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Towards a minerals policy for the Southern African development community (SADC)

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CHAPTER ONE

OVERVIEW OF THE PROBLEM AND BACKGROUND

1.1 INTRODUCTION

In the Southern African Development Community (SADC) the mining sector is considered to be the basis of economic reconstruction and development, even in countries where the industry is not fully mature. The sector is expected to provide employment, revenues and broader economic development. With growing populations and the advent of democracy the demand for delivery on the part of government has increased tremendously. At the same time because of globalisation of mining finance and open markets of almost all countries in the world, the demands by mining companies on host governments have also increased. This has therefore necessitated the development of mineral policies in such countries for a more beneficial mineral exploitation.

The DEMR (1974) defined mineral policy as the sum of government decisions and actions that influence the mineral system, and the ways in which the system itself affects the economy and society in general. Its elements are diverse and continually changing. Mineral policy contains more than laws and regulations that directly influence mineral exploitation, extraction and processing. Other policy elements include export/import permits, regional development funds, pollution control laws, taxation and social development programs (Towards a Mineral Policy for Canada: Opportunities for Choice, p11).

In order for a country to attract mineral investment, it needs to provide an appropriate environment for investors. In addition, it is incumbent upon the host governments to share the benefits of mineral extraction with its citizens.

The sharing of benefits is a controversial issue with most communities feeling that they do not get what they deserve. They would instead prefer better arrangements since governments are perceived to be siding with mining companies who get all the benefits. This study will investigate the role of communities in participating in mineral resources development since they are at the centre of mining activities. It will also examine the issues of sustainable development in the SADC and the roles of the various stakeholders and how they influence decision-making. This study therefore looks at mineral policy development through stakeholder participation as experienced by South Africa, Namibia and Malawi. It explores and reveals new structures for mineral development and the sharing of benefits with the intended recipients---the populace. For the SADC this is crucial, firstly because most of its population is rural-based, and secondly the countries have to compete for investment with similar regions like Latin America. The aim of the study is to investigate the process of developing a minerals policy in the SADC that attempts to address the needs of the various stakeholders.

The SADC countries have similar opportunities, problems and challenges. Either a similar or common procedure to construct a minerals policy to deal with local issues invariably could lead to similar solutions. This common

approach would then lead to a regional approach to mineral policy construction and eventually to similar policy instruments. This would become the basis for a regional policy and a strong element in regional integration. One way to achieve a regional policy is for all member States to complete their own mineral policies. This should then be followed by the identification of common areas and synergies; identification of unique features specific to each country; and complete a document for regional discussion.

1.2 REVIEW OF RELATED STUDIES INFLUENCING THE RESEARCH

Studies on mineral policy development have been done in other countries with similar experiences with the SADC region. In this thesis, an examination of Canada, Brazil and some SADC countries is made for comparative reasons.

1.2.1 The Canadian Experience of Mineral Policy Development

In the 1980's the Canadian mining sector attracted 26 per cent of global exploration expenditures (Bond, 2000). In the 1990's this had halved. According to the Kwagga Report (2001) the mining industry felt that this decline was due to two reasons: firstly, there were strong environmental lobby groups that led to withdrawal of large tracks of land for conservation and parks. Secondly, there was uncertainty around the settlement of aboriginal land claims. Both of these issues had huge implications on land tenure. In reaction to this the Mining Association of Canada developed a concept of bringing various stakeholders together to create a mineral policy that would drive the country into the 21st Century. Essentially the industry drove this

initiative because it needed continuing investment and the concern that the public was not supporting it. The Mining Association of Canada suggested this concept to a conference of mining ministers in Whitehorse. The ministers agreed to the proposal, became co-sponsors, and named it the Whitehorse Mining Initiative (Natural Resources Canada, 1999).

Stakeholders to the Canadian process were drawn from five sectors of society and these were industry, government, labour unions, Aboriginal peoples and the environmental community. There were four work groups each with membership from all stakeholders. The four themes on which the discussions were based included issues that were important to industry competitiveness. These were land access, environment, finance/taxation and workforce/workplace/community. The Whitehorse Mining Initiative process started in February 1993 and ended in September 1994 involving 100 people and cost CN$1.2 million. A total of 150 recommendations were developed and formed the basis of the 1996 Minerals and Metals Policy of the Government of Canada.

Among the recommendations from Aboriginal concerns were the following:

1) Government should pay attention to settle land claims expeditiously.
2) Mining companies should develop agreements on lands that they wished to mine.
3) Mining companies should hire Aboriginal people and contract services to communities where possible and

4) Companies should hire Aboriginal liaison officers to address cultural imperatives.

As a result of this initiative companies started paying greater attention to communities around projects. Companies were required by legislation to consult with local communities starting at environmental assessment through the mine life. To implement agreements, committees were developed to evaluate progress through the life of the mine. The Whitehorse Mining Initiative has since gained support in South America. Bond (2000) in his paper analysed reasons why South America had doubled its global share of exploration investment from the 1980's when other regions were either shrinking or expanding marginally. He concluded that governments in South America were able to compete by managing risk and return. He classified this as mining sector sustainability through an environmental management system, good community relations and equity in rent sharing, stakeholder participation and code of conduct/ethics.

1.2.2 The Brazilian Experience of Mineral Policy Development

Brazil has the largest economy in Latin America and is a member of Mercosur, a regional trading block that includes Argentina, Uruguay and Paraguay. Brazil has enormous mineral potential and is a producer of over 70 commodities, some of which are in significant proportions. For example, it produces 95 per cent of global niobium, and it is the second largest producer of iron ore or 20 per cent of global production. Other minerals produced include bauxite, kaolin and manganese. The country has a diversified economy and the value of mineral production, including oil and gas,

accounted for 2 per cent of GDP, in 1999. The added advantage for the Brazilian mining sector is the enormous local and regional markets for its mineral products. Generally Brazil is considered as a late starter in terms of aggressive mineral development promotion that included opening up to foreign investment in comparison with Chile, Mexico, Peru and Argentina. The question is how has Brazil managed to succeed so fast in its mineral development?

Machado and Figueirôa (2001) documented the development of the mining industry in Brazil from the arrival of Portuguese settlers in 1500. They stated that this should be seen within the context of mercantilist behaviour where resources were developed based on slavery and targeted at foreign markets. The Portuguese Crown promised honours and rewards for those who discovered mineral riches. The first mining in Brazil was the extraction of shell deposits to make lime, in 1549. In 1591 the first steel plant with two kilns producing 100 kg of iron per day was built. In 1603 the first mining code in Brazil to regulate the sector came into force. Concerned with little progress, the code was revised in 1618 in an attempt to stimulate investment and compensate entrepreneurs. Further concessions were made in 1694 that included honours and the status of knighthood.

The discovery of gold in the 17th and diamonds in the 18th centuries brought significant changes to Brazil, including the opening up of new frontiers which were hitherto uninhabited. This brought with it all the characteristics of human accumulation and associated impacts. From this stage the code evolved

through decrees in response to specific issues in a piecemeal fashion. The state-owned Companhia Vale do Rio Doce (CVRD) was created during the Second World War to supply the United States of America and Britain with iron ore. The company later diversified into aluminium, manganese, phosphate rock, potash, gold, steel making and kaolin, making it the largest Brazilian exporter. In general, government policy was to promote growth of the sector in order to meet domestic demand and produce for export markets. This led to the development of a new mining code and a comprehensive appraisal of the mineral resources of the country. In 1988 a new Constitution (Machado and Figueiroa, 2001) was passed which restricted foreign participation. This contributed to a decline in investment in the sector. However, in 1995, the Constitution was amended. This led to changes in the mining legislation permitting foreign majority control (Diagem International Resource Corp, 2002). This move together with other changes in the code resulted in an upsurge of exploration and mining activities in the country. In addition to opening up to foreign capital and creating an environment that is conducive to investment the new code has significant provisions for distribution of benefits to Brazilians. Among these are the following:

1) Acknowledgement and identification of surface owners
2) Consultation with communities before mining activities
3) Consultation with, consent of and compensation to land owners
4) Participation by land owners
5) Royalties to surface owners, district, municipality, ministry of mines and environmental management agency and
6) Reserve opportunities for Brazilians

1.2.3 The SADC Experience of Mineral Policy Development

In December 1994 the SADC mining sector held the first regional mining investment forum in Lusaka, Zambia. Each minister responsible for mineral development made a presentation to the investment community on the policies, status and efforts being made to attract investment in their countries (Mining Investment Forum, 1994). It was apparent that the member States have similar aspirations for the sector as a whole for the development of their mineral resources. It was also clear that problems facing the sector were also similar. However, each State had its own mineral policy or, in many cases, just a policy statement. Little change had been made to policies and statements as at the next SADC mining investment forum held six years down the line, in October 2000 (SADC Mines 2000). Most member States concentrated on modification of legislation to address specific issues rather than having fundamental policies to guide the sector.

In September 1995, the SADC Mining Sector Co-ordinating Unit invited a wide range of stakeholders from all the SADC member States to participate in the development of the regional Mining Sector Protocol. The workshop discussed five areas which were then on the mining sector programme. These were Geology, Mining and Mineral Marketing, Mineral Processing, Environment and Human Resources Development. The proceedings of the workshop[1] formed the basis for further consultations and development of the Mining Sector Protocol. The Protocol came into effect on 8th February 2000 after ratification

by member States. The Protocol aimed at harmonising national policies to the objective of integration, facilitating the development of human and technological capacities and promoting private sector participation in the regional minerals industry. It was also aimed at improving the availability of economic information to the private sector, observing the internationally accepted standards of health, safety and environmental protection and promoting responsible small-scale mining. These were perceived as critical areas where the sector needed to direct its energies for improvement as well as achieve regional co-operation and integration.

In April 2001 the SADC Mining Sector Co-ordinating Unit held a workshop to develop a strategic plan for implementing the protocol (MEPC, 2001). Participants were drawn from the academia, industry, civil society and government. In addition, foreign participants also attended. These were from the Economic Commission for Africa, the European Union Centre for Development of Enterprise based in Brussels and CSA Group of Ireland. From the output of the workshop six long-term objectives were formulated, each related to a key area in the Protocol. Each of the objectives was associated with sub-objectives and a prioritised list of actions in the form of an implementation plan.

As a follow-up to the strategic plan the SADC Mining Sector Co-ordinating Unit held a workshop[2] on harmonisation of policies to promote private sector

[1] SADC, Mining Sector Community Building Workshop, Record, Pretoria, South Africa, 11-15 September, 1995

[2] Proceedings of the Workshop on harmonisation of policies to promote private sector participation in Mining. SADC/MCU-EU/DIAGNOS, Gaborone, March 20-22, 2002

participation in mining in March 2002. The purpose of the workshop was to prepare a financing proposal to support the harmonisation process and define strategies and actions to be carried out. Issues discussed included mining rights and legislation; fiscal regime and taxation; environmental safety and health; research and technology; and value addition. The discussions also focused on small-scale mining, gender and human resource development and training. One of the main conclusions made at the workshop was that: "*Mining is key in our economies, but there is no significant participation by local people. There is need to involve indigenous people in the development of the sector. We should aim at interventions that can bring about effective participation by local citizens"* (Proceedings of the Workshop, p1).

Indeed if these are issues at regional level they bear a lot of resemblance to national concerns in almost all the member States. It can be argued that a uniform approach to identification of these issues and addressing them at national level could go a long way towards achieving regional co-operation and integration.

1.2.4 Attracting Mining Investment

Benefits from minerals can only be realised if investment is made in the sector. With globalisation, countries have to compete to attract this investment. Otto (1992) argued that countries must offer terms as attractive as those with similar geological potential. With most countries pursuing this route, a global legislative and fiscal regime is emerging. Otto also noted that problems in developing countries include the fact that mineral laws are not

fully integrated in overall regulatory system. In this instance, full benefits cannot be realised, especially with disjointed administrative procedures. He further observed that agreements between host governments and investing companies have been the norm because of inadequate protection offered by legislation.

Otto listed four factors influencing company decision to invest in the mineral sector, and these are: prospective geology; acceptable tax terms; acceptable legislation; and political stability. Countries that need investment are well advised to consider these factors. He further classified decision criteria into seven categories to evaluate perceptions of investors in individual countries. These categories are: geological; political risk; marketing; mining law; investment and tax laws; environment; and operational. Otto contended that this type of evaluation, when compared with similar geologically endowed countries, provides important guidance to countries in specifying areas where emphasis and action are required to attract investment in a particular country.

Maponga and Maxwell (2001) argued that ownership of mineral production in Africa may be characterised by stages in the history of mineral development in Africa. The first stage was the local private exploitation by traditional owners. This was constrained by lack of capital. The second was private foreign ownership, usually of large companies which exhibited enclave development and failure to contribute to economic growth in host economies and the third was the state ownership that emphasised inward policies seeking to direct returns into socially and economically desirable objectives.

Unfortunately many problems were apparent with this third phase. These included inadequate re-investment in the sector, political interference, unfavourable investment climate, general political instability, lack of economic stability, and lack of technical and human skills. This led to poor economic performance of many mineral-producing countries. The fourth stage was private ownership (still is now), which provided alternatives to failures of state ownership and also was in line with general structural adjustments of emerging economies.

It was the global crisis and decline in the metal prices in the 1980's that prompted member States of the SADC to examine ways of attracting new investment. Mate (2001) observed that:

"Structural Adjustment programmes were implemented in response to the problems of debt and economic under-performance. Their emphasis on export-led recovery and the generation of fiscal and foreign revenues was accompanied by the adoption of legislation and mechanisms that sought to improve the conditions for direct foreign investment" (p5).

Private ownership is, therefore, characterised by the modernisation of mining regimes, development of new formal mineral policies, statements, international agreements and appropriate legislations.

Various studies have been done and recommendations made for actions to stimulate private sector mineral investment. Alyward (1995) interviewed North American and South African mining executives in his research and recommended that African countries need to create stable political, legal and

administrative structures--- the latter preferably being independent of 'politics'. Under this heading would be the elimination of corruption and self-interest. He also mentioned that African countries need to monitor critically the policies and investment environments in other regions. They are Africa's competition for investment capital. It appears that even countries have to be run as businesses in today's world of rapid information technological advance. Countries should also undertake education and training of Africa's populous, which are an integral part of the process towards the implementation of the above enabling environments.

Matshediso (2002) contended that mineral investment in the SADC countries is constrained by mineral policies, mining codes and environments that have not been conducive to mining. Since investors have more opportunities for investment elsewhere, he advocates a strategy for mineral investment in the SADC that should result in a win-win situation between governments and investors. Matshediso presented areas of attention by the SADC that include the publicising and promotion of mineral resource potential, developing appropriate mineral legislation and improving taxation regimes. Other areas are improving the business environment, reducing the political risk and improving the Corruption Perception Indices.

The World Bank (2002) and the International Finance Corporation made six recommendations to policy makers in developing countries responsible for the economic management and institutional competency in their mining sectors. These institutions emphasised the pursuance of reform and capacity building

for government agencies and ministries, in particular with regard to economic management and fiscal administration and the building of legal and fiscal frameworks to attract private mining investment. They also emphasised improving social and environmental frameworks to support responsible mining, privatising parastatal mining and industrial enterprises, including closing unprofitable state-run mines, regularising small-scale and artisanal mining and strengthening partnerships with important stakeholders.

1.2.5 Community Participation in Mineral Resource Management

The World Bank (2001) stated that participation is the process through which stakeholders influence and share control over priority setting, policy-making, resource allocations and access to public goods and services. The Bank acknowledged that this is not a blue print for all cases. It argued that in whatever context or reason they are used, participatory processes or civic engagement in the poverty reduction strategy process allows countries to begin exchanging information with other stakeholders and thereby increase the transparency of their decision making. This in turn will improve government accountability to the people and, as a result, increase the overall governance and economic efficiency of development activities. All member nations were urged to improve governance and hence participatory approaches to policy development serve to contribute to this goal.

Public participation is not a luxury anymore. In his argument for this view, Pring (2001) listed several factors that cause this. One of the factors is the democratisation trend since 1989. A number of events have taken place in the

world in general and in Africa in particular. Policy makers must therefore consider these trends when formulating mineral policies. Such events have varied. While some are locally driven, others are responses to dynamic changes happening worldwide. Other factors that Pring described include the adoption of new legal paradigm of "*sustainable development*", international environmental movement, international financial organisations requirements, Human Rights regimes, organisation of indigenous peoples and local communities and technology, particularly the information-exchange capabilities of the Internet. In addition to these factors, the coming into effect of the Aarhus Convention[3] on 30th October 2001 has enhanced the role of the public in government decision-making. This is the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. More and more countries are ratifying its treaty. The Convention has three pillars. These are access to information, since knowledge is vital if the public is to participate in a meaningful, informed way; public participation in decision-making in government decisions, which would encompass specific activities, plans, programmes and policies; and access to justice, if access to information or participation fails.

Studies done by Batton and Mattes (2000) on democracy in Africa have made a number of observations. First, authoritarian regimes have generally been discarded in Africa, enhancing the newfound freedom of choice of leadership and government. Second, with the thawing of relations between east and west with concurrent diminishing of central planning, almost all countries in Africa

[3] Aarhus, 1998. Aarhus Convention on Access to Information, Public Participation in Decision-

have adopted market forces as the hallmark of their economies. Unfortunately democratisation and ongoing economic reforms have incompatible market-oriented policies and have generally lost support due to unemployment and income gaps they create. These effects tend to result in political instability, thus undermining democracy, as it seems to fail to deliver results because of inefficiency and corruption.

Bray (1999) described corruption succinctly. Corruption in public bodies is abuse of public position for private or personal gain, and flourishes most where politicians and officials exercise power without accountability. It distorts economic development by rewarding the most dishonest rather than the most competent. The fear of competition is the major justification for paying bribes. Governments are conscious that a reputation for high levels of corruption will discourage foreign investment. Perceptions of corruption undermine satisfaction and erode confidence in state institutions by foreign investors as well as citizens of the country.

Another problem that has posed major challenges to democracies in Africa is the magnitude and growth of the impact of HIV/AIDS on social and economic infrastructure. The negative impact of HIV/AIDS on economic growth of the countries include erosion of the human resource base, diversion of meagre resources to health services and lack of ability to deal with the scourge. If communities are poor and helpless, despair is severe. At the mine operation level, this poverty has enormous implications. These include loss in

productivity due to sickness and absenteeism and high turnover of employees. In addition the cost of doing business also escalates due to more frequent training of new staff, increased medical and insurance costs and so on. It also drives household-heads who are minors to be engaged in mining activities to survive.

As a result of democracy, empowerment has enabled nationals to renew their self-confidence in controlling their lives. It has given them a choice to contribute or not to contribute to the running of the affairs of the state. In the minerals sector, attention to a variety of stakeholders and their participation started from the late 1980s through the 1990s. In many cases, it was a response to specific issues rather than initiatives for corporate social responsibility. It is now standard practice to expect engagement by all stakeholders in policy development.

Another writer on this issue is Taylor (1998) who discussed the proper roles of states and local communities in the governance of common property natural resources. In his conclusion he noted that: "*States do not easily relinquish control, many bureaucrats and state-employed 'experts' do not readily concede that they are less knowledgeable and less capable than the natives and peasants in the provincial woods, and they are often ill served by the large numbers of economists who are still blinkered by a narrow market-centred ideology"* (p258). With global trends towards the need for stakeholder participation, change in attitudes and new techniques have become necessary.

Lawrence et al (1997) who reported on the forest planning processes in the United States also ably described the role of stakeholder participation. They argued that the problem being addressed was the fact that

"*Like many other natural resource planning efforts, the infusion of state-of-the-art science, the latest planning technology, and the investment of planning and scientific skills has done little to ameliorate the public conflict over forest management. …What more, or different could have been done?"* (p278).

Among their findings were that the public was ignored and yet this was a source of additional expertise and data for decision-making. In addition, the manner in which public involvement is conducted can affect how they react to decisions.

In almost all SADC States mineral rights are vested in the state. Local communities have restricted access to minerals except for what tradition demands, for example construction materials for their houses. The policy development and management of the sector have been the prerogative of the government without any input from local communities.

1.2.6 Sustainable Development in Mining

The World Commission on Environment and Development, the Brundtland Commission (1987) defined Sustainable Development, as "*Development that meets the needs of the present without compromising the ability of future generations to meet their own needs*". The core principle is to improve the human well-being. This definition generates three themes. The first is

sustainability of the environment, both in terms of quality and stock of natural resources. The second is economic sustainability of the human living standards. The third is the social and cultural sustainability. This refers to the disproportionate distribution of benefits and costs associated with mineral development and the role in decision-making processes that various stakeholders make. The Mining and Minerals Sustainable Development Report (MMSD, 2002) states: *"A sustainable development framework should be defined only in part in terms of social, environmental, and economic objectives. It should also be defined by the decision-making processes it promotes: the mechanisms for making trade-offs it identifies in ways that are widely regarded as fair. New principles for governance are required"* (p23).

In line with global efforts towards sustainable development the mineral sector is expected to fully contribute towards its achievement. Like in any other sector, in the mineral sector one of the important ingredients to sustainable development lies in the process of identifying and organising the various stakeholders to work together in developing policy. The special significance for the involvement of several stakeholders lies in the unique nature of the mineral sector as opposed to other natural resources that are renewable. Firstly, the extractive nature of mining results in environmental degradation. Secondly, benefits can only be extracted during the life of the mine and be used prudently for intergenerational transfer, which is for investments that will continue after mine life. Thirdly, the mineral sector must link with the broader economy for benefits to be sustainable. Thus, stakeholder engagement will enhance wider inputs; enhance community development and form partnerships among the stakeholders. Communities are highlighted because

mineral development activities normally take place in rural areas and that these communities bear the brunt of most of the environmental and social costs, which are normally not consistent with the benefits they get.

The mining industry has historically had negative effects on the environment. In fact it was assumed that a price had to be paid by the host countries in order to benefit from mineral development and this price was usually the environmental degradation. The industry has also been criticised for the disregard for local communities until the late 1980's. Corporate social responsibility is the buzzword in recent years, and the industry is fast adjusting to societal needs and aspirations. However these adjustments have only been a response to protect their investments as various cases have shown outright violence by some communities when frustrations cannot be contained. Few countries have made stakeholder engagement as part of national policies and development of such policies must, of necessity, involve the stakeholders themselves.

1.3 THE PROBLEM CONTEXT

The mining sector plays significant roles in the economies of the member States of the SADC (MEPC, 2001). On average it contributes 10 per cent to GDP, 40 per cent to exports, and 5 per cent towards formal employment. The sector is recognised as a base for reconstruction and development, even in countries without a tradition in mining. Broad national goals aspired include growth and capacities to achieve this growth; distribution of benefits of growth to all; economic diversification; improvement of quality of life; eradication of

poverty; preservation of environment, and many others (Radetzki, 1980 and Moharir, 1991). As the sector is part of the national economy, the goals can be distilled in the mineral sector as earning foreign exchange, contributing to tax revenue, creating employment, providing skills training, value adding to mined minerals, just to mention a few.

Capturing these benefits calls for capacities in governments to identify and manage rents in partnerships with the private sector. Cawood (1999) proposed a sharing ratio of 60:40 in favour of the investor. In the SADC the majority of inhabitants are rural and indigenous. This is where need for resources is greatest because of abject poverty, low literacy rates, high unemployment, poor infrastructure and poor health facilities. At the same time this is where minerals occur and where most mining activities take place. Like in Latin America and South East Asia, these populations have historically been politically weaker and less organised than the urban populations (Mate, 2000). As a result most mineral developments have been enclaves of investors with few benefits, if any, to the local economies and the primary recipient being the national governments (Clark, 2001). Decisions have been made from discussions between government and industry without regard to any other stakeholders, particularly local communities, indigenous people and Non-Governmental Organisations. Policymaking has, therefore, been the prerogative of the state. Some form of stakeholder attention started from the late 1980's through the 1990's, in a number of cases in response to emerging issues.

Epps and Brett (2000) traced some of these issues emanating from the many United Nations institutions. Since its birth, human rights and development have been at the centre of UN's activities. The authors trace the developments from the 1948 UN Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights through the UN Draft Universal Declaration of the Rights of Indigenous Peoples (UN, 1992) to the Rio Declaration (Earth Summit, 1992). Such international agreements underpin sustainable development, which takes into account aspirations and rights of affected local communities. It is the role of government, primarily, to make sustainable development achievable and take root.

With democratic processes sweeping across the globe the SADC is no exception. Authoritarian regimes have been mostly discarded. With this has come empowerment, which involves nationals attaining new measures of confidence and wider scope for taking control of their lives (Bratton and Mattes, 2000). This has created great opportunities for citizens to speak their views and act accordingly. In this situation there is great optimism from the population about economic prospects. Unfortunately satisfaction with democracy is performance driven: elected governments have to deliver acceptable results emanating from election promises to satisfy constituents (Bratton and Mattes, 2000).

In its various documents, the United Nations has urged developing countries to improve on developing capacities for policy formulation and implementation

consistent with current trends. In Canada a consultative process termed “The Whitehorse Mining Initiative (WMI)” provided a good example of resolution of key issues. It was intended to establish a framework for dealing with issues related to mining in Canada in a co-operative and collaborative manner. The mining industry made an initiative to develop a strategic vision for a competitive healthy Canadian mining industry in the 21st century. Representatives of industry, governments, labour unions, aboriginal peoples, and the environmental community participated in the initiative (WMI Final report, 1994). The process attracted keen interest from the mining community internationally.

Moharir (1991) pointed out three main differences in policymaking in developing countries from that in developed countries. Firstly, economic performance in developed countries has generally been satisfactory as they can allocate resources to one sector without necessarily affecting others. In contrast performance in developing countries has not been encouraging; it is compounded by high expectations of the electorates driven by democracy, and limited resources at the disposal of government. Secondly, in developed countries various interest groups play different roles, with Non Governmental Organisations (NGO’s), providing checks and balances. In developing countries the processes are still fairly centralised, with little participation and inputs from stakeholders, other than government, in policymaking. As an example, NGO’s are generally not as influential as in developed countries. Thirdly, due to historical, political and economic situation in developing countries the criteria for policy options may be based on different factors than

would normally apply in developed countries. Policymaking in developing countries thus has a different set of challenges and requires innovative approaches. This therefore means that there is a need to come up with a policy making model that would address the issues highlighted above as far as developing countries especially the countries under study-—namely South Africa, Namibia, Malawi and SADC region generally are concerned.

1.4 OBJECTIVES OF THE STUDY

There are three main aims to this study. The first is to investigate the role of communities in managing natural resources since they (communities) are at the centre of mineral development as far as issues of access, ownership, benefits and the environment are concerned. The second aim is to examine the issues of sustainable development in the SADC and the roles of the various stakeholders and how they influence decision-making. Finally, the study aims to explain how communities can benefit from mineral development. This is done through a process that attempts to reconcile the divergent views and interests in a mineral policy product that all would subscribe to. The author believes that if stakeholders are part of the problem and issues identification, part of identifying possible solutions and choice of actions, then the mineral policy has a high chance of success in implementation. In summary, this study aims to provide policy makers with a process of developing a minerals policy in an economy for sustainable development in the SADC that should reflect the foregoing concerns. The study will recognise the fact that SADC countries have similar opportunities, problems and challenges. The use of a similar or common procedure to

construct a mineral policy to deal with local issues invariably leads to similar solutions. This common approach would lead to a regional approach to mineral policy construction and eventually to similar policy instruments. This would be a basis for a regional policy and a strong element in regional integration.

1.5 METHODOLOGY OF THE STUDY

The study applied qualitative research methods with an extensive use of personal experiences and a literature review of policy development and implementation. This was done in three SADC countries namely South Africa, Namibia, Malawi and the SADC as a regional block between 2000 and 2005. Consultations and discussions were made with all stakeholders concerned with the mineral industry through forums. These stakeholders included government policy and decision makers, local communities and all other interested parties. The author was part of the process of mineral policy construction in Namibia, Malawi and mineral policy harmonisation in SADC. He was the project manager responsible for design of elements of the process, background documents and implementation of all phases. In the discussions during the shaping of the policy documents, he was also called upon to provide expertise and experiences from elsewhere.

1.5.1 Research Questions

The following research question was central to this study: ***How can a mineral policy in the two SADC countries be formulated in such a way that it contributes to broader objectives of national economic and social***

development? Four sub questions followed this main inquiry. These were as follows:

1. How can the goals of mineral development be distilled to earn foreign exchange, contribute to tax revenue, create employment, provide skills, and reduce poverty, amongst others?
2. What would be the relevance of consultative and participatory approaches in mineral policy development?
3. How would the policy instruments be implemented?
4. From respective constituent country policies, how can a regional policy be developed?

1.6 IMPORTANCE OF THE STUDY

The minerals are part of many countries' natural resources, which can be transformed to overall national growth and prosperity. They are also beneficial to growth and increased value of investors. Benefits can thus accrue to all stakeholders who affect or are affected by minerals development in a nation. These stakeholders include government policy makers; international or bilateral organisations that support development; communities affected by mineral development; exploration and mining companies; Non-Governmental Organisations; academia involved in teaching minerals science and research and development; and other researchers. Most of the work on policy development has shown what should form part of a minerals policy. This thesis shows the process of putting together a minerals policy, which can be replicated from country to country. With a group of neighbouring countries

adopting this process there will be similarities in solutions which would lead to a regional policy, and hence a foundation for regional integration.

1.7 LIMITATIONS OF THE STUDY

The nature of the study contributes to its limitations. For example, the choice of three countries in the SADC from fourteen leaves out a big area that could have been studied. SADC countries face similar problems and opportunities and it would have been more beneficial to the region if all countries were considered in the study. The selection of the three countries decreases the generalisability of the findings.

1.8 STRUCTURE OF THE THESIS

This thesis has been organised into nine chapters. The following is a summary of the chapters.

Chapter one: Overview of the Problem and Background

Chapter one presents the overall problem and its background. It also illustrates the context of the research, the purpose, methodology and procedures in the collection of information, the importance or significance of the study especially to the countries under study and it also presents the limitations of the study. The chapter discusses the important role of stakeholder participation in policy development in general and, in particular, in the minerals sector. This is in line with the global current trends of democratic processes and sustainable development.

Chapter two: **Traditional Policy Development Strategy**

Chapter two describes how a mineral policy has traditionally been developed, emphasising on requirements for attracting private sector investment. This is explained through relevant considerations and elements necessary for investment.

Chapter three: The Southern African Development Community and Mineral Development

Chapter three discusses the status of the SADC. This includes the historical perspectives and the current status of mineral policies. This information is critical for appropriate actions that should be taken in order to achieve sustainable development from the mineral sector using appropriate method of policy development.

Chapter four: The Role of Communities in Mineral Exploitation

Chapter four looks at communities in mineral development, their relevance and expectations. Since the bulk of citizens of the SADC are in rural areas where mineral resources occur, it is important to have an appreciation of these communities and how they are given opportunities to participate in the development of the sector. This is seen within the concept of sustainable development.

Chapter Five: Principles of Policy Design and Implementation

Chapter five examines principles of policy design and implementation. It puts into context the definition of policy as opposed to what is generally misrepresented as legislation---which is a mechanism to implement policy. Since a mineral sector is part of a national economy it is crucial that the development of its policy should consider a wide variety of issues that have a bearing on the sector. The chapter therefore also outlines these considerations and explains their relevance to the sector.

Chapter six: Model of Mineral Policy Construction

Chapter six describes a model, with its elements, that has been used to develop a mineral policy through a participatory process. The stages are explained sequentially from the beginning of the process to the final draft Policy Paper.

Chapter seven: Research findings and Analysis of Results

Chapter seven presents results and analysis of the results that are modelled in a matrix. These will attempt to define a typical policy framework for some SADC countries, which can be used as benchmark for the others.

Chapter eight: A Regional Mineral Policy Framework for the SADC

This chapter attempts to develop a regional policy derived from elements of the individual countries. This will serve as a unison approach to mineral sector development and provide a basis for coordination and resource-sharing.

Chapter nine: Discussion of Results, Conclusions and Recommendations

This final chapter discusses the results and makes conclusions from the study. Based on these, recommendations are made first, for the countries under study and second for the need to replicate this study.

CHAPTER TWO

TRADITIONAL POLICY DEVELOPMENT STRATEGY

2.1 INTRODUCTION

National ownership of mineral resources is the status in most countries, while private ownership is fast losing ground. Nations have for a long time recognised the residence of skills and managerial capacity, finance and technology with the private sector for the development of a viable minerals sector. Therefore, for the sector to develop, an appropriate consideration of factors and issues in and affecting the sector have normally taken precedence to attract the private investor.

This chapter aims to highlight issues and concerns of governments traditionally in consideration to develop a minerals policy acceptable to both governments and the private investor. The policy aimed to attract investment (largely foreign) and hence concentrated on elements necessary to achieve this. The chapter also highlights how the policy is implemented.

2.2 ELEMENTS OF A MINERALS POLICY

Buck and Elver (1970) described the development and implementation of a minerals policy, which is used here to demonstrate the traditional strategy of doing so. The authors emphasised that a prerequisite to mineral sector development is the acknowledgement that the sector is only part of the national economy. As such the sector must contribute to or aim to achieve national objectives along with other sectors' contributions. Therefore, it is vital

to have an understanding and appreciation of the national objectives. Such national objectives might include poverty reduction, raising per capita income, increasing employment, favourable balance of payment conditions and many others.

Secondly, an understanding and appreciation of the political, economic, social and physiographic situation of the country is required in order to respond appropriately to any problems through the right policy instruments. The issues will include, for example, the nature and stability of government; level of infrastructure development; availability of risk capital and markets; and the level of skills that are needed for the minerals sector. All these will affect what and how policies will evolve in order to attract investment and develop the sector.

Thirdly, an understanding and appreciation of the characteristics and problems of mineral resources, highlighting their uniqueness in comparison to other natural resources, which permits the need for special attention in developing appropriate policy instruments. These characteristics of mineral resources include the following:

- Non-renewable nature, once mined they are gone for ever;
- Have negative environmental effects throughout their cycle from exploration to mine closure;
- Are uniquely distributed and hence create opportunities for trade;
- Sector is international in character;
- Mineral demand fluctuates with resultant fluctuation in prices; and

- As part of a nation's natural resources, there is need for integrated approach with other resources in the vicinity.

Fourthly, the consideration of potential benefits that would accrue from mineral development provides impetus for careful planning. Buck and Elver contended that a good minerals policy can be vital for economic development. Giving the case of Canada, they showed that the sector had led to increased standard of living of its inhabitants; made remarkable sector contribution to GNP; achieved annual growth rate of higher than agriculture and forestry; made significant contribution to GDP, export trade, freight revenue and capital investment. The mineral sector had also been responsible for the development of remote areas of the country.

The foregoing considerations were deemed necessary for the development of a minerals policy. Buck and Elver listed fifteen elements or themes that could form a minerals policy of a country:

- Meeting domestic demand of minerals;
- Developing standards in which investors would operate;
- Aiming to promote value-addition;
- Encouraging local ownership;
- Maintaining and improving international competitiveness at market places;
- Provision of infrastructure;
- Procurement, maintenance and dissemination of data;
- Mineral development to provide basis for regional development;

- Forecast problems of mineral depletion;
- Conservation through the use of least wasteful production methods;
- Establish environmental standards;
- Minimise discriminatory actions affecting trade;
- Contributing sector share of tax burden to the country;
- Adequate provision of skills; and
- Ensuring sector contribution to national goals and objectives.

These elements or themes were not ordered in any priority. Prioritisation would depend on an individual country's emphasis.

2.3 IMPLEMENTATION

In order to complete the policy formulation process, the analyses of the above elements are then articulated into policy statements or instruments. To implement the minerals policy, these instruments are translated into specific laws (mineral law) and regulations. Buck and Elver emphasised that policy is not static, it "*should evolve to reflect domestic and international circumstances as they relate to national objectives*", and that "*application of policy to specific areas is a highly dynamic process*".

Leman and Nelson (1981) contended that policymaking required special skills. Three categories were advanced, and these were as follows: choosing the problem to be examined; doing the analysis; and selling the conclusions. In the first category, specify goals and if possible define measurable inputs and outputs. Consider political context so that the outcome is realistic, for example there may be a need to lower targets. In the second category, engage

participation of users and implementers to internalise the process. The authors argued that there may be need to identify equity objectives and combine with efficiency. In the last category, simplify results or policy instruments and actions for a lay person for effective communication and implementation. Naturally this required experience.

To advance government agenda through the minerals policy, most countries have re-affirmed their sovereignty over mineral resources and this became fundamental for it to determine the rate and nature of sector development. In Southern Africa all countries have vested mineral resources in the state on behalf of their citizens (Levin and Handley, 1993). An investor, therefore, can only gain access to explore, develop, process and market the products through relevant permits from governments. Since the private, mostly foreign, investor is the prime agent for mineral sector development due to domestic shortages of factor inputs, investor interests are normally considered and attended to.

The foreign investor interests are normally at variance with a host government. In brief, while the investor is primarily concerned with maximising returns on its investment, the host government is concerned with using mineral resources for national development. In consideration for the need to be competitive, government and an investor address their interests by narrowing differences for mutual benefit to achieve a win-win situation in mineral development. In general, these resolved common positions are articulated in mine development agreements. The table 2.1 below

summarises a list of seven areas of conflict and possible solutions from Salmasi, K. S. et al (Undated) and Brower (1987). These areas are:

- Government revenues;
- Local processing;
- Transfer pricing;
- Managerial control;
- Technology and training;
- Infrastructure; and
- Legal and political.

Table 2.1 Possible areas of conflicts and solutions

Area	**Conflict**	**Possible Solution**
Government revenues - taxation	Increased taxation	Treat sector as others; remain unchanged for long.
- royalties	Calculation base	Base on profit or on production & not tonnage
- foreign exchange earnings	Foreign exchange repatriation	Trustee account to pay foreign obligations
- Rate Of Return (ROR)	Investor short term & government long term	Negotiate compromise rate
- Additional Profits Tax	Sharing rent above threshold ROR	Sliding scale to benefit both parties
Local processing	Home-based processing	Make available sufficient raw materials to operate at international prices

Transfer pricing	Transfer profits to affiliates	Report all transactions; use arms-length to determine assessable income; equity participation to provide checks
Managerial control	Extent of local management and phase-in rate	Government acquire participation in key committees or board; in long term turn jobs to locals
Technology and training	Acquisition of specific technical expertise	Develop training programmes
Infrastructure requirements	Who pays for infrastructure?	Share by government, investor & inhabitants through various schemes
Legal-Political issues	Signing permanent & binding agreements; Possibility of nationalisation; Project versus local laws and citizens; Disputes of international nature	Agreement allowing project economics remain sound; Compensation at fair market value; Laws of the country; International arbitration

The implementation of the policy would invariably depend on many factors, but the skills and effectiveness of the mineral sector administrators or managers are crucial in achieving the intended national objectives.

2.4 SUMMARY OF THE PROCESS

The process of developing a mineral policy traditionally may be summarised as shown in table 2.2 below as follows:

- Considering background information;
- Deriving elements;
- Articulating policy statements; and
- Implementing policy.

Table 2.2 Process to develop and implement mineral policy

Background considerations: - national objectives; - social, political, economic, physiographic situation; - characteristics of mineral resources; and - potential benefits from the minerals sector
Derive elements
Articulate elements into policy statements
Implement policy - mineral laws and regulations; and - mine development agreements

The first stage involves compiling and colleting information necessary for consideration in a minerals policy. This information includes national

objectives, factors relevant for mineral development and unique characteristics of the minerals sector. The second stage involves generation of elements or themes necessary for inclusion or consisting of building blocks of a minerals policy. With due consideration, this may be regarded as a template, but without ordering the elements in any priority order. The priority would be determined by a country undertaking the mineral policy development exercise. The third stage involves articulating the elements into policy statements or instruments, thereby forming a minerals policy document. The fourth stage is implementation, which comprises articulating all policy instruments into mineral laws and regulations. In some cases the implementation necessitates the use of mine development agreements.

The process can, therefore, be used by a single institution or ministry responsible for mineral development to construct a minerals policy for a country. It may remain a desk study exercise to deliver a high level policy for government based on science and sound economics. In some cases the draft policy document had been circulated to a wider audience, more especially industry, for comments before its finalisation and adoption.

2.5 DISCUSSION

Keyes (1995) identified five major components of a minerals policy, namely: themes; levers; players; time-frames; and process. This discussion will revolve around these issues in relation to the foregoing and the process of policy development under this study. Suffice to say that these components are closely related.

Themes are the elements of the minerals policy and some emanate from other sectors' policies. Keyes defined themes as horizontal and vertical. Horizontal themes are those that are critical but do not affect only minerals. These include foreign investment rules, environment, economic and fiscal policy issues among others. Vertical themes are those that are unique to the mineral sector and include tenure, royalties and rehabilitation, among others. The template in the traditional model that contains elements of a minerals policy is good in that it has a lot of useful and relevant information for the purpose. The shortcoming is that it does not go far enough to take into account other emerging issues in societies where mineral development is expected to play a much more crucial role than traditionally perceived. For instance, the traditional model does not contain issues of local peoples' economic empowerment, role of traditional leaders in management of resources, and many other issues that may not have been documented as standard concerns. The process advanced in this study builds on the information gathered from the traditional model for the players to identify the issues and these are then grouped into appropriate elements or themes. This allows the society, as defined by the players or stakeholders, to hone in to specific local circumstances. The process thereby gives an opportunity to raise current issues as seen by various participants or stakeholders. Since the process allows stakeholders to think freely without being constrained by a predetermined template, several issues are raised resulting into a myriad of policy elements. The process that this study advocates raises more issues than what is in the template observed in the traditional model; it is more

encompassing, it gives a broader perspective of the issues that are not only mining specific but cut across all sectors of the society, including and most importantly, social issues.

The second component is the responsibility for actions, since policy requires actions by other government departments whose knowledge and interest are critical. Keyes contended that the responsible ministry must work hard that actions by others consider mining needs. The process advocated by this study takes on board the affected and interested departments to the mineral policy making activities. They form part and parcel of the process, they internalise the process and become co-owners of the product with agreed or shared action plans at the policy development stage. This eliminates potential areas of conflict and encourages participation by all concerned and necessary organs of government. They ensure that programmes are not duplicated, for example if there is a need for the creation of a centre of excellence for the mineral sector consideration may be offered by the utilisation of science and technology infrastructure that may already have been developed by the relevant department.

The third component is stakeholders, who are an important part of the process of policy making in this study. Indeed an expanded breadth of stakeholders is important, ranging from communities through all interested stakeholders to government departments. An important consideration is the timing of bringing the stakeholders in the process. It is evident that all stakeholders need to be brought in at the start. They are then involved in

appreciating the sector as it relates to government objectives, identifying the issues and various options for action in addressing them. They are then able to internalise the process and the product. To allay fears of degenerating sound economic and science-based decision making giving way to 'political expediency', the process allows for the generation of background documents and identification of eminent persons as part of the stakeholders to identify issues and become part of the process.

Indeed as observed by Keyes, that "there is a degree of consultation fatigue and overload" on the part of stakeholders. This author observed this while on a World Bank funded survey in Mozambique on small-scale mining. Among other reasons advanced by respondents or participants was the lack of feedback by those undertaking the projects consultation processes. Stakeholders require feedback to them of results of their participation. This allows them to have an appreciation of what may or may not work and why; how their suggestions have been modified or indeed been rejected; and what is expected as a way forward. As a result of not getting back, stakeholders, particularly communities, feel that they just get used and exploited by those who are better off in society or indeed by government. The process attempts to get all stakeholders to participate at all stages in the life of the minerals policy formulation and implementation cycle.

The fourth component is time frames which differ from one stakeholder from another. While industry takes a long term view, communities take a short term view because of, among other reasons, poverty. Similarly other stakeholders

have different perspectives: governments; environmentalists; organised labour; academia; and many such others. To reconcile this, the process adopts the participation of many different stakeholders at all stages from issues identification, through the articulation of themes, proposal of possible actions and the choices of appropriate ones, design of programme of action to monitoring implementation. This allows stakeholders to appreciate problems and bottlenecks, including the availability of resources in addition to the requirements of the flow of relevant activities preceding their individual interest outcomes.

The final component is the process, which is the basis of this thesis. The mission of mineral policy development is to articulate how the mineral sector will be developed and managed for the benefit of all the citizens of a nation, and of course the investor. A stakeholder process, which is taking centre stage, of achieving this as proposed in this study will provide a plausible option to the traditional strategy of policy development.

The next chapter provides the status of the mineral sector in the SADC, the evolution of the sector policies and the specific policies in the member States. It aims to find out the need for articulated policies as evidenced by a few countries whose elements have addressed the economies holistically.

CHAPTER THREE

THE SOUTHERN AFRICA DEVELOPMENT COMMUNITY (SADC) AND MINERAL DEVELOPMENT

Chapter two examined how a mineral policy had traditionally been developed and proposed that an alternative process be investigated in order that beneficial exploitation of mineral resources is realised. This chapter looks at the status of policies in the SADC justifying the need for a new process.

3.1 HISTORICAL BACKGROUND

The Southern African Development Community (SADC), established through a Treaty[4] in 1992 is a regional community comprising 14 countries that share common historical, economic, political, social and cultural factors. The region's vision is that of ensuring the well-being, improvement of standards of living and quality of life, freedom, social justice, peace and security for the peoples of Southern Africa. Mandaza et al (1994), describing the origins of the community list five specific factors that make the definition of the region. The authors point out that the first is the geographical formation of the sub-continent landmass. The second is the history of the people who have mingled since time immemorial and who speak common Bantu rooted languages with common socio-cultural traditions. The third is the common colonial experience at the hands of the British, Belgians, French and the Portuguese. The fourth common factor is the struggle for independence based on African Liberation and African Unity. Last, but not least is the

[4] The Treaty of the Southern African Development Community http://www.sadc.int

presence of South Africa with its economic and military hegemony, which has become a unifying factor in the definition and development of Southern Africa. Such factors as described above contribute to a distinct Southern African personality and identity, which underpins political solidarity and economic co-operation.

The main objectives of the grouping include *inter-alia*: promoting sustainable economic growth and socio-economic development; alleviating poverty; enhancing the standards and quality of life of peoples of Southern Africa and supporting the socially disadvantaged. The SADC also aims at achieving sustainable utilisation of mineral resources and protection of the environment; and achieving complementarities between national and regional strategies. The Mineral sector has been identified among those that can contribute to economic development, alleviate poverty and improve the standard and quality of life in the region. It is in this context that development of articulated mineral policies in the region is important in order to meet these broad objectives. This chapter highlights the role of the sector and individual mineral policies with a view to examining whether these policies are inclusive of broader objectives than the traditional thrust of generating revenues to governments.

3.2 THE MINERAL SECTOR

Mineral exploitation in the region is a very large contributor to socio-economic and infrastructure development of the region. It has made major contributions to employment, provided schools and hospitals in mining communities. It has also initiated the construction of major transportation and power infrastructure.

In aggregate the mineral sector contributes 60 per cent to foreign exchange earnings, 10 per cent of GDP and 5 per cent of formal employment (SADC Review 2003)

The sub-region is endowed with various minerals that include base metals like copper, lead, zinc and tin; ferrous and ferro-alloy metals like iron, manganese, nickel, chromium and others. In addition, there are also precious metals, energy minerals, and industrial minerals just to mention a few. The size of the mineral sector varies across the region ranging from mineral economies of South Africa, Angola, Botswana, Zimbabwe and Zambia to the more agriculturally based economies like those of Malawi and Tanzania. In January 1992, a new SADC Mining Sector Strategy[5] was approved. It recognised the need for increased levels of investment in mineral exploration and development with particular emphasis on the involvement of the private sector. More recently, focus has been on the development of small and medium-scale mining of minerals such as gemstones and industrial minerals which can be exploited with modest capital but still contribute significantly to the development of a country.

Individual member States have similar expectations of benefits from the development of their mineral resources. Almost all of them have similar problems of factor inputs for mineral development. However, there are several differences, which include the geological knowledge of mineral potential; emphasis on mining because of differing contributions to the economy; level

[5] SADC Mining Sector Strategy, 1992-97

of socio-economic development; infrastructure; and service industry. In this situation since all member states are sovereign, each has its own mineral policy. There is however a need for co-ordinated efforts in mineral policies' development in the region. This will make it easier to attain the SADC goal of achieving complementarities between national and regional strategies.

3.3 EVOLUTION OF SADC MINERAL SECTOR POLICIES

The period before independence, which came in the 1960s, and early 1970s of many member States, large foreign companies dominated the mining industry. Mineral policies and relevant legislations were specifically designed for these large foreign investors. Even though the member States had similar problems and opportunities, the mineral policies varied from state to state. On independence in exercise of sovereignty and as reaction to activities of these foreign companies many member States reversed policies and legislative provisions by imposing heavier taxation, compulsory training of indigenous people and reducing repatriation of profits. More importantly most member States decided to get involved in production activities. In 1988, 45 per cent of the region's mineral output was from state controlled facilities. These actions led to rapid decline in new foreign investment in exploration and mining.

The global crisis and decline in the metal prices in the 1980s prompted the member States to examine ways of attracting new investment. It was realised that domestic private sector did not have financial resources to meet the level of requirements, except the large foreign companies. As a result many

member States developed mining and investment laws and revisions to attract investment into the minerals sector.

In 1992 the World Bank released a technical paper[6] No. 181, which set out an agenda for Africa's recovery of the mining sector in the 1990s. This stated that:

- Economic adjustment programmes to continue;
- Government mining development programme to spell out that the private sector would take the lead with government providing necessary support;
- Privatise state mining companies;
- Provide incentives for the sector;
- Legislation should reduce risk and provide unambiguous licensing system;
- Strengthen mineral management institutions;
- Give serious considerations to environmental, health and safety issues; and
- Legislate and organise small-scale mining.

3.4 MINERAL POLICIES IN THE SADC REGION

As if the SADC member States were responding to the World Bank message, almost all the issues raised have been addressed depending upon the level of mining activities. Certainly macroeconomic adjustment programmes have continued unabated despite their consequences. Almost all of the SADC

[6] Strategy for African Mining

member States have declared that mining is a private sector business and government role is restricted to facilitate investments, regulate and promote the sector and generally to be a service provider to the private sector. The objectives of all the countries' mineral sectors are common as can be seen from these States' mineral policies and laws, which recognise mining as a necessary engine of economic growth and reconstruction.

While almost all countries subscribe to the basic agenda suggested by the World Bank, few countries in the SADC have now embarked on initiatives and programmes that directly link the mineral activities to the broader economy without essentially having the rents pass through the National Treasury. The landscape of mineral policies in the SADC is briefly as follows:

3.4.1 Angola

The country has just come out of a civil war that destroyed infrastructure and caused insecurity to foreign investors. These were the main causes of lack of foreign direct investment despite the country's good mineral potential (Matshediso, 2002), whose economy is dominated by petroleum and diamond production. The economy has thus under performed because of the war.

Angola does not have an articulated mineral policy to reflect long-term goals. The minerals policy can be derived from Investment Law No.15 of 1994; Privatisation Law No.10 of 1994; Diamonds Law No. 16 of 1994; Mining Law No.1 of 1992; and Decree No. 4-13 of 1996. Essentially the emphasis is on

participation of the private sector and especially attracting foreign investment. The government has the right to participate in mining, for example, obtaining 10 to 15 per cent free equity in large investments of more than US$ 50 million with an option to increase this through buying at market rates.

Joint venture opportunities of private sector with state mining companies are characteristic of diamond exploitation. Mineral rights for diamonds are granted exclusively to ENDIAMA, the state-owned diamond company, which enters into agreements with the private sector, including small-scale miners. Since foreign direct investment is a national policy for the country's reconstruction, a number of fiscal incentives were introduced including transfer of profits and dividends abroad. The World Bank and the British Geological Survey assisted the government in the drafting of the mining law.

3.4.2 Botswana

At independence in 1965, Botswana had an insignificant minerals industry and has, over the years, now become a mineral economy based on diamonds, coal and base metal deposits. This has been possible with remarkable peace, stability and democracy during the period. The country has managed a mixed economy balancing free market principles with government control and ownership of economic assets.

The Government of Botswana does not have an articulated minerals policy. The minerals policy can be derived from policy statements in the Vision 2016 and the National Development Plan (MEPC 2002). The Vision provides a

development framework, which emphasises on poverty alleviation and education. The framework is then translated into development plans. At an operational level, policy is derived from the Mines and Minerals Act No. 17 of 1999, the Mineral Rights in Tribal Territories Act (governing development of industrial minerals by indigenous communities) Cap 66:02 of 1967, the Petroleum (exploration and production) Act No. 12 of 1981 and the comprehensive Model Mineral Agreement of 1995.

The mineral sector objectives include: encouraging prospecting and new mine development; creating opportunities for generating linkages with the rest of the economy through value-addition; conserving and protecting the environment; and identifying and developing appropriate strategies for dealing with challenges facing the minerals sector. In pursuit of these broad objectives Government promulgated the Mines and Minerals Act No. 17 of 1999. A key feature being that the rights from prospecting to mining will be automatic.

3.4.3 Democratic Republic of Congo (DRC)

Up until 2001 the Government held the majority ownership of productive sectors of the economy. State mining companies produced almost all minerals. In 2002, the Government approved an investment code to encourage private investment to contribute to economic and social development of the country.

DRC does not have an articulated minerals policy. The policy is derived from a new mining code (Law No. 007 of 2002) funded by the World Bank and

adopted in 2002. This has renewed interest by the international business to invest in the country. The law essentially provides for incentives conducive to foreign private sector investment.

3.4.4 Lesotho

Lesotho, with its moderate mineral resources endowment, does not have an articulated minerals policy. Policy is derived from applicable laws and regulations. The significant one is the Mining Rights Act No. 43 of 1967. This is currently being revised in line with current practices to promote private sector investment.

3.4.5 Malawi

The country has not had an articulated minerals policy until 2004 and has introduced a process for developing one. Currently policy guidelines can be derived from the Mines and Minerals Act Cap. 61:01 of 1981; the Petroleum (Exploration and Production) Act Cap.61:02 of 1983; the Statement of Development Policies (DEVPOL) for 1987 to 1996; and the National Environmental Policy of 1996. Policy statements and laws are vague and most open to government discretion.

The draft minerals policy has yet to be ratified and adopted. The objectives of the sector in brief concentrate on: attracting investment; contributing to economic growth and development; contributing to self-sufficiency in mineral products; protecting the environment; creating employment; empowering

women; and improving the trade balance. Once the minerals policy is adopted, the review of the Minerals Act will follow.

3.4.6 Mozambique

The Government of Mozambique reviewed the whole mineral sector from institutional reform through geological infrastructure, environmental systems, and legislation to small-scale mining. The aim was to create an enabling environment for private sector capital.

The mining policy was developed in 1998. The government recognises the role of the mineral sector in economic development. In order to achieve this, the government will promote a promotional and facilitation function. In the short-to-medium term the government has the following objectives:

- To up-date and increase geological information;
- To increase mineral production and exports; and
- To strengthen institutional capacity to manage the sector effectively

A new minerals law and subsidiary regulations have been promulgated. The World Bank is supporting various aspects of the implementation of the minerals policy and law.

3.4.7 Namibia

The Government developed a fully articulated minerals policy that was adopted in 2003. The minerals policy dealt with specific issues in eight broad areas and developed policy actions. The covered areas were: Mining Industry, dealing with promotion and growth of all mining sub-sectors; Value Addition;

Marketing and Promotion, dealing with attracting investment; Environment; Human Resources, dealing with requirements of the industry and related social issues; Research, Development and Technology, dealing with scientific investigations and application of knowledge; Governance, dealing with the management of the mineral sector; and Regional Integration dealing with engagement with the Southern African Development Community (SADC). The Government is developing an implementation plan and is in the process of revising the Minerals (Prospecting and Mining) Act No. 33 of 1992 to be in line with the adopted policy**.**

3.4.8 South Africa

The South African Government developed a new Minerals and Mining Policy in 1998 to take into account the new political order of the country. This was developed through a wide consultative process to give opportunity for convergence of diverse views as a result of the past apartheid system. The Minerals and Mining Policy for South Africa addresses eight key areas: Business Climate and Mineral Development, dealing with continuation of policy conducive to investment; Participation in Ownership and Management, dealing with racial and other imbalances in the industry; People Issues, dealing with health and safety, housing needs, migrant labour, industrial relations and downscaling; Environmental Management; Regional Co-operation; and Governance.

Consistent with the policy, a Minerals and Petroleum Resources Development Act No. 28 of 2002 came into force in 2004. The main element is that the

custodianship of mineral rights was transferred to the state from private hands. Further to the Act are a series of implementation action plans to achieve various provisions of the Minerals and Mining Policy.

3.4.9 Swaziland

The Government of Swaziland does not have an articulated minerals policy. The minerals development policy is derived from the Swaziland economic and social reform agenda that aims to promote local and foreign investments (MEPC 2004). Specifically minerals policy may be inferred from the Mining Act No. 5 of 1958 and the Natural Resources Act No. 71 of 1951. The emphasis of policy include: diversification of mining activities; increasing the range of produced minerals; updating existing legislation from time to time; and developing specific legislation for small-scale mining.

Currently the country is in the process of developing a minerals policy and legislation will be reviewed and updated consistent with the policy**.**

3.4.10 Tanzania

Tanzania has a history of state intervention in economic activities of the country (MEPC 2004). Liberalisation of the economy in the 1980s resulted in restructuring of the minerals sector in the 90's. Restructuring programme in the minerals sector was aimed to encourage and promote private sector development.

The Government articulated a Minerals Policy[7] in 1997 whose vision is to have a strong, vibrant, well-organised private sector led mining industry. The Minerals Policy addresses several key issues in pursuit of its vision, which include: Fiscal Regime, dealing with creating attractive provisions; Legal and Regulatory Framework, dealing with creating stable and conducive business climate; Institutional Framework, dealing with governance of the sector; Financial Services, dealing with financial support particularly to the small-scale sub-sector; Rationalising Artisanal and Small-Scale Mining, dealing with support to the sub-sector; Mining Sector Support Services and Facilities, dealing with promoting and facilitating establishment of the same; Creating and Maintaining a Viable Infrastructure, dealing with promoting the same; Establishing Formal Marketing Systems, dealing with problems facing small-scale miners particularly; Integrating Mining into the National Economy, dealing with value addition and raw material inputs into the industry; Human Resources Development, dealing with developing human skills for the sector; Environmental and Social Sustainability, dealing with environment, health and safety, women and children, and community participation and involvement. The policy acknowledges the need for stakeholder engagement for the effective implementation of the instruments. It has, hence, identified various stakeholders to target. Tanzania promulgated a new Mining Act No. 5 of 1998 in line with its new policy of public disengagement from participation in mineral production activities.

[7] United Republic of Tanzania (1997), Mineral Policy of Tanzania,

3.4.11 Zambia

Zambia is an interesting case in terms of effects of nationalisation and warrants a brief background to origins of the development of its Mining Policy. This is amply explained in the mining policy and a summary is thus made here.

The minerals sector, especially copper mining, has been a significant component of the economy of Zambia for several years. In 1995 mining accounted for 90 per cent of export earnings, about 13 per cent of GDP and about 15 per cent of total formal employment. Initial private investment in the copper mining sector formed the backbone of the economy. In 1970 the government acquired 51 per cent through nationalisation with management and marketing left with the private sector. In 1975 the government terminated the management contracts, placing them under government, which led to increase its shares to 60 per cent. In 1982 Zambia Consolidated Copper Mines (ZCCM) Limited was formed becoming the only copper mining company and hence the Zambia mining industry. At nationalisation copper production was 650,000 tonnes per annum, peaking at 700,000 tonnes in 1977. By 1991 it had fallen to about 380,000 tonnes. The fall was the result of low retention of earnings, inadequate reinvestment in exploration and equipment, and growing expenditure in non-mining activities. This led to reduction in the contribution of the sector to the economy with resultant negative effects on other sectors of the economy and living standards. In this scenario other sectors of mining were ignored, for instance management of

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http://www.africaonline.co.tz/madini/MineralSectorPolicy/page4.htl

the sector, incentives and infrastructure. It is against this background that the mining policy was developed.

Zambia's mining policy was developed in December 1995. Its overall aim is to encourage private sector investment in exploration and development of new mines to exploit all minerals. Value addition will also be encouraged**.**

This has been broadened to the following policy objectives: maximise economic benefits to the country by privatisation, making the private sector to take the lead in exploration and development as well as diversify mineral-based products and exports; promote small-scale mining; promote development of gemstone mining and facilitate marketing; promote exploration and development of industrial minerals, energy minerals and ferrous industry; reduce environmental damage from mining, health of workers and communities; and promote value addition.

To achieve these objectives the following strategies will be adopted: privatise state mining companies through a series of steps; attract private investment for exploration and development through the provision of stable and attractive fiscal regime and provision of geological data; provide appropriate legal and fiscal regime for small-scale mining; facilitate liberalised marketing arrangements for gemstones and other minerals; provide appropriate environmental legislation, institute Environmental Impact Assessments and Management Plans, and Environmental Protection Fund; provide appropriate legal and fiscal regime to promote value addition, for example royalties;

provide infrastructure to areas of potential mineral development; and restructure the ministry to respond to needs of industry, for example promotion, advisory, bureaucracy (Zambia Mining Policy, 1995).

The Minerals Act Cap: 213, of the Laws of Zambia, was promulgated in September 1995, while the policy was published in December of the same year. The minerals policy seems to be explaining actions taken in the various legislations, including the minerals act, rather than spearheading the vision and let the laws and subsidiary legislation implement it.

3.4.12 Zimbabwe

Several towns in Zimbabwe can trace their origins to the discovery of minerals. The mineral discoveries and their development led to the provision of unprecedented infrastructure construction including power, roads, rail, water and support industries. With a wide range of mineral endowment, mostly small- to medium-scale, the mineral sector contributed 4 per cent to GDP and 45 per cent to foreign exchange earnings by 1998, reflecting a balanced economy together with agriculture.

Zimbabwe does not have an articulated minerals policy. Policy can be derived from numerous pieces of development plans, programmes and pieces of legislation (MEPC 2003). The pieces of legislation include the Mines and Minerals Act Cap. 21:05 of 1961. This Act has gone through amendments in 1978, 1987, 1990, 1991, 1993, 1994 and 2002. There are several pieces of subsidiary legislation under the Act.

In general mineral policy issues are outlined in periodic announcements made by the Ministry of Mines and Mining Development through its Minister (MEPC, 2003). In recent years these have included:

- Role of the sector in economic revival especially in generation of foreign exchange;
- Promotion of linkages through forward and backward activities including beneficiation of minerals;
- Promotion of small-scale mining to create employment and alleviate poverty among indigenous Zimbabweans;
- Minimising environmental damage from the sector;
- Indigenisation of the minerals industry through shareholding by locals; and
- Ensure marketing of minerals, especially gold and other precious stones is through the official channels.

3.4.13 Summary of SADC mineral policies

Until now, there are only four countries in the SADC with articulated minerals policies encompassing the broad range of issues in mineral development. These countries are South Africa, Namibia, Malawi and Tanzania. Mozambique and Zambia have policies which are not fully articulated. Swaziland has embarked on a process of developing one. The rest have policies based on various documents.

The minerals policies of almost all countries have the priority of attracting investment, particularly foreign. The thrust, therefore, is in providing conditions that assure tenure, stability of investment, competitive fiscal frameworks among others. The governments play the role of promoter and facilitator. The assumption is that once investment has been made, governments will exact appropriate taxes to fulfil its social responsibilities. Those countries with fully articulated policies have broader objectives beyond exacting taxes, for example:

- Local people economic empowerment, like Black Economic Empowerment initiatives;
- Specific provisions dealing with governance;
- Promoting regional cooperation and integration;
- Emphasis on provisions for closure plans;
- Supporting community participation;
- Emphasising gender equity;
- Articulating research, development and technology;
- Emphasis to deal with HIV/AIDS pandemic;
- Articulating opportunities for value addition;
- Housing and accommodation for workers;
- Promotion of worker participation at mines; and
- Participation of local government in management of the sector.

If mineral development must play an all encompassing role in economic progress, it is recommended that articulated policies are constructed by all member States and, of course, implemented.

The next chapter examines the position of communities in the SADC. A great majority of the citizens of the region reside in rural areas where most mineral development activities take place and levels of poverty including infrastructure are high. The chapter highlights the support communities have, in terms of an enabling environment, for their participation in decision-making both at regional level and country level.

CHAPTER FOUR

THE ROLE OF COMMUNITIES IN MINERAL EXPLOITATION

4.1 INTRODUCTION

Chapter three discussed mineral policies in the SADC, which indicated a need for articulating policies that should be holistic and address the needs of a great majority of the citizens of the region, who in this case are communities. In the context of this thesis, communities are those that host mineral deposits and mineral development activities. They are mostly rural-based, and most of the SADC shows that these proportions are on average not less than 80% of total national populations. These are, therefore, large populations which average country characteristics determine the wellbeing of a country. These communities are characterised by high unemployment, extreme poverty, and low levels of health and education facilities. Furthermore, these communities have inadequate road and bridges infrastructure, and above all unavailability of potable water. Any potential mineral development activities spur extreme excitement and expectations to solve the problems of rural poverty. This reinforces the need for serious consideration of this stakeholder group for participation if meaningful well-being is envisaged. This is unlike communities that have high levels of infrastructure; low poverty levels; good health; and education facilities, are less likely to get moved positively and instead would oppose mineral development.

This chapter discusses the SADC perception of communities in mining. First, an examination is taken from the regional perspective and later at the member

State level. This provides important information to support the role of communities in the mining sector in the SADC.

4.2 THE SADC SITUATION

The SADC was established under a Treaty signed at Windhoek on 17th August, 1992. The Treaty has the force of national law. The vision of the SADC is "*one of a common future, a future in a regional community that will ensure economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples of Southern Africa"*. Article 5 of the Treaty spells out the objectives or the SADC Common Agenda as shown in annexure as appendix A. To achieve these objectives, action plans are outlined in the same article including to "*encourage the people of the region and their institutions to take initiatives to develop economic, social and cultural ties across the region and to participate fully in the implementation of the programmes and projects of SADC*". Article 6 of the Treaty bars discrimination based on "*gender, religion, political views, race, ethnic origin, culture, ill-health, disability, or such other ground as may be determined by the Summit*". In addition, the SADC states that it aligns itself "*with the NEPAD programme, which lays emphasis on inclusive participatory national economic process, good corporate ethics underpinned by the principles of openness, integrity and accountability.."* (RISDP)[8]. The SADC, therefore, gives support to participation of all SADC citizens in the activities of the region to meet its objectives.

[8] RISDP section 1.5.2 Economic and Corporate Governance

To implement the Treaty and achieve its objectives, each sector developed a protocol. The Mining Protocol[9] aims to develop a thriving mining sector that can contribute to economic development, alleviate poverty and improve the standard and quality of life in the region. It specifies seven areas of cooperation:

- Harmonisation of policies, strategies and programmes;
- Developing human and technical capacities, which includes value addition;
- Promoting private sector development of mineral resources;
- Improving information availability to investors;
- Promoting small-scale mining;
- Developing acceptable standards of mine health, safety, and environmental standards; and
- Promoting economic empowerment of historically disadvantaged, which includes women.

The Mining Protocol is not explicit on how, if any, participation should be undertaken in the sector. Suffice to say that may be that at the time of the articulation of the protocol, the concept of participation had not taken root. In fact the emphasis was the creation of favourable economic and scientific environment or conditions to attract foreign direct investment. Similarly, the SADC Mining Sector Strategic Plan[10], which spells out how the Mining Protocol would be implemented, is silent on participation. Participation is, therefore, left to individual countries in processes to implement national and SADC programmes. To put it differently, the opportunities for safeguarding

[9] The Protocol on Mining http://www.sadc.int

and internalisation of decision-making for communities in the minerals sector must be made available at national level.

4.3 POLICY AND LEGAL FRAMEWORK IN MEMBER STATES

Meaningful participation in society requires supportive political and rights environment. This section looks at policy and legislation enabling stakeholder engagement, and the establishment of an environment conducive to participation, in the SADC member States with particular reference to the minerals sector.

4.3.1 Angola

Basic Law of Environment Act no. 5 of 1998 provides for access to information and capacity building for effective participation. This is specific for protection of the environment and not mineral development in general (ICMM/WB, 2003).

4.3.2 Botswana

The constitution (1966) entitles every person to fundamental rights and freedoms. Existing supporting legislation is biased towards environmental concerns, while social and economic issues are treated superficially. This allows for community participation and community awareness. Social responsibilities are the ambit of mining companies. Government environmental legislation is provided for in the Mines and Minerals Act No. 17 of 1999.

[10] SADC Mining Strategic Development Plan, SADC Secretariat, Gaborone, August 2001

4.3.3 Democratic Republic of Congo (DRC)

The Constitution (2002) allows for stakeholder involvement. It creates an environment for stakeholder involvement. Women in particular are accorded an opportunity to participate in environmental issues (ICMM/WB, 2003).

4.3.4 Lesotho

The National Environmental Policy of 1997 allows for public participation and capacity building. Public participation is also required in terms of regulations under the Environmental Impact Assessments (EIA). Environmental education and awareness are also emphasised (ICMM/WB, 2003).

4.3.5 Malawi

The Constitution (1994) provides for fundamental rights and freedoms. The Republic of Malawi National Environmental Policy of 1996 provides for public participation and promotion of awareness. Education and awareness campaigns in environmental issues are also emphasised.

4.3.6 Mozambique

The Constitution (1990) guarantees fundamental rights and freedoms. The Environmental Impact Study regulations under the Environmental Law No. 20 of 1997 allows for public participation.

4.3.7 Namibia

The Constitution (1990) guarantees fundamental rights and freedoms. The Affirmative Action (Employment) Act No. 29 of 1998 empowers Parliament to enact legislation to remove discriminatory laws or practices and implement policies and programmes to redress social, economic or educational imbalances of the historical practices.

The minerals policy has an explicit policy instrument that "*Government will encourage the mining industry to address social responsibilities through support programmes, training and community participation*". In addition there is another special provision in regard to empowerment, which says "*Government will develop strategies to support Namibian participation in the mining sector to achieve sustainable development*". Further more the government has a policy on affirmative action that states that "*Government will ensure that the mining industry complies with legislation to ensure equal opportunities for all Namibian citizens*". In addition, the Draft Environmental Management Act completed in 1998 identifies community involvement and public participation as elements of environmental management.

4.3.8 South Africa

The Constitution (1996), section 9, states the right to equality and includes, among others, equality before the law and no unfair discrimination on any grounds. The vision of the Integrated Sustainable Rural Development Strategy, 2001 is "*to attain socially cohesive and stable communities with viable institutions, sustainable economies and universal access to social*

amenities, able to attract skilled and knowledgeable people, equipped to contribute to their own and the nation's growth and development". The strategy aims to bring change to the poorest areas, by transforming them through targeting the poor, women, youth and the disabled. The approach empowers rural stakeholders to use the process to select programmes that address their priorities. The mineral policy makes specific provision for the participation in ownership, management and empowerment in the sector by all, particularly the previously disadvantaged South Africans.

The Minerals and Petroleum Resources Development Act No. 28 of 2002, among other things, aims to redress the results of past racial discrimination of the apartheid system and ensuring that the historically disadvantaged people participate meaningfully in the mining industry. The act through the Mining Charter allows for economic transformation to bring about black economic empowerment in the minerals sector. The charter is being implemented through a scorecard that lists the requirements. Participation is also provided for through the National Environmental Act No. 107 of 1998 and subsidiary regulations.

4.3.9 Swaziland

Participation is accorded in Swaziland Environmental Action Plan (SEAP), which emphasises input from communities. Public participation is also stressed in Environmental, Audit, Assessment and Review Regulations under The Environmental Management Act No. 5 of 2002.

4.3.10 Tanzania

The Constitution (1977) guarantees fundamental rights and freedoms and provides for the right to natural resource management. The minerals policy acknowledges stakeholder involvement. The National Environmental Management Act No. 19 of 1983 makes public participation mandatory. The Mining Act No.5 of 1998 incorporates EIA requirements in decision-making processes.

4.3.11 Zambia

The Constitution (1996) guarantees rights and freedoms. The National Environmental Management Plan (NEMP) 1994 and the National Environmental Protection and Pollution Act No. 12 of 1990 emphasise public consultation and provide guidelines for public consultation process.

4.3.12 Zimbabwe

The Constitution (1996) guarantees fundamental rights and freedoms. The state endeavours to facilitate rapid and equitable development and undertakes to take measures that include ensuring that, where applicable, involve people in the formulation and implementation of development plans and programmes that affect them.

The Environmental Management Act Cap 20:27 of 2002 provides for the sustainable utilisation of natural resources including minerals. The Interim Environmental Implementation Policy under the Ministry of Environment and Tourism provides for decision-making on implementation of policy. Among the

guidelines for implementation is an emphasis that public consultation is an essential component of an EIA policy. In addition, District Environmental Action Plans require community involvement in the design and implementation of environmental plans. Finally, the Ministry of Local Government has village development committees, among other structures, in relation to addressing deteriorating areas in communal lands.

4.3.13 General observations

Apart from the generalisation offered by the constitutions of all countries of the region in offering opportunities for community participation, there are only few countries that have specific provisions for mineral development per se. These countries may be singled out as Namibia, Tanzania, South Africa and Zimbabwe. All of the SADC countries should be commended for the provisions that they have in environmental issues, because participation is a hallmark in all. In short, participation is prevalent only in environmental issues and not general mineral development. This is expected as the mining industry has had a bad history in environmental responsibility. But the author would quickly point out that environmental affairs are in most countries not within the ministries responsible for mineral development and therefore the issue of participation needs attention in the minerals sector.

The ICMM/WB (2003) study listed five issues challenging community participation in the mining industry in SADC, and these were:

- That the issues in the mining industry were complex; that they were alien to daily experience, concerns and interests of the communities;

- The challenge of aligning the interests of communities, civil society generally and those of industry;
- Participation processes need to be sufficiently textured, sensitive and sophisticated to achieve this end;
- Calls for significant skills in process design and facilitation on the part of those undertaking participation processes; and
- Generalised lack of knowledge and skills needed to engage with participatory aspects of the mining process. This is compounded by low levels of education and poor access to communication and information sources.

The study concluded that there was a need for good skills in design and implementation of participatory processes on the part of industry and governments. There was also a lack of capacity and resources within the region at all levels of government. It was again noted that while there were many policy and regulatory provisions by governments, there seemed to be disparities between policy and implementation.

These observations seem to be an accurate assessment of the situation in the SADC that more needs to be done to ensure community participation in mineral sector development.

4.4 THE PLIGHT OF THE COMMUNITIES

The SADC Regional Indicative Strategic Development Plan (RISDP) puts the position of the majority of its peoples in perspective. These peoples are in the rural areas, where opportunities for their uplift are high in regions and countries with minerals occurrences. The RISDP summarises the plight of the majority of the population in the SADC as described below.

The fourteen member States of SADC are at different levels of development. On average most of them are underdeveloped. Thus the overriding aim of the SADC is to reduce poverty. Currently the structure of production in the majority of member States is in primary sectors of agriculture and mining, with contributions of greater than fifty percent of total GDP.

Human Development Index (HDI) incorporates life expectancy at birth, education, adult literacy and real per capita income. The HDI[11] for SADC in 1998 was 0.538, which fairs unfavourably with other regions. Poverty is one of the major challenges of SADC. It is reflected in low levels of income and human deprivation. Data shows that 70 per cent of the population lives below US$ 2 per day and 40 per cent live below the international poverty line of US$ 1 per day.

The average human poverty level in the region is 31.5 per cent, varying between 54.7 per cent of the population and 11.6 per cent. Over 50 per cent of the member States are under the regional average. The greatest

[11] SADC Regional Indicative Strategic Development Plan (RISDP) http://www.sadc.int

deprivation is low access to drinking water and child malnutrition. This has been made worse by drought that has led to food crisis. It has been further observed that poverty is greatest in households headed by old people and orphaned children. These are increasing due to the HIV/AIDS pandemic. In fact, in a number of mining areas one is confronted with orphaned children making a living from mining, when ideally they should not be actively engaged in mining activities, but go to school.

The RIDSP contends that poverty is a consequence of economic, technical, environmental, social, political and exogenous factors. In most member States Poverty Reduction Strategic Papers or Plans (PRSP's) are used to address poverty problems through stakeholder engagement in development and monitoring. They support policies that help the poor to benefit from growth focussing on pro-poor initiatives. There-in lays the opportunity for inclusion of the mineral sector in PRSP's.

4.5 SUMMARY AND CONCLUSIONS

The chapter justifies the need for community participation in mineral resources development since they are the potential beneficiaries who are faced with abject poverty from basic livelihoods to infrastructure and yet sector activities take place in their surroundings with the associated environmental effects. At the higher policy level of the SADC, participation is supported by the instruments of the organisation, namely the Treaty and the Regional Indicative Strategic Development Plan (RISDP). At the regional mining sector level, participation requirement or any reference to it is not

made; both the SADC Mining Protocol and the SADC Strategic Plan do not make mention of community participation. Participation then seems to be the prerogative of the member States individually in the minerals sector.

All member States' constitutions provide the basis for participation. In the minerals sector, community participation is a necessity in all member States only in terms of and in compliance with the Environmental Laws. This is not surprising as the mineral sector has historically had a bad environmental record. Otherwise, generally only four countries give support to community participation through mineral policies, legislation or other institutional instruments or all of these.

If the mineral sector must make meaningful contributions to the national economies and bring well-being to the majority of its impoverished masses, communities must be provided the opportunity to participate in policy development and the following-on management of the sector. This allows them to internalise the process of developing the policies, by identifying the issues; suggesting possible solutions; setting priorities; and being part of the implementation process, which then benefits all citizens. To achieve this, governments must make the initiatives by creating the appropriate environment for communities to participate in the minerals sector. Firstly, governments must include in their policies the need for community participation in the sector activities. As a follow up to this, the policy provisions should be legislated to make these operational. Secondly, governments must develop facilitation process capacities and competencies, and make

resources available for this purpose. In addition, governments must have capacities and competencies to implement the action plans. Until the need and understanding at the centre are appreciated, little progress can be achieved. Thirdly, communities will only participate effectively if they have the necessary information and capacity to engage to make meaningful contributions. These can be provided through various stakeholders, including governments, industry and non-governmental organisations.

4.6 RECOMMENDATIONS

A mineral sector policy development that will bring benefits to the African majority needs:

- Full participation of communities in policy development and implementation activities;
- Suggestions from communities affecting their well-being;
- Dealing with issues relevant to poverty, the issues that are close to them. After all it is they who bear the brunt of poverty and negative effects of mining;
- Ensuring that there is a fair distribution of benefits with more accruing to areas that are closest to the mines and the poor receiving more;
- Legislating, among other benefits, that money may be ploughed back to mining regions and into predetermined development programmes; and
- Taking into account human rights and democracy issues.

This can be achieved firstly at the higher level of policy development where visions are articulated, issues are identified, constraints and opportunities are

discussed, and choices from options of way forward are agreed. The implementation of programmes at project level then becomes routine, with every stakeholder appreciating the basis of actions.

The next chapter provides the principles of policy design and highlights of policy implementation emanating from the foregoing chapters, which takes into account many players.

CHAPTER FIVE

PRINCIPLES OF MINERAL POLICY DESIGN AND IMPLEMENTATION

5.1 INTRODUCTION

This chapter looks at the principles for designing a mineral policy using an alternative process advanced in this study. It puts into perspective what policy is, its role and characteristics. It further explains the considerations for the development of a minerals policy and ends with how a minerals policy may be implemented. The chapter sets out broad boundaries of considerations in issues affecting policy design and implementation.

5.2 PRINCIPLES

5.2.1 Definition of Policy

Leonard and Thomas (1995) defined policy as a vision, aspiration and a statement of intent or a strategic plan. It is a course of action based on societal values, followed in dealing with a problem or matter of concern and includes predicting results. Jamil Rabah (1997) embraced this definition when he summarised that the purpose of politics is to make life better. He wrote:

"*So we want to make life better within our own traditions and within our own society, but resources are limited and we have to make choices, to establish priorities" (P1).*

In order to achieve these aspirations, there is need for a new approach to policy development allowing for many viewpoints to be brought up for consideration. Experiences in policy construction in Southern Africa have

shown that key principles and elements of mineral policy can carefully be articulated through the involvement of all relevant stakeholders. This is achieved with the proviso that adequate timely information is made available to the stakeholders.

5.2.2 Role of policy

Policy communicates society values. It provides guidelines for decisions and actions that are taken in the day-to-day administration of government. In this way it provides certainty and expectation. In addition it allows for planning by both the government and the affected entities. The absence of policy leads to decisions and actions that may be reactive, contradictory, random and arbitrary (Leonard & Thomas, 1995). The policy becomes the basis of planned work, accountability and evaluation. In government it is an enabling and guiding framework in all sectors and at all levels.

5.2.3 Characteristics

Policy development is a multidisciplinary process involving many different players at different levels (Bourk, 2002). The issues involved will be political, social, economic, scientific or technological. These will include land access, security of tenure, fiscal systems, environmental concerns, mine closure, local participation, research and development, training and many others. Where various stakeholders contribute to a policy, they are more likely to aspire to effectiveness, transparency, economic efficiency, benefits and many more resulting from a policy they contribute to.

Policy should not be seen as made by politicians or government professionals, but by a number of actors whose interests are taken into account. This avoids a top down approach where decisions and power are generated at the top and forced down on all stakeholders. The multidisciplinary approach advocated here allows for consideration of social or cultural values, the role of science and technology and of communities, interests of various other groups and above all the changing responsibility of mining companies. The rest of the chapter shows the way to arrive at a mineral policy.

5.3 CONSIDERATIONS FOR A GOOD MINERAL POLICY

The exercise of national sovereignty over mineral resources is now almost universal. Almost all nations state their ownership of mineral resources within their sovereign borders. They thus determine how to develop their mineral resources and at what rate.

The broad elements of a mineral policy may be classified into a number of broad categories, namely: exploration, mining, processing, taxation, financing and environment. An additional dimension revolves around sustainable development issues. Almost all countries would like to see rapid exploration and development of their mineral resources. Host nations acknowledge the risky nature of exploration and mining, and provide appropriate conditions through rights and obligations for private sector participation. Government

involvement entails provision of basic geologic data, mostly financed through foreign aid and multilateral institutions in the case of emerging countries.

5.3.1 Sector's Contribution to Broader Economy

Governments set up agendas for national development. The aspired broad national goals include growth and capacities to achieve this growth; distribution of benefits of growth to all citizens; diversification of the economy; improvement of quality of life; eradication of poverty; preservation of the environment, among others (Radetzki, 1980 and Moharir, 1991). As the sector is part of the economy it is expected to fit into this broad national economy and contribute to the achievement of national goals. At the sector level the goals can be distilled as earning foreign exchange, contributing to tax revenue, creating employment, providing skills training, value adding to mined minerals, providing materials, and many more. It is this contribution by the sector that propels the legislators in Parliament to appropriate the requisite resources for the development and management of the sector. It is essential; therefore, that national goals and objectives are appreciated in order to put the mineral policy into context. In short, a minerals policy must reflect its potential or real position in a national economy.

5.3.2 Accounting for Interests of Various Stakeholders

Stakeholders are defined as those groups and individuals who either affect, or are affected by, the activities of an organisation (Epps and Brett, 2000). In the broadest sense they would include government decision-makers, local, national and global community groups, landowners, neighbours, public

interest groups, suppliers, contractors, consumers, insurers, financial lending institutions, industry associations, environmental interest groups, media, research and educational institutions, and many others. The aim is to balance concerns and needs of the government on the one hand against those of other stakeholders on the other. In this case the government has the primary responsibility to facilitate dialogue and create an environment suitable for all stakeholders to participate fully.

Among all stakeholders communities are in the weakest position because they have limited power, limited economic and political influence, yet they reside where mineral resources occur and get the brunt of negative effects of mining operations. The bulk of SADC is rural-based and if development should filter to the majority then these are the people whose contribution is vital for effective results. Examples abound where communities have been marginalized in project development and have become hostile and violent.

Traditional policymaking model was by government, “decide-announce-defend”, (Keyes, 1995)(p3). He further observed that this model is no longer being applied, and recommended that government must still play a significant role through its ministry responsible for mineral affairs. The ministry must have influence over policymaking and provide direction.

In some countries there are no formal mineral policies, but mere policy statements. In most of these cases the government concentrates on updating specific issues of, for example, the fiscal regime. In this way it aims to create

competitive regimes while exacting rents for distribution to the rest of the elements of the economy. The emerging trends in policy construction are the consideration of broader issues together and linking of policy elements at all stages of articulation and implementation. This allows other stakeholders to participate in the delivery of social issues' solutions.

5.3.3 Use of Consultative and Participatory Approaches

In dealing with the many issues of the minerals sector in the current period of global attention to governance, governments must play key roles. Some of these are enabling, organising and participating in multi-stakeholder processes for policy reform (MMSD Report, 2002).

One of the key approaches to involving many participants is to show stakeholders how they can influence the process and how it is in their interests to do so with the process of developing a policy. This would initially involve production of a press release to inform the various stakeholders of the intention and justification for the development of a mineral policy. A newsletter or newspaper outlining the process to be undertaken and expectation of stakeholder inputs would follow this. Periodic reminders at each milestone stating where the process came from, where it is and where it is going and the various players taking responsibility for events are important to carry stakeholders along. At this point Non Governmental Organisations (NGO's) could play a big role in educating local communities on the issues in mineral development to prepare them to engage in the process when the time comes for them to do so.

The consultative and participatory approach provides an opportunity for stakeholders to appreciate issues and concerns, and decide best approaches from amongst the options. This approach enhances acceptability and effectiveness of the policy implementation phase. To begin with it ensures that the policy meets the needs and aspirations of stakeholders; empowers stakeholders through ownership of the policy; and increases the likelihood that the policy will be effective. Similar approaches can also be used in monitoring and evaluating policy delivery, for example, by collecting information from stakeholders as opposed to or in addition to government staff implementing the policy. This would be the impact or long- term outcomes of the policy.

5.3.4 The Environment in which Policy will operate

The constitution of a country sets the tone. It is the supreme law of the country. It is supposed to be stable and rarely changes. Only special processes change it. It defines general trends of policy. All national policies must conform to the constitution. The mineral policy must support the principles of the constitution and defines mining policy objectives for the medium to long term (Otto, 1997 and Cawood, 2001). Since the minerals sector is only part of the national economy the sector policy must also be consistent with other sectors' policies. Development of the mineral policy should not be undertaken in isolation. It is therefore important that representatives from other government ministries affected by mining also fully participate in the exercise. Unfortunately in many emerging countries,

emphasis has been towards developing open and competitive regulatory environment rather than broader issues of development. Laws implement policy. Mining laws are developed and aligned with policy statements together with regulations that handle discretionary aspects of the law. These laws and regulations must also be consistent with those in other sectors of the economy. Otto (1992) argued that mining law is just a small part of the over all regulatory system and other relevant legislation and related administrative arrangements may not be well integrated. This requires serious consideration.

5.3.5 Sustainable Development Goals

The achievement of sustainability goals in the mineral sector will depend on an understanding of how sustainable development is applied in mining. This must be reflected in the mineral policy so that subsequent actions, resources and responsibilities are articulated at implementation stage. As discussed earlier, government must take the lead in spearheading sustainable development initiatives.

Unlike renewable natural resources where the emphasis in sustainable development is maintaining stock, mining depletes the natural assets. Firstly, as a result of extraction, mining disrupts and pollutes the environment thereby posing serious challenges. Secondly, since resources deplete, there is a need to convert rents emanating from the sector to sustainable benefits addressing issues that lie at the roots of poverty and these include health, education, child malnutrition, water and other infrastructure. Thirdly, the need to fully integrate mining into the local, regional and national economy, most importantly from the start of the operations can not be overemphasised.

5.3.6 Other Relevant Factors

Policy changes in developing countries have attracted significant shares of foreign direct investment. The investment climate in a country measured against international best practice needs to be described. This would involve a review of mineral policies and legislation in selected countries in order to suggest options for consideration in the planned mineral policy. Careful selection of the comparative countries based on certain agreed criteria is required. The descriptions would consider information that is critical to the investor, and this would include economic policy, taxation policy, royalty regime and mineral rights administration procedures. These descriptions would be the subject of debate and discussion before any recommendations are made for consideration in the development of policy.

Another area of concern is compliance with international health, safety, environment and other sector specific issues. These factors affect the attractiveness for investment. While over regulation may deter investment, the global markets for financing mineral resource projects encourages the enforcement of responsible environmental performance. Furthermore, some international Non-Governmental Organisations exert pressure on producers that do not comply with operational norms.

5.3.7 Unique Circumstances of a Country and the Sector

Many factors that may be unique to a country should be taken into consideration. Circumstances will influence how the country responds to these factors in the policy formulation. Some of these factors include first, access to availability of finance for mineral investment. If the finance were lacking then policies would take into account the fact that the country must compete fiercely to obtain investment from international resources. In addition, new policies may need to be put in place to establish local capital markets or make the sector the first choice of investment from local resources, diverting them from traditional investment destinations.

Second, the level of mineral development will normally determine to what extent there is tradition of mining. It would be safe to say that countries that have no tradition in mining would normally go further to provide open opportunities to attract mining investment.

Third, the wealth of geological endowment and mineral inventory are naturally the first attraction for investors. Again it is the existence of these mineral resources that motivates a country to develop a minerals policy. The absence of good information on geology would motivate a country to concentrate on policies that would attract exploration companies to undertake grassroots exploration.

Fourth, technical skills are a prerequisite for undertaking mining operations. A deficiency in skills calls for policies that have both short-term and long-term

impacts. Short-term solutions deal with ease of access to expatriate skills, while long-term solutions concern training and development.

Fifth, the availability of local markets will have a strong bearing on the level of local beneficiation. Conversely, limited local markets imply adhering to the demands of international markets with their inherent barriers. Some mineral producing countries prescribe the level of beneficiation required, but at the same time it is appropriate to spell out how far mining companies, by their specialisation, are expected to go into downstream activities. This is an area that requires a fair amount of inter-sector coordination.

Sixth, under-developed infrastructure will compel captive investments or utilities to service individual mines. This opens up debate on whether mining operations remain enclaves or whether they become integrated into overall regional development programmes of government. Ideally if an operation cannot support the total cost of production then it is not viable.

Seventh, the contributions of the mining sector and hence resources allocated to it by government will also influence investor perception and confidence. In countries where the sector is just grappling to grow, there are normally no general plans for the sector in development agendas. Furthermore, there is insignificant budgetary allocation for preliminary surveys and skills to manage the sector. Policy development will need to take into account this ‘grassroots’ effort.

Finally, the issues of non-renewability of resources, market determined prices and limited shares of markets need pragmatic attention to innovative policy options. Despite the fact that exploration is normally an ongoing exercise during mining there is always a limit to resource availability at the mine site. Attention to detail at each phase of mining in terms of costs and benefits are needed. The product prices and share of the market (which is limited) will determine how much the country will benefit from mineral extraction. These issues are not particular to a country, but impinge directly on expectations of stakeholders that solutions to many woes are permanently over. The revenue streams from mining are only temporary reprieve to poverty problems unless benefits are captured and utilised 'wisely'.

5.3.8 Response to dynamic changes in external environment

The mineral industry is a global village where individual producer countries are inhabitants. The countries attract capital from the international market place and sell products in the same market. Therefore considerations that need to be looked into include first, the behaviour of mineral markets and volatility of prices. Fluctuating mineral prices are determined by global macro-economic trends, where consumers rather than producers set the price of commodities. In turn these are based on the demand for end products such as automobiles. Competition between producers has reinforced this trend. Secondly, mining companies are subject to global economies, corporate regulations, and taxation. They show no real affinity for any particular country. This calls for analysis of evolving investment trends and needs of international mining companies that are exposed to expanded investment opportunities.

This analysis is used to benchmark what needs to be done through policy interventions and third, sensitivities to changing business practice which include environmental practices, social responsibilities and globalisation.

5.3.9 Implementation of a Mineral Policy

Once a policy has been developed a rollout plan or an implementation plan needs to be developed. In this endeavour, the following questions need to be interrogated: Where are we? Where do we want to go? How do we get there and how do we measure progress and impact?

The implementation plan will consist of a programme of action with time frames that indicates what needs to be done, by whom and by when. There will be a need for some kind of management structure, such as a working group comprised of interested stakeholders, which oversees, monitors and reviews the implementation of the programme at a strategic level. The terms of reference for the management team or working group will need to be formulated.

At an operational level, key performance indicators will need to be identified so that progress can be monitored by the use of a tracking system and the effects and impact, success or otherwise, of the programmes can be quantified. A great deal of information will be generated; issues such as who will be custodian of the information and how the information is to be collected in a co-ordinated manner and disseminated need to be addressed. A wide

array of information could be produced that would significantly enhance strategic planning, policy management, planning and budgeting.

Implementation can only be achieved with the right institutional structures, and sufficient capacity of the stakeholders. This implies that capacities must be built where they are insufficient. The government needs the right attitude and has to translate the policy into a work plan. The work plan will normally have deadlines and will identify the entities or persons responsible for results. This enables progress to be monitored and corrections made if there are differences between targets and results.

The achievement of sustainability goals within the framework of a mineral policy depends so much on the political will of the government. Demonstration of political will includes the allocation of resources to plan and implement policy statements. This will involve the creation of Indicators for performance and assignment of responsibilities for implementation of set targets.

From the government perspective what is needed is to improve capacity for delivery and managing partnerships between stakeholders. This will allow audits to be undertaken by all stakeholders. This would involve collection of information from all stakeholders though interviews, questionnaires, focus groups, discussions, and many others.

5.4 SUMMARY AND CONCLUSION

The chapter defined policy as a vision where a society wants to get to as the current position may not be fully acceptable. It then provides a framework within which all stakeholders or role players can participate and it provides direction in decision-making and actions. The development of policy requires a multidisciplinary approach calling for the involvement of several differing stakeholders. Since the minerals sector is only part of a national economy it is important to appreciate national objectives and goals in order to tailor the sector policy to make contributions to them. In addition, the minerals sector has unique characteristics and the fact that a national mineral sector operates in a global village, there are several issues that must be considered and these include other sectors of the economy, sustainable development objectives, competitiveness as compared with similar geologically endowed countries, unique circumstances of the country and the dynamic changes occurring internationally. Once the mineral policy has been formulated, some thoughts are put into how it can be implemented and a critical aspect is the demonstration of political will on the part of government.

The chapter provides crucial information that would provide the necessary input into a mineral policy. This information is used to inform all stakeholders that would participate in the mineral policy development process and to appreciate the complexity of the sector. It provides a levelling field of information. It is the information from which issues and elements of the mineral policy emanate. Adequate time and effort are required to compile this information and disseminate to all stakeholders. It forms the basis on which

information to and capacity building of communities is based for their effective participation.

The next chapter explains the model of mineral policy construction from the generation of background information, through synthesis by various stakeholders, to the production of a final policy document and the elements of policy implementation.

CHAPTER SIX

A MODEL OF MINERAL POLICY DEVELOPMENT

6.1 INTRODUCTION

Chapter five provided several considerations required in the development of a mineral policy. There are many possible ways of developing a minerals policy. It may not be easy to generalise a process of doing so. This model provides one alternative process of policy development. It has key stages of process cycle which will be discussed in detail. The author has tested the model and applied it in Namibia and Malawi.

6.2 THE MODEL

The process of mineral policy development employs a combination of techniques such as workshops, community forums, consultations, discussions and so on, thus involving the participation of a wide range of stakeholders in a transparent and consultative manner. Strategic policy planning as described in the model below has the advantage of building on political decision making or rationality. It is inductive rather than deductive. It begins with issues, which by definition involve conflict not consensus. In the course of revolving the issues through stakeholder participation in the structured workshops and discussions, politically acceptable policies emerge. The various agreed upon views represent a reasonable agreement among stakeholders. This process therefore accepts political decision making's emphasis on issues and seeks to inform the formulation and resolution of those issues. Its implementation

requires adequate financial and human resource allocation and the commitment of all stakeholders in the success of the policy.

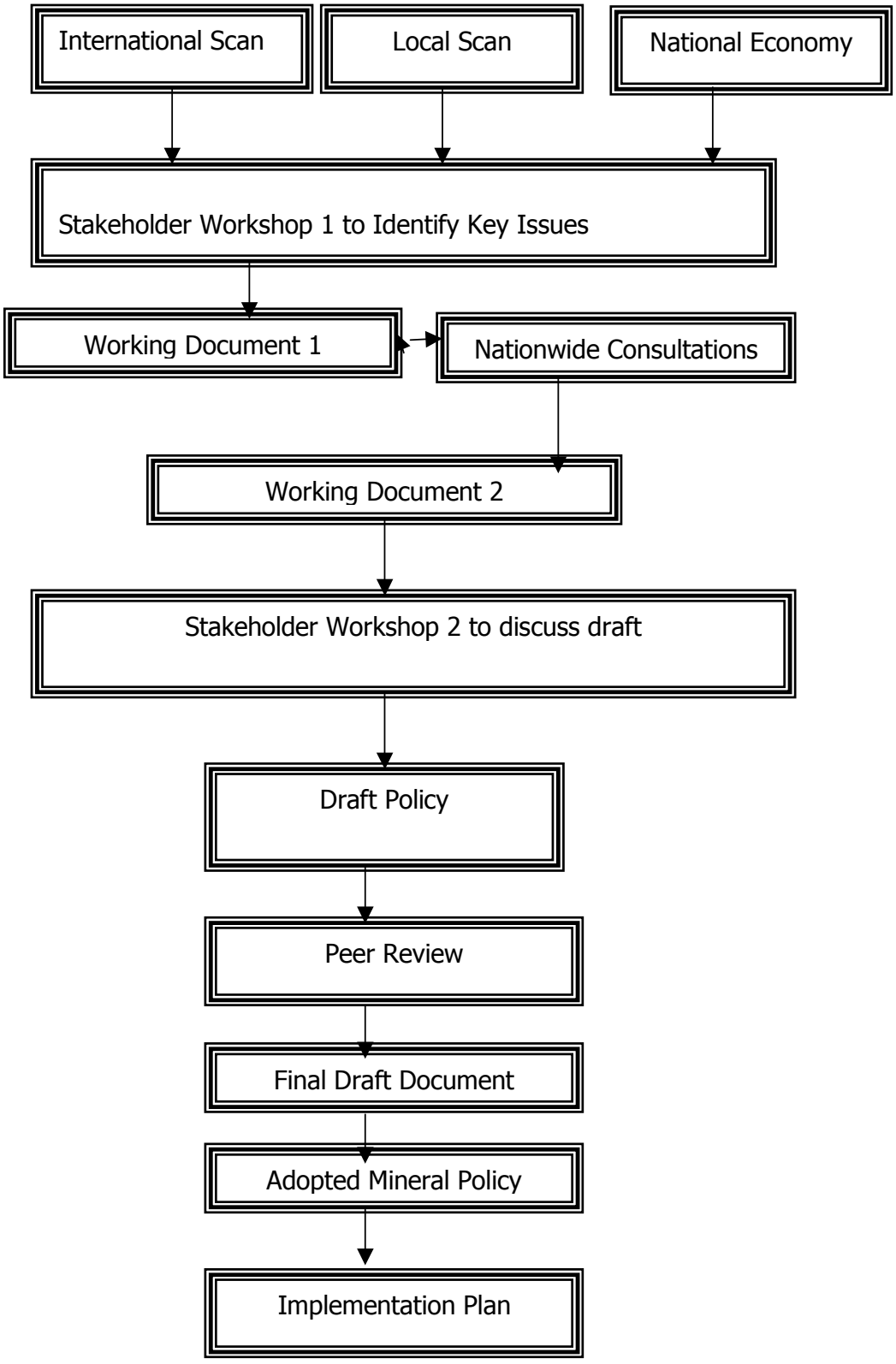
There are three primary phases in the process of mineral policy development. These include: information gathering, information analysis and strategic development. Table 6.1 summarises the process of policy development in this study.

Table 6.1 Summary of new policy process

Background documents: • International scan; • Local scan; and • National economy scan
Through a national workshop of stakeholders and knowledgeable people, identify issues and possible solutions.
Carry out nationwide consultations through workshops and written responses/comments.
Through a national workshop of stakeholders, reconcile different views and develop policy instruments. Cluster policy instruments into themes.
Review policy through a peer group of stakeholders, to confirm that different interests are taken into consideration.
Implement policy.

The model involves several steps, namely: preparing background documents, which are an international scan, a local scan and a review of the national economy; mounting an initial stakeholder workshop to identify key issues with proposed actions; developing a working document from the results of the first workshop, which is then used for nationwide consultation; mounting a second stakeholder workshop; preparing a draft policy document from the proceedings of the second workshop; engaging a peer review group to review the draft policy document; preparing a final draft; subjecting the draft policy through government processes for its approval; and preparing an implementation plan. Outlined below are the details of what actually happened during the steps that resulted into the policy documents. These details are illustrated in figure 6.1 below.

Figure 6.1 The policy process flow



6.2.1 Data gathering and generation of background documents

Access to information is a prerequisite if the public is to participate productively and the information must be appropriate to subsequent decision-making. Broad-based knowledge is necessary for a wide stakeholder audience of different backgrounds.

The initial phase in data gathering comprises the generation of background information on the local economy, the local mining industry and the international mining industry. These documents aim to provide a level ground, a general understanding of the status of issues and to lead to informed stakeholder engagement in developing possible policy options. The documents include:

6.2.1.1 International scan

This is aimed at capturing all issues, trends, opportunities and threats that are likely to impact on the future well being and competitiveness of the country's mining industry over the next ten to twenty years. Such a scan informs stakeholders that the country's mining sector will be operating in a competitive global situation. It also provides information on social, environmental, economic, and political issues that would enable the national mining sector to be benchmarked against international trends and challenges. The report informs participants of potential opportunities and threats, while best practices can be used to benchmark relevant recommendations. An additional document is produced using a selected number of geologically endowed countries based on determined criteria in order to develop best practice benchmarks in various aspects of enabling environment for mineral

investment and development. This is compared with prevailing practices in the country.

6.2.1.2 Local mining scan

This is a review of the current status of the mining sector of the country being studied. The issues include the resource base, exploration and mining activities, management of the sector, human resources, environmental, safety and health, social issues, legislation, and many others. It also includes experiences, failures and successes of previous policies and actions. This provides an explanation of the past, an accurate description of the present in order to chart a path to improve the future development plan. As Otto (2002) puts it "*those who neglect history are doomed to repeat its failures…..it is better to understand the present and anticipate the future…*", p1-1.

6.2.1.3 Local economy scan

The local economy scan aims at providing an overview of the national economy, covering the constitution, development policies, national objectives and goals, strategies, performance of the constituent sectors, business practices and the role of the mineral sector. The report reminds participants to recommend solutions that are consistent with the laws of the country and subscribe to the national goals. This review underpins the role of the mineral sector and that it should not be considered in isolation but as an integral part of the economy and contributor to national development goals.

6.2.1.4 Identification and justification of various stakeholders

The range of stakeholders may be extended endlessly, but for purposes of developing a mineral policy, like any other sector, a cut-off point is needed. The following are examples of stakeholders and their expectations, which tend to differ or even conflict:

- Financial institutions and investors require an enabling environment that ensures security of tenure and a reasonable return on investment;
- National governments need economic growth, based on the generation of employment opportunities and good standards, for both labour and the general public. In addition separate government departments or ministries need to assure consistency with their sector policies and legislation;
- Local communities expect to see benefits arising out of sector activities and to participate in them;
- NGO's expect to see delivery of programmes of action;
- Regional organisations would like to participate meaningfully in development programmes;
- The donor community expects to see positive results from efforts in mineral sector development;
- Research and educational institutions expect to be involved in research, training and human resource development;
- Small-scale miners would like to see an enabling environment because this is the segment where most of the indigenous people belong and participate;
- Industry would like to see its concerns addressed so that it can remain globally competitive and profitable; and

- Shareholders demand a continuous stream of dividends as reward for the risk of their investment.

The stakeholders are expected to identify sector issues and propose solutions during the first workshop. These solutions would then be used to develop a draft document for comments and consultations with a wider audience.

6.2.2 Identification and Synthesis of key issues

Representatives were selected from the various stakeholder groups, outlined above, to attend an initial workshop. These participants were informed people, able to contribute from their own knowledge as well as being representatives of their constituencies. For effectiveness a limitation to numbers below fifty was deemed to be appropriate. The background documents were made available to the participants in good time to enable them read and prepare for the discussions. The workshop began with a discussion of each document to ensure that stakeholders understood the issues and any grey areas were clarified, using the authors of the documents to summarise the documents and raising key issues.

The workshop, through a process of smaller working groups and combined plenary sessions, and using participants' own knowledge, rigorously analysed the background papers. Members of each group were asked to reach consensus in their debates. The purpose was to identify the issues, challenges, opportunities and threats facing the sector. The outputs of each group were then presented in plenary and 'clustered' by participants into

'STEEP' factors, which are social, technological, economical, environmental, and political drivers.

6.2.2.1 Situation Analysis

The situation analysis for the sector is achieved by applying a SWOT (Strengths, Weaknesses, Opportunities, and Threats) process on the external environment and the internal profile, using the international, local mining scan and national economy scans respectively. The analysis also heavily draws on the individual and collective expertise of the members of the workshop participants for inputs. Strengths and Weaknesses (SW) reflect the present situation in the country while Opportunities and Threats (OT) present the situation both inside and outside the country. This situation analysis in the working groups attempts to identify what strengths exist to meet the opportunities; threats for the future; and the weaknesses are highlighted by these factors. The participants are also asked to develop solutions to address the outputs of SWOT analysis. These solutions form the basis of an appropriate mineral policy. The appendix B shows an example of raw data from SWOT analysis, forming the issues. It enables the participants to identify the major (current and emerging) social, technological, economic, environmental and political issues (STEEP process) as well as the key drivers and challenges facing the sector. This provides a picture of the current situation of the sector. The situation analysis packages the key issues into themes for further analysis. Appendix C shows the results of STEEP analysis.

6.2.2.2 Scenario building and use of scenarios

Scenarios are stories about the possible future unfolding of events; they describe what could happen rather than what will or should happen. They focus on possible future potential realities from which it is possible to identify new opportunities and threats that may require new solutions (DACST, 1997). In addition, scenarios are useful in testing the "*robustness"* of solutions, policies and strategies. The use of scenarios improves the quality of strategic thinking; generates new ideas about the future; anticipates and recognises change. Scenarios may include the following four options:

- *Globalisation* where government's role (globally and locally) and national identity shrinks, while the private sector dominates; open markets; economic policy facilitates private sector; high quality services for those who can pay but public service quality gradually decreases;

- *Partial globalisation* where the country is globally aligned but on her own terms; developing countries view the developed world as profit oriented, at the expense of people; proactive economic policy, with markets partially open following a strategic plan;

- *Regionalisation* where the focus is on the region; development of a regional social contract with a directed plan for incremental development and regional socio-economic policies; and

- *Nationalisation* where the government is not a significant player either regionally or globally (national isolation).

If the above scenarios are used, indicate a route the country would follow over the next ten to twenty years. The workshop brainstorms each of these scenarios. By assuming that each scenario in turn was occurring, the workshop groups consider what important Opportunities and Threats the sector would face. New opportunities, threats and solutions when required are identified. In addition, participants test the robustness of the developed solutions against each of the four scenarios, and fine-tune them to better meet the challenges of the four possible future situations. Appendix D shows results of the above scenarios in the case of Namibia.

The final process by the participants is to consolidate the issues and solutions into themes. These themes then form the foundation, and provided strategic direction, for the development of a mineral policy document. Themes vary in number depending upon the outcomes. In the case of Namibia, the themes at this stage were seven, namely: management and administration; people issues; human resources (skills & training); small-scale mining; environment; marketing and promotion; and regional integration. Each theme contained several issues and possible solutions. Box 1 shows an example of a theme, in this case, ‘people issues’.

Box 6.1 Theme on People Issues

1. PEOPLE ISSUES

1.1 Land Use

(a) There is an Ancillary Rights Commission (ARC) in place, which is neither efficient nor effective.
(b) There is a lack of clear law, especially on compensation by mining companies.
(c) The existence of the ARC offers an opportunity for a consultative process with other land users.
(d) The lack of regulation on compensation could delay mining activities and lead to clashes among land users.

Solution (Policy)

i. Ministry of Mines and Energy (MME) to "strengthen" the Ancillary Rights Commission (ARC), and to provide guidelines on compensation to land users / owners.
ii. MME to facilitate the mining industry in the consultation process with land users / owners.
iii. Government to identify land users / owners.
iv. Adopt consultation process in dealing with other users to minimise distrust (MME and Industry).

1.2 Mine Closure / Integrated Mine Use

(a) Mine closures can be planned for, and should form part of an integrated land use strategy involving communities. However, there are also occasions when mines are forced to close in an unplanned manner.
(b) Planned closure in consultation with communities offers the opportunity to create alternative industries, alternative land uses through rehabilitation, and enhancing existing infrastructure.
(c) The unplanned mining closure has environmental costs associated with it, and government has to provide contingencies to deal with this problem.

Solution (Policy)

i. The Ministry of Mines and Energy (MME) to "ensure compliance" by the Mining Industry with the approved Environmental Management Plan (EMP) contracts (including Integrated Community Planning, Mine Closure, Development of Alternative Industries etc… if appropriate).
   - Planning for Mine closure (social etc)
   - Consideration to support / develop alternative industries
   - Minimise impact of closure
   - Make alternative use of existing infrastructure

1.3 Infrastructure

(a) There is an existing infrastructure, which needs to be maintained after closure.
(b) There is an opportunity for sharing the infrastructure among mining companies and local communities. This offers the opportunity of contract mining to local communities, and creating an artisanal mining industry.

Solution (Policy)

i. The Ministry of Mines and Energy (MME) to encourage any future mining

developments to optimise use of existing infrastructure, and support services, as appropriate.
- Sharing of infrastructure

1.4 Distribution of income

There is an unequal distribution of income in Namibia. There is an opportunity for a minerals policy to contribute to this issue in a transparent manner.

Solution (Policy)

i. The Ministry of Mines and Energy (MME) must set guidelines for the mining industry to ensure that the industry addresses the concerns and perceptions of the local communities in a responsible manner.

ii. The mining industry must keep local communities informed in a transparent manner.

1.5 Corruption

(a) Namibia is second least corrupt country in Africa.

(b) However, Government officials are given discretionary powers. The regulations are not effective.

(c) The opportunity is to become the least corrupt country in Africa, through providing competitive salaries and implementing clear, well-defined, controlled disciplinary procedures. Unless these processes are implemented, there is a possibility of sliding down index, imposition of sanctions and reduced investment.

Solution (Policy)

i. The Ministry of Mines and Energy (MME) and the mining industry to actively support compliance with the Namibian anti-corruption policy.

ii. The Ministry of Mines and Energy (MME) to adopt laws that provide minimal discretionary powers to officials implementing the Mining Act, and to ensure that such a process is transparent.

iii. The Ministry of Mines and Energy (MME) to strengthen its code of conduct and set appropriate penalties
- Active compliance with government policy
- Adopt minimal discretionary powers
- Strengthen code of conduct
- Increase transparency

1.6 Empowerment

(a) Mining is one of the major sectors in Namibia. For job creation, however, despite the existence of Affirmative Action Bill, Employment Act, The constitution and the Labour Act, there is no empowerment focus in mineral legislation. There is an opportunity for disseminating mining related information (geological, etc) and training of previously disadvantaged, to achieve economic empowerment.

Solution (Policy)

i. The Ministry of Mines and Energy to ensure that the mining industry complies with the National Empowerment Policy. The policy needs:
- Generally recognised special purpose vehicles

- Sustainable objective (mining restricted to life-span)
- Small miners
- Gender
- Outsourcing
- Sub-contracting
- Stock (share) options
- Training (HR)
- Stimulating Entrepreneurship

1.7 Gender

(a) There are a range of initiatives, such as the Ministry of Women Affairs and Child Welfare, Labour Act, as well as formal, financial, support mechanisms for encouraging women in mining. However, there is no compliance to the regulatory framework because of the nature of the mining activity, as well as maternity leave.

(b) By creating awareness of opportunities for women in mining, it is possible to bring more women into mining and address unemployment in the country.

Solution (Policy)

i. The Ministry of Mines and Energy (MME) to ensure that the mining industry complies with the National Gender Policy.

1.8 HIV /Aids / Malaria Impact

(a) Although there is a general awareness and openness on the HIV / Aids issue, and some large mining companies are addressing the issue in their workforce, there is no overall, national policy on HIV / Aids.

(b) There is a need for long-term planning, involving policy framework, linking with the Ministry of Health and Social Services to provide better health care and education through the creation of an HIV / Aids fund.

(c) If this is not addressed, the current situation has a marked economic impact on loss of productivity, the cost of training, the replacement cost, and also scares investors. There needs to be a regional approach to dealing with HIV / Aids issue.

(d) The Namibian government is addressing the problem of HIV / Aids. This offers opportunities in

- training about Aids
- retroviral treatments
- advances health care, plans and schemes
- improves the delivery of health care (increases good health care practices)

(e) while a lack of attention to this pandemic will

- deplete the labour pool (skills)
- harm productivity
- increase the cost of health care
- require training of new people

(f) Traumatised communities, increased social demands and changes in social structures, aggravates the problem, while the loss of skills will de-stabilise the mining operations.

Solution (Policy)

i. The Ministry of Mines and Energy (MME) to actively support the

	development, and implementation, of a National HIV / Aids Policy.
ii.	The Ministry of Health and Social Services (MHSS), together with the private sector, the Chamber of Mines and NGO's, should proactively educate and increase awareness of the HIV/Aids issue.
iii.	The Ministry of Health and Social Services (MHSS), in partnership with the private sector, should facilitate easy and affordable access to medication (retroviral), possibly making use of the critical mass of the SADC region.
iv.	There is a need for companies to provide for continuous skills training.
v.	The private sector should create family orientated communities for mine employees.

Source: Outputs of the first workshop from the construction of the Minerals Policy of Namibia in 2002

The theme is arranged in a way showing the issues or concerns that were raised from the start of the exercise and proposed solutions in addressing them. The issues and solutions cover both 'vertical' and 'horizontal' characteristics, or rather some are unique to the mineral sector for example rehabilitation and land tenure; and others affect more sectors than the minerals sector for example empowerment, gender and HIV/AIDS. Embedded in these issues are the social concerns, which are raised by the communities and non-governmental organisations or community-based organisations. This reflects diversity of different participants' interests, with each providing a unique influence on the resulting consensus-derived policy. It is assumed that since different government departments are also participants in this process, they take co-responsibility for the crafting and implementation of the resulting policies. These themes are then articulated to form a discussion document for comments by a wider audience. The next stages aim to obtain more views; reconcile and prioritise views and issues; modify and or widen scope of issues; include new issues and, most importantly, aim to reach consensus nationally.

6.2.3 The Consultative stage and the White Paper

The identified key issues clustered into themes form a discussion document for wider consultation with various stakeholders for their inputs that include comments, concerns and new issues that the initial workshop may have overlooked. The submissions are in written form and specific instructions are needed to make them. This consultation applies to individuals, various forms of organisations, business, unions and labour, educational institutions, other government ministries, non-governmental organisations and many others.

For those silent, often ignored communities, workshops are undertaken to enable verbal communication where issues are explained and comments recorded. Independent bodies, like NGOs, should facilitate these workshops. It is vitally important that each theme is explained to examine the issues that are raised and policy options that are suggested. This enables engagement by communities as they voice their concerns. Representatives from the ministry responsible for mining are necessary to explain government practice and position on each of the themes. For these communities, discussion of the document should be preceded by discussion of the mineral sector and issues in the country to have a general understanding of the sector and how they and the sector relate to each other. Appendix E is an extract of the proceedings of one of the three community workshops in Namibia.

The written submissions and the recorded inputs raised by communities are used in enriching the themes, key issues and possible policy solutions that would be the subject of further consultation. The modified document (Working Document 2 in Figure 6.1), which is a product of community forums and

written submissions that have capacity to do so, is then distributed to various stakeholders for preparation of the next workshop.

A second workshop (Stakeholder Workshop 2 in Figure 6.1) with a wider participation of stakeholders than the first one and all those that were consulted follows. The purpose of this workshop is to discuss the various views and concerns, and reach consensus in most key issues. The output from this workshop is the basis of a White Paper (Draft Policy in Figure 6.1). The final document in the case of Namibia had a different set of themes, even though they were still eight. The consultation process had revealed gaps in some issues. In this case, more specific work was required in relation to marine mining; protected areas; and research, development and technology. The final Namibian draft contained eight themes as follows: mining industry (medium and large-scale mining, small-scale mining and marine mining); value addition; marketing and investment promotion; environment; human resources; research, development and technology; governance; and regional integration.

The draft policy document was then subjected through various processes. A key component of these processes is a critical examination of the policy statements if they aim to address each of the objectives of the mineral sector and the national objectives. In this way it would enable the establishment of a link with the national goals. The other component is a peer review process or further consultations by identified individuals and other ministries before

government could finally adopt it through Parliament. The policy was adopted in 2003.

The product is a multitude of policy statements in all key areas or themes. This is characteristic of participatory processes since stakeholders are given an opportunity to think and express their views without limitations. In addition, many stakeholders believe that government will have no constraints of resources to implement the policy.

6.3 OBSERVATIONS ON THE PROCESS

The author believes that the model is a success from a point of view of the following:

- The mineral policy generated from the process addresses broad and specific issues of social and economic development with resultant recommendations, while at the same time addressing the concerns or needs of the investor. The issues that are covered include those that are consistent with sustainable development in line with global debates.
- The implementation of the relevant policy instruments should lead to sector contribution to development, which include earning foreign exchange, tax revenues, employment, and many more. Since the policies are articulated in detail, and in some cases, even operational detail, the conversion of these policy instruments into law at implementation will make the special mine development agreements less necessary;

- The process is a success in the first place, because in the case of the two countries, Malawi and Namibia, various stakeholders were taken on board and were willing to be part of the process from the start to the end. With timely and adequate information, the stakeholders participated effectively. Again, this allows stakeholders, most of whom are citizens, to appreciate the broader issues of national objectives and goals; the role of the mineral sector in it; and their role in society at large;
- The consultation and participatory process allows the exercise of democracy and human rights, which every one enjoys doing, with the resultant transparency that goes with it. This provides opportunities for stakeholders and citizens to decide what is best for them, and how to achieve them, and herein lies the basis of success of a policy, which is stakeholder internalisation and ownership;
- The total review of activities allows the stakeholders an appreciation of the past, basis of the current and determining future choices. What was so evident in the application of the process in the countries was the interest in taking responsibility for the wellbeing and health of persons in the sector, communities and its environment especially that the sector had always been seen in a negative way;
- Provides opportunities for all member States of the SADC, and indeed the NEPAD, to use the process leading to similar solutions, which would be easily harmonised to make a regional or continental policy; and finally

- The process was a success due to other logistical support issues, namely: firstly, political support from the countries developing policies by providing the necessary campaigns on the process; allocating sufficient financial outlay; and making time for the process, which was extremely good in the case of Namibia. Secondly, success was also due to the techniques of facilitation in the mineral sector, which requires special skills due to the fact that not all issues are common daily activities.

There were a few negatives that could be refined as the process is used in developing policy. Most or all of them are procedural in nature. These include the following:

- In the model, it may be necessary to have a third stakeholders' workshop if the extended second workshop raises new issues or consensus was not been convincing;
- The many protocols that member States have signed with various partners were not articulated and hence not many of them were built into the policies. Mining is international business and such issues need appreciation;
- The role of government and relating the sector to national goals require special attention to many stakeholders for them to get to grips with its intricacies, because they easily slide to what they think is at hand, that is minerals;
- Unavoidable preconceived ideas are normally brought on board, particularly strong stakeholders like industry, require strong-willed

facilitators to balance opinions and take into account other views; and finally

- Clearly in the case of Malawi, inadequate time allocation, inadequate human resources, and inadequate financial resources were bottlenecks. This example clearly demonstrated the need for the adequacy of these factor inputs. All said, this does not reduce the appropriateness of the policy.

The author believes that this model is useful and can be reliably used for the benefit of the various stakeholders in the minerals sector.

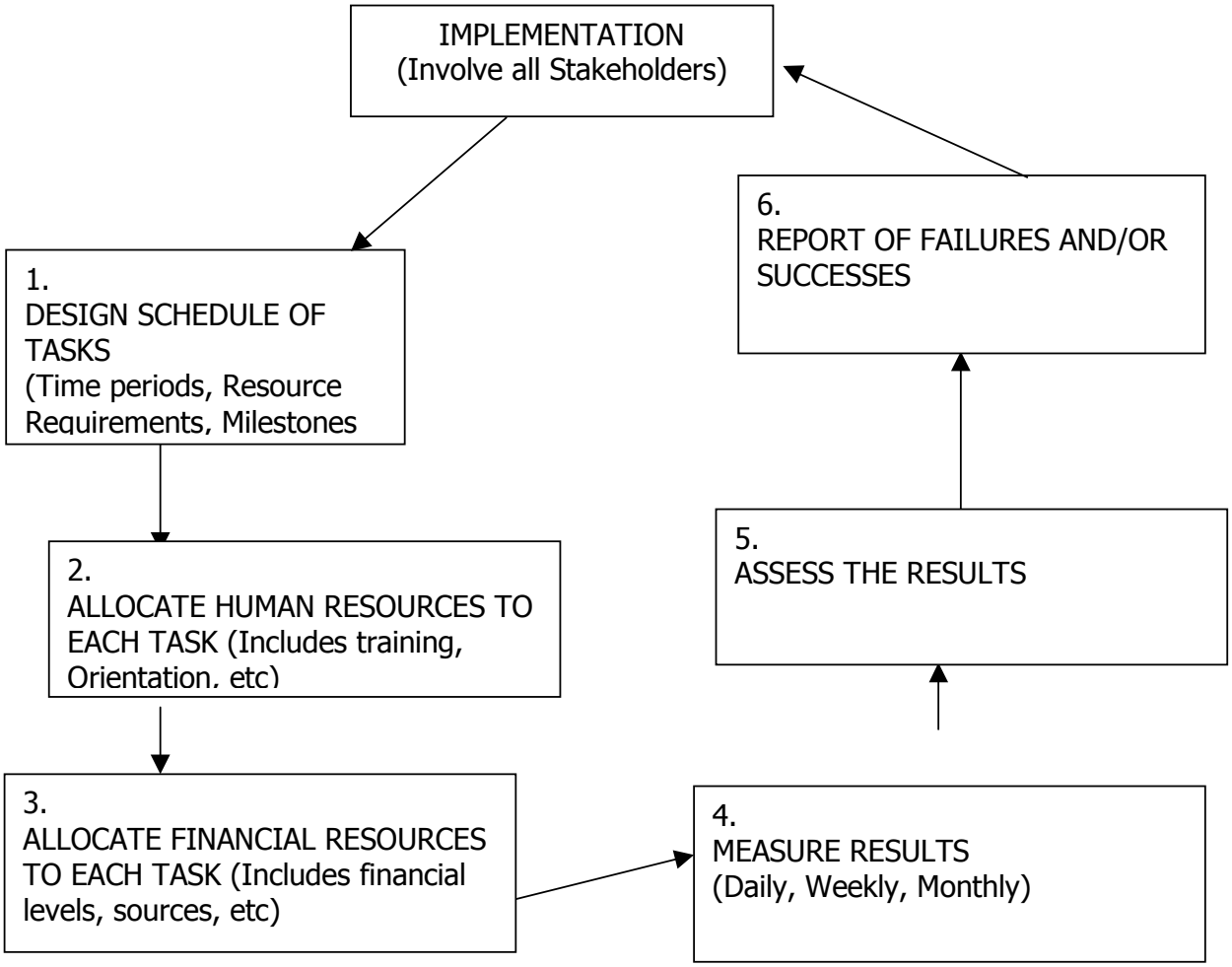
6.4 POST POLICY DEVELOPMENT

After adoption the responsibility for implementation of the policy reverts back to the Ministry responsible for mining. A good policy document needs to be followed up with an implementation plan otherwise it is as bad as having no policy at all. The reason is that after the policy has been developed many stakeholders do not refer to it unless problems arise. All stakeholders are more interested in how the policy statements will be put into effect.

For the model described in Figure 6.1 to be successful, an elaborate implementation plan needs to be put in place—otherwise the model becomes a simple artefact for office shelves. Developing a mineral policy or strategy does not guarantee successful policy implementation because the two are different. While policy planning and development is an intellectual process, policy implementation is operational in nature. Implementation planning requires the same stakeholder participants that were involved in the

formulation of the mineral policy. It entails changing previous policies, changing organisational structures, allocation of resources - both financial and human and training of personnel - just to mention a few. Successful policy implementation requires commitment and support from all stakeholders. Figure 6.2 is an illustration of the steps to be followed in the implementation plan and the cyclical nature of this exercise.

Figure 6.2 Policy Implementation



While governments may feel that it is their responsibility only from that point, it is being recommended in this study that the same participatory process should be used to develop an implementation plan and strategy.

The implementation of policy statements will most likely require varying types of action depending upon the nature of the proposal. These should include the following actions: first, a change in administrative arrangements, priorities or techniques; second further studies and proposals for new actions; third, amending existing legislation and fourth, promulgating new or additional legislation. These types of actions require different time scales due to resources and practicality to obtain the results.

Whatever the outcomes of an implementation plan, the programme must have assigned responsibilities of measured or quantified deliverables and time frames for implementation. It is through this that work contracts for senior staff can be designed, assignment of responsibilities and making sure that the policy delivers on its expected contribution to national goals as measured by developed indicators of performance.

A clearly designed implementation programme on a time scale with deliverables sets a framework for ease of periodic auditing. Again, there is a lot of scope for using stakeholders to participate in audits, rather than leaving the exercise to the implementing staff of the ministry responsible for mining.

6.5 SUMMARY

Development and implementation of a minerals policy are crucial if the mineral sector is to play a meaningful role in a country's economy. The model that is promoted in this study requires the following:

- Adequate financial, human and time resources to enable the process to effectively deliver a good policy. This should cover a period of two years, and preferably without any change of staff that directs policy process as this would adversely affect the project;
- Compiling background information is very critical as this affects the issues that would be raised during the important first brainstorming workshop. In this regard, the selection of quality individual participants from the various stakeholders for the initial workshop to identify issues is also critical;
- Once the draft document has been developed, decide when consultations stop as it can become endless and the selection of the peer review group is also important, since it must examine the document from all stakeholder perspectives. In the same vein, all stakeholders are entitled to the product of their contributions, that is the final policy document to appreciate how national consensus has been achieved with or despite their contributions to the process;
- Develop skills in design and facilitation processes, particularly for the minerals sector since it requires specialisation;
- It is very common to have disparities between policies and implementation. Most countries lack implementation plans and revert to the status quo. Developing implementation plans is key to achievement of sector policies, and in this vein it is critical to convert policy into law and according to policy objectives; and
- Since policy is not static, provisions must be made for periodic updates of policy instruments. After some time, say 5 years, it is prudent to

examine results of policy instruments, successes, failures, and causes and propose courses of action for the future.

The next chapter provides an analysis of the results of policy construction in three countries of the SADC. The two countries, Malawi and Namibia, where this process was used exclusively and South Africa, whose process was similar but different approach since underlying conditions were unique as will be explained in the chapter, illustrate the typical policy proposals that result from it.

CHAPTER SEVEN

RESEARCH FINDINGS AND ANALYSIS OF RESULTS

7.1 INTRODUCTION

Chapter six provided a model for developing a minerals policy and recommending that the model can reliably be utilised to get results for social and economic development of a country. This chapter looks at results emanating from the application of the model. The chapter looks at Namibia, Malawi and South Africa. South Africa has been included because of its unique challenge of reconciliation, but did not use the exact model promoted in this study. Basic reasons are given why sector policies were developed for each country and the resulting policy instruments are compared and analysed.

7.2 FINDINGS

The general impression from stakeholder contributions is that participants felt there was potential for more benefits to be derived from the mineral sector through a variety of ways. This could be achieved through better management, control and sharing of benefits. In almost all policy instruments there is mentioned partnerships with Governments, particularly the private sector, in achieving results.

The results for each country have been clustered into nine themes for ease of comparison. More or less could have been chosen. The chosen themes are characteristic in many issues that were raised. These had been extracted from the final policy documents. These themes were: Promoting the mineral

sector; Social issues; Small-scale mining; Value-addition; Environment; Training; Research and Development and Technology; Governance; and Regional integration.

7.2.1 Namibia

At independence in 1990, the country set on course to revise the legislation pertaining to mining. This culminated in a new Minerals (Prospecting and Mining) Act No 33 of 1992. This was followed by another process that culminated in the promulgation of a Diamond Act No. 13 of 1999. In the meantime, the development of a minerals policy was initiated but was shelved deliberately, apparently until after the Diamond Act was promulgated. The development of a minerals policy was meant to provide guidance in the development of the sector, so that all stakeholders are aware of government intentions. This culminated in a minerals policy in 2003. The legislation has been reviewed to take into account the new thinking.

The summary of the Minerals Policy of Namibia (2003) follows in nine themes:

Promoting the mineral sector

- Promote and facilitate exploration and mining investment;
- Provide incentives for exploration and mining in remote areas;
- Provide security of tenure through efficient legislation and provide environment conducive to investment;
- Create capacity to undertake mineral promotion and marketing to encourage investment;
- Maintain industry competitiveness to ensure benefits to Namibians;
- Investigate supporting mining related infrastructure.

Social issues

- Ensure exploration and mining in protected areas comply with environment and economic regulatory framework;
- Investigate establishment of funds for final closure plans;
- Encourage industry to address social responsibility through support programmes of training and community participation;
- Develop strategies to support Namibian citizens to participate in the sector;
- Actively support implementation of National HIV/AIDS Policy and encourage companies to adopt it;
- Ensure industry complies with legislation that gives equal opportunity for all Namibians;
- Ensure industry complies with National Gender Policy;
- Ensure industry complies with health and safety regulations.

Small-scale mining

- Commitment to develop small-scale mining;
- Encourage that small-scale mining adheres to good environmental, health and safety standards;
- Investigate efficient and cost effective legislation for small-scale mining;
- Provide loans to viable small-scale mining projects through existing and future financial structures;
- Provide technical assistance and information, training and technology to small-scale miners;

- Support establishment of cooperatives and marketing structures for small-scale miners;
- Ensure compliance by small-scale miners with environmentally acceptable mining practices through regular monitoring.

Value-addition

- Explore opportunities for promotion of value addition;
- Encourage and facilitate local manufacturing under the concept of mined and manufactured in Namibia;
- Identify skill deficiencies and take measures to address them;
- Investigate industries' constraints to value-addition;
- Implement effective environment management systems to comply with Environmental Management Programmes (EMP) for value addition activities in line with best practice.

Environment

- Enact legislation benchmarked against best environmental global practice;
- Ensure compliance for rehabilitation with national policies and guidelines, and where appropriate, with global best practice;
- Investigate establishment of financial mechanism for environmental rehabilitation and aftercare;
- Develop waste management standards and guidelines.

Training

- Encourage and facilitate development of skills to meet ultimate requirements and challenges of the sector;
- Encourage the sector to promote and support training for careers in mining through bursaries, in-house training and apprenticeships;
- Facilitate short-term employment of specialised mining services that are deficient in the country.

Research, Development and Technology

- Encourage, promote and invest in R&D and technology to meet industry challenges;
- Establish a National System of Innovation;
- Facilitate fundamental and applied knowledge generation through collaboration with the private sector;
- Support and encourage industry to undertake R&D technologies and apply them.

Governance

- Ministry of Mines and Energy for coordinating related ministry's efforts for effective governance;
- Constantly update legal framework to be in line with global practice;
- Actively support compliance with Namibian anti-corruption measures;
- Ensure coordinated land use development;
- Strive to maintain political environment through democratic system.

Regional integration

- Committed to implementation of SADC Treaty and Mining Protocol;
- Take proactive role in developing regional policies and their implementation;
- Promote uniform approach to technology and human resources policies to utilise regional institutions;
- Encourage SADC States to ratify environmental conventions for the sector.

Examination of the above shows that the policy instruments advanced can lead to the sector contributing to broader objectives of national economic and social development. The policy instruments as developed by stakeholders clearly indicate an appreciation of creating an environment for investment by the private sector and opportunities for the Namibian citizens to benefit from the sector activities either through related activities while minimising effects of the environmental degradation and mine closure. In line with current global trends, the policy instruments acknowledge the need for good governance and regional integration as necessary for investment and growth. The mineral policy, therefore, provides a guide for stakeholders in all these issues enabling them to act accordingly.

7.2.2 Malawi

The economy of Malawi is largely agriculture-based. Its export earnings comprise raw agriculture produce, mainly tobacco, which accounts for more than 70 per cent of all exports. The prices of tobacco are plummeting and there is a vigorous antismoking campaign globally. These conditions pose

tremendous challenges to the social and economic progress of the country. In response to this situation the country wishes to diversify its economy to other productive key sectors and mining was identified as one of them. The contribution of mining to GDP was a paltry 1 per cent, even though the country has a variety of mineral resources. The country never had an articulated minerals policy. The development of the minerals policy this time round was meant to promote the development of the minerals sector. This culminated in a draft minerals policy in 2004.

The Draft Mines and Minerals Policy for Malawi (2004) is hereby clustered in nine themes as discussed above:

Promoting the mineral sector

- Allocate resources for generation of baseline geological information;
- Strengthen the Geological Survey Department to supply this information;
- Develop strategies and resources to promote the sector and attract investors;
- Ensure that supporting infrastructure and essential services are in place;
- Put in place balanced fiscal regime that attracts investors and benefits Malawians;
- Develop taxation regime that competes with other mineral producing countries and benefits Malawians;
- Introduce realistic rates for mineral resource depletion;

- Consider sharing mineral revenues between central and local government.

Social issues

- Explore mechanisms for benefit-sharing with local communities;
- Address promotion of women in mining;
- Address social responsibility issues;
- Introduce mechanisms to enable Malawians to embark on mineral resource ventures;
- Encourage joint ventures between companies and communities and establish cooperatives for small-scale miners;
- Continue to address HIV/AIDS and its high negative impact on growth of the sector;
- Ensure that before mine closure companies develop training programmes for workers enabling them alternative livelihoods;
- Encourage operators to give priority to local communities to acquire assets of company after closure;
- Enforce legislation dealing with compensation of communities.

Small-scale mining

- Create a legal and enabling environment to develop small-scale mining;
- Provide technical support by providing information, technology, finance and marketing;

- Develop multi-sector approach to development of small-scale mining through identification of technical support, infrastructure, financial and training services;
- Provide access to geological and mining information, and specific commodities;
- Encourage formation of cooperatives;
- Encourage micro-finance institutions or consider establishing specific mineral funds for providing soft loans to small-scale miners;
- Facilitate access to appropriate mining equipment to small-scale miners;
- Encourage and collaborate with local and regional institutions to develop alternative appropriate mineral processing technologies;
- Put appropriate preventive measures (education, health and environment);
- Explore ways of larger mines supporting small-scale mining.

Value addition

- Promote value-addition of minerals;
- Explore funding and transfer of skills with cooperating partners and other relationships;
- Explore best ways of marketing value-added products;
- Design incentives to ensure gradual downstream value-addition;
- Encourage value-addition of precious and semi-precious stones to be undertaken at village level.

Environment

- Develop processes that ensure that mining operations adhere to environmental sustainable practices;
- Ensure degree of content for inclusion in an Environmental Impact Assessment is ranked, and based on type and extent of mining activity and degree of environmental impact;
- Ensure Environmental Management Plan for each mine is in place and monitored by government with private sector and communities;
- Develop process for issuing closure permit indicating compliance with environmental regulations during and after decommissioning;
- Introduce an environmental bond for each project to cover cost of rehabilitation and closure;
- Provide extension services for best practices to small-scale mining;
- Ensure revised Mines and Minerals Act promotes health and safety on mines.

Training

In the case of Malawi training is intrinsically linked to two of the five policy instruments that deal with Research and Development as well. These two are:

- Investigate ways of setting up an R&D base in support of high level skills development, development and application of mineral technologies;
- Create innovative and comparative knowledge base through cooperating partners in training and R&D.

Research and Development

In addition to the above two, the following deal with R&D:

- Consider establishment of specialised mineral/mining R&D facilities;
- Explore public/private partnerships or joint ventures for R&D;
- Explore bilateral agreements to undertake joint research programmes and encourage exchange of research personnel.

Governance

- Restructuring and coordinating various mining related departments to become effective in translating and implementing policy;
- Revise minerals Act to be in line with minerals policy, with industry and relations with relevant Acts;
- Put in place clear and equitable regulatory framework that addresses issues like tenure, transparency processes of settling disputes and harmonised with other impacting regulations;
- Put in place processes for the setting of priorities and allocation of responsibilities, including measurement of performance, through identification of existing expertise and through monitoring;
- Ensure officials involved in management of the sector have appropriate skills;
- Harmonise mineral legislation with various legislation of other sectors;
- Address corruption through established channels.

Regional integration

- Explore and take cognisance of opportunities and benefits provided by participating in regional and international initiatives;

- Actively participate in implementation of regional and international protocols on mining and other initiatives.

The mineral policy instruments indicate the address of the broad objectives of national economic and social development of Malawi. The aim of the country was to develop a viable minerals sector to compliment an ailing tobacco industry, which was the backbone of the economy. The policy instruments acknowledge the absence of the sector and hence the need to put emphasis on generation and distribution of basic information through various inducements. The policy also puts emphasis on encouraging the citizens to participate in the sector, thus moving away or complementing current agriculture sector. The policy instruments also, while acknowledging lack of a tradition in mining, promotes the designing of systems for financial support, value addition, small-scale-mining, training, and research and development. Finally, the policy instruments acknowledge the need for governance and regional integration as necessary for investment and growth. In short, the minerals policy adequately addresses the needs and concerns for the country, with the proviso that these are articulated in the follow up legislation and subsequent action plans.

7.2.3 South Africa

A new constitution was adopted by South Africa in view of the changed political dispensation from the apartheid system of government to democracy in 1994. This led to the development of a new minerals policy. The policy was developed by a process of getting differing stakeholder views and reconciling them. The major stakeholders were government, mining industry and

unionised labour. The policy aimed to usher in state ownership of minerals and hence determine how their exploration and exploitation would be undertaken in the context of social, economic and environmental inequities, which were inherent in the apartheid system. The minerals policy was adopted in 1998.

For the purpose of his study, the White Paper on a Minerals and Mining Policy for South Africa (1998), instruments are summarised and clustered in nine themes as follows:

Promotion of mineral development

- Create a macro and regulatory environment in which mining can make effective use of its human and capital resources;
- Create enabling environment for municipalities to maximise role mining can play in promoting local economic development and integrated development planning;
- Encourage municipalities to take advantage of mining activities in their areas and will support beneficial partnerships between industry and municipalities;
- Ensure efficient provision and functioning of physical, social and institutional infrastructure necessary for competitiveness of mining industry;
- Ensure effective organisation and accessibility of public information about the minerals sector;
- Lower barriers to entry to prospective new investors in industry;

- Develop mining tax policy that ensures regime is consistent and stable and that aggregate rate of tax will be internationally competitive.

Social issues

- Expedite implementation of mine, health and safety Act and, review standards for small-scale mining to ensure their practicality;
- Develop programme that ensures physical, psychological and vocational rehabilitation of disabled workers to earn a living;
- Develop coherent and comprehensive policy towards HIV/AIDS;
- Investigate improvement of housing and accommodation for mine workers and their families;
- Continue to permit citizens of SACU countries and Mozambique access to mining labour market on an acceptable basis;
- Foreign miners will be treated as any other potential migrant to South Africa or temporary resident;
- Encourage formation of work place participation at every mine;
- Facilitate a process to establish a bargaining council for the mining industry;
- Obligation to assist employees, industry suppliers and mine-linked communities in anticipating and managing consequences of large-scale job losses.

Small-scale mining

- Make available information on mineral rights and mineral deposits;

- Make access to funding and technology through appropriate and targeted institutions;
- Carry out needs-driven research by science councils;
- Establish training facilities in South Africa and the sub-region;
- Set up one-stop shop;
- Coordinate government and development agencies for promotion of activities;
- Encourage municipalities to support development through local economic development strategies;
- Enhance DME capacity to facilitate small-scale mining support;
- Facilitate establishment of self-sustaining institutional support mechanism for small-scale mining;
- Facilitate co-existence with large-scale mining;
- Streamline regulatory and administrative procedures and approach of guidance and advice to sector.

Value addition

- Promote investment in beneficiation through ensuring competitive and stable costs of public services and goods such as electricity and transport;
- Support research to develop new or improved value addition techniques and develop new applications for locally produced mineral products;
- Science councils and Government to establish joint venture research and training programmes with universities and private sector to

produce necessary skills and manpower required for value addition developments;

- Review policies and regulations that constrain value addition, for example local jewellery manufacturing industry.

Environmental management

- Polluter-pays principle will be applied in regulation and enforcement of environmental management;
- Consistent standard environmental impact management (EIM) will be applied and maintained irrespective of scale of mining operation. Special attention will be given to education and provision of guidelines for small-scale mining;
- Companies are required to comply with local development objectives, spatial development framework and Integrated Development Planning of municipalities and encouraged to promote social participation so that needs of local communities are better taken into consideration. On closure opportunity be taken to ensure continued availability of useful infrastructure;
- Provide guidelines on the process and sequence of events for implementation of environmental management procedures and decision-making;
- Principles of Integrated Environmental Management (IEM) will be applied to environmental management in the industry;
- Build capacity to implement environmental management policies;

- Use of principle of multiple land use will be adhered to in planning decisions.

Training

- Support and promote provision of appropriate education and training in the mining industry. Emphasis will be on Adult Basic Education & Training (ABET), and health & safety training at all levels;
- Require all learning achievements are registered on the National Qualifications Framework, to enable people to progress through various learning pathways, across levels of learning and throughout their lives;
- Ensure people in the sector have access to quality education and training so they can gain knowledge and skills needed to work to improve their lives.

Research and Development

- R&D efforts to be needs driven and directed to develop solutions in exploration, mining, processing, beneficiation and environmental conservation and rehabilitation of the environment; to satisfy needs of global customers; and to exploit value adding potential of the country's minerals;
- Research on occupational health and safety to receive due attention;
- A system of matching grants to be considered for funding research and development projects;

- Support focussed and coordinated research on economic geology by government to attract exploration investment to the country;
- Encourage cooperation between various mining and processing R&D institutions to make best use of existing facilities, promote collaborative effort, promote technology transfer and ensure R&D is conducted in accordance with national objectives of the sector and the country's science and technology policy.

Governance

- The Department of Minerals and Energy to be the lead agent;
- Separate structures for resource management and promotion, and administration and regulator on others; separate environment; separate mine, health and safety inspectorate; one-stop shop information; research, coordination and revision of policy;
- All associated institutions guided by national objectives and priorities and DME to serve on all boards;
- Staff composition of DME to reflect demographics of South Africa;
- Companies to consult affected communities, taking cognisance of local economic development needs and local integrated development plans;
- Industry governed at national level and formal mechanisms established to engage with agriculture, environment, and other relevant local government competencies;
- Local government and municipalities have access to expertise and information in DME and associated institutions;

- Establish a statutory board to advise the Minister on mining and mineral matters that fall outside mine health and safety Act. The board will be required by law to advise Minister whether, when and how to intervene in cases where a dispute arises in grant of licences.

Region Integration

- Encourage companies to apply expertise to tap business opportunities in the region and across the continent;
- Participate in coordination of policies of southern African countries for the region to benefit from its mineral wealth by taking steps to: remove barriers of factors of production; cooperate in harmonisation of legislation and standards; encourage cross border processing; foster regional cooperation in technology development; encourage cooperation in development of human resources; and disseminate investment and exploration information among member states;
- Work with other governments, industry and international agencies to address environmental concerns, and mine, health and safety standards in the mineral sector.

Mineral rights were historically in the private hands and many South Africans were disadvantaged by a system of government that denied them access and empowerment through education, skills training and finance. Opportunities for all were enshrined in the new constitution of 1996, which heralded the development of this minerals policy. With the changing of mineral ownership to the state, this provided government to develop policies for mineral development to benefit all through the promotion of the sector and

participation by all. The tripartite (government, industry and labour) negotiations on various issues and policy options led to compromise policy instruments as reflected in the minerals policy. The policy is all-embracing covering social, economic and environmental issues clearly addressing broader national economic and social development. Again, the policy includes governance and regional integration, which are acknowledged as important for investment and growth.

7.3 ANALYSIS OF RESULTS

To analyse the data and compare the countries' number of policy instruments in each theme, the themes are given codes to identify them. There are nine themes as grouped in section 7.1 above and have accordingly been coded 1 through to 9 as shown in table 7.1.

Table 7.1 Themes codes

Theme	**code**
Promoting sector	1
Social issues	2
Small-scale mining	3
Value addition	4
Environment	5
Training	6
Research & Development	7
Governance	8
Regional cooperation	9

These codes in table 7.1 were used to construct table 7.2 below. The left column of table 7.2 lists the themes represented by codes. Column two indicates the number of policy instruments in each theme derived from the Namibia policy document as summarised in 7.1 above. The third column is the portion of these instruments of the total instruments, which are 47 in the case of Namibia mineral policy, expressed in percentages. The exercise is repeated for Malawi and South Africa in columns four and five, and six and seven respectively. Column 8 gives the total number of policy instruments for the three countries and the last expresses those instruments as a percentage of the totals for the three as a block.

Table 7.2 Proportion of issues in themes

Theme	Policies	%	Policies	%	Policies	%	Totals	% Total
1	6	12.77	8	14.55	7	11.67	21	12.96
2	8	17.02	10	18.18	12	20.0	30	18.58
3	6	12.77	10	18.18	11	18.33	27	16.66
4	5	10.64	5	09.09	4	06.67	14	08.64
5	5	10.64	6	10.91	7	11.67	18	11,11
6	3	06.38	2	05.45	3	05.00	8	04.94
7	4	08.51	5	09.09	5	08.33	14	08.64
8	5	10.64	7	12.73	8	13.33	20	12.35
9	5	10.64	2	05.45	3	05.00	10	06.17
Total	47	100	55	100	60	100	162	100
Country	**Namibia**		**Malawi**		**South Africa**			

It is interesting to note that the three countries had different reasons for developing minerals policies as discussed in country sections above, but these results show similar priority areas of concern by stakeholders in all the countries. There is a general trend of numbers of policy instruments in declining order, whether nationally or in aggregate for the three countries. Social issues come first followed by small-scale mining, promoting the sector and governance, environment issues, value-addition and R&D, and finally regional integration and training. These trends could be explained or interpreted.

The social issues come first owing to the inherent poverty situation in the communities and indeed in the economies where citizens see an opportunity for alleviating this status. In the case of South Africa, the expectations of the majority of the previously disadvantaged see an opportunity to gain from what had always been beyond their dreams. In general, mining had been the prerogative and exclusive domain of the large and hence rich companies that never really sufficiently shared the benefits of extraction with the local people. In short, the social issues are closest to the hearts and minds of the majority because benefits would be tangible within the narrow circles in a shorter foreseeable future period. These issues deal with the general well-being and upliftment of citizens of a country. The government through the responsible ministry is therefore under more pressure to deliver on this theme than other issues. The social issues require proactive government intervention rather than left to industry alone. The South African government is a good example

where it has translated these policy instruments into legislative framework in the Minerals and Petroleum Resources Development Act of 2002 and subsequent Charter of 2002 and Score Card. The Charter spells out the goals and actions of industry in achieving their social responsibilities and the Score Card provides a checklist for adherence to each of the targets.

Small-scale mining issues come next in line because the sector provides opportunities for a vast majority of local people to participate in mining. It normally has lower barriers to entry with low capital requirements amongst others. Small-scale mining provides opportunities closer to home, and in many cases it also becomes part of village activities with minimum disruption of the traditional fabric of life. In this regard, it provides an alternative to other income generating activities, when for instance rain fed agriculture cannot provide adequate food in times of drought. Small-scale mining together with social issues provide immediate benefits to local populations where minerals are located. The citizens seem less preoccupied with the greater national or global issues.

The next in line are essentially government responsibilities, which the stakeholders wish be done. These are expectations of government to attract investment in mining and aspire for good governance to ensure delivery in all of their responsibilities. Again, democracy raises a lot of expectations from government by the electorate. People aspire for government to be effective, transparent and ensure that benefits flow to the citizens.

After government issues comes the environment. People seem to be more preoccupied with addressing poverty in the first place. This is understandable. Unless environmental issues are addressed with the wider concept of making people address their immediate needs, it may not be possible to achieve getting all stakeholders to be environmentally responsible.

Value-addition and R&D come after environmental issues. These seem to be more remote from the public. These issues relate to greater benefits and competitiveness of the country and are driven by the state in their wisdom and overall responsibility for the sector and the nation at large.

Finally are issues of training and regional integration. Again, these are areas of government prerogative; where government sees national growth, development and engaging in the global world. These issues are more remote from the general public, especially the vast majorities whose livelihoods are threatened by rampant poverty.

In summary, the majority of people would like greater attention to the issues clustered as social, small-scale mining, mining promotion and governance implemented and results demonstrated.

7.4 CONCLUSION

Participatory approaches lead to policies that address broad national social and economic development objectives. These approaches must be structured and guided by specialised facilitation skills. It has been shown that almost all

aspects of social and economic development are addressed and people or citizens tend to give preferences to areas of greatest concern, notably those that affect their daily lives, some of which may not be priorities to the investors. But there is certainly unanimity on the address of interests of all stakeholders. Since policies are all inclusive, it is therefore imperative that they are implemented if national goals and objectives are to be met. Such implementation will need articulation of these policy instruments into mineral laws, subsidiary legislation and other structures with the necessary human skills.

The next chapter aims to show how these national policies may be combined to produce a regional policy framework, which can be converted to a legislative framework. This would be the basis of regional integration in the minerals sector.

CHAPTER EIGHT

A REGIONAL MINERAL POLICY FRAMEWORK FOR THE SADC

8.1 INTRODUCTION

Chapter seven analysed the elements of the articulated policies of three countries. This chapter builds on these country elements to propose how a regional policy for the SADC could be developed.

A United Nations Economic Commission for Africa report[12] (2004) defined harmonisation as "*merging of national systems into a unified approach to reduce differences in operating environments between countries as much as possible*" p6. It further clarifies that harmonisation "*...converges policies to the needs of the region…conforming to set of common operating conditions working towards a common objective, which in this case is sustainable development of the regional minerals industry*" p7. Harmonisation is a strategic choice of action in SADC, NEPAD and the AU as it helps deepen regional integration. Regional integration facilitates member States' participation in a globalised economy; opens up individual economies to foreign investment; increases ability to attract foreign investment; and as a group it offers credibility to security of capital. For the minerals sector, it can provide an environment that has larger markets; higher capacities; larger technical and managerial skills; and increased ability to respond to environmental and sustainable development challenges. This would lead to minimisation of inter-State competition in the sector, save for country specific

[12] Harmonisation of mining policies, standards, and regulatory frameworks in Southern Africa

issues like geological prospectivity, mineral commodities being sought; and the level of economic development. This chapter summarises harmonisation of policies thereby creating common goals and actions in the region.

8.2 PROCEDURE

The analysis in the previous chapter seven showed that the policy instruments could be clustered in nine themes. Based on the numbers of policy instruments in each theme as percentages of totals, the themes were ordered in terms priority of preference or importance by the stakeholders. The observed priority, in declining order, showed as follows:

- Social issues;
- Small-scale mining;
- Promoting the sector, and Governance;
- Environmental issues;
- Value addition, and R&D;
- Regional integration, and Training.

To advance a possible regional minerals policy, an identification exercise of common elements and synergies in each theme was undertaken. The unique features that were specific to each country were carefully considered and left out of the regional thrust. The ordering of the themes has not followed the priorities as shown above, but arranged as reflected in the earlier chapter seven.

The issues or concerns for each theme were also summarised from the countries and form the background as reflected in each case. This is then followed by the policy instruments in each theme. A discussion and conclusions come at the end of the policy framework. In the following sections, the "region" is represented by the three countries discussed in chapter seven.

8.3 THE REGIONAL MINERALS POLICY FRAMEWORK

8.3.1 Promoting the sector

The Issues

The region is endowed with a wide variety of mineral commodities and acknowledges the role of both the local and international mining industry in the development of the sector. There is ample scope for improvement in promotion and marketing the sector in order to increase the contribution of the sector to economic development and growth. To attract private sector capital, there is a need to create competitive investment environment in the face of fierce international competition. It is therefore important to continue economic liberalisation and strengthening capacities for sector management. It is also necessary to create a mineral law framework that promotes the sector but at the same time it should not be detrimental to the environment.

Policies

- Create a macro-economic and regulatory environment for mineral investment;

- Create an enabling environment for local governments so that mining can play a role in local economic development and integrated development planning;
- Support the provision of adequate and efficient physical, social and institutional infrastructure for competitiveness of the sector;
- Ensure effective organisation and accessibility of public information about the minerals sector;
- Lower barriers of entry to prospective new investors in the sector;
- Develop a sector fiscal regime that is consistent and stable, and the effective rate is internationally competitive;
- Provide incentives for exploration and mining in remote areas;
- Provide security of tenure through efficient legislation;
- Create capacity to undertake mineral promotion and marketing to encourage investment.

8.3.2 Social issues

The Issues

This theme raises several challenges, most of which concern the vast majority of citizens who had not been accorded due attention. Many of these issues arise from the nature of mining and the history of mineral development in the region, some from enclave nature of the sector and others from blatant racial discrimination. These issues did not allow the full participation and benefits of the cross-section of the countries' citizens. These challenges include, namely: providing opportunities for human development, through training, education and empowerment among others; implementing affirmative actions by giving

priorities to disadvantaged groups and locals to foreigners; improving relationships between people; addressing the needs for safer and more healthy working environment; managing the consequences of downscaling and mine closures; addressing the HIV/AIDS pandemic; and finally addressing the issue of gender.

Policies

- Ensure that exploration and mining in protected areas comply with environmental and economic regulatory framework;
- Establish funds for final mine closure obligations, provide training for alternative livelihoods and transfer assets to communities after closure;
- Encourage industry to address social responsibility through support programmes of training and community participation and benefit sharing;
- Develop strategies to support citizens to participate in the sector;
- Support the implementation of HIV/AIDS policies by government and industry;
- Industry to ensure gender equity;
- Industry to comply with health and safety requirements;
- Develop effective legislation dealing with compensation of communities;
- Improve housing and accommodation for mine workers and their families;
- Allow movement of mine labour in the SADC region;
- Encourage the formation of work place participation at every mine;

- Facilitate the establishment of bargaining council for the mining industry;
- Assist employees, industry suppliers and mine-linked communities in anticipating and managing the consequences of large-scale job losses.

8.3.3 Small-scale mining

The Issues

The region recognises that small-scale mining has grown significantly in recent years. In this discussion, small-scale mining includes artisanal scale mining. It is a source of livelihoods for many people in rural areas; provides employment with potential to limit rural-urban drift; provides opportunities for stimulating rural local processing which has many advantages; and contributes to poverty alleviation. Small-scale miners exploit small-deposits that would normally be left untouched and not contribute to production with related socio-economic benefits. Despite these advantages, the small-scale mining sector in the region faces several challenges, including: problems of access to mineral rights, finance, general information on several issues, markets and technology; lack of or inadequacy of business skills, supervision and support; operates often illegally and damage to environment; and hazardous to both miners and communities. The sub-sector needs a simplified legal and simplified licensing system together with a decentralised administrative and support system. In general, the region aspires to encourage and facilitate the meaningful sustainable development of the small-scale mining sector.

Policies

- Encourage small-scale mining to adhere to good environmental, health and safety standards;
- Develop efficient and cost-effective legislation for, and administrative procedures for the management of, small-scale mining;
- Provide funding, technical assistance, information, training and technology for small-scale mining;
- Support establishment of cooperatives and marketing structures;
- Develop multisectoral approach to the development of small-scale mining;
- Develop ways of large-scale mining supporting small-scale mining;
- Carry out needs-driven research;
- Establish training facilities for small-scale mining;
- Coordinate government and development agencies for the promotion of activities;
- Encourage local governments to support small-scale development through local economic development strategies;
- Enhance government capacity to facilitate small-scale mining support;
- Establish self-sustaining institutional support mechanism for small-scale mining development.

8.3.4 Value addition

The Issues

In many countries the industry produces for downstream processing to be carried out elsewhere. Opportunities abound for value-addition to be done

locally or in few cases the potential exists to increase the proportion of this stage. In cases where value addition is carried out the basic necessary conditions required are available, which are large reserves, technological skills and low energy costs. Many countries are deficient in skills for downstream activities and facilities for training. In general, it is acknowledged that economic and fiscal certainties are required for long term planning. Bottlenecks that are identified include limited local markets, high capital costs and the lack of technology in specific areas. It is the wish and goal of every country to increase potential benefits from the sector by enhanced value-addition to the commodities produced each country.

Policies

- Explore opportunities and constraints, and promote value addition of minerals;
- Encourage and facilitate local manufacturing;
- Explore the marketing of value-added products;
- Promote value addition through competitive investment in infrastructure like electricity and transport network systems;
- Support research to develop new value addition techniques and new applications for locally produced mineral products;
- Provide training programmes by universities, research institutes and private sector to produce the necessary skills and manpower needed for value addition;
- Encourage value addition to be undertaken at village level.

8.3.5 Environmental issues

The Issues

The mining industry has left environmental foot-prints in the region. For instance, there are many abandoned mine sites which are now the responsibility of the governments. This calls for appropriate legislation for all stages of mineral extraction from exploration, development, production, closure and maintaining rehabilitation. The "polluter-pays principle" is advocated at all stages. This needs effective environmental management in the industry requiring the coordination of all institutions dealing with environmental matters. The requirement is to balance cost-effective and competitive mining industry and protecting the environment. In several cases there is a lack of public awareness, capacity weaknesses and education programmes on environmental issues. The need for public involvement in decision making is emphasised. The region aims for responsible mineral development with regard to the environment.

Policies

- Apply polluter-pays principle in regulation and enforcement of environmental management;
- Provide special attention, through extension services, to education and guidelines for small-scale mining;
- Enact legislation benchmarked against best environmental practice;
- Provide guidelines on the process and sequence of events for the implementation of environmental management procedures and decision-making;

- Build capacity to develop and implement environmental management policies;
- Use the principle of multiple land use to planning decisions.

8.3.6 Training

The Issues

The sustainable development of the minerals sector requires adequate specialised skills. The skills are deficient for either racist practices of the past where job reservations and restricted access to training and advancement were practiced, or the industry is still not mature enough to have developed the necessary skills. In such a situation many mine workers had no access to education and training opportunities. This affects safety, health, productivity and absorption capacity of new technologies. There are deficiencies as well for higher levels training in management and professional skills. Facilities are available in the SADC for the training that is required for the sector.

Policies

- Support and facilitate the development of skills to meet the requirements and challenges of the sector;
- Establish high level skills development facilities;
- Support and promote the provision of appropriate education and training in the mining industry, that will include health and safety at all levels;
- Ensure people in the sector have access to quality education and training to gain skills for life improvement;

- Ensure learning achievements are registered on national and then regional qualifications framework to enable personal growth.

8.3.7 Research and Development (R&D)

The Issues

Sustainable development of the minerals sector requires R&D. Technical capacity and innovation are essential for the competitiveness of the sector. The positions of the countries will be determined by the ability of local institutions for the development and use of new and efficient technologies. These technologies must conform to address country needs, both fundamental and applied, in areas including exploration; small-scale mining technologies; value-addition; technologies for health, safety and environment; and process cost reduction for the satisfaction of customers. There are many participants in research activities who will require concerted effort and complement each other.

Policies

- Encourage, promote and invest in R&D and technology to meet industry challenges in all aspects;
- Establish a regional system of innovation;
- Facilitate fundamental and applied knowledge generation through collaboration with the private sector;
- Undertake joint research programmes and encourage exchange of research personnel.

8.3.8 Governance

The Issues

The region recognises the importance of good governance in the management of the sector to attract investment and achieve benefits for the good of all citizens. Governments recognise their role in creating institutions that are competent and efficient, that is of appropriate structures, with adequate capacity and resources. These institutions should be supported by appropriate legal framework for the sector and transparent in operation. The governance must be all inclusive by engaging various stakeholders addressing their needs.

Policies

- Ensure existence of a ministry to be lead agent in minerals development;
- Constantly up-date the legal framework to be in line with global practice;
- Support compliance with anti-corruption measures;
- Put in place clear and equitable framework that addresses transparency processes of settling disputes, land tenure and many others;
- Inculcate tradition of setting priorities, allocating responsibilities and measuring performance;
- Build or strengthen capacity of personnel managing the sector through the establishment of separate structures for specialisation in various areas;

- Encourage companies to consult affected communities, taking cognisance of local development needs, priorities and local integrated development plans;
- Harmonise mining legislation with other sectors and establish formal mechanisms to engage with agriculture, environment and other relevant local government competencies;
- Establish a board to advise the ministers on mining and mineral matters.

8.3.9 Regional integration

The Issues

The region recognises the need for belonging to an economic block that sustainable development depends on reconstruction and development in the region as a whole. The regional block provides opportunities for developing mutual programmes. These programmes can emanate in the implementation of the SADC mining sector protocol, which aims at economic development, poverty reduction and improving standards and quality of life of citizens of the region. Programmes under the SADC include harmonisation of policies, skills development, infrastructure sharing, facilities sharing, projects financing, small-scale mining development, R&D, and environmental management. Further opportunities are also available by broadening the SADC into African Mining Partnership (AMP) and New Partnership for Africa's Development (NEPAD), which have similar agenda's to SADC. The member States recognise the need to fully participate in the regional initiatives.

Policies

- Commitment to SADC Treaty and Mining Protocol;
- Explore and take cognisance of opportunities and benefits provided by participating in regional initiatives;
- Actively participate in regional activities;
- Encourage companies to apply expertise to tap into business opportunities in the region and the continent;
- Working together to address concerns in the above themes;
- Coordinating policies in removing barriers of factors of production

8.4 DISCUSSION AND CONCLUSIONS

The background sections of the above policies were extracted from common elements in the countries' mineral sector policies that led to the common policy instruments that have been articulated. These policy instruments representing two developed mineral economies and one aspiring to develop its sector, serve a good sample of the situation in SADC. These should result in alignment of policies, laws, regulations, guidelines, and codes in all the areas of focus or themes. These policy instruments could apply to almost all SADC member States. They may also be used as a benchmark against which other country policies may be compared. In summary, such a harmonisation process shows that:

- Concerns raised in the three countries cover the broad experiences in the SADC, which are in fact similar;
- Policies thus articulated can solve industrial concerns;
- Such policies are within the ambit or reach of most countries; and

- Furthermore, one regional mining law could be developed if these policy instruments are translated into a legal framework.

If these policy instruments are implemented through the development of activities, resource allocation, responsibility allocation and time frames, they should lead to:

- Common goals in the region;
- Elimination of competition;
- Facilitating sharing capacities and competencies;
- Poverty reduction among the majority of the poor;
- A competitive SADC mineral sector; and
- Creation of economic growth and development.

A more realistic regional framework or policy could be derived from information resulting from policies derived as a result of similar processes in each of the countries as described in this thesis.

The next chapter provides a general summary and conclusions emanating from this study.

CHAPTER NINE

DISCUSSION OF RESULTS, CONCLUSIONS AND RECOMMENDATIONS

9.1 POLICY ON MINERAL DEVELOPMENT

A minerals policy must subscribe to national goals and must take into account the level of economic development of the country along with the unique characteristics of the sector. There are many ways of developing a policy, ranging from general statements issued by Mines Ministers and other government departments, through mines ministries' developing articulated policies on their own, to fully articulated policies developed through consultative processes. The table 9.1 below summarises the traditional and the fully consultative processes of policy development.

Table 9.1 Traditional and fully participatory models of policy construction

Traditional model	**Model by this study**
Considerations: • National objectives; • Factors affecting mineral development; • Characteristics of minerals; and • Potential benefits from the sector.	Background documents: • International scan; • Local scan; and • National economy scan

Derive elements of policy.	Through a national workshop of stakeholders and knowledgeable people, identify issues and possible solutions.
Articulate elements into policy instruments.	Carry out nationwide consultations through workshops and written responses/comments.
Implement policy.	Through a national workshop of stakeholders, reconcile different views and develop policy instruments. Cluster policy instruments into themes.
	Review policy through a peer group of stakeholders, to confirm that different interests are taken into consideration.
	Implement policy.

The traditional strategy of developing policy essentially has three stages, namely: consideration of relevant information; deriving elements of policy; and articulating these elements into policy instruments. This process may have shortfalls for a number of reasons. Firstly, in a large number of cases the policies were aimed to attract foreign direct investment and the elements tended to focus on this attainment mainly. Secondly, there was a danger that most stakeholders would not have an appreciation of government reasoning of certain policies. Thirdly, the policy instruments did not go far enough to take

into account emerging issues in societies, which can only surface if the societies fully participate in the policy development process.

The process advocated in this thesis provides an option to ensure optimum tapping of knowledge of as many stakeholders as possible, which results in the consideration of several concerns and possibilities of solutions. This requires several stakeholders' participation through all the stages. The model provides a structured process that allows stakeholders to engage, permitting campaigns to motivate them and garner their support. The preparation of background documents allows information to be disseminated to all stakeholders to have broad knowledge before engagement, and is also used for capacity building of, for example, those stakeholders who may not be familiar with sector like communities and government departments that are affected by or affect the mineral sector. The process allows stakeholders unhindered thinking, in fact new issues or concerns keep coming up during engagement. Experience has also shown that this process allows localisation of issues in different parts of the same country, which are then reconciled during the later workshop. In general, the process gives a much broader perspective of the sector with emphasis on social issues.

9.2 THE NEED FOR CONSULTATIVE PROCESSES

Ministries responsible for mineral affairs usually have departments of mines and geological surveys. Essentially they concern themselves with the technical aspects of the sector – supervision of exploration and mining activities, and promotion of the sector. They concern themselves mostly with

export-led growth, that the revenues accruing to central government would equitably be distributed to all. They do not concern themselves with broader issues of sustainable development. In addition, other ministries deal with environmental and related social issues. Effective co-operation is sometimes lacking for timely decision-making when authorisations or actions are required by a number of institutions and departments.

The observations from the study were that the needs of communities and society in the region, what policy considerations to address these and how to implement the results could effectively be met with stakeholder engagement processes. The results indicate the actual needs and preferences of developing countries, represented by some SADC countries. Specifically, this implies addressing issues that are closer to people, and these are social issues or issues pertaining to sustainable development, which are a major concern. The other issues require strong government action, which emphasise the need for capacity building in areas of value-addition, training, environmental issues and regional integration. Care should be taken as a good mineral policy is no panacea for benefits to a country. Once translated into action through mineral law and other institutional arrangements, benefits would come to a country. South Africa is a good example of how policy may be translated into action through various instruments.

In summary, success of policy depends to a large extent on ownership through effective participation by society in the identification and understanding of the issues, choices of actions and eventual implementation

activities. The internalisation of these processes provides pride to all, and above all it offers peace and stability. Therefore, policies that are home-grown and people or stakeholders believe in have greater chances of success.

9.3 A REGIONAL MINERALS POLICY

The use of similar processes would result in similar resulting policy instruments, as evidenced strongly by the cases of Namibia and Malawi in this study. The SADC member States have similar concerns spanning social issues, value-addition, small-scale mining, environment, governance, training, research and development (R&D), regional integration and promoting the sector. Undoubtedly if the same process was applied to all the member States, this would lead to similar solutions or policy instruments. In this instance the harmonisation of policies would just be a formality since similar thoughts, considerations and processes would result in similar commitments. Finally, these common instruments can then be translated into mineral law and legislation including other institutional arrangements, thereby forming a regional policy and legal framework. The chances of success of harmonisation, hence integration would be enhanced.

9.4 FINAL CONCLUSION

The process is good because it emphasises ownership of mineral resources, it is the people who own the resources and the state is only the custodian on their behalf. Therefore, it is only appropriate that the people decide how best to develop the sector in exercise of democracy and human rights. Benefits should then accrue to all, especially in this dynamic world with changing circumstances. Mineral resources are a depleting asset and therefore all

stakeholders must take responsibility for benefits to accrue to them during the life span of operations and beyond. The key to people participation are:

- Resources – funds and allocation of time;
- Capacity building – both government and other stakeholders, especially communities; and
- Information provision – relevant, adequate and timely for effective engagement.

Government must take the initiatives to ensure that a country is able to develop a minerals policy that all stakeholders will subscribe to. In short, government must provide the necessary environment for such processes.

The process has been used in differing circumstances, coming from different backgrounds. The stakeholders identified in the different separate countries seem to agree on the same things. In this situation we can generalise that people will prefer social issues and small-scale mining as the most pressing needs with others following on. These have direct bearing on poverty reduction, especially in rural areas where levels of need are greatest.

9.5 RECOMMENDATIONS

The first recommendation from this study is that this process works and it would be beneficial to most countries that need to develop their mineral policies to meet national goals. Secondly, the results from the three countries studied showed that it is possible to harmonise the policy instruments. It is, therefore, recommended that the process should be replicated in other countries in the SADC within limits. Levels of poverty, needs for jobs and so

on, may define the limits. Similar solutions are likely to be observed on a wider scale within the SADC. This will lead to easier harmonisation of policies in the region and can be a launch pad for gradual extension to continental NEPAD. Thirdly, it is being recommended that there should be a follow up in the countries studied to establish the effectiveness of the policy instruments.

9.6 AREAS FOR FURTHER RESEARCH

Chapter one indicated limitations of this study. The process was used to the fullest extent in two countries, namely: Namibia and Malawi. It would have been better to use the process in more countries. This would allow opportunities for continuous refinement of the process, possibly more issues would surface and possible differences in emphasis would also emerge.

Having formulated policy instruments, the next stage was to develop implementation plans, which unfortunately opportunities did not present themselves in this study. In the case of Namibia, government shelved this exercise to a later date and preferring the work to be done in-house without the support of a consultancy. For Malawi, the intent was present and the exercise was initiated but time was not available on the part of government, deferring completion to a later date.

The best opportunity availing itself is for developing a minerals policy, developing an implementation plan, and carrying out a policy review. This trend needs to be documented. This calls for the articulation of policy instruments – what they aimed to achieve; implementation plans – how the

policy instruments were to be achieved; and actual results – what was achieved. This would allow policy and decision makers to know whether they were on the right course or not and hence how to move forward by choosing new directions from possible future options.

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APPENDIX A

ARTICLE 5 OF THE TREATY OF SADC

OBJECTIVES

The objectives of SADC shall be to:

Promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;

Promote common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate and effective;

Consolidate, defend and maintain democracy, peace, security and stability;

Promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;

Achieve complementarity between national and regional strategies and programmes;

Promote and maximise productive employment and utilisation of resources of the Region;

Achieve sustainable utilisation of natural resources and effective protection of the environment;

Strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region;

Combat HIV/AIDS or other deadly and communicable diseases;

Ensure that poverty eradication is addressed in all SADC activities and programmes; and

Mainstream gender in the process of community building.

In order to achieve the objectives set out in paragraph 1 of this Article, SADC shall:

Harmonise political and socio-economic policies and plans of Member States;

Encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of the programmes and projects of SADC;

Create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its institutions;

Develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States;

Promote the development of human resources;

Promote the development, transfer and mastery of technology;

Improve economic management and performance through regional co-operation;

Promote the coordination and harmonisation of the international relations of Member States;

Secure international understanding, co-operation and support, and mobilise the inflow of public and private resources into the Region; and

Develop such other activities as Member States may decide in furtherance of the objectives of this Treaty.

APPENDIX B

ISSUES IDENTIFIED BY GROUPS FROM BACKGROUND DOCUMENTS AND THEIR OWN KNOWLEDGE

KEY ISSUES

Group 1

- Emerging Shortage of Technical Skills
- No Technical Curriculum in place
- Need for advertising campaign (job market)
- Need for communication between ministries
- Small-mining enterprises: what links exist to industry with SMEs, need for integration
- More policy needed for SSM's
- Need for a better understanding on environmental legislation, and accountability
- Improve commitment from Ministry:
    - Budget
    - Promote and develop industry
    - Staffing
- Need to change structure of economy (value adding)
- Training: no commitment
    - Not enough guidance
    - Lack of support for investment
    - 3 term phase needed
        - Short Term (work permit/skill acquisition)

    - Medium Term
    - Long Term
- Bring education/training into the country
- No support from geological society
- Develop a professional curriculum – in country
- HIV impact – Policy
- Corruption
- Human resources, share cost of training

Group 3

- Lack of known world class ore bodies
    - *access to geological data*
- Property rights
    - *access to land*
    - *security of tenure*
    - *turnaround processes*
- Geography
    - uneven distribution of infrastructure
    - responsibility for water, power, transport
- Fiscal Policies
    - fiscal stability
    - negotiate tax regime
    - EPZ
- Human Resources (HR)
    - timing of HR needs

    - short-term problem
- Environmental
    - level the playing field(lack of)
    - international solutions
- Political stability
    - Regional
    - local/National
- Competitiveness of Mining industry
    - performance
- Ripple effect of investment
    - downstream employment
    - downstream economic impact
- Lack of local venture capital
    - small scale miners
    - access to financial markets
- One stop investment center (stock Exchange)
- Windfalls
    - formula for sliding scale tax
- Risk factor
    - discount (life of project) rate

Group 4

- Access to communal/private and state land (PTO, MET etc)
- Decentralisation
- Stock exchange

- Work permits: (short, medium, long term flexibility)
- Adoption of responsible person (SAMREC – Namibian Professional Body)
- Strengthening of institutional capacity to provide baseline information (re-visit MME structure)
- Effective Environmental Agency
- Environmental trust funds or bonds (rehabilitation)
- Integration Planning
- Beneficiation
- Over regulation
- Fiscal regime (re-visit)
- SADC – integrated training

Group 5

- Geological potential – quality and availability data base
- Junior mining sector – lacking (grass root expansion)
- Manpower – inadequate quantity and quality
- Labour relations – understanding legislation
- Value addition
    - Incentives unfulfilled
    - Cost of labour
    - Bureaucracy
    - Acquisition of skills and technology
- Land rights
    - Access for exploration and mining rights

- Environmental legislation – lack of clarity
- Health – HIV threat
- Corruption – transparency
- Regional stability
- Stakeholders' distrust of mining companies – lack of transparency - training

APPENDIX C

RESULTS OF "STEEP" ANALYSIS

KEY ISSUES

Social (Group 1)

- Corruption:
  - Transparency required
  - Perception
- Mine closure
- Community integrated planning
- Infrastructure
- Health:
  - HIV/Aids
  - Impact on business
    - Financial implications
- Educational development
- Migration
- Cultural
- Small scale mining
- Illegal mining
- Land use
- Stakeholder district of mining companies

- Transparency lacking
- Investment in training

- Unequal income distribution

Technology and Human Resources (HR) (Group 2)

- Support Services
  - Strengthen Institutional capacity to provide base-line information (revisit MME structure)
  - Making mining attractive as a career choice
  - Improve commitment from ministry
    - budget
    - promote and develop industry
    - staffing

- Is unemployment an underlying factor in the development of a new minerals policy?

- HR Development
  - Timing and needs
  - Specialists
  - Work/residence permits
  - Skills transfer

- Administration of the Minerals Act

- Work Permits (short, medium, long term)
- Skills and Labour
- Training
    - no commitment
    - lack of support for investment
    - bring education/training into the country
    - no support from geological society
- Training
    - 3-term phase needed: short term (work permit) medium term, long term
- Skills
    - insufficient quality and quantity
    - money and government departments
    - lack of resources
- SADC Integrated Training
- Emerging shortage of technical skills, maintenance in particular
        - no curriculum in place
        - need for advertising campaign
        - need for communication between ministries
- Labour Relations
        - legislation misunderstood
        - militancy

Economic and Marketing (Group 3)

Investment Assistance

- One stop info Centre
- Re-position (out of line ministry)
- More direct assistance

Venture Capital Markets

- Access
- Public awareness
- Investment culture

Ripple Effects of Investments

- Ancillary industries
- "Spin-off' opportunities
- Entrepreneurial development

Economic

- Is unemployment an underlying factor in the development of a new minerals policy

Geological Data

- Information Base
- Access

Geographical Location

- No discretion

Junior Mining Sector

- Lacking
- Commitment absent

Value Addition

- Create jobs
- Unfulfilled incentives
- Bureaucracy
- Acquisition of skills and technology
- Policy and information

Taxation

- Effective (Corp. VAT. Profits)
- Promotion – of what we have, and recent successes
- Investment Incentives
- Stock Exchange
- Promote success stories
- Marketing
- EPZ
- Need to Change Structure of Economy (value adding)
- Beneficiation
- Fiscal Regime re-visited

Environmental (Group 4)

- Effective Environmental Agency
- Environment standardization
    - Level the playing field
- Environmental legislation
    - Lacking clarity
    - Ownership responsibility
- Need for better understanding of environmental legislation and accountability
- Environmental Trust Funds
    - Rehabilitation

Political (Group 5)

- Regional stability, wars and conflict
- Politics
- Political stability: national and regional
- Property rights:
    - Access
    - Security of tenure
    - Process of application

- Land use
- Land rights: exploration
- Mining rights and access
- Compensation
- Access to communal, private and state land PTO, MET etc
- International trade barriers/restrictions
    - Developed *versus* developing
    - North *versus* South e.g. Basle Convention
- Adoption of responsible person (SAMREC, Namibian Prof Body)
- Fiscal Policies
    - Stability
    - Tax rate
    - Tax (sliding scale)
    - VAT
    - EPZ concepts
- Environmental Act
- Over regulation
- Corruption
- Legislation
- Decentralization
- Manpower

APPENDIX D

OUTPUTS FROM SCENARIO ANALYSIS

People (Social) Issues (Group 1)

The various Solutions were tested for robustness against all 4 scenarios, and in the majority of cases were found to stand-up. In one or two instances, the solutions were “fine tuned” to address certain weaknesses exposed by some of the scenarios. All the solutions proposed are captured in the main text of the document.

Technology and Human Resources (Group 2)

Globalisation

Opportunities:

- access to technology development
- access to best practice in training
- more investment in technology and training

Threats:

- training and technology needs directed more towards international needs
- diminished specialized skills transfer

Regionalisation

Opportunities:

- full utilization of existing facilities
- open exchange of skills and technology
- free movement of people
- center of good career excellence in training
- harmonization of health and safety standards and training personnel
- enhancement of the tri-partite communication process
- pooling of resources

Threats:

- dominance of one member state
- migration of lesser skilled personnel

Nationalisation

Opportunities

- development of own technology
- development of in-house skills

Threats:

- could not keep up with international development

  drying-up of private investment
- restrictions of skills transfer and development

Solution (Policy)

Labour Relations:

Tri-partite communication enhanced by Regionalisation, less by Globalisation and negative for the other two scenarios.

The existing tri-partite communication is incorporated into existing SADC mining sector system,(is working).

- Globalisation would result in the diminishing influence of government and employees
- Nationalisation would severely reduce communication and negotiation by employees

Training and Technology:

Ultimate objective is to train personnel according to best practice standards which can be achieved through Globalisation Scenario.

This would be achieved by unrestricted access to train expertise and systems

Access to global IT would reduce training costs.

- Nationalisation is liable to result in less comprehensive programmes, restrictive availability of training expertise and higher cost

- Regionalisation would afford access to existing facilities and expertise which could collectively have access to global information and programmes
- There is a potential to develop Regional centers of excellence through resource optimization

Technological advancement is greatly dependent on access to global information and development, supplemented by local and regional R&D

Current SADC programmes, projects and R&D facilities should also be supported and adequately funded

Economic and Marketing (Group 3)

Globalisation

Opportunities:

- access to proven science and technology
- certain sectors are globally competitive, i.e. diamond mining sector
- inflow of skills
- access of global markets
- global environmental standards (higher than National Standards)
- domestic companies can become global

Note: Namibia should go Global only through Regionalisation.

(Covered in solutions but sensitive to timeframes)

Threats:

- marginalized weak social groups
- marginal resources therefore not competitive to exploit
- marginal countries swamped, possibly high in Namibia
- short term benefit. Long term threats because of rapid technology advances
- uncompetitive skills
- linked product regime (import more than export)
- lack high value products
- high environmental standards – negative effects on local companies

Anti-Globalisation

Opportunities:

- can develop capacities and focus on those capacities
- SSME's can grow in sheltered environment
- inclusive development allows retention of values and spreads economic benefits
- stimulates innovation and creativity (especially SME's)

(Refer to re-fined Solutions)

Threats:

- too small and underdeveloped to set its own terms
- failure to keep pace with intellectual and technological developments
- exclude yourself from “free trade” (narrow scope for participation)
- small domestic market **(included through Regionalisation)**

(Covered in original Solutions)

Regionalisation

Opportunities:

- develop regional standards
- retention of cultures and traditional value
- share common economic infrastructure
- stronger members lift weaker members, creating factor conditions in respect of technology; investment; knowledge and expertise
- regional geology and diversification
- economies of scale
- increased opportunities for value adding
- increased bargaining powers in global initiatives

Threats:

- regional processes grid-locked by Policy
- intra-regional competition maybe destructive

- undercutting standards
- instability in one country negatively affecting the image of the other countries
- inability to reach consensus
- trade-based regionalisation creates and exacerbates differences

Note: SADC must move towards political maturity and expedient decision making through flexible arrangements.

Nationalisation

Opportunities:

- insularity forces self-sufficiency and forced innovation **(via Regionalisation not feasible on National level)**
- job security
- common ownership – social equality and social stability

Threats:

- stagnation and slide back, in terms of socially, technology and economically
- risk of social instability
- pay high national price for imported goods and services
- creates employment gaps (no competition)
- skills become uncompetitive
- barriers to investment and technology acquisitions
- lowers productivity and competitiveness

Note: Our Original Solutions seek to avoid ALL of the above

Environment (Group 4)

Globalisation

Opportunities:

- in-line with International standards
- support from international community
- monitored according to International Standards e.g. Organisations
- level playing field – benchmarks accepted
- other solutions to assist in impact of small scale mining
- foreign investment in mining

Threats:

- inappropriate to local needs
- too costly
- relevance questioned
- imposition of international pressure groups (ILU & EIA)

Anti-Globalisation

Opportunities:

- emphasis on local issues
- local solutions to local problems

- increase in small scale mining

Threats:

- isolation
- local standards – no benchmarking
- lack of foreign investment
- economic implications resulting in increased poverty
- monitoring and implementation will not take place

Regionalisation

Opportunities:

- regional harmonization of legislation
- sharing of resources eg training; personnel; markets; price control and infrastructure
- better ILU

Threats:

- integration won't work
- national priorities (divergent) will dominate
- disparities in commitment (implementation and appropriateness)
- political instability and national disasters

Nationalisation

Opportunities:

- it can be enforced in a non-consultative manner
- focus on National (local) issues

- employment creation (short term)
- local confidence in environmental protection
- faster implementation

Threats:

- long term unemployment
- lack of investment, both local and foreign
- budgetary constraints
- push away investors
- slower development of legislation
- lack of political will
- limited access to foreign markets

Note: The original "common to all" Solution still stands

Political (Group 5)

Solution to Land Access

Globalisation:

Opportunities - security of tenure

- attraction of investment

Threats - none

Anti-Globalisation:

Opportunities - none

Threats - none

Regionalisation:

Opportunities - promotion of regional co-operation

Threats - none

Nationalisation:

Opportunities - more participation by small scale miners

Threat - no co-operation from landowners

Solution of Appropriate Legislation to Promote Mineral Industry

Globalisation:

Opportunities - attract capital and access markets

Threat - lack of manpower and loss of National identity

Anti-Globalisation:

Opportunities - none

Threats - reduced investment

Regionalisation

Opportunities - harmonization of policies

- collective attraction of investment

Threats - loss of National identity

Nationalisation:

Opportunities - promotion of local industry with local resources

Threats - reduced foreign participation

Solution to Regional Initiative to Resolve Conflict

In **Globalisation** the major **opportunities** are the creation of a conducive environment for investment and the involvement of the international community e.g. UN, while the **threat** is the reduced time to focus on internal matters and the tendency to hi-jack National and Regional initiatives.

In **Anti-Globalisation** there are no **opportunities** while the **threat** is isolation from the international community leading to isolation.

In **Regionalisation** there are **opportunities** for SADC initiatives and no **threats**

In **Nationalisation** there are no **opportunities,** while the **threat** is the negative impact on the economy

Note: The impact of the various Scenarios on the Solutions given below have been covered in the original text. They are:

1) urgently enact Environmental Legislation

2) implement Product Research and Regional Trade

3) entrepreneur training

4) streamlining existing legislation and processes

APPENDIX E

Extract from proceedings of a Community Minerals Policy Consultative Workshop

Introduction

The Namibian Government has contracted the Minerals and Energy Policy Centre

(MEPC) to assist with the development of Namibia's Minerals Policy. Various stakeholders have been asked to make submissions during the policy formulation process. !Nara Training Centre was contracted by the MEPC to facilitate some Community Consultative Workshops. The purpose was to afford different stakeholders who are affected, interested or benefiting from mining the opportunity to make policy inputs.

!Nara organised three Consultative Workshops to consult with diverse stakeholders from the different parts of the country. The workshops were held in:

1. Keetmanshoop: To cater for different communities in the South i.e. North of the Orange River which includes the Karas and Hardap regions
2. Usakos: To cover communities in the West (Erongo Region)
3. Tsumeb: To cover communities in the North i.e. north of Otjiwarongo that includes the Otjozondtupa, Oshikoto and Kunene regions.

A number of different stakeholders and interest groups were identified and invited to the workshops, that is: communal farmers, commercial farmers, small miners, mine workers, community leaders, local councillors, traditional leaders, regional councillors and business people. (see Annex 1 for list of participants at each workshop.)

The workshops dealt with a number of topics pertaining on mining namely the mineral policy making process, overview of mining in Namibia, people issues, small scale mining, human resources, environment, regional integration, marketing and promotion.

(see Annex2 for workshop programme) The workshop conclusions on the above- mentioned topics are detailed in this report. It is assumed that they will be taken into account and will be reflected in the Minerals Policy.

TSUMEB WORKSHOP

Date: 14-15 September 01

Venue: Minen Hotel, Tsumeb

Number of Participants: 22

Facilitators: Lucy Edwards-Jauch; Jerry Kaihiva

Day 1

1. Welcoming

Welcoming remarks were made by Ms. Edward- Jauch in which she explained the purpose of the workshop namely to afford participants the opportunity to make policy inputs for the impending minerals policy. The welcoming remarks were followed by a prayer led by Rev. Eliphas Eiseb, traditional leader and the king of the Damara people.

2. Opening Address

The Honourable Governor of the Oshikoto Region, Mr. Kamanja, opened the workshop. In his address he placed the minerals policy in the context of Namibia's national policy objectives of poverty reduction, job-creation and equity. He reflected on the social, health and environmental impact of mining and made a strong plea for capacity building in the sector. He then urged all present to participate actively in the proceedings.

3. Workshop Expectations

Participants expressed the following expectations from the workshop and as well as broad expectations from mining policy:

Expectations from Workshop	**Expectations from mining policy**
Definition of Small Scale Mining	Unitary approach to mining policy
Learn and Listen	End monopolies in mining rights
Knowledge about minerals	Application of Affirmative Action

Learn about the minerals white paper	Should ensure equality
Find out how communities will benefit	Should address environmental issues
Learn about processing and marketing	Should ensure that Namibians benefit
Find out the legal set-up	Have a Namibian policy
Find out about the minerals policy	
Gather information	
Raise small miners issues	
Make a contribution to the process	
Make technical inputs	
To be updated on mining policy	

Important Expectation the Workshop could not meet:

Participants expressed the desire to gain more knowledge about the technical aspects of minerals e.g. identification of the different types of minerals, and the value of these minerals. These were expectations that went beyond the scope the workshop. It is brought to the attention of policy makers in the hope that these knowledge deficits as identified by participants can be addressed

through policy.

4. Review of the Minerals Policy Process

Process

The facilitator made a short presentation on the Minerals Policy-making process. The presentation included the reasons for the policy, the process of policy-making, the management of the process, and how to make written submissions. (see Annex 3)

The presentation was followed by plenary discussion.

Discussion

There was concern about the composition of the Minerals Policy Committee and the fact that it did not have any representation from the regions. There was the added concern that the role of traditional leaders in the process has not been clarified although they are the custodians of communal land. An issue of great concern was the lack of knowledge in communities about the minerals in their areas. There also appear to be a great deal of mistrust towards people who claim to do things on behalf of local communities

Policy Recommendations

- Traditional leaders should be represented on the MPC
- MPC should also have regional representation

- People in the regions should have greater access to information about the identification of minerals, the valuation of minerals and the geology of the area
- Knowledge about the above should be localised.
- Policy should eliminate unethical practices where officials and others who can value stones exploit local people.
- Greater transparency in how Reconnaissance Licences are awarded

5. Overview of Mining

Process

The facilitator made a short input on the role of mining in the Namibian economy. This included its contribution to GDP, employment and export earnings. The input referred to ownership patterns and the shortage skills affecting mining. Mention was made of the different role players in the sector. (see Annex 3)

Mr. Willem Kotze, a geologist from the Ongopolo Mine, made a second presentation that dealt with the geological overview. He focused on the type of minerals that are found in Namibia and in the Regions represented at the workshop. This was done with the use of a map.

Discussion

Discussion raised the following issues:

1. Traditional leaders have not been recognised as role players.

2. There is uncertainty about who has authority over land-use in the communal areas with regard to the issuing of mineral rights

3. There is a lack of knowledge about the history of mining in the region. Throughout history different groups have mined in the area starting with indigenous people who resided there before colonialism. The Germans also practised small-scale mining. This knowledge should be built on, but is seemingly lost to younger generations.

4. There are possibilities for greater synergy between the bigger formal sector and the small informal sector miners. An example mentioned was the possibility of small miners in the area mining base metals that could be brought to the Ongopolo Smelter.

5. Not enough is done to improve the production of small-scale miners. In Zimbabwe gold production is in fact built around small miners.

6. Namibia has a particular bias towards the South African model which privileges the big companies through mining-house models that control all processes in the production chain.

7. Attention should be given to the safety of people working in the small-scale sector.

8. People have difficulty getting information and permits because everything happens in Windhoek.

Policy Recommendations

- Traditional Authorities should be recognised as role-players

- Decentralisation of the administration of mining.
- Decentralisation of support services for example SMAC
- Policy should clarify land rights, particularly in communal areas, taking into account custodianship, ownership, mineral rights and permission to occupy.
- Applications for mining concessions should include the consent of traditional leaders/ landowners.
- Traditional leaders should be acknowledged when issuing mineral rights.
- Policy should promote synergies between small miners and bigger established mining houses.