot's cost of drilling the first exploration well in this block as well as past costs incurred. The ownership of the block is Petrobras (30 percent), BP (45 percent) and Enigma (25 per-

cent). However, the drilling of the Kabeljou-1 exploration well in block 2714A came up dry during 2012. BP is now pinning its hopes on the Serica Energy blocks.

Chariot Oil and Gas has four licences stretching from the Namibe Basin to the Orange Basin. In 2012 Chariot Oil & Gas plugged and abandoned two wells – at the Tapir South prospect in its northern block of 1811 (A & B) and at its Nimrod prospect in its southern block 2714A. Chariot farmed out southern block 2714A to BP which covered the cost of the 2012 drilling as well as previous costs. Chariot holds 25 percent of the block through its wholly-owned subsidiary Enigma, while Petrobras has 30 percent and BP 45 percent. An exploration well drilled in 2012 did not find commercial hydrocarbons. Chariot's earlier efforts in 2012 to drill in block 1811 also came up dry. Chariot's central blocks 2312A&B and the northern halves of 2412A&B (90 percent Chariot, 10 percent Azimuth) are located within the Lüderitz and Walvis Basins.

Chariot was formed in 2007 to acquire two exploration businesses with Namibian licences. In 2008 it purchased Enigma Oil & Gas Exploration, a Namibian company established in 2003 with Heinrich 'Swapo' Ndume, the son-in-law of President Hifikepunye Pohamba, as a founding shareholder. As of January 7, 2008, Enigma Oil and Gas Exploration (Pty) Ltd. operates as a subsidiary of Chariot Oil and Gas Limited.

Brazilian company **Cowan Petroleo e Gas** has had the exploration licence for blocks 2613A and 2613B in the Lüderitz sub-basin since 2011. In 2012 Cowan entered an arrangement with Namcor whereby the Brazilian company undertook to pay all development costs on the block while giving the state-owned company a N\$50 million bonus. Local oil entrepreneur Knowledge Katti is said to have been instrumental in setting up the deal.

Eco (Atlantic) Oil and Gas is a Canadian oil and gas exploration company focused on emerging oil prospects off the coast of Namibia. In 2012, Eco Atlantic became the only oil and gas company to list on the Namibia Stock Exchange so far. Eco (Atlantic), through its local subsidiary Eco Namibia, has a 90 percent stake in three offshore blocks (2012A, 2111B and 2211A) located in the Walvis Basin. Namcor holds the remaining 10 percent. In addition, Eco Namibia has two onshore licences with shale and coal bed potential (covering blocks 2013B, 2014B, 2114 and 2418). In April 2012 Eco (Atlantic) signed a farm-out agreement with Bermuda-based Azimuth Ltd. in which Azimuth will earn a 20 percent working interest in each of Eco Atlantic's offshore Namibia licences in return for funding 40 percent of the 3D seismic survey costs. As a result, Eco Namibia's stake will be reduced to 70 percent. Namibian

businessman Naeman Amalwa is Eco Namibia Director & Country General Manager. Former minister Helmut Angula is a director of Eco Atlantic while his daughter Phillipine Angula is a director of Eco Namibia. Prominent Spanish businessman in Namibia, Jose Luis Bastos, is also an Eco Namibia director.

EnerGulf Resources Inc. is an oil and gas exploration company based in Dallas, Texas and Vancouver, British Columbia. EnerGulf's wholly-owned subsidiary, EnerGulf Namibia Ltd., was formally assigned a 10 percent working interest for block 1711 in the Namibe basin on March 31, 2006. EnerGulf's stake later increased to 15 percent. Nakor Investments Ltd. (an affiliate of the Russian Sintez Group) came in with 70 percent. This has since been relinquished to 10 percent carried interest. As a result, 51 to 55 percent interest in the block is available. The remaining co-venturers are PetroSA 10 percent, Namcor 7 percent (carried), Knowledge Katti's Kunene Energy 0.3 percent (carried) and HRT 2.7 percent. The EnerGulf website lists Andimba Toivo ya Toivo as Senior Adviser for African Affairs. EnerGulf drilled the Kunene #1 well in 2008 in block 1711, which provided evidence of a working petroleum system.

Frontier Resources International Plc, a UK-based oil and gas exploration company focussed on Southern Africa and the Middle East, was granted the exploration licence for Blocks 1717 and 1817 in the eastern part of the Owambo Basin in 2011.

Grisham Assets Corp, a British Virgin Islands-registered company, was listed on the 2013 Hydrocarbon Map as having the licences for blocks 1810 in the Namibe Basin and 2913B in the Orange basin. Mibia Energy (Pty) Ltd was listed in 2012 as being allocated block 1810. In April 2012 it was reported that Canadian company Cascade Resources had bought a 15 percent stake in Mibia. Further ownership changes may be in prospect as in April 2012 it was reported that Canadian company Petro Viking Energy Inc. intended to buy all the issued shares in Grisham. The deal was later called off due to a lack of financing. Petro Viking's plan to buy 80 percent of Grisham's subsidiary, Alphapetro, which has the licence for block 1710, did however go ahead. As of April 2013 Grisham still had the licences for 1810 and 2913B. Namcor carries a 20 percent interest in both blocks. In May 2013, Petro Viking issued notice of its intention to buy 75 percent working interest in unoccupied southern blocks 2712B, 2812B, 2912 and 2611 – all to the far west of Namibia's exclusive economic zone.

As of 2013, **HRT Africa Petróleo SA** operates ten blocks off the Namibian coast under four licences. The ten blocks are broken down as follows: 100 percent interests in blocks 2112B and 2212A, 95 percent in 2713A, 2713B, 2815, 2816, and 2915,

and 91.2 percent in 2813A, 2814B, and 2914A. HRT Africa Petróleo SA is a subsidiary of HRT Participacoes em Petróleo, one of Brazil's largest independent oil and gas exploration and production companies. In 2010 HRT acquired control of Ranger Oil, the holding company of Labrea which held two northern blocks 2112B and 2212A.

Previously a range of Namibian companies have been listed as the licence holders for the southern blocks. In 2011 HRT Africa acquired Vienna Investments (Pty) Ltd. and its equity interests in Limpet Investments (Pty) Ltd and Harmony Energy (Pty) Ltd. These companies in turn were linked to Orange Pty Ltd which held 100 percent of the exploration rights in blocks 2815, 2816 and 2915; Kunene Energy (Pty) Ltd which held 10 percent of exploration rights in blocks 2713A and 2713B; and Acarus Investments (Pty) Ltd which held 20 percent of exploration rights in blocks 2813A, 2814B and 2914A. The price paid for the acquisition of the entirety of these equity interests was US\$30 million, according to the share purchase agreement released in July 2011. Acarus Investments appears to have become a wholly-owned subsidiary of HRT in 2011. Acarus Investments, in its latest company filing with the Ministry of Trade and Industry, lists HRT's principals as directors and indicates that John Nauta, the senior special assistant to founding president Sam Nujoma, resigned as a director in August 2011. Eddy Shiimi, who has in the past been named as acting chief of security at State House, also resigned in August 2011 along with Jeremy Hangula, who runs Katti's office in Windhoek.

Prior to 2011 Canada's Universal Power Corporation had a majority share in several of these blocks and brought in HRT as its technical partner in 2009 to undertake 3D seismic surveys, which convinced HRT that Namibia's offshore potential was similar to that of the Santos and Campos basins off Brazil. In 2009 Universal Power Corporation acquired 90 percent of Namibia Industrial Development Group (Pty) Ltd which had that point had the exploration rights in blocks 2815, 2816 and 2915. In September 2010, Universal Power Corporation changed its name to UNX. In early 2011, HRT bought all the shares in UNX in return for equity and the deal was valued at C\$730 million (around N\$5 billion at the time). Most of the Namibian companies acquired by HRT in 2011 and by Universal earlier are linked to Namibian oil entrepreneur Knowledge Katti.

Portuguese company GALP Energia has a 14 percent participating interest in three of HRT's licences and is the Brazilian company's partner to in drilling the first three wells of HRT's 2013 exploration campaign.



Hydrocarb Corporation, based in Houston, Texas, has blocks north of the Etosha National Park – 1715, 1815A, 1814A, 1714A. In September 2012 it was reported that US-based Duma Energy Corporation had completed a share exchange agreement with Namibia Exploration Inc. As a result, NEI became a wholly-owned subsidiary of Duma. Through NEI, Duma has an effective 39 percent interest in the onshore licence blocks, in partnership with Hydrocarb and Namcor. Former head of Namibia Wildlife Resorts, Tobie Aupindi, is Vice President: New Ventures for Hydrocarb Corporation.

Jupiter Petroleum is listed on the MME's 2013 Hydrocarbon Map as having the exploration licence for blocks 1910B and 2010A in the Walvis Basin. In November 2011 the assets of Jupiter Petroleum (Namibia) Limited were acquired by Global Petroleum. UK- and Australia-based Global Petroleum has an 85 percent participating interest in the exploration licence for these blocks, which was issued on December 3 2010. According to Global Petroleum's website the remaining stakes are held by Namcor (10 percent) while Bronze Investments Namibia has 5 percent as a 'free carry'. In mid-2012 Global was reported to be looking for a partner to explore the blocks. Namibian lawyer Werner Boesak is the contact person for Global Petroleum in Namibia.

Kayuco Universal Ltd, registered in the British Virgin Islands, is the licence holder with Namcor and Lunganda Trading Enterprise in block 1811B in the Namibe basin. In 2012 Vancouver-based Westbridge Energy Corporation said it planned to acquire the shares of Kayuco Universal in a deal worth US\$5 million. Kayuco's main asset is an 80 per cent interest in the licence for 1811B. The deal was reported to have been completed by July 2012. However, Kayuco Universal was still listed as the owner of the licence on the 2013 Hydrocarbon Map. Lunganda Trading Enterprise is owned by former Road Fund Administration CEO Penda Kiiyala.

Lekoil Exploration and Production (Pty) Ltd is a subsidiary of Lekoil - a Lagos-based oil exploration and production company with interests in Nigeria and offshore Namibia. According to the 2013 Hydrocarbon Map, Lekoil Exploration and Production has been awarded block 2514 in the Lüderitz Basin, in which it has a 69.75 percent interest. Lekoil's main Namibian partner is businessman Tangeni Shiimi ya Shiimi.

Leopard Investments Ten (Pty) Ltd owns the exploration licence for Blocks 2712A and 2812A in the Orange Basin directly west of the Kudu gas field. In early 2013 Canada's Alberta Oilsands Inc. indirectly took ownership of the Namibian company. Alberta Oilsands agreed to pay US\$1.5 million and issue 20 million shares valued at 10c each to acquire Maroon Hill International, a British Virgin Islands company that owns 85 percent of Leopard Investments Ten. The blocks do not appear as being allocated on the MME's 2012 Hydrocarbon Map. The remaining 15 percent remains with Leopard Investments, which according to an Alberta Oilsands press release is "controlled to the benefit of Namibian economic empowerment and local groups". The principal Namibian involved in Leopard Investments Ten is King Frans Indongo, son of well-known businessman Frans 'Aupa' Indongo. Namcor carries a 10 percent interest in the blocks up to production.

French medium-sized oil producer **Maurel and Prom (M&P)** said in mid-2012 that it had been awarded two exploration licences covering blocks 2212B, 2313A, 2313B, and 2413A in the Walvis Basin. M&P is the operator of both licences with 37 percent participating interest. PGS Seismic UK Ltd has 48 percent participating interest, Namcor 8 percent, Livingstone Mining Resource Development 4 percent, and Frontier Mineral Resources 3 percent. The company, which spun off its Nigerian assets into Maurel and Prom Nigeria in 2011, also has oil assets in Colombia, Gabon, Tanzania and Mozambique.

Nabirm Energy Services has a 90 percent stake in the licence for block 2113A in the Walvis Basin with Namcor carrying the remaining 10 percent. Nabirm Energy Serv-

ices, which was launched in Namibia in February 2012, is a subsidiary is a Nabirm Global LLC which itself is a subsidiary of Masada Resource Group based in Birmingham, Alabama. Nabirm Global has interests in Sierra Leone, Namibia and the US.

Namcor – The National Petroleum Corporation of Namibia's main tasks have been the acquisition of data and the promotion of Namibia's petroleum potential. It also assists the Ministry with the administration of the Petroleum (Exploration and Production) Act of 1991. Under the Petroleum (Exploration and Production) Act of 1991 Namcor has the right to carry out reconnaissance, exploration and production operations either on its own or in partnership with other organisations in the industry. As of 2013, Namcor no longer had its own petroleum exploration licences, but did have minority stakes in numerous others. As well as having free carry in these licences, Namcor has also received signature bonuses when a company buys into a block owned by Namcor. Obeth Kandjoze was appointed as Namcor Managing in October 2012.

Oranto Petroleum Limited has owned the licence for the 2011B, 2111A and 2010B blocks in the Walvis Basin since 2011. The company commenced a farm-out process for exploring blocks 2011B and 2111A in 2013. Nigerian company Oranto Petroleum has undertaken 2,000 sq km of 3D seismic study. Namibian partner Ozondje Petroleum has a 3 percent share in Oranto's blocks.

OS Petro Inc is an oil and gas company with offices in Ghana and Utah which has a licence for blocks 1819 and 1820, 1719 and 1720 in the Kavango region. The company was founded by retired Ghanaian sprinter Kenneth Andam, who remains its chairperson. On the MME's 2013 Hydrocarbon Map Premier Oil and Gas is listed as a partner in the licence.

Canada-based **Pan African Oil's** principal asset is its 72 percent working interest in blocks 2211B and 2311A in the Walvis Basin and an 81 percent working interest in Block 2612A in the Lüderitz Basin. These blocks were named on the 2012 Hydrocarbon Map as belonging to AMIS Energy linked to businessman Shafa Kaulinge, who is now listed as the Country Manager for Pan African Oil. In March 2013 Gondwana Gold Inc. completed the acquisition Pan African Oil's shares and as a result Gondwana Gold will change its name to Pan African Oil. Gary Wine will remain the Chief Executive Officer and a Director of Pan African Oil.

Australian company **Pancontinental Oil and Gas** has a licence for exploring Blocks 2012B, 2112B and 2113B in the Walvis Bay offshore basin. Pancontinental's joint venture partner is a Namibian company, Paragon Investment Holdings (Pty)

Ltd, owned by businessmen Desmond Amunyela and Lazarus Jacobs. Pancontinental announced in July 2012 that it would pay US\$4 million to Paragon Holdings to buy a ten percent stake in the exploration licence they were awarded in July 2011. As a result, Pancontinental's interest climbed to 95 percent with Paragon reduced to 5 percent.

Brazilian company **Petrobras** is the operator of block 2714A, off the southern coast of Namibia, with 30 percent equity stake. Petrobras works in partnership with Chariot & Gas Limited, which has a 25 percent interest and BP with 45 percent. Petrobras is the operator for the block. In 2012 an exploration well drilled at the Nimrod prospect found no evidence of commercial hydrocarbons and had to be plugged and abandoned. Petrobras is estimated to be the seventh biggest energy company in the world. The majority stockholder in Petrobras is the government of Brazil.

PJ Mining was awarded the onshore blocks of 2417 and 2517. In 2012 it was reported that the company had disputed Namcor's decision to allocate block 2413B to Unimag. PJ Mining's directors include American businessman Jae Lee, South Korean businessman Jong-soo Yoo, and Secretary to the National Council Panduleni Shimutwikeni, according to the Registrar of Companies.

Preview Energy Resources (Pty) Ltd has the licence for blocks 1716 and 1816A in the eastern part of the Owambo basin.

In the MME's 2013 Hydrocarbon Map **Regalis Petroleum** is listed as having the licence for block 2813B in the Lüderitz Basin. In 2012 the Map listed this block as being assigned to Signet and Tuakumua Mining (which is linked to businessman Brian Katjimune). Regalis is linked to the same consortium of companies in which Signet Petroleum operates and has a 70 percent interest in 2813B. Polo Resources, which owns a 48.21 percent stake in another licence holder Signet Petroleum, has an 8.32 percent interest in Regalis.

Repsol Exploration holds a 44 percent interest in Blocks 1910A, 1911 and 2011A situated in the Walvis Basin. The remaining stakes are with Neptune/Tower (30 percent) and Aracadia (26 percent). Repsol is planning to drill a well in Block 2011A.

Serica Energy Namibia has the licence for blocks 2512A, 2513A, 2513B and part of 2612A in the central Lüderitz Basin. In 2012 it was announced that BP would farm into Serica's interest. BP has a 30 percent stake the licence and will cover past costs and pay for a 3-D seismic survey. Serica Energy Namibia is a wholly-owned subsidiary of Serica Energy

Signet Petroleum is an independent oil exploration company with a 75 percent interest in Block 2914B in the Orange Basin to the southwest of the Kudu gas field. Polo Resources Limited, a globally focused natural resources and mine development investment company, has a 48.21 percent stake in Signet. Stuart Munro is Signet's Country Managing Director for Namibia.

Sungu Sungu Namibia – Sungu Sungu appeared on the MME Hydrocarbon Map in 2013 as the owner of the licence for block 2412B in the Lüderitz Basin, which was previously partly allocated to Namcor. Sungu Sungu is part of Sungu Sungu Group – a South African mineral resource-focused company formed in 2005. South African businessman Thabang Khomo is the CEO of the Sungu Sungu Group.

Tower Resources Plc is a London-based oil and gas explorer focusing on sub-Saharan Africa. Tower purchased Neptune Petroleum (Namibia) Ltd in 2006 which held a 15 percent interest in offshore blocks 1910A, 1911 and 2011A with operator Arcadia Expro Namibia holding 85 percent. In July 2012 Spanish oil company Repsol SA took a 44 percent working interest in the licence and become its operator. Arcadia Expro Namibia also signed a farm-out agreement with Tower subsidiary Neptune to convert Tower's 15 percent carried interest in the licence to a 30 percent working interest. Arcadia retains a 26 percent interest.

Unimag Trading SA has interests in textiles, raw materials, food and fuels and is registered in Geneva, Switzerland. It has the licence for blocks 2614 (A&B) in the Lüderitz basin. It has previously been reported that Sam Beukes, former Namcor MD, is Unimag's representative in Namibia. In 2013 it was reported that Unimag had also acquired block 2413B, which was previously held by Namcor. In early 2013 the Anti-Corruption Commission started a preliminary investigation into Namcor's decision to bring in Unimag. The deal was linked to a N\$8.9 million signature bonus for Namcor.

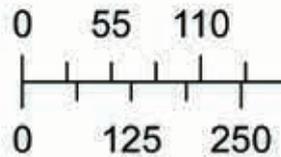
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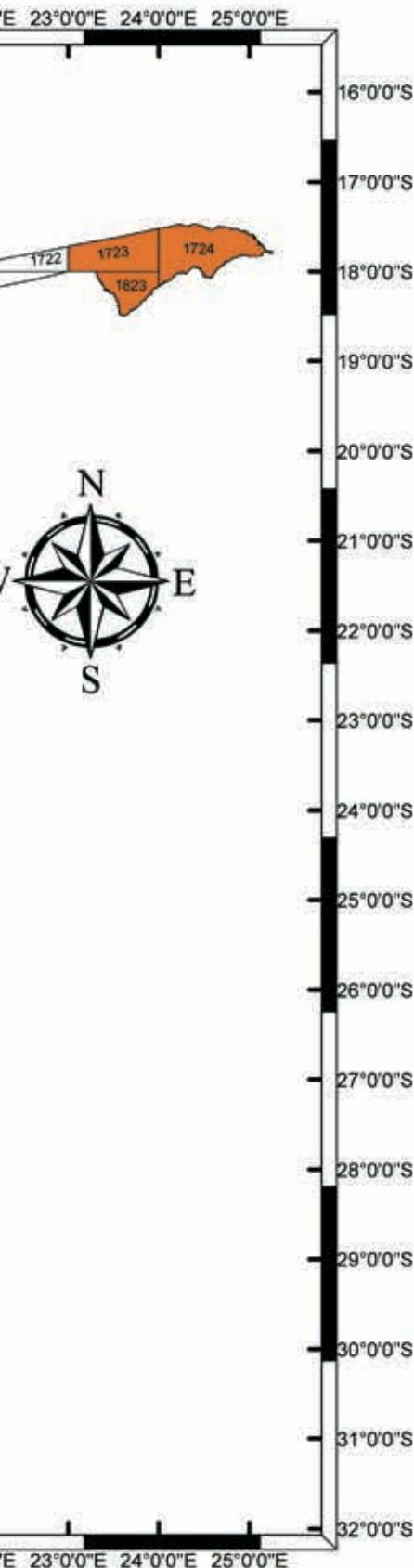
For further information:

www.namcor.com.na
www.gov.na

Updated: January 2013



LICENCE MAP



Legend

- Limit Exclusive Economic Zone
- Isobath
- Shore line
- Etosha national Park

Production Licence

- NAMCOR / Tullow Kudu / Cieco E&P Namibia

Exploration Licence

- | | |
|--|---|
| Pan African Oil Namibia | Maurel & Prom Namibia / Azinam |
| Alfapetro | Nabirm Energy Services |
| Repsol / Arcadia Expro / Tower Resources | Energulf / PetroSA |
| Cowan Petroleo e Gas | Oranto Petroleum |
| Eco Oil & Gas Namibia | PJ Mining Investments |
| Enigma Oil and Gas | Pancontinental Oil and Gas |
| Frontier Resources Namibia | Petrobras / BP / Enigma |
| Grisham Assets Corp | African International Energy / Petrotek |
| Grisham Assets Corp | OS Petro Inc / Premier Oil and Gas |
| HRT Africa Petroleo | Preview Energy Resources |
| Hydrocarb Namibia Energy Corp | Regalis Petroleum |
| Jupiter Petroleum Namibia | Signet Petroleum |
| Kayuko Universal | Serica Energy Namibia / BP |
| Lekoil E&P | Sungu Sungu |
| Leopard Investments | Unimag Trading |

Coal Bed Methane Licence

- CSG Energy Namibia
- Eco Oil & Gas Namibia

220 Nautical Miles

500 Kilometers

PERCEPTIONS OF EXTRACTIVE INDUSTRY GOVERNANCE



By Leon Kufa and Graham Hopwood

As part of this study, the IPPR conducted an opinion survey to gauge the views of extractive industry company representatives about the transparency and effectiveness of the licensing system for mineral exploration in Namibia. Companies with EPLs or PELs which could be traced from the information available on the MME's website were requested to complete a 30-question survey form. In addition, members of the Chamber of Mines, which were not in the PEL or EPL lists, were also asked for their views. The survey focused on general views of how government facilitates and regulates the extractive sector; the extent to which the Namibian system of licence allocation meets global best practice standards; the effectiveness of official anti-corruption strategies; the extent to which extractive sector companies are prepared to go to tackle corruption; the role of the Anti-Corruption Commission; and perceptions of ethics in both government and the corporate world.

The response rate to the survey was disappointing in that the number of completed questionnaires received was only 24. Most of the EPL holders listed on the MME website were not contactable as they did not have physical offices or active phone numbers. However, the respondents did include several of the largest mining houses in Namibia and a number of exploration companies involved in searching for both minerals and hydrocarbons. In addition to the written responses, several company representatives opted to communicate their views on a range of issues raised in the survey verbally rather than complete the

actual questionnaire. Overall, it was felt that the survey results offer a useful guideline to the views of major extractive industry players if not the definitive opinion of companies involved in exploration in Namibia.

A number of industry representatives said the issue of exploration licensing was 'highly sensitive' and expressed reservations about putting their views on paper despite assurances about the confidentiality of the survey process. This in itself was an indication that company representatives felt that their firms could be somehow 'punished' in the process of licence allocation if they expressed critical views. Perhaps such comments should have been expected in the high stakes world of exploration and licence allocation. Most of the respondents either held EPLs or PELs and/or were in the process of applying or requesting extensions.

The most problematic factors affecting the allocation of EPLs in Namibia

Respondents were asked to list the top five problematic factors. The results showed that extractive industry businesses are worried about the role of 'middlemen' operating between companies and government and were concerned about being pressurised by officials to make deals with untested individuals and firms. Anecdotal evidence was offered of companies being

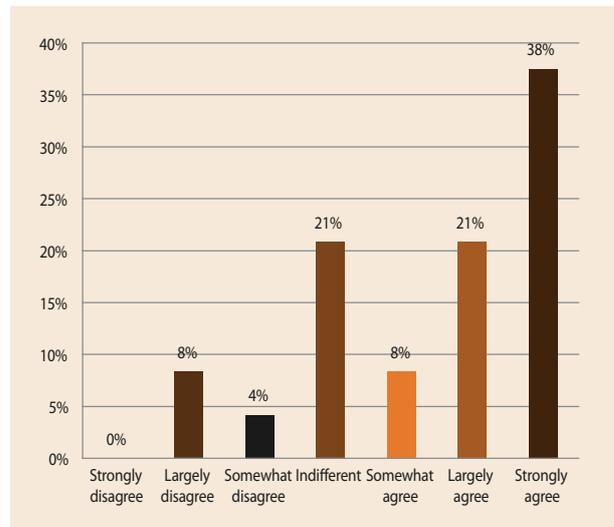
asked to make ‘empowerment deals’ with companies that appeared to be little more than ‘briefcase firms’ representing one or two individuals that were being favoured for unclear reasons by officials. While such claims may be difficult to establish, it is clear that there is concern about the discretionary power of individual officials within the allocation process. Similarly, there was a perception that ‘middlemen’ sometimes fix deals with officials on behalf of certain companies. While there may be nothing illegal about the activities of such ‘brokers’, a system that operates in this way can be open to the peddling of political connections and corruption. However, it should be pointed out that it is not only government officials that come under suspicion as respondents also rated corrupt practices in the private sector as a significant problem. The lack of a rigorous policy and legal framework was also highlighted as a problematic issue by most respondents and would seem to suggest that clearer and watertight regulations are needed to mitigate perceptions that unethical behaviour influences the allocation of licences. Comments from respondents indicated that companies were worried by delays in the licence allocation and renewal processes and a lack of feedback from officials on what was happening to their applications.

Factor	Rank
Influence of ‘middlemen’ operating between companies and government or government agencies	1
Pressure from public officials for companies to enter into arrangements with untested/inexperienced individuals and/or firms	2
Lack of clear policies and/or legal framework	3
Corrupt practices by individuals in the private sector	4
Inefficient government red tape/bureaucracy	5
Influence of politicians on licensing process	6
Corrupt practices by public officials	7
Corrupt practices by companies	8
Lack of transparency in licensing process	9
Lack of confidentiality among public officials	10

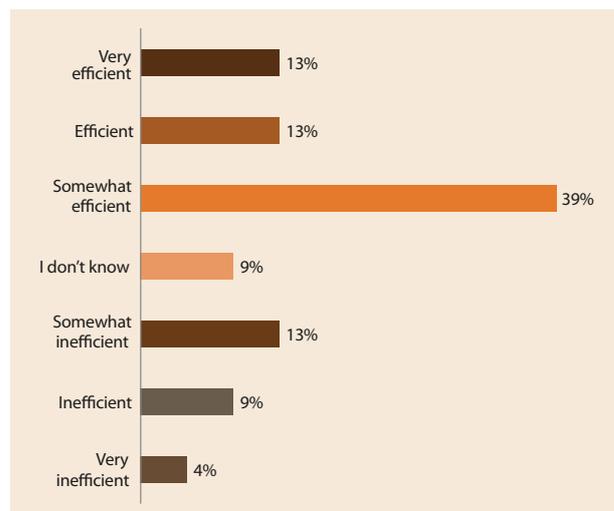
The extent to which the Ministry of Mines and Energy (MME) fulfils its mission to “facilitate and regulate the responsible development and sustainable utilisation of [mineral] resources for the benefit of all Namibians”

While this survey pinpointed concerns about the role of middlemen and the influence of senior officials, it was clear that

the majority of respondents think that the MME generally fulfils its role as a facilitator and regulator in a responsible manner and is mindful of its mission to manage sector for “the benefit of all Namibians”. Some 58 percent of the respondents gave an affirmative answer on this question while only 12 percent view had a negative perception of the Ministry and 21 percent were neutral. Several respondents commented that the MME’s custodianship of the extractive sector was either ‘good’ or at least ‘adequate.’



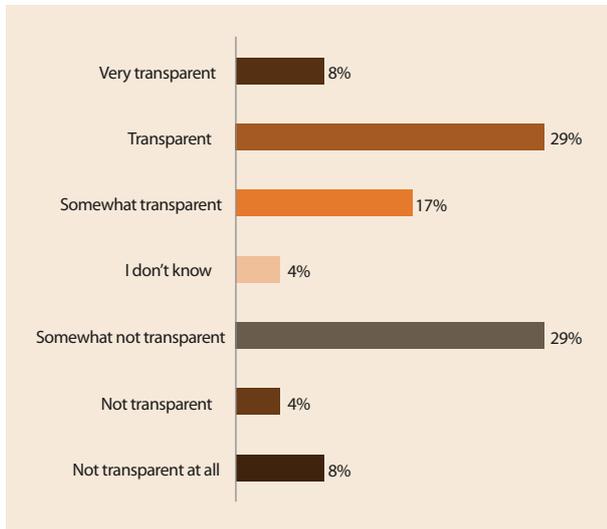
The efficiency of government’s exploration licensing system



26 percent of respondents said that the licensing system was very efficient or efficient, while 39 percent believed that the system is somewhat efficient. While not quite a clean bill of

health, there is generally positive view of government efficiency in its handling of licence issues. Some comments indicated that companies' interaction with government was much better than in many other resource-rich countries – a finding that is backed up the Fraser Institute's rating of Namibia as the second best jurisdiction in sub-Saharan Africa for mining companies to do business. The work of MME's Geological Survey and the availability of high quality data for company perusal are regarded as major positives judging from comments received from company representatives.

Transparency in government's system for allocating licences

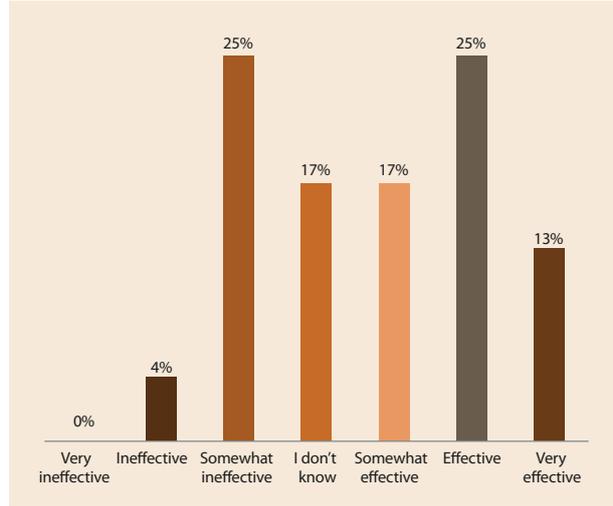


Respondents were split on the transparency of the system for allocating licences with slightly more (54 percent) positive than negative or indifferent. Of course, companies are not always so keen on transparency themselves. Responses to a question on whether companies supported the Extractive Industries Transparency Initiative indicated that while none of the companies rejected EITI outright, 13 respondents said they would require more information before expressing a view while 11 said they supported the initiative. The requirement for publishing contract and payment details, demanded by global campaigns like Publish What You Pay, is often an uncomfortable one for companies.

The effectiveness of government at ensuring environmentally acceptable practices during exploration and/or mining

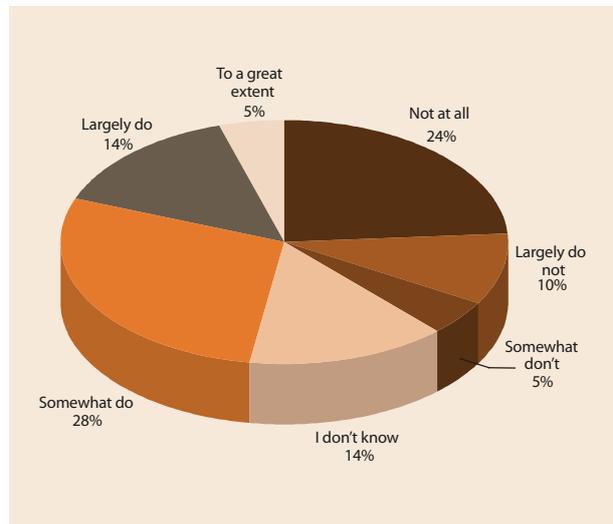
While respondents were also split on this issue, the majority see government's stewardship as effective to some degree

(65 percent). The issue of environmental awareness when it comes to the extractive industry has taken a prominent position in the regulation of extractive activities. Some 29 percent viewed government's environmental policies as ineffective.

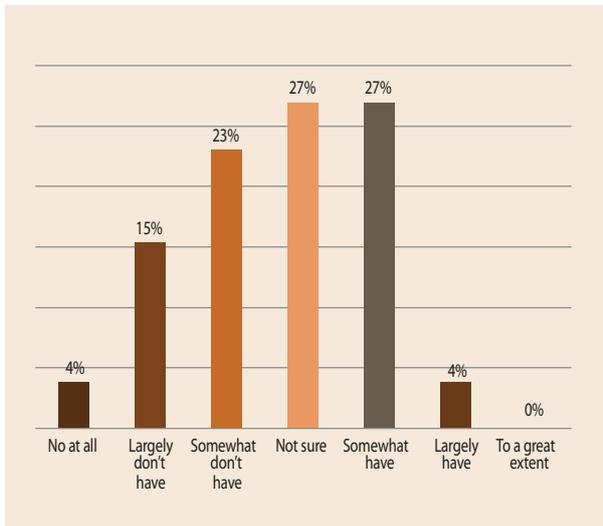


The extent to which government and the mining/extractive industry work together to actively support compliance with Namibia's anti-corruption laws and policies

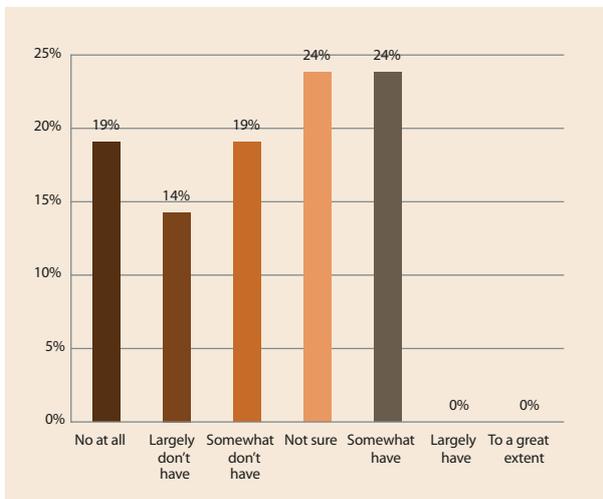
Slightly less than half respondents felt that government and the extractive industry work together to ensure and enhance compliance with the country's anti-corruption laws and policies. Comments indicated that several companies feel there is still a disconnect between government and the private sector on this issue. Some respondents pointed to the need for the Anti-Corruption Commission to be more actively involved in shap-



ing policies and laws that seek to prevent corruption in the first place and to also monitor the extractive industry more closely.



The extent do you think government has systems in place to ensure any corrupt elements within government and government agencies are brought to book



Companies' confidence in the broader governance environment was generally lacking. Some 42 percent of the respondents do not believe that the government has systems to ensure the prosecution of corrupt public officials involved in the licensing processes, while 27 percent were not sure. Perceptions that the ACC is only skimming the surface when it comes to tackling grand corruption in Namibia are widespread and also reflected in the views of key extractive industry players.

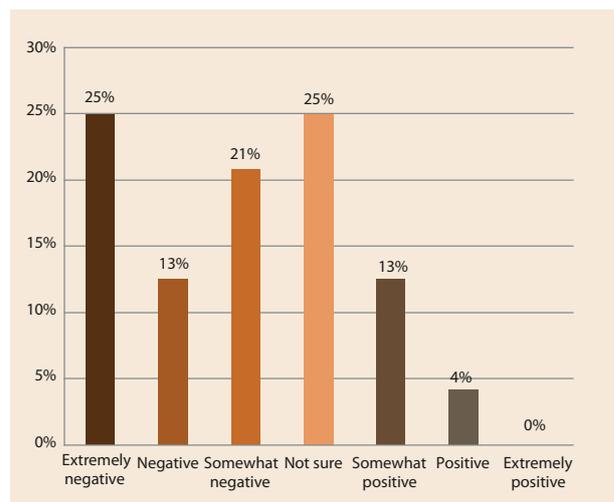
The extent to which government has systems in place to ensure any corrupt elements within private companies applying for licences are brought to book

Just over half the respondents do not think that government has systems that ensure that the private companies are brought to book for corrupt practices. This is a slightly largely proportion than those who thought government was lacking when it came to tackling corruption in the public sector. Some 24 percent of the respondents were indifferent. This again tends to indicate a lack of faith in official efforts to tackle corruption.

The extent to which public officials show favouritism to politically well-connected companies/business people when making decisions about licence allocations?

Concerns about partiality on the part of officials were shared by 50 percent of the respondents. They think that public officials show favouritism towards politically well-connected companies and individuals when they implement the licensing process. 28 percent of respondents thought that the process was not much influenced by favouritism. A further 25 percent of the respondents were not sure if favouritism exists.

The impact of middlemen/brokers/third parties in terms of ensuring accountability and mitigating corruption risks in the licence allocation process

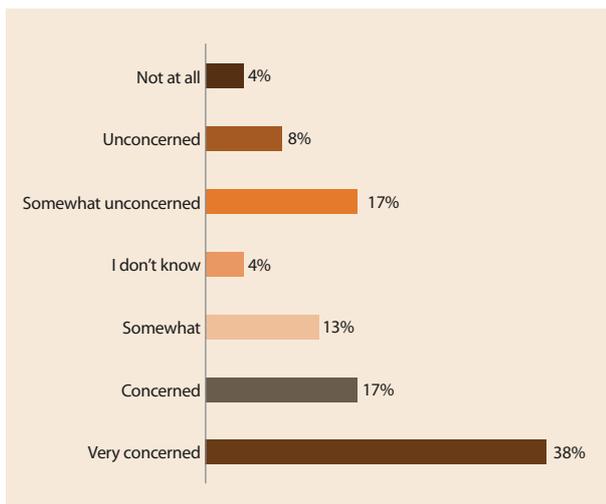


The existence of middlemen in the licensing process is generally viewed as having a negative impact on accountability and mitigation of corruption risks. Only 17 percent of the total number of respondents thought that the impact of middlemen is

not a challenge to the licensing process. 59 percent responded that the middlemen generally have a negative impact, while a quarter of the respondents were not sure if they have any impact on the accountability and mitigation of corruption risks.

The extent to which the Anti-Corruption Commission (ACC) should be concerned about the integrity of exploration licence allocation procedures?

Respondents were largely of the opinion that the ACC should be concerned about the integrity of exploration licence allocation procedures. A considerable number of respondents, representing 38 percent of responses received felt that the ACC should be very concerned. Only 29 percent of the respondents did not think the ACC should have a reason to be concerned by the integrity of the system.



INTERVIEW WITH THE PETROLEUM COMMISSIONER IMMANUEL MULUNGA

If companies apply for a Petroleum Exploration Licence and they meet the requirements how long does it take for a decision to be taken about whether they will be allocated a PEL and is there a standard time?

There is not really a standard time but obviously we would like to do it as fast as we can. It really depends on various factors. It depends on the availability of the chairman of the government negotiating team, who is the [MME] Permanent Secretary; it depends on who is available as well. So you have to agree on a date for negotiation. Once that is agreed upon it could be between two weeks and two months.

Who at the end of the day makes the final decision and what kind of process takes place? What kind of advice is received before that decision is taken?

There is a whole process that goes on from when the application is received. They bring it to me here and I give it to my people to take a preliminary look and they come up with issues, they value the application and they check whether there are any outstanding documents. If there are outstanding documents we write to the person acknowledging receipt of the application but pointing there are some outstanding things you had not put in. If everything is okay then we write them a letter saying we received your application and everything is fine and we will come back with a date for negotiation. We ask them to submit a draft petroleum agreement which forms the basis of our negotiations.

Once they submit it we set a date for the negotiations and they come in. Before the negotiations we would have a caucus meeting internally to discuss the issues for the negotiations, once ... we take those issues to the government negotiating team which includes the Permanent Secretary as the chairman, the Director of Energy, somebody from the office of the Attorney General, you must have somebody from Trade and Industry, Namcor, myself, and the directorate of Geological Survey – that is the committee that has negotiations with the company so whatever is agreed there goes into the final petroleum agreement. Then obviously once we have agreed it goes to the Minis-



ter for signature and then they sign, they pay the necessary fees and then we issue them with a licence.

Is that [negotiating] committee a statutory body? Is it in the law?

No, it is not a statutory body. It is something that was established many years ago I think by either Cabinet or the Minister then to do the negotiations on behalf of the Minister because the Minister is the one that signs the petroleum agreement. He is the one that directs the petroleum licence to be issued so we are actually doing it on behalf of the minister.

In terms of BEE and affirmative action are there any guidelines or anything in place at the moment?

Unfortunately as you know there is no BEE charter in Namibia. So in the beginning when we first started issuing these petroleum licences there were no Namibians at all coming for negotiations but then as time went by one or two people started coming in. It almost became a trend you know that Namibians should form part of any licence. We have encouraged it. We know there is no [BEE] charter but somehow it became an unwritten policy almost later on that we would want to see Namibians and Namcor as part of any negotiations and part of any licence. So we had to take it up on ourselves somehow in the absence of any law or policy or whatever.

But it's not an absolute requirement. There are some blocks which have no Namibian involvement?

Yes, like I said, especially the ones we issued in 2005, 2006, 2007, 2008 – those ones have no Namibian participation but the newer ones all have Namibian participation and of course we don't force it upon people – it's negotiable – but I think companies find it useful. It's in their best interest to come with a Namibian partner.

How pro-active is the Ministry in terms of saying to a company you should talk to these people or these are the types of companies you should approach?

What happens sometimes is that Namibians come to us saying we want opportunities then we have a list of people. Sometimes you can advise people to go and speak to whoever but it's really up to you, it's not that you have to know this person otherwise you are not going to get a licence but it's obviously our duty when people come and they are looking for opportunities to introduce them to people who are interested in licences. So that sometimes happen where you advise someone to go and speak with so-and-so they are interested.

At the moment as the industry is still developing there probably aren't many Namibians that are experienced in the oil and gas sector?

No, the experience is not there....

So what qualities would the Namibians bring to a business arrangement that would be of benefit?

Sometimes what happens is the Namibians would identify a certain block. Obviously they want that block for exploration and they would go out and get the international guys. It's not that the international guys come themselves – they [the

Namibians] go and bring these guys and they go into partnership and they go in together. There are some cases where the international guys come and find a partner here and they go ahead. It happens both ways.

“We know there is no [BEE] charter but somehow it became an unwritten policy almost later on that we would want to see Namibians and Namcor as part of any negotiations and part of any licence.”

What happens in cases where the Namibian shareholders are quite involved in the beginning but then reduce their stake over? Is that something that concerns you – that the Namibian partners seem to cash in quite early in the process?

We can't run away from the fact that Namibians who enter in this industry go in with the aim of making money, making cash up front. I mean people have seen that some guys have made cash, money up front. There is always an element obviously as a Ministry we would not like to see someone applying for a licence and sell it out immediately. We would want them to remain in the block and gain experience in the medium to long term. I don't, however, think it's our business to stop somebody from making money – [saying] you can't sell some of your equity because you are Namibian and that kind of thing because with the selling of equity it's not only Namibians that do it. There is a lot of trading going on. Some people see this only from an exploration point of view but it's also business, people make money. Shareholdings get offloaded here and there – so it's a normal course of business that is happening.

In terms of the number of licences that a company can have – are there any limits?

There is no set number in terms of you can only have up to five or have up to three. We don't want to see a situation where one company goes for too many licences but there has been one or two cases when a company came to apply and said well listen this is our plan we want to have as many blocks as possible because we want to go to the Stock Exchange and list and to have one block won't really help us and that is the argument that some companies use and so they get three or four blocks at once. I don't think we would like to see a situation where you have one or two blocks and then you come back for another. There have been a few cases where we said no to people, espe-

cially some of the speculators or local guys who don't really know their market well. We tell them with one or two blocks you are empowered so keep going with whatever you have and that's it.

What systems do you have in place to monitor and control any changes of ownership?

The law says that when a change of ownership happens the Minister needs to approve it. If the interest in a licence changes hands it needs to be approved by the Minister. That happens all the time but there is a loophole where somebody sells equity in the company that owns the licence and that you cannot prevent – they go ahead and do it.

How does the protection of the environment work in terms of licence allocation? Are companies always required to have an environment impact assessment (EIA)?

The law is very clear – if you get a licence from scratch before you do a seismic survey you have to do a baseline study, so it's basically an EIA baseline study make sure that all the impacts are catered for and then you proceed and then before drilling you have to do an EIA and there has to be an environmental management plan. You send it to the Ministry of Environment and Tourism for their clearance and then it comes back to us and we give a final clearance certificate here. Because of the stage of exploration that we are in apart from the EIA there is probably not much we can do about the environment but as things develop, as discoveries are made and development and production happen it will be something we have to take seriously. Now there is not much impact on the environment.

“One hopes that when oil is discovered it's going to be a blessing and not the other way around.”

Inside the Ministry do you have any systems or codes of conduct in place that would prevent anybody involved in making or influencing a decision on a licence allocation having any kind of links of the people who are applying? Is there anything in place?

Obviously, we rely on is the Acts that say that no person working at the Ministry of Mines and Energy is allowed to have an interest in any petroleum exploration licence. So if we find you

are against the law there can be consequences. However we don't actively now go and say maybe you are related to who and who – those kinds of things. It's not really our role per se but it will be something concerning if maybe there are those kinds of things that are going on.

We try and suggest that codes of conduct can help?

Yes, I think there is an opportunity of codes of conduct and for all those things to be put in place. It's an area especially in the future that needs [attention] – to have better codes of conducts and maybe to sign certain declarations to make sure that no funny things happen.

What do you think of the Extractive Industries Transparency Initiative?

I think if we have a discovery especially [it will become relevant]. Now from a petroleum point of view it's not useful to be part of the Initiative. However, I think we do attend meetings. The issues are something we take cognizance of. I think it's important that we are a part of it; especially when oil is discovered we should be part of this issue. If we are not it will obviously raise questions why do we not want to participate. One hopes that when oil is discovered it's going to be a blessing and not the other way around.

You have been quoted in the last couple of years as saying that the system for allocating licences will at some point change and go back to bidding rounds. How is that progressing?

We are not there yet. It's a Cabinet decision that opened up licensing so it has to go to Cabinet for them to say now it is a bidding system. We are in the process of taking the thing to Cabinet. We are probably slow; we should have done it earlier. But since there is no Cabinet decision yet we cannot stop people although I want to tell people that I cannot take their applications. But on what basis do I refuse receiving applications?

Regarding onshore exploration, some companies are now exploring in areas where communities are living. Do you have any systems and regulations in place covering the community impact of exploration and the need for community consultation?

Yes, it is in the law. It makes provision for the relationship between the oil company and the people in terms of compensation and all those things. We had an issue during exploration in the Nama Basin a few years ago concerning farmers and issues of access and so on. Although in the Ovambo Basin exploration

is already on the ground, we are not yet at a stage where seismic surveys are happening. Fortunately our law is not silent on that, it is very clear on how things should be handled.

“We can’t run away from the fact that Namibians who enter in this industry go in with the aim of making money, making cash up front.”

If we do find oil, obviously that would seem to be very good news but we know from other African and global experiences that sometimes things go wrong.

We would not in 10 or 20 years from now want to be saying that it was a bad thing that we discovered oil. We want to be in a position where we say finding oil was a blessing for the country.

Is there any thinking at the moment within government about planning ahead for what happens if we find oil? For example – do we have any special development fund where the proceeds of the oil industry can be placed?

There is nothing like that. I do not think that people do take it seriously at this point. It is really when we do get the discovery that people will start thinking about lot of things. I think it is only a few of us who really have a vision about this thing and are trying to drive it and bring in all the companies. But sometimes I do not feel that the support is really there yet. Even from our political leaders within the Ministry, people think this is just sales talk. Hopefully, more people will start paying attention when we do discover oil. The thing is, from discovery to production we will probably take five, six, seven years and even in that period the country will start to be transformed already. Once we have a discovery a lot of things will start happening – people coming into the country, the hotels that need to be built and service industry that needs to be in place and all those things. There is going to be a big transformation and as with wealth, money – I have a feeling that there will be people from

outside who would want to use their power and start controlling things. Sometimes it is scary, but you hope that that kind of thing will not happen. But what gives me hope is that Namibia is a country where it will be difficult for systematic corruption to develop and for money to get lost. I do not think that we will go the same route as Angola or Nigeria. We are too small, we have the institutions, and we have openness. Corruption thrives in closed countries where people don’t know what is really going on.

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About the IPPR

The Institute for Public Policy Research (IPPR) was established in 2001 as a not-for-profit organisation with a mission to deliver, independent, analytical, critical yet constructive research on social, political and economic issues that affect development Namibia.

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Anyone can receive the IPPR's research free of charge by contacting the IPPR at the contact details above. Publications can also be downloaded from the IPPR website.

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A yellow drilling rig is mounted on a truck in a field. In the foreground, there are many bags of material. The background shows a clear blue sky with some clouds.

Namibia is not usually associated with the term 'resource curse' which has blighted so many African countries blessed with extensive natural resources. On most measurements of extractive industry governance Namibia performs reasonably well. However, there are growing concerns that Namibia's regulatory environment is out of date and not 'fit for purpose' when it comes to eradicating corruption. This study, compiled by the Windhoek-based Institute for Public Policy Research (IPPR), focuses on the way in which mineral, oil and gas exploration is currently managed and how this measures up against international benchmarks that set out the latest standards on transparency and accountability. Namibia is clearly lacking in some areas and future reform of minerals, oil and gas-related legislation should look at closing existing loopholes and developing a system which will see Namibia being regarded as a genuine world leader in extractive industry governance.

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