COMMUNITY SHARE OWNERSHIP TRUSTS (CSOT) IN ZIMBABWE'S MINING SECTOR

The Case of Mhondoro-Ngezi

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Published by: Zimbabwe Environmental Law Association (ZELA)

Year of Publication: 2013

Available from: Zimbabwe Environmental Law Association (ZELA), No. 6 London Derry Road, Eastlea, Harare, Zimbabwe: Tel: 253381; 252093, Email: zela@mweb.co.zw, Website: www.zela.org

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ACRONYMS

ABCD – Asset based Community Development
BEE – Black Economic Empowerment
BBBEE – Broad based Black Economic Empowerment
CBO – Community Based Organisation
CDA – Community Development Agreements
CED- Community Economic Development
CSOS - Community Share Ownership Scheme
CSOT - Community Share Ownership Trust
CSR – Corporate Social Responsibility
ESOS - Employee Share Ownership Scheme
ESOT - Employee Share Ownership Trust
IEE – Indigenisation and Economic Empowerment
MNCDF- Mhondoro-Ngezi Community Development Foundation
MNCT - Mhondoro-Ngezi Community Trust
MNCZCT – Mhondoro-Ngezi Chegutu Zvimba Community Trust
MRD- Mineral Resources Department
MYDIE- Ministry of Youth Development, Indigenisation and Economic Empowerment
MZCT - Marange-Zimunya Community Trust
NIEEB - National Indigenisation and Economic Empowerment Board
NIEEF - National Indigenization and Economic Empowerment Fund
RBN - Royal Bafokeng Nation
RDC – Rural District Council
ZCT - Zvishavane Community Trust
ZLHR - Zimbabwe Lawyers for Human Rights
ZMDC – Zimbabwe Mining Development Corporation
ZYC – Zimbabwe Youth Council

1. INTRODUCTION

A painful reality for most African countries is that an abundance of mineral wealth continues to co-exist with abject poverty. This is despite the fact that communities, especially those residing in the vicinity of mining operations bear the environmental, social and economic costs of extraction. In fact most resource rich economies, particularly those in sub-Saharan Africa are the most unequal and poverty stricken. The current global commodities boom and the importance of Africa as a natural resource hub has revived discussions on social, economic and ecological justice in resource rich areas and the potential role of mineral wealth to uplift poor people out of poverty. Generally, most African countries have responded to the rise in mineral prices by increasing taxation without necessarily restructuring ownership of the mineral resources. In South Africa, government has repeatedly assured mining capital that nationalization is not government policy. A research by the African National Congress (ANC) has buttressed this position by arguing for increased taxation at most. Zimbabwe seems to have taken a somewhat different and radical approach. Not only are mining taxes being reviewed upward, but all mining companies have been instructed to reduce foreign ownership to a maximum of 49% in line with the country's indigenization and empowerment laws.

Zimbabwe's indigenization and empowerment policy requires at least 51% of shares in every mining company to be owned by indigenous Zimbabweans by 2015. Of this, the ministry now requires at least 10% to be disposed to local communities through a Community Share Ownership Trust (CSOT). A further 10% can be availed to employees through a “qualifying” Employee Share Ownership Scheme/Trust (ESOS/T). Skeptics have dismissed the drive as a political gimmick within the dual contest for power between Zimbabwe African National Union Patriotic Front (ZANU-PF) and Movement for Democratic Change (MDC). Indeed parallels have been drawn with the takeover of white owned farms, which, most argue, was responsible for the country's economic collapse. However, despite what appears to be its apparent defects, at a conceptual level the emphasis on local community stake, employee ownership and disposal of shares to ordinary indigenous citizens and companies (as opposed to state centered emphasis on taxation or nationalisation) presents an interesting dimension of what may pragmatically constitute benefit sharing between mining companies, local communities, employees and citizens at large. Bearing in mind that governments have been accused of hiding information on mining contracts and abusing resource rents, as far as Zimbabwe's experiment represents a shifting away from state centeredness, this is a novelty worth analysing.

This research shows that despite its apparent grass roots language, Zimbabwe's Indigenisation and Economic Empowerment Policy and indeed the CSOT initiative is still largely paternalistic and top down. In the community of Mhondoro-Ngezi, there is a strong feeling of exclusion from the process. Community involvement has been zero. The local leadership lacks a clear grasp of what is actually going on. The policy is overly fixated on transfer of ownership and pays very little attention to issues of socio-economic and environmental sustainability. The promotion of CSOTs seems to have been an afterthought on the part of government. In spite of the March 2011 statutory amendments to provide for CSOTs and a general belief that the law requires mining companies to dispose shares to their local communities no such requirement exists. This creates a legal loophole which may be further widened by the lack of a rights based approach that recognises communities' rights to minerals beneath their soils. Such a right once acknowledged and provided for in national statutes can open enormous opportunities for community development and participation.

1.Maximising the Developmental Impact of the People's Mineral Assets: State Intervention in the Minerals Sector (SIMS), ANC, Policy Discussion Document, March 2012
2.See the Indigenisation and Economic Empowerment Act (IEEA), Chapter 14:33 Act 14/2007

1.1. Research problem and rationale;

The manner in which Zimbabwe's indigenization and empowerment policy has been crafted and implemented has been controversial and far from clear. Critics have dismissed the policy as a political façade meant to serve one political party. In spite of the mixed feelings in government and outcry from the mining sector, by mid-2012 the Ministry of Youth Development, Indigenisation and Empowerment (MYDIE) reported that all of the country's mines had complied with the law. A lot however remained unclear about the unfolding process and whether or not shares were really exchanging hands. The transfer of ownership as proscribed by the law is through selling of stake to interested locals or designated entities. This presupposes the existence of not only willing locals but that these have the capacity to buy shares at prevailing prices. In the absence of locals either interested or capable of buying the shares the state through a special fund or any of its relevant agencies buys up the shares in question. The shares are warehoused on behalf of local investors.

Considering its weak fiscal position, it is unlikely that the Zimbabwe government can afford to buy these shares as required by the law. Already according to the Business Council of Zimbabwe, 50% - 60% of Zimbabwe's mining rights are indigenously owned, mostly under the control of the state through its mining company, Zimbabwe Mining Development Company (ZMDC). Even if one is to assume that the state will indeed buy a stake from these mines, at least in the interim, the likely consequence would be increased involvement of the state in big mining ventures. Measured against ZMDC's unimpressive record in managing its mines, a perceived poor safety and environmental reputation, lack of transparency and accountability this emerging quasi-nationalization raises questions on the suitability of the current approach. This prospect leads one to think that the targeting of CSOTs, Employee Share Ownership Schemes (ESOS) and interested indigenous people and companies present a more viable option. In so far as it provides a funding mechanism, Zimplats' proposal for CSOT and ESOS potentially eases the possibility of implementing these schemes. However, while CSOTs and ESOS have been launched and publicized, fine details of how this will work remain vague.

The extent to which mining communities stand to benefit from the policy has not been analysed hitherto. A curious aspect of Zimbabwe's indigenisation and empowerment debate has been what appears to be the loud silence of the intended beneficiaries. The Mutoko (granite mining) and Chaidzwa (diamond mining) communities are an exception in this regard, thanks partly to the support rendered to the communities by ZELA, the Mutare based Center for Research and Development (CRD) and the Zimbabwe Lawyers for Human Rights (ZLHR). Yet even in these two communities, positions on CSOTs remain under represented at policy formulation and implementation level. Do communities feel better off with CSOTs? Is there a sense of empowerment and ownership of the process? How do Zimbabwe's community trusts compare with similar initiatives elsewhere? What is the role of the state and its institutions in all this? Is the current initiative sustainable? Moreover, it appears that debate on Zimbabwe's indigenisation of the extractive industry has so far not attempted to understand this process in light of ecological issues and other potential challenges that often come with resource extraction. Precisely, where does the current indigenisation of mines place corporate social responsibility, gender equality, youth empowerment and other traditional concerns?

This paper is a scientific attempt at a close case analysis of the application of Zimbabwe's indigenisation policies in the mining sector and the viability of community share ownership schemes (CSOS). The politically entrenched polarity of views in Zimbabwe's public discourse has tended to stifle balanced analysis and opinion on this issue. Moreover, discussion, where it has taken place, has been restricted to the policy blueprint as pronounced and not as practiced. In many respects, Zimbabwe's approach is radically different from empowerment models elsewhere. The recent wave of implementation of the policy in the mining sector provides an opportunity to start moving from paper discussions to testing the operational aspects of the policy. It is hoped that this research will spur dialogue from debating the policy as appearing on the blue print to discussing what is actually taking place.

This shift is warranted, since the policy is actually being implemented despite the skepticism and resistance. While different in many aspects to empowerment models in other countries, the policy echoes familiar reverberations of grassroots and pro-poor development and redress of historical injustice and ecological justice. Such language, though coming from the state is temptingly appealing to 'extractivists' (extractive sector activists) and mining communities but does it live up to the test of feasibility. It is necessary, through research, to continuously build capacity for meaningful community and people's engagement and active policing of the manner in which the policy is being implemented. To this end, the discussion shift that this research will engender is empowering. Such a process is necessary for deepening grassroots democracy and policy advocacy for improved transparency and accountability in the extractive sector.

1.Maximising the Developmental Impact of the People's Mineral Assets: State Intervention in the Minerals Sector (SIMS), ANC, Policy Discussion Document, March 2012
2.See the Indigenisation and Economic Empowerment Act (IEEA), Chapter 14:33 Act 14/2007

1.2. Objectives of the study

This study considers the viability of CSOTs as vehicles of empowerment and positive social and economic transformation of local communities and ordinary citizens. In particular, it focuses on Zimbabwe's current indigenization drive in the platinum sector. This is done through;

1. Reviewing the viability of efforts by the Zimbabwean Government to transfer ownership, through the Indigenisation and Economic Empowerment Act (Chapter 14:03) and associated regulations, of big mining companies from foreign to indigenous Zimbabweans,
2. Providing a detailed and critical analysis of the Community Share Ownership Schemes as a model of empowering communities and indigenous Zimbabweans under the Indigenisation and Economic Empowerment Act,
3. Specifically investigating and analysing the establishment and implementation of the Mhondoro – Ngezi Community Share Ownership Scheme,
4. Comparing Zimbabwe's approach with other empowerment models in the region and South America,
5. Considering how issues of ecological justice, gender equality, Corporate Social Responsibility, transparency and accountability, taxation (tax inadequacy, evasion and avoidance), socio- environmental sustainability are being dealt with in the context of Zimbabwe's indigenisation of mines and Community Share Ownership Schemes.
6. Identifying strengths and short comings so as to shed light on the utility of Zimbabwe's current approach,
7. Considering the possible use of Community Development Agreements (CDAs) by Community Share Ownership Trusts as a vehicle to advance and promote community interests in the mining sector.
8. Making policy recommendations on how Community Share Ownership Schemes can be improved as vehicles for community empowerment based on experiences in other countries.

1.3. Methodology

The study used a combination of a broad contextual analysis, a case study analysis of Community Share Ownership Trusts (CSOTs) formed in respect of Zimplats, in-depth interviews, focus group discussions, observations and desk research. The paper through desk analysis is able to start with a brief panoramic reflection of comparative cases in other countries. In Zimbabwe, more than a dozen CSOTs have been launched since the beginning of 2011. This paper briefly comments on the five most cited ones namely, Tongogora (Unki Mine), Zvashavane (Mimosa), Marange-Zimunya, Gwanda and Mhondoro-Ngezi within the context of Zimbabwe's Indigenisation and Empowerment program. The latter trust represents the community within which Zimplats is operating and will receive a more detailed analysis. This is only pragmatic within the time and resource constrains. Moreover, it is safe to say that more than any other mining company Zimplats has received a lot of public attention and media coverage as far as the indigenisation and the CSOT formation is concerned. This is not surprising considering that Zimplats is the single biggest investor in Zimbabwe. Zimplats has a traceable history of community engagement. It is also in the Zimplats mining area that ZELA is seeking to expand its work with mining communities along the great dyke. This made it easy for the researcher to gather community views through interviews and focus group discussions.

Purposeful judgmental sampling was used to identify respondents for interviews and participants in focus group discussions. Interviews involved officials from relevant government departments and agencies, parliament, local community leaders, ordinary members of the community, workers' union leaders, mine employees and management among others. Through ZELA contact already existed for most of the targeted interviewees. There were cases where it was not possible to meet with the target respondents, for example, the Minister of Youth Development, Indigenisation and Empowerment. The research had to rely on reports and official speeches of the targeted respondent. Two focus group discussions were conducted with councilors for the Mhondoro rural district and members of the community respectively. The discussions were unfortunately not able to draw women participation. Neither was it possible to identify and secure an interview with the women representative on the CSOT board. In an attempt to bridge this gap, informal discussions were carried out with some women found at the shopping center close to Mhondoro rural council. However, from the rest of interviews, discussions, observations and desk material it is possible to map out gender issues arising.

3.A term borrowed from Professor Patrick Bond of the Center for Civil Society at the University of KwaZulu Natal.

2. MINING, EMPOWERMENT AND COMMUNITY DEVELOPMENT (A REVIEW OF RELEVANT LITERATURE)

2.1 Mining and Community Development

There are at least three explanations as to why mining communities have become the center of attention in development discourse and government policy. Firstly, since the 1990s there has been a growing shift towards Community (sometimes called Local) Economic Development (CED) or emphasis on local community away from the traditional macro-economic and state centered approaches to development. The perceived failure of market oriented development strategies to filter benefits of economic growth to the local community has informed this shift. The disjuncture between growth and local community socio-economic condition is most expressed in resource rich countries which coincidentally rank among the most unequally societies in the world. Often, mining companies generate super profits while surrounding communities live in abject poverty. The current unrest in South Africa's mining sector has served to remind the world and mining community that a growth model that stresses profitability to the neglect of local communities is unsustainable.A second possible explanation is that for countries (especially former colonies) wanting to address historically generated socio-economic imbalances between population groups and uneven spatial development the community has served as one of the main entry points for corrective interventions.

The third explanation relates to the ethical and somewhat moral question of socio-economic and ecological justice. Mining communities bear the social, economic and ecological costs of extraction. There is also a logic that posits that mining communities are the rightful owners of the minerals beneath their soils and thus deserve rents from resource extraction. From the stand point of Asset Based Community Development (ABCD) communities are not merely needy and poverty stricken, waiting for crumbs to fall off from the table of big mining companies. ABCD looks at what communities have rather than what they lack. It is within this context that the voice of mining communities is becoming louder and louder, as a reminder that they are the rightful owners of minerals. To some extent the concept of CSOTs resonates with ABCD. However, since in most cases the central government monopolises mining rights, rationale for community involvement tends to emanate from the fact that communities by virtue of their proximity to mining activities bear socio-economic and environmental costs associated with resource extraction.

2.2 Empowerment in South Africa's Mining Sector

Mineral rich South Africa represents one of the most unequal societies in the world. Poverty in South Africa has a lot to do with the apartheid legacy wherein the majority blacks were denied economic opportunities. Since the end of apartheid in 1994, South Africa's ANC government has sought to reverse racial imbalances through the Black Economic Empowerment (BEE) policy. BEE according to a 2001 Commission report aims at changing the imbalances of the past through the transfer and conferring of “ownership, management and control of South Africa's financial and economic resources to the majority of the citizens”. Specifically South Africa's Mineral and Petroleum Resources Development Act(No. 28 of 2002) Section 100(2)(a) instructs the Minister of Mines to ensure attainment of government objectives to redress historical, social and economic inequalities…develop a broad based socio economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of Historically Disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources”. Generally, BEE has been mainstreamed and one sees harmony between various legislations, policies and government departments.

However BEE's prescribed change in ownership has been very slow in South Africa's mining sector. Black ownership of mines stood at only 9% in 2009. What is more worrying is that BEE ownership of mines is “concentrated in the hands of anchor partners and Special Purpose Vehicles representing a handful of black beneficiaries”. Focus on, let alone implementation of Employee Share Ownership Schemes (ESOS) and Community Trusts has been very minimal. Cases of Community share ownership (CSOs) in mines are very scarce since there is no specific legal requirement for such. In fact, there are several ways for companies to attain BEE compliance and these need not necessarily include community ownership. Moreover, BEE related ESOS and CSOS where these were established have been characterised by inequitable distribution of benefits and sometimes benefits were extended to non-historically disadvantaged groups. The funding model for the acquisition of shareholding for formerly disadvantaged groups has in many instances resulted in the actual ownership being tied in loan agreements. Excessive focus on regulatory compliance has been at the expense of fundamental transformation.

On 9 February 2007 the South African government published BEE codes also known as the Broad Based Economic Empowerment (BBBEE). This saw a shift from excessive narrow focus on ownership. BBBEE is anchored on seven requirements for companies which include ownership, management, employment equity, preferential procurement, skills development, enterprise development and socio-economic development. Failure to comply according to the enabling act can lead to the revoking of a mining license. Of these, ownership constitutes only 20% of BBBEE credits. In fact, South Africa has taken a more gradual approach with a requirement of 15% black ownership in 2010 which would be increased to 26% in 2015. Further, the mining sector specific score card includes employee housing and living conditions targeting an occupancy rate of one person per room by March 2015.
The only aspect of the policy that prescribes direct benefit for mining communities is socio-economic development, which constitutes 15% BBBEE's total weighting for the mining sector. The South African mining charter requires mining companies to "conduct ethnographic community consultative and collaborative processes to delineate community needs analysis". This according to the charter should result in the implementation of community approved projects. Unfortunately this seems to be the charter's most difficult target to measure as there are no specified instruments to measure compliance. Preferential procurement is only prescribed for BEE entities with a target of 40%, 70% and 50% for capital goods, services and consumables respectively. Far less ambitious targets are set for employment equity, human resource development and sustainable development and growth. There are no requirements for the employment of people from the local community. Included in the BBBEE is beneficiation though targets are yet to be stipulated.

There are few cases where significant community interventions have occurred in the context of BEE. In 2011, Optimum Coal which was born out of the need for global giant BHP Billiton to secure black economic-empowerment credits joined hands with the Steve Tshwete municipality in Mpumalangato to deliver 100 houses to the public in a R13-million project. This perhaps represents one of the most radical BEE related community development interventions. On the whole, BEE (or BBBEE) represents something far less radical than what is enunciated in Zimbabwe's empowerment policy. SA's constitution guarantees of property rights make it difficult for government to force companies to dispose shares. In fact, what BEE does is rely on a combination of legal and moral suasion. As a result, the road to achieving economic transformation sought by BEE has been a frustrating one. In 2009, South Africa's Mineral Resources Department (MRD) reported that targets set by the Mining Charter were far from being met.
South Africa however has one of the most internationalized cases of community involvement and shareholding in a mining venture in the Royal Bafokeng Nation (RBN) or tribe. RBN is a community of approximately 300,000 Setswana-speaking people with substantial, minerals-rich land holdings in South Africa's North West Province. RBN is entitled to 22% royalties on all platinum taken from their territory. Annual royalties amount to over US$70 million. Through an investment arm the Royal Bafokeng Holdings (RBH), RBN has direct stake in Royal Bafokeng Platinum (RBPlats) and Impala Platinum Mines (Implats). The RNB has a sovereign wealth fund managing assets worth over US$4 billion. This status was a product of extensive negotiations, fights with mining companies during and post-apartheid culminating in a court settlement which affirmed RBN's ownership of the minerals and entitlement to 22% royalties. Critics have, however, pointed out the glaring inequality between the Royal household and the ordinary members of the tribe. While the establishment of facilities such as the 45,000-seat stadium (one of the venues for the FIFA 2010 world cup), an athletic complex and the Royal Bafokeng Institute (for education and training) has been celebrated in many circles critics have dismissed these initiatives as elitist.

On the whole, nothing much has changed in terms of ownership in South Africa's mining sector. There is growing discontent among communities about this lack of transformation and the fact that the gap between the rich and the poor is widening further. Several proposals are being discussed at national policy level. Among these is the option of nationalizing either all or some of the mines. Proponents of nationalization constantly refer to ANC's 1955 Freedom charter which states that, "The mineral wealth beneath the soil, the Banks and monopoly industry shall be transferred to the ownership of the people as a whole..." Notably none of the proposals clearly advocates for community centered approach.

5.Unlike most African countries where similar affirmative action has taken place, the definition of Black according to BEE encompasses, black Africans, Coloureds and Indians. Subsequent court actions have seen the definition of BEE has been expanded to include Chinese people who were South African citizens prior to 1994 and white females. While this may be seen as providing a basis for a broad and non discriminatory empowerment program, there is a risk of becoming too broad to be meaningful.
6.South Africa's Department of Mineral Resource, BEE Report, (DMR), 2009
7.Ibid, pg. 17
8.This is significantly higher than the 5% weighting in the general score card.
9.Scorecard for the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry
10.Ibid
11.Mining Charter Impact Assessment Report, Department of Mineral Resources: South Africa, October 2009

2.3 Examples from China, South and North America

China has a history of the Shequs community organization where community control is emphasised. However, the purpose of Shequs does not arise from community empowerment in the sense of redressing past imbalances nor organizing for purposes of benefiting from the country's natural wealth. Though the functions of Shequs have evolved since their establishment by the People's Republic of China in 1949 they have served more or less as an agent of the government. They often served as community organization for provision of social services, managing senior and youth centers and conducting environmental conversation and maintenance programs. In the 1990s the Shequs were strengthened as a response to failure by local government to meet social demands of a rapidly urbanizing population. Shequs are thus found in both urban and rural China. Shenyang in the Liaoning province epitomizes Shequ development in China. It was a response to social problems due to increasing unemployment and a lack of money to pay for health care and pensions. The problems inspired bold steps by the community to spearhead local socio-economic development with no legal authority or permission from the central government.

South America is one region that has experienced substantial radicalization of community perspectives and policy towards extractive sector governance. In Bolivia and unlike most countries in Africa, the central government shares royalties with regions. Similarly, fiscal reforms in Peru saw up to 50% of the "canon minero" (a type of royalty) being returned to the regions. Whilst policy in most Latin American countries does not prescribe community ownership in mines, communities are often involved in the negotiation of mining contracts. This owes partly to the legal regime governing land and mineral rights in most of these countries. This regime does not give the state complete monopoly over mining rights. Often, acquisition of mining rights involves a complex process of contract negotiations with respective regions, land owners and communities, in the case of common land. This gives communities leverage and ability to insist on employment of locals, local procurement and infrastructural development as part of the mining agreement. It is not uncommon for communities to renegotiate contracts once new information comes to light.

In South America, it is common for collaborative relations to emerge between mining companies and local community. In Puquio Norte in Bolivia, a mining company and the local community combined funds to build a gas pipeline to the mine that was larger than what the company needed. The excess capacity was used to provide electricity to the local rural population. Also in Bolivia, the La Joya community of the Inti Rayni region set up a community development trust which includes one representative of company management as part of a three man board of Trustees. However, though robust, community engagement in South America is far from ideal. Concerns have been raised about the weak and ineffective communication between central and local government and communities with regard to mining policy. This has resulted in most of revenue going to central government though the policy states otherwise. Moreover, tensions often result from the fact that companies deal directly with land owners and community representatives rather than local government structures. The World Bank has observed that in Latin America, "When mining operations were established, there was no formal relationship between the company and the local – that is, municipal – governments (except for Antamina)".

One of the key lessons from South America is that negotiations/dialogue has to involve all stakeholders in an open and transparent manner. Despite the clear relevance of three parties the negotiation process tended to be bipartite and not tripartite. Companies negotiate with the central government and the local community (or government) separately. Yet in Canada, trilateral relationships have proved crucial for sustainable community development. Socio-economic agreements between mining companies and Aborigines entered with the involvement of government include employment quotas or targets, special training programs, targets for local procurement, support for local business development, support for women's employment and training, and a supportive work environment for distinctive cultures. In Canada generally, "... one factor common to most mining communities ...is that their relationship with mining companies has evolved from paternalism to partnership, with both sides striving – with the help of governments – for sustainable community development".Through the tripartite negotiating platform, mining communities are guaranteed low skills jobs in the first year accompanied by training to equip them for high skilled jobs in the subsequent years.

12.Mining and Development, Large Mines and Local Communities: Forging Partnerships, Building Sustainability, World Bank and International Finance Corporation, 2002, pg 5
13.Mining and Development, Large Mines and Local Communities: FORGING PARTNERSHIPS, BUILDING SUSTAINABILITY, Global Mining, World Bank and International Finance Corporation, 2002, pg.10

The benefits of an institutionalized tripartite relationship have been most celebrated in Canada northern Saskatchewan. Following some resistance to uranium mining in the area a special commission recommended a shift from bipartite consultation to tripartite where local government and community would be involved. The commission recommended a devolved royalty regime in which local communities would receive a share of revenue from uranium mining. Socio-economic and cultural impacts were incorporated into mining contract negotiations and decision making. This was also tied to fulfilling stringent environmental regulations. The tripartite relationship has the potential of reducing opportunities for corruption and the opaqueness that has come to be so associated with the mining sector.n place security infrastructure, there remain instances of security breaches resulting in smuggling and or leakages.

2.4 Sustainability and best practice

Beyond mere community engagement, policy and related research has sort to answer questions about the quality and sustainability of community development initiatives by mining companies and states. When mining is introduced into an area it alters the social, economic and environmental status quo. It also leads to the realignment of social and economic activities towards the now dominant extractive economy. Mining closure thus leads to despondency for a community that had become socially and economically dependent on mining. There are many examples of ghost towns resulting from mining closure. Environmentally, mining has gotten a reputation of being an "industry that scars both landscapes and lungs…". There is commonly policy failure on the part of governments in Africa and reluctance by mining companies to invest in socio-economic and ecological sustainability beyond the lifespan of the mine.
Measured from the stand point of sustainability, it is possible to qualify or disqualify a community intervention as good or bad. Projects such as the building schools, clinics, roads, farming support among others can be well meant yet unsustainable. Sirolli observes that "… these efforts have not usually lasted beyond the life of the mine and, sometimes, not even beyond the tenure of the particular company staff that instigated the projects". Moreover, support from mining companies, be it to the community or national government can be addictive. "… if local communities and government agencies become accustomed to mining companies taking charge of the provision of infrastructure and services, an unhealthy dependency relationship can evolve, which works against sustainability". In several places where mines built public infrastructure, schools and other facilities, it has been found that several years after the mine closes nothing works anymore. A community development program should be able to "survive without input from a mining and metals company, especially after the mining project is finished".The point is, according to one community advocate, "Don't give us infrastructure that we cannot maintain."

Given the foregoing, there is growing consensus that mining should facilitate other economic activities that have potential to sustain the community beyond company closure. The International Council on Mining and Metals' Community Development Toolkit suggests that, mining companies should localize procurement and "...encourage small business" and in so doing build "... the capacity of the communities to survive long after the mine has gone". The strategy according to the Tool Kit should be to facilitate the emergence of a parallel economy that may initially be based, on "providing goods and services to the mine but that, eventually, would expand and diversify to provide the same to the community, the region and the State". The Tool Kit cites the Lac La Ronge Indian Band as one example of this model. From initially developing trucking and catering skills with support from the local uranium mines in northern Canada, over time Lac La Ronge Indian Band "...expanded its business away from the mines and had an annual turnover of (CD) $65 million in 2005 supplying services in the surrounding region".

14.Ibid, pg. 11
15.Beddington et al, 2009, pg. 3

But these objectives, however noble, cannot be pursued without community involvement. In order to build sustainable communities the Tool Kit recommends that **"actions must be community planned and driven**, not imposed by donors or companies."Opportunities should be fairly distributed so as to cover women and vulnerable and/or marginalized groups such as Indigenous Peoples, ethnic minorities and the economically displaced.
From the above, one can come up with the following as principles for building sustainable communities in mining areas,

- Actions must be community planned and driven,
- Dialogue must involve all stakeholder – local community, government (local and national) and private sector,
- Ensure environmental sustainability,
- Local procurement must be promoted,
- Grow small business based initially on opportunities created by mining,
- Facilitate the emergence of an independent (from mining) parallel economy.

On the part of mining companies, there is growing acknowledgement that investing in local economic development is good for the companies. World over, communities are becoming more and more critical and demanding more from mining companies. Protest action and in extreme cases civil unrest is not uncommon over perceived exploitative practices and lack of social and environmental accountability. It is becoming difficult for mining companies to maintain a viable operation without buy in from the local community. In other words, **the legal license alone is not enough, mine require "social license to operate"**. Recently in South Africa's North West province, communities have joined hands with company employees to protest against mining companies. In Limpopo, communities perennially clash with mines over violation of cultural rights, environmental degradation and poor developmental outcomes.

16.Ernesto Sirolli, "Mining and Community Development: From Rhetoric to Practice", Mining and Communities,MINING.com, January 2010, pg 25.
17.Ibid
18.Mining Tool Kit for Community Development, International Council on Mining and Metals, July 2012
19.E Sirolli, 2010, pg. 26
20.Mining Tool Kit for Community Development, International Council on Mining and Metals, July 2012
21.Ibid
22.Ibid
23.Mining Tool Kit for Community Development, International Council on Mining and Metals, July 2012

3. COMMUNITY SHARE OWNERSHIP TRUSTS, INDIGENISATION AND ECONOMIC EMPOWERMENT IN ZIMBABWE

3.1 Indigenisation Policy

In early 2008 the Zimbabwe government enacted the Indigenisation and Economic Empowerment Act (IEEA) better known as Chapter 14:33 Act 14/2007.The law seeks to redress historical imbalances dating to the colonial period when the white minority government disenfranchised blacks and other groups. In order to do this, the law requires that at least 51% of "shares of every public company and any other business" in Zimbabwe be owned by "indigenous Zimbabweans". Section 3 of the act, provides for particular attention to be paid towards benefiting women, youth and "disabled persons". Employee Share Ownership Trusts (ESOTs) and at least 50% local procurement are also provided for in the act. The law was a culmination of previous policy efforts, discussions and pressure from indigenous business groups. As far back as February 1998 government came up with the "Policy Framework on the Indigenization of the Economy", which was later revised and adopted by Cabinet as the "Revised Policy Framework for the Indigenization of the Economy" in October, 2004. To give effect to the law, a series of government notices and general regulations were issued from 2010 onwards.

First among a series of statutory instruments meant to breathe life into the indigenisation and empowerment policy was the Statutory Instrument 21 of 2010. The instrument set 2015 as the deadline for all foreign owned companies to meet the 51% locally ownership requirement. Every businesses with an asset value of US$500 000 was to submit a compliance plan detailing present and future state of compliance to the minister within 45 days. The move was criticized as harsh and an untimely threat to foreign investment "at a time when the country needed to be seen to be investor friendly". Political parties within Zimbabwe's inclusive government differed sharply and continue to do so. The 45 days ultimatum was not met by most companies. Following much discussion in cabinet, some aspects of the regulations were revised.

On March 25 2011 the Ministry of Youth Development Indigenisation and Empowerment (MYDIE) issued amended regulations specifically targeting mining companies. The capital threshold for the 51% local ownership requirement was reduced from US$500 000 to US$1. This means every mining company no matter how small or big ought to have majority indigenous ownership. Another 45 day ultimatum was issued but most mining companies failed to meet it. Mining companies contested the Minister's discretion in determining prices for the shares to be transferred. Most mining companies negotiated for an extension of the deadline to give themselves time to negotiate with the Minister. There is evidence that the law has not been uniformly and rigidly applied. One journalist noted that the indigenisation and empowerment threshold "is not cast in stone... If you look at the Zisco-Essar deal, you will notice that foreign shareholders surpassed this threshold. Another example would be the acquisition of Premier Bank now Ecobank Zimbabwe".Far from a blanket application of the law, issues of what is or not acceptable have been determined by negotiations. This somewhat arbitrariness stems from the discretion given the Minister by the law.

There are several players which are directly involved in the implementation of the Indigenisation and Empowerment (IEE) programme. The Ministry of Youth Development, Indigenization and Empowerment (MYDIE), is the core ministry mandated with the implementation of the IEE programme in Zimbabwe, including the formulation of the IEE policy and strategies, Acts, Regulations as well as receiving and approving IEE applications/proposals. It also liaises with other stakeholders, sector ministries, the National Indigenisation and Economic Empowerment Board (NIEEB), IEE sectoral committees, the Parliamentary Portfolio Committee and the Zimbabwe Youth Council (ZYC) among others on IEE issues. The Minister, in turn reports on IEE issues and progress to the Office of the President and Cabinet (OPC). The NIEEB as provided for in the Act consists of a maximum of 15 persons appointed by the Minister responsible for IEE, in consultation with the President of Zimbabwe. The Board is responsible for the management of the National Indigenization and Economic Empowerment Fund (NIEEF), advising the Minister on the policy and overseeing compliance with the National Indigenization and Economic Empowerment Charter. The NIEEF provides financial assistance for share acquisition, warehousing of shares under employee share ownership schemes or trusts, management buy-ins/buy-outs, business start-up consolidation and expansion.

24.While there is general preference of the term "physically disadvantaged persons" the act uses the term "disabled persons".
25.The delay in enforcing the law might have owed to the level of economic decay Zimbabwe experienced in 2007 and 2008. Mining, which later turned out to be the main target of the policy was at its knees at that time. By 2010, however, the sector was leading the country's economic recovery, growing by 47% and 26% in 2010 and 2011.
26.For example, the requirement to "cede" shares to indigenous Zimbabweans was replaced and instead read "sell".

It goes without saying that for the most part, policy pronouncements on indigenisation and empowerment have been acrimonious. On several occasions between 2010 and 2012, the Minister would issue statements on the policy only to be rebuffed by cabinet and especially the MDC side of government. For critics the policy is just a political gimmick by ZANU-PF to garner more supporters and placate public opinion towards the party. Parliament also issued adverse reports on statutory instrument 21 and several other pronouncements by the Minister relating to the enforcement of the policy. Due to the controversy surrounding the IEE policy, Government set up sectoral committees to provide recommendations on how sector peculiarities could be treated. The consequence of sectoral committee has been the coming up with sector specific thresholds. While 51% is required for mines by 2015, this is not the cases for manufacturing. According to NIEEB, it all depends on the economic importance, capital requirements, expertise required and technical skills involved.

Government of Zimbabwe has placed special interest in diamond mining and there is strong possibility that a different indigenisation regime might apply to the sector. On December 7, 2010, Cabinet announced unanimous agreement that the Government should be the owner of all alluvial diamond mining operations in the country. The decision of the Cabinet is yet to be implemented. This would have applied only to alluvial diamonds. Mining for other diamonds and all other minerals would remain under the 51% rule. Companies extracting diamonds in partnership with the state enterprise Zimbabwe Mining Development Company (ZMDC) such as Mbada and Canadile diamonds will be affected if government proceeds with this decision. Government advised that consultations were to take place with companies involved in mining alluvial diamonds to review steps towards meeting the 100% rule. There is, however, little to indicate that government will live up to its December 2010 decision.

3. 2. Community Share Ownership Trusts

So much has been reported in media about the establishment of community share ownership trusts (CSOTs). According to the former Chairperson of NIEEB Mr David Chapfika CSOTs and ESOTs represent the second leg upon which IEE policy stands, the first being the 51% local ownership requirement. Chapfika points out that by providing for CSOT the policy ensures broad based economic empowerment. Section 14 of Statutory Instrument 21 of 2010, provides for Employee Share Ownership Trusts (ESOTs) to be used as a vehicle to fulfil the policy requirement. According to NIEEB, 10% community ownership and 10% employee ownership is a requirement applicable to all mines whether foreign, state owned or indigenous owned. Government contends that "…communities have the natural right to benefit from their God-given resources". Since 2010 and the mooting of CSOT as a vehicle for communities to benefit from resource extraction several CSOTs have mushroomed. This has at times resulted in more than one CSOT claiming to represent the community.
In a bid to create sanity, Cabinet came up with a framework for the establishment of CSOTs for the purpose of indigenisation and empowerment policy. According to the framework, "The Minister of Youth Development, Indigenisation and Empowerment shall cause the establishment and registration of all Community Share Ownership Trusts…"The framework derives a definition for a community for the purpose of defining a CSOT from the Rural District Councils Act [Chapter 29:13] as residence of a district. One CSOT is prescribed per district with a membership of 7 to 15 persons composed of;

1 Chief – (Chairperson), rotational where there are more than one chief in the District.
2 Other Chiefs in the District.
3 District Head of the Ministry of Youth Development, Indigenisation and Empowerment.
4 District Administrator.
5 Council Chairperson – (Vice Chairperson).
6 CEO of RDC Ex- Officio (Secretary).
7 Representative(s) of qualifying business(s) drawn from senior management level of the business
8 Representative of women
9 Representative of the youth
10 Representative of the disabled
11 A Lawyer.
12 An Accountant.
13 Any other person co-opted by the trust for their expertise and/or special skills from time to time

Where a District has more than one chief, the chairmanship is rotated on a yearly basis among the chiefs in the District. The minister is allowed to appoint additional people to the board as and when deemed fit to represent the state or special interest groups. For a Trust to be established, Ministerial approval is required. Also according to the Cabinet framework, the Minister may appoint members to the Trust Board as he or she may deem fit. The Minister clearly has sweeping powers with regards to the establishment and functions of CSOTs.

Several documents from NIEEB and MYDIE stipulate that money accruing to CSOTs from shareholding in business ought to be used for social and economic infrastructure in accordance with community priorities. These priorities are listed as follows;

- ☞ The provision, operation and maintenance of Schools and other educational institutions,
- ☞ Educational scholarship, hospitals, clinics and dispensaries,
- ☞ Provision and maintenance of dipping tanks,
- ☞ The provision, development and maintenance of roads,
- ☞ The provision, development and maintenance of water works,
- ☞ Gully reclamation and other works related to soil conservation and conservation and prevention of environmental degradation.

To avoid dividend avoidance "companies will be expected to declare their dividends every six months"
Since the promulgation of Statutory Instrument 14 of 2010, a number of CSOTs have been launched amidst pomp and fanfare. While it is difficult to ascertain how many of the CSOTs have been launched to date, five Trusts stand out. These are Marange-Zimunya Community Trust (MZCT) in Manicaland, Mhondoro-Ngezi (sometimes includes "Chegutu-Zvimba") Community Trust, Mat South Gwanda Community Trust in Matebeleland South, Tongogara CSOT and the Zvishavane Community Trust (ZCT). It must be pointed out that of these MZCT has a unique arrangement. While other CSOTs are entitled to 10% stake in foreign companies MZCT is to enter into a joint venture with state owned ZMDC and a yet to be identified private investor. In all the cases, the CSOT launch was accompanied by either a US$10 million capitalising donation or pledge for the new entity by companies concerned. MZCT had a donation of US$1.5 million on the day of its launch and pledges of US$10 million by each of the concerned five diamond mines thus totaling US$50 million. It could not be established by the time of writing whether the companies had honoured their commitments.

In most cases the takeoff for CSOTs has been sluggish. The sluggishness is linked to the complexity and lack of clarity around the setting up of the trusts. This research encountered several complaints especially from members of mining communities and local leaders in this regard. It is only with Tongogara (TCT) and Zvishavane (ZCT) CSOTs that tangible evidence of functionality has been reported. On October 2012, the Chronicle Newspaper reported numerous community projects ranging from vegetable gardens, water provision, to construction of school under the watch of the Tongogara Community Trust. Prior to this, the Trust had been accused of not making any progress with its developmental plans after receiving US$10 million in November 2011. Similarly ZCT seems to have established itself administratively and operationally. One can locate the Trust's offices within the Zvishavane rural district council offices. In September 2012, ZCT was advertising for tenders related to a number of projects. However, this apparent sign of progress was tainted by allegations of abuse of funds by chiefs who form part of the Trust' board of directors. It is alleged that in 2011 five Chiefs awarded themselves US$5000 each as sitting allowance for a meeting to decide how to use a US$2 million donation from Mimosa Platinum.

27. Online Interview, 11 June 2012, the Journalist in question requested anonymity.
28.Indigenisation and Empowerment (Flyer), MYDIE
29.Operational Framework for Community Share Ownership Scheme or Trusts, Ministry of Youth Development, Indigenisation and Empowerment, Public Notice, pg. 4
30.A government flyer on IEE proscribes a 5 – 11 member Board of Trustees for community trusts.
31.Operational Framework, pg. 5
32.NIEEB....
33.Minister Savior Kasukuwere, Zimbabwe Upper House of Parliament, Thursday, 22nd March, 2012
34.Chronicle, 10 October 2012 accessed at http://www.chronicle.co.zw/index.php?option=com_content&view=article&id=42001:shurugwi-community-benefits-from-csot&catid=42:features-news&Itemid=134

4. THE CASE OF MHONDORO-NGEZI COMMUNITY SHARE OWNERSHIP TRUST

In October 2011, amidst controversy regarding Zimplats' compliance with the indigenisation policy, government and the mining company reportedly launched a community Trust referred to as the Chegutu Mhondoro-Ngezi Zvimba CSOT. However no such trust exists yet and it is uncertain whether such an entity will be formed. The only trust established with regards to Zimplats community allocated shares is the Mhondoro-Ngezi Community Trust (MNCT). In fact there is confusion as to the actual name of what was launched in October 2011 and different names continue to be used to refer to the same. What is known though is that the said Trust was meant to facilitate the acquisition of community designated shares in Zimplats and to spearhead local economic development. From interviews and news reports and as suggested in the name, this was meant to cover three rural districts of Chegutu, Mhondoro-Ngezi and Zvimba.

The establishment of the Trust, its operations, the reported donation of US$10 million and the 10% share transfer remain murky. On many occasions prior and after the reported launch of this CSOT, the Minister rejected the Zimplats indigenization proposals and threatened to withdraw the company's mining license. According to Media and politicians, the CSOT launch marked the transfer of 10% of Zimplats shares to the local community. The Herald of 14 October 2011 reported that "...Zimplats gave 10 percent shareholding to the local community".Similarly the Financial Gazette reported that a US$10 million donation from Zimplats to the community and that 10% shares were to be transferred to the newly formed Chegutu Mhondoro-Ngezi and Zvimba Community Trust (CMZCT). These are the facts that one gets when talking to both ordinary people and some government officials. This notwithstanding the company remained in dispute with government over the remainder of shares required to meet the 51% threshold.

Zimplats' indigenisation plan was only accepted in May 2012, after a series of meetings between the company and the Minister. At a joint press conference with the Zimplats chairperson, the Minister announced that Zimplats had finally submitted a plan which "meets our expectations as Government... and complies with the laws of our country in terms of achieving the 51% minimum indigenisation threshold". According to this settlement, the CSOT and an ESOT would each buy 10% of Zimplats shares thus contributing 20% towards meeting the threshold. The rest of the shares would go to the NIEEF. Further, government and Zimplats agreed to establish a joint technical team to come up with transfer details. The then Zimplats board chair, Mr David Brown, suggested that the work of the joint technical team could take weeks if not months. Though an impression has been created that this is a "done deal" the process is far from complete and uncertain. No progress has been reported from the joint technical team and the company's ownership is still the same seven months on. When one considers the initial points of disagreement between Zimplats and government and how this remains unresolved it is difficult to see how the supposed agreement can be effected.

The special mining contract entered between the Zimbabwe government and Zimplats is confidential. Local communities are not involved in the negotiation of a mining contract. Neither is there a requirement for the agreements to be made public. Through media and reading through some of the company publications one can tell that the 2000 framework agreement contained a number of fiscal incentives among them offshore banking and exemption from additional profit tax. Though the government promised to follow up these commitments with requisite legislative changes this never happened. This loophole has been manipulated by government to reverse some earlier promises. For example, government has compelled Zimplats to remit super profit tax. The company' appeal on the basis of the mining agreement was overridden by the country's tax legislation. With regards to transferring 51% of Zimplats equity to locals, it is the 2006 ground release clause that has been subject to debate between the company and government.

35.Though in reality only the minister of mines can issue or withdraw a mining license.
36.Financial Gazette, 21 October 2012
37.Zimplats ASX Announcement, 13 March 2012
38.The Herald, 14 March 2012

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In 2006 Zimplats entered into a ground release agreement with the Zimbabwe government in anticipation of the indigenisation policy. Prior to this, the company had also committed 15% of its shares to local businesses as far back as 2000. This was never taken up for reasons ranging from involved political interference, jostling among local investors and lack of requisite capital finance. Under the 2006 agreement Zimplats released back 36% of the land from the original mining lease to the Zimbabwe government in return for US$153 million or 29, 25% empowerment credits based on the share pricing then. The resource base released amounted to 51 million ounces of platinum “in return for empowerment credits and/or cash”. The 29.25% empowerment credits were to be reached as follows, “19.5 percent empowerment credits, as well as cash credit of US$51 million or 9.75 percent empowerment credit if no cash is forthcoming”. Having returned back the land and gotten the empowerment credits, the company's shares available for local ownership were effectively reduced to 21, 5%. Considering Zimplats' offer of 20%, divided 10% apiece between the CSOT and ESOT, this would further cut the number of shares openly available to 1, 5%. Media reports suggest that the government of Zimbabwe felt cheated. The Herald commented that, “It was extremely naïve and irresponsible for the Implats board to assume it could fortify its operations in Zimbabwe with a flawed and exploitative agreement.”
The final indigenisation agreement with Zimplats suggests that government has been cautious not to completely disregard the 2006 agreement. According to the agreement;

…Government will explore fair value compensation in lieu of empowerment credits for the ground released under the agreement of 24 May 2006. It was proposed to Government that on receipt of this compensation, Zimplats Holdings Limited will make available for sale to the National Indigenisation and Economic Empowerment Fund (“NIEEF”) a 31% fully contributory stake in Zimbabwe Platinum Mines (Private) Limited for cash at an independently determined fair value at the time.

The conditionality that a 31% stake would only be made available subject to compensation for ground released effectively put to rest in the short to medium term government's quest for the Zimplats shares. It remains improbable that the cash strapped government can afford to pay the required compensation, let alone afford the 31% stake. The remainder 20% to make up the stipulated 51% would be met evenly through the community share and employee share ownership trust. Thus on paper the 10% CSOT looks more probable.

39.Ibid
40.Zimplats 2001 Annual Report; Institute of Developing Economies (IDE), 4 June 2012
41.Interview, anonymous Zimplats senior employee, 17 June 2012
42.The Institute of Developing Economies' (IDE) African Growing Enterprise (AGE)
43.Ibid
44.The Herald 14th March 2012
45.ASX Announcement, Indigenisation update, 14 March 2012
46Zimplats, ASX announcement 14 march 2012

The extent to which the agreement guarantees the successful transfer of shares to CSOT is questionable. The company committed to providing an interest free loan to enable the CSOT to purchase the 10% stake.

> …shares in the operating subsidiary representing 10% of the [enlarged] issued share capital of that company will be issued to the Community Trust at the independent valuation previously submitted to the Government. Zimplats Holdings Limited ("Zimplats") will provide an interest free loan to the Community Trust to fund the shares and the loan will be repaid from dividends.

Some analysts have questioned the legality of a company financing the purchase of its own shares, something that is clearly prohibited in other jurisdictions. The CSOT would repay the loan by forfeiting its share of dividends. Zimplats has not declared dividends since 2003 and operating profits are being reinvested in the expanding the mine. It is thus unlikely that if indeed shares are transferred communities will see immediate benefit. While the government states that value for shares to be disposed to NIEEF will be calculated taking into account "… the State Sovereign Ownership of mineral…" there is no specific weighting for how much of a deduction this will account. It is also not clear whether this applies to shares disposed to CSOT.

Though the community entity that exists is Mhondoro-Ngezi CSOT, some within government and media still refer to Chegutu Mhondoro-Ngezi Zvimba CSOT, which was supposedly launched in October 2011. However, basing on the Cabinet Operational Framework for Community Share Ownership Schemes or Trusts, a CSOT "ought to be formed" at district level. The reference to "Chegutu Mhondoro-Ngezi Zvimba" CSOT is then somewhat of an anomaly as this potentially combines three districts. In a focus group discussion, councilors from Ngezi district argued that such a complex name was born out of greed and an attempt by some politicians to incorporate other districts which, geographically speaking, would not qualify. Prior to the Trust launch, Chief Nyika, in whose area Zimplats is mining, had threatened not to take part in the proposed Trust insisting "…his people had formed their own Mhondoro-Ngezi Community Development Foundation (MNCDF)..."However strictly speaking, Zimplats operations transcend Mhondoro-Ngezi district boundaries, encroaching into two other districts namely, Chegutu and Zvimba. A 77km road constructed by the company connects mining operations in Mhondoro-Ngezi with a processing plant in Selous which technically overlaps Mhondoro-Ngezi. In such a case according to the cabinet CSOT framework a Special Purpose Vehicle (SPV) will be used to"…ensure equal distribution of dividends amongst the affected Trusts" (by implication districts).

The Mhondoro-Ngezi Community Trust is, however, the most relevant since it hosts the most significant aspects of company's operations. It is likely to bear most of the socio-economic and environmental impacts of the mine. The Board consists of four chiefs, the Ngezi Rural District Council (RDC) chairperson, Council CEO, a women representative and a representative for people with disabilities. The chiefs assume board chairpersonship on a rotational basis. Though the board has met on more than one occasion since 2011, the CSOT is yet to have an independent office and start operations. So far, the board has relied on RDC offices for its meetings. If one considers how other CSOTs are operating, it is likely that the CSOT will operate from the RDC offices. There is thus risk that these Trusts might be subsumed by RDCs and end up functioning as local government subunits, thus failing to improve community involvement in local development. Locally there is frustration and growing impatience over the empowerment deal. Residence and local leaders question why, a year later, nothing tangible has come out of the CSOT and the US$10 million donation. The impression from media and politicians has been that this money was a once off payment but this is not the case.

47. It must be noted that the Operational Framework for Community Share Ownership Schemes or Trusts came months after the launch. The use of the term Chegutu Mhondoro-Ngezi Zvimba may thus be representing something of a hangover.
48. The Standard, 24 September 2011 accessed at http://allafrica.com/stories/201109260892.html on 7 November 2012

It is seldom mentioned that the US$10 million is actually staggered over a period of three years. According to Zimplats, this will be done in amounts of approximately US$3, 3 million from 2012 to 2014. Sources within government suggest that the US$10 million is actually meant to covert the three districts of Chegutu, Mhondoro-Ngezi and Zvimba. What this means (and again something hardly stated) is that each district will get about US$1, 1 million annually until 2014. This money is towards corporate social responsibility projects which henceforth will be managed by the community trusts instead of the company. It may thus be that Chegutu and Zvimba will soon form own community trusts. The government of Zimbabwe no longer considers social investment credits for foreign firms. "We are not going to consider social grants such as building schools and clinics. What we have said is the communities will be able to do it themselves when they get the 10 percent share of the profits."In the company's view from 2014 onwards the company will cease CSR support since the community would have purchased 10% stake. Whether or not the 10% shares will also be shared equally between the three community trusts has not been explained. So far, the assumption is that it is the Mhondoro-Ngezi CSOT that will access the entirety of the shares.

Before discussing and analysing the research findings it may be necessary to say something about the Zimplats employee share ownership trusts (ESOT). Generally, the problems associated with the ESOT are similar to those of CSOTs. Zimplats' empowerment proposal suggested that,"... a further 10% of the [enlarged] issued share capital of that company will be sold to an employee share ownership trust for the benefit of all full time employees ...". This will be financed through a loan facilitated by the company. However, repayment of the loan will attract interest. As with the CSOT's case the length of the repayment period is uncertain since the company is on an expansion mode. Moreover much depends on the continued profitability and performance of platinum prices. Since this scheme was available to willing employees, it remains to be seen whether the employees would buy into the idea.

The policy does not prohibit indigenous entities that would have benefited from purchase of shares from disposing off the same shares at some stage. In fact NIEEB, points to the "... potential to receive a lump sum..." from the sale of such shareholding as one of the advantages of the policy. This presents a potential contradiction. Firstly the disposal of such assets can only be done to indigenous entities within the limitations of the 51% principle. This is constraining where there was potential to realise more value from the shares from none indigenous competitive binders. It remains to be seen how the government will govern this, now in the context of a proposed minerals exchange. Philosophically, one can foresee a share value trap with regards to the 51% portion of shares reserved for indigenous ownership. Considering the strict legal definition of "indigenous Zimbabwean" according to the law, will the government operate two markets for listed companies, one for indigenous shares and another one for foreigners? This would be even more problematic for companies with more than one listing.

49.DailyNews 21 January 2011
50.Zimplats ASX Announcement, 14 March 2012

5. DISCUSSION AND ANALYSIS OF FINDINGS

Zimbabwe's indigenisation and empowerment policy and the related attempts at organizing community involvement in resource extraction and local economic development can be analyzed at three levels. These can be identified as (1) policy as legislated (2) policy as pronounced (either through public verbal pronouncements or through official documents) and (3) policy as practiced. From this study it is safe to conclude that policy as legislated is not necessarily the same as policy as pronounced nor is it equal to policy practiced, neither is policy pronounced synonymous nor interchangeable with policy practiced. Since there has already been much discussion about the rationality or otherwise of the policy, this analysis focuses more on whether the policy as currently pronounced and as practiced offers something of a viable opportunity to develop local communities. Viability here will be measured on the basis of international experiences and emerging international best practices. The assumption is that from the stand point of community economic development, the emphasis on community is a vital lens through which indigenisation and empowerment can be viewed.

5. 1. Inadequate legal backing for CSOT

Contrary to popular opinion and government pronouncements, there is no legal requirement for mining companies to dispose shares to communities or CSOT. The same can be said about ESOT though the latter is mentioned in the principal act and subsequent regulations. In fact, nowhere in the principal act does the word "community" appear let alone "community share ownership". It appears as if the concept of CSOT was an afterthought and a reaction to criticisms that the policy lacks broad based empowerment. That the ministry is responding to criticisms is in itself a positive thing. Having been excluded in the principal act and subsequent regulations, on March 25th 2011, government came up with an amended Statutory Instrument 21 of 2010 which provides for CSOTs but this does not make mandatory the disposal of 10% shares to communities.
The NIEEB green handbook incorrectly states, "In terms of Section 14 B of Statutory Instrument 116 of 2010 and General Notice 114 of 2010 it is a requirement that communities must acquire at least 10% in mining companies that operate in areas they live in."However the referred to section is only defining or "qualifying" the CSOT the "…may be taken into consideration when assessing the extent to which a business has achieved or exceeded the minimum indigenisation and empowerment quota". This according to Section 4 (b) 4 is provided for where a "… a business is wishing to use the qualifying scheme…" Thus the regulation **does not require but clarifies** how a willing foreign owned business may use CSOT to fulfill the indigenisation minimum requirement.

In the absence of clear legal backing, the CSOTs will only participate and own shares at the discretion of the Minister and mining companies. Section 4 (b) 4 referred to above implies that the mining company has to be willing. According to NIEEB the 10% Community Share Ownership is also applicable to indigenously owned mines, the principle being that communities are entitled to 10% shares in every company extracting resources in their area. The acknowledgment that communities are entitled to directly benefit from mining activities is progressive. However, without making this legally mandatory, it is difficult to imagine how this can be enforced. Curiously, the cabinet framework on CSOTs lists several functions for the community trustees. However, none of these speak to acquisition, management or disposing of shares provided for by the IEE policy.

5. 2. Lack of Implementation Clarity

The official government position is that nearly all mining companies have complied with requirements of the law. In some instances the pronouncements refer to companies "surrendering" shares though the law stipulates "selling" of shares. It is difficult to establish how many companies have disposed of shares and what government defines as complying. Complying can mean one of two things. Firstly it might be that companies have successfully sold off stake to indigenous entities as required by the law. Secondly, it may mean that a company has submitted an indigenisation plan acceptable to the Minister. However, an indigenisation plan is merely a promise to meet the 2014 51% indigenisation requirement. NIEEB does not publish details of how many mining companies have either disposed of shares successfully or submitted plans and how. NIEEF which is responsible for the warehousing of shares on behalf of indigenous Zimbabweans (in the event of slow uptake) does not provide information about whether they are actually warehousing any shares and how the purchase of such shares was or will be financed. A question that arises from the warehousing role of NIEEF is whether the fund will buy shares in non-performing foreign owned mining companies, just for the sack of achieving the 51%.

51.Understanding Indigenisation and Economic Empowerment, What it is, Who Benefits, How to Benefit, National Indigenisation and Economic Empowerment Board (NIEEB), December 2011

Within government, there appears to be contradictions over what the policy entails and how it ought to be implemented. This is generally known through media since pronouncements and counter pronouncements have been made. It is known that the two dominant parties are in disagreement over the policy. However, during interviews it was worrying to note the lack of consistence from one public official to another over content issues. For instance, according to some officials, NIEEF and the Sovereign Wealth Fund is one and the same thing while for others the two are separate and should be so. The same confusion is found in describing the entity that is Community Trust in respect to Zimplats community allocated shares. With regards to CSOTs and in particular as relating to Zimplats shares it is not obvious which vehicle has been created to facilitate the handling of shares on behalf of local communities. Operationally, the implementation has been very slow. Publicly, the event of October 2011 launched a "Chegutu Mhondoro-Ngezi and Zvimba Community Trust", a US$10 million donation was made and 10% shares were transferred to the same. Follow on research has shown that no such Trust was formed. Instead there is the prospect of a special purpose vehicle composing of at least three community trusts representing respective districts. It seems there is some unwillingness to explain full facts from the government side. Community members and local leaders are not aware that the shares will actually be purchased from a loan and that the US$10 million will be staggered over three years and shared among three districts. Unbeknown also, is the company position that once shares have been transferred to the CSOT CSR support will be halted since the community will be deriving dividends. However the community is unlikely to see any dividends in the short to medium term since these will go towards loan repayment. Thus the implication of the community taking up stake has not been fully explained. Finer details are only available from the company side through announcements on the Australian Stock Exchange (ASX).

During interviews, some government officials became evasive and agitated when pressed about the lack of clarity with regards to the community shares and the supposed US$10 million donation. While there is a lot of romanticism for example one official remarking "... they (communities) don't even know what to do with money now..." there is general unwillingness to provide specifics. One media report noted "...there has been no fanfare surrounding the issuance of shares certificates to beneficiary communities, nor has there been much publicity about the trust deeds." From this research it could not be ascertained whether the Mhondoro-Ngezi Trust has been constituted in terms of a deed of trust. Information obtained was contradictory and following up with the deed office proved impossible. Prior to the CSOT, Zimplats had a trust for CSR projects and this would continue to hold monies until the Mhondoro-Ngezi Community Trust is registered and operating an own account.

There is interest about the CSOT and the indigenization and economic empowerment policy as a whole, but in the absence of information and a platform, meaningful participation is not possible. A local councilor had this to say, "... indigenisation as far as I am concerned, is not yet a clear issue... We only hear about it, we have not seen it...we need education on what this thing is about"According to the councilor, "It must be clear what the local community is getting..." During discussions, poverty alleviation was placed as number one priority with some suggesting that "... before we go for shares, let's focus more on poverty alleviation..."The Zimbabwean law does not acknowledge the community's ownership of mineral wealth. The approach to CSOTs is not rights based. At best, it is a halfhearted attempt at asset based community development. For this reason, mining agreements are bipartite between national government and concerned companies.

5. 3. Lack of Community Involvement

The implementation of the CSOTs is top down and paternalistic at best. Other than members of the board, there is no sense of ownership of the Trust among community/district residence. The sense of exclusion emanates from the way the Trust was formed and is structured. Residents have questioned the extent to which the Trust can be defined as a community entity. The cabinet CSOT framework does not provide for community participation or involvement of pre-existing community organizations in an area. The General Notice 114 of 2011 requires "all non-indigenously owned companies to submit Revised Indigenisation Implementation plans". These must be approved by the Minister and there is no mention of community engagement though one aspect of these plans would be the transfer of 10% of shares to community. The top down nature of the Trust is not only seen by the way it is originated but the fact that Chiefs are heavily represented. Mhondoro-Ngezi Trust has four Chiefs who serve as chairpersons rotationally. Some within the community and indeed among local councilors argue that the office of Chiefs has been compromised by politics and hence they are not the best people to unite the community for the purpose of maximizing benefits from resources. They also note that having a leader is not enough, "We might have a leader, but he is not everything about us..."

52.Zimplats senior employee, electronic interview,
53.Interview with anofficial from NIEEB, September 2012
54.Local Councillor, Mhondoro-Ngezi Rural council, 11 September 2012

The sense of exclusion is represented in statements by local leaders below. One Chief went as far as describing the whole affair as a lie. "... this whole thing is a cheat... it is just speech, nothing is being done ... (the) ...whole thing is an imposition because we have no say, you must just say yes..." The Chief continued, "What are mothers getting from this... it is only comrades. And some of these comrades were year olds when the war started...This whole thing is political. Chiefs are just being forced to support this..."Asked about community needs and perceptions in the wake of the CSOT and indigenisation, one local councilor remarked,

This issue is a top to bottom approach... if we go into community, people don't know about this. There is no community and grassroots involvement. Most people do not know. Even as we tell you what they want, the truth is we are only speculating what people actually want because they are not participating...so we actually do not know what people want.
The Minister has sweeping powers over the establishment and management of community trusts and generally the implementation of the indigenisation policy as a whole.

5. 4. Representativeness

Related to the lack of community involvement is lack of community representation in the Trust. Of the 11 – 15 proscribed board members only one (council chair) is an elected official. There is a sense among the community that at least, a few councilors should have been included in the board of Trustees since these are elected representatives. The second official from the council who is part of the board is the CEO. Councilors opined that the decision on whether or not the CEO should be in the board should have been left to their discretion as council. They argued that since the CEO is an employee of the council it is improper for him/her to represent them in a governance structure. The role of the CEO as far as the board is concerned should be restricted to that of an administrative officer and not a decision making. Considering that the council CEO is the chief day to day administrative officer one can almost see the logic of him/her being in the board. However such an appointment could be smoothened by taking on board more of the local councilors.

Several Community Based Organisations (CBOs) could have also been represented according to residence. These include churches, youth groups, local business owners, local women's groups/associations and other associations. The cabinet framework provides for youth, women and disabled persons representation in the Trust. However, the representation of one each among the categories out of a board of 11 to 15 appears too little to guarantee sufficient influence in decision making. Other than the power given the minister, there is also no clear and transparent formula as to how these special interest representatives are chosen.

Broadly looking, structures responsible for policy implementation are dominated by adult males. As of October 2012, of the 15 members of the National Indigenisation and Economic Empowerment Board (NIEEB) only three were women. It is notable that the vice-chairperson of the board is a woman. In the Mhondoro-Ngezi community Trust's board, there is only one woman. The Mhondoro-Ngezi Trust according to local councilors only had one woman. The adult male dominance owes in part to social-cultural constrains that limit women participation in public life. However the government could make legal provisions for the participation of more women, youth and people with disabilities.

It must be acknowledged, however, that at government level, youth participation is enhanced by the close corporation between the Ministry and the Zimbabwe Youth Council (ZYC). According to the ZYC, a proposed youth policy will require 25% youth participation in all social and economic spheres. Several funds exist to support youth start up business projects. The degree to which access to these funds has cascaded to the community level and spread to the rural areas has room for improvement. The few young people spoken to in Mhondoro-Ngezi expressed ignorance about opportunities presented by the indigenisation policy. This is a marked difference from Harare where the researcher came across young people who not only claimed to know but had in fact attempted to apply for several funds availed by the policy.

On the whole, there appears to be no special emphasis or strategy at the level of community trust to empower women, youth and the disabled. This is despite the fact that the principal act lists women, youths and disabled persons among groups that must specifically benefit from the policy.

55.Focus group discussion, 11 September 2012
56.There are several initiatives and financial facilities targeted at supporting young people but the extent to which these are accessible to all young people is questionable. The Meikles Youth Empowerment Facility for instance only supports projects within 100km radius from Harare. Other facilities are the CBZ and CAPS (Kurera/Ukondla Fund

5.5 Sustainability

Perhaps the most important question to consider about CSOTs in the mining sector is sustainability. This can be looked at from the standpoint of firstly, the sustainability of the CSOTs initiative itself and secondly how CSOTs address social, economic and environmental sustainability relating to mining. The sustainability of Zimbabwe's CSOTs as a community development initiative has been addressed in part. One can conclude that the lack of legal and rights based approach, lack of community involvement, top heavy handedness of the approach, lack of clarity and in particular the funding model of the initiative all negatively impact on the extent to which the initiative is sustainable. The government of Zimbabwe has no capacity to fund the acquisition of shares for or on behalf of community hence the initiative has to by and large rely on the generosity of companies involved - generosity which is not assured. It seems also that the policy does not exclude the possibility of beneficiaries selling off shares. For instance, explaining the benefits of the 5% – 28% shares accessible to employees the Ministry points out that this will provide additional earnings from not only dividends by “a potential lump sum when they dispose of their shareholding upon retirement”.

The finite nature of mineral resources means that reliance on mining can only be for a limited period of time. The existence of ghost towns such as Munyati mine, Empress Mine, Venice mine, Mhangura, Kamativi and Dorowa suggests that resource extraction in those areas was not sustainable. Years of mining in those areas failed to activate alternative economic activities to maintain social-economic vibrancy beyond the lifespan of the mines. One thus needs to consider whether the CSOT model as currently construed addresses the sustainability question. Zimplats has a 50 year lifespan. It is uncertain how long it will take for communities to repay the loan and start reaping dividends.

So far, the Mhondoro-Ngezi community has benefited from CSR projects by the company which have seen construction of schools, health facilities and a farming project among others. The US$3.3 largesse (considering that the US$10 million donation will be shared among 3 districts) spreading from 2012 to 2014 is still to be used and is likely to go towards construction of schools, health facilities, dip tanks, roads and other public facilities as provided for by Statutory Instrument 21 2010 amended 25 March 2011. Beyond 2014, if the company's position on ceasing CSR donations is to stand, the community would have to rely on dividends from its portion of shares in the company. It is plausible that Zimplats has offered an interest free loan for the “community trust” but it is unlikely that that this would have been paid up by 2014 since the transaction is yet to take place. The prospect of CSR funding drying up and outstanding loan repayment obligations threatens the sustainability of projects listed above. This is further complicated by the fact that it may take some time before the company declares dividends since profits are being invested towards expansion.

The acquisition of shares by communities means that the communities will directly benefit from a windfall in the event of platinum prices picking. However, this also means the community is directly sharing the risk of price dipping. Among the examples of communities that have had direct interest in mining is the Bafokeng. Though the Bafokeng model has been cited as inspiration for Zimbabwe's CSOT it is seldom acknowledged that the Royal Bafokeng do not only own shares, but because the law protects them as owners of minerals beneath their soil, they are entitled to royalties. Receipts from Royalties mean that the effect of a price slump will be minimal since 22% royalty applies to per ounce of resource extracted rather than being profit dependent. If the Zimbabwe's CSOT concept is to live up to the letter and spirit it purports to derive inspiration from, (i.e. the idea that communities have a stake in the mineral beneath their soils) then local communities ought to receive a share of royalties. This will also reduce the burden of purchasing the 10% shares or the repayment of the loan thereof.

One of the most effective ways to ensure sustainability of mining communities beyond the lifespan of a mine is by promoting local businesses through procurement and then supporting this to develop other business competencies that are not necessarily dependent on the mine. The current initiative does not include a strategy for CSOT to grow small businesses and alternative economic activities. 50% local procurement is legislated but this has not been enforced. Despite statements by government officials about need to boost local procurement and the possibility to expand CSOT business interest beyond the 10% stake there is not much to show for this at practical level. Moreover, local procurement in the policy and law is not construed to mean local community procurement. During a focus group discussion Mhondoro-Ngezi district residents expressed a desire for the CSOT to assists with business related skills training and seed capital for local entrepreneurs in addition to social services and infrastructure support stipulated by government. The current scenario presents several uncertainties for sustainable development of the community.

57.Understanding Indigenisation and Economic Empowerment, What it is, Who Benefits, How to Benefit, National Indigenisation and Economic Empowerment Board (NIEEB), December 2011

Environment wise, there is not much reflection on the environmental implications of resource extraction and the possible role for CSOT. Yet the trust could be a vehicle to ensure adequate and fair compensation in the event of relocations and environmental impacts emanating from mining activity. Statutory 21 of 2010 section 4 (f) includes "gully reclamation and other works related to soil conservation and the prevention of soil erosion, and the conservation of the environment generally" among the uses of monies accruing to the Trust. One hopes that this will not be manipulated to absolve mining companies of responsibility to rectify environmental damage caused by the mines. Equally, since CSR obligations emanate partly from the fact that mining activities have socio-environmental impacts, it can be argued that this responsibility must be retained. This is especially so, since communities are actually purchasing the shares. It is questionable why change of ownership may absolve a company of CSR obligations given that it remains a corporate citizen with obligations to both state and society.

5.6 Prospects for CDAs in Zimbabwe

Community Development Agreements (CDAs) are a way of institutionalizing a tripartite and mutually beneficial relationship between mining companies, government and communities. This short subsection considers prospects for CDAs within the context of CSOTs and Zimbabwe's indigenisation program in the mining sector. Several terms have been used in different contexts to refer to agreements entered between mining companies and communities. These include, Voluntary Agreements, Partnership Agreements, Impact Benefit Agreements (IBAs), Community Contracts, Landowner Agreements, Benefits Sharing Agreements, Social Trust Funds, Empowerment Agreements and Community Joint Ventures among others. Generally, CDAs can help address one of the major shortcomings of Zimbabwe's CSOTs as currently construed, i.e. the lack of community involvement. CDAs hinge on the promotion of community involvement, community employment and skills development, local procurement, environmental sustainability, growth of small business and development of a parallel economy that can survive mine closure. CDA are meant to enable the realization of the developmental potential of extractive industries at the local level.

The World Bank Mining CDA Resource Book (2012) identifies two main visions for a CDA;

1. Improving relationships between companies, communities, governments, civil society, and other stakeholders; and

2. Promoting sustainable and mutually rewarding benefits from mining projects, including pro-poor initiatives and other strategies which may be beyond the immediate scope

CDAs can play a valuable role in managing community expectations and thus avert possible conflict. They also set terms for multi-stakeholder engagement that include the mining company, local communities, local and national government, and non-governmental organizations. This guarantees mutual respect and ensures involvement of all parties in an open and even forum. CDAs are a vital vehicle for building trust and confidence among different potentially conflicting parties. Benefits include, clarity and transparency, increased engagement among stakeholder, development of community capacity, fostering good business practices and sustainability.

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There is no one size fits all model for a CDA. The development of a CDA should be informed by the local context, in particular "the applicable regulatory structure(s) specific community/stakeholder interests, values, concerns, and capacity". However, from the studies that have been conducted over the past few years, one can identify what may constitute building blocks in coming up with a CDA. These have tended to focus on, timeframe and process, stakeholder participation, capacity of participating stakeholders, community identification, funding and expenditure requirements, obligation and responsibility, grievance and dispute resolution mechanisms, short-medium and long-term development plans and accountability and transparency. The World Bank's Mining CDA Source Book describes a process, through which a CDA can be arrived. This can be illustrated diagrammatically as follows;

Four Key Phases for CDA development and Implementation

The first phase which is stakeholder engagement entails listing potential stakeholders and interest groups and identifying and mapping qualifying communities. A key output from this phase can be an engagement plan agreed to by all stakeholders. Phase 2, capacity development consists of needs assessment, development of a program and implementation plan and identification of potential partner organisation. The third phase involves presentations by community representatives and other stakeholders which will then define the mandate and vision of negotiating bodies. The fourth and final phase provides for the coming up with implementation and feedback mechanisms. Implementation mechanisms include issues such as share investment initiatives, community investment, local procurement and continuous participatory needs assessment and monitoring and evaluation.

CDAs as provided for in the Mining CDA hand book provide an enormous opportunity for a genuinely broad based community involvement in extractive sector governance and benefit sharing. Currently Zimbabwe CSOTs and mining governance in general is limited mostly to transfer of shares and money handouts. CDAs provide scope for broader benefits by considering issues of procurement and community investment. Through CDAs the pact entered with mining companies can best meet local needs and development aspirations. This is because in CDAs identification of local needs and priorities precedes the actual agreement. A major flow in the current process is that it did not arise from scientifically identified community needs and local developmental objectives. In fact, local needs appear to have been invented to justify a role for CSOTs. CSOTs have not been an outcome of a grassroots based dialogue and priority identification process.

Instead, the formulation and implementation of CSOTs is centralized and paternalistic. Community engagement is not prescribed. CDAs can be a viable alternative or corrective model to implement the current indigenisation drive with respect to community benefits without compromising the key of objective of the current policy. In fact CDAs have the potential to enhance and deepen the current drive. Critics have pointed to the seemingly ad hoc manner in which the CSOT have been formed and implemented. The four phases suggested by the MCDA Source Book provide a practical, multi-stakeholder, sustainable and orderly guide that can be followed. It is needless for others to feel left out, when mechanisms for an all involving process exist.

58.Mining Community Development Agreements Source Book, March 2012, pg x
59.See for example, James Otto, Community Development Agreements: Model Regulations and Example Guidelines, 2010; ERM (Environmental Resources Management Ltd.) Mining Community Development Agreements: Practical Experiences and Field Studies, Report prepared for the World Bank (Oil, Gas and Mining Unit). June 2010 and World Bank Extractive Industries Sourcebook, Good Practice Notes: Community Development Agreements, Centre for Social Responsibility in Mining, University of Queensland, 2011.
60.World Bank, Mining Community Development Agreements Source Book, March 2012, 3

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6. CONCLUSION AND RECOMMENDATIONS

At a conceptual level, CSOTs present an opportunity to focus on local economic development and allow local participation in the development process. Such a shift is particularly important for an industry that has been known to scar lungs and landscapes of communities more than any other. In spite of the short comings of Zimbabwe's current initiative, there is a wide awakening among mining community residents. More and more, operations of mining companies are being scrutinized, government actions are being questioned. It may be that one of the spin offs from the CSOTs and indigenisation, though far from perfect is a socio-political dynamic where communities now have a basis to question extractive sector governance. This may not yet be as pronounced as it should, but the interest among residents and local leadership in Mhondoro-Ngezi in the extraction and governance of local resources is significant and resonates with what is happening in Mutoko and Marange.

For the CSOTs to deliver on their promise to improve socio-economic conditions of communities, radical changes, however, need to take place as far as the present framework is concerned. To date, the establishment of CSOTs remains cloudy both at community level and national levels. In particular despite the establishment of a board, the operational status of Mhondoro-Ngezi Community Trust remains doggy. Information within government on particular details as to what happened to the US$10 million donation, the existence or non-existence of trust accounts, mechanism for the financing and transfer of shares remain unclear. Most worrying though is the absence of the community, the intended beneficiary, at the discussion table. The implementation is hugely paternalistic and top down and susceptible to manipulation for political patronage. The absence of political consensus and inadequate legal and constitutional backing exposes the policy to reversal in the event of new political leadership taking over government. Notably the issue of community rights to mineral resource is not coming up as should within the ongoing constitutional debates.

International experience shows that a starting point for progressive community development in and around mines should be the acknowledgement at law and policy level that communities have the right to minerals. In most countries, the community benefits from mining activities have taken forms other than CSOTs. CSOTs have their risks and advantages and these need to be considered with community involvement. Community share ownerships alone are not enough and in fact need not take preeminence over other strategies for community development. The case of South America and South Africa's Royal Bafokeng shows how royalties shared with central government or entirely remitted to local community can make a huge difference. This option would need to be considered in Zimbabwe where part of royalties can go directly to local government. Zimbabwe's CSOTs scheme does little if anything to tap into international experience and best practice.

6.1 Recommendations

A number of recommendations can be made to government and extractive sector advocacy groups basing on the international best practices, international experience and the strength and weakness of Zimbabwe CSOT initiative.

6.1.1 Policy related recommendations

1. If the policy objective is to ensure that all mining communities own at least 10% shares in companies this must be unambiguously provided for in the law. This can be done by amending the enabling act and clarifying further Section 14 (b) of Statutory Instrument 21 of 2010

2. Other than providing for CSOTs ownership, mechanisms should be provided for the central government to share royalties with local communities through local government. This is important since dividends are unlikely to be realised anytime soon,

3. Though procurement is one of the areas addressed by the indigenisation law and policy with pronouncements indicating that thinking on CSOT goes beyond holding stake in mining companies, this needs to be pursued and requisite instruments set in place. The focus here should be to use mining to (1) encourage indigenous and community procurement, (2) grow small businesses and (3) develop a parallel economy capable of surviving mine closure,

4. Improve community involvement in the formation and running of CSOTs. This can be done by, (1) decentralize and democratize their formation and management, (2) give more role to the local councils, (3) provide for fair representation of CBOs, Churches, Local NGOs, women and other local groups in the board of trustees. This inclusivity is already happening in most rural councils in Zimbabwe. Usually these groups participate in council periodic meetings.

5. With regards to community shares offered by companies, government's role should be to legislate and at most facilitate dialogue between companies and communities. The arrangement by Zimplats to dispose 10% stake to the Community Trust was between the Minister and the company. This is anomalous since the actual parties to the deal are the Trust on behalf of the community on one hand and Zimplats on the other. From the research it is clear that the contents of the deal are not clear to community members, councilors and even to at least two board members.
6. Government through the relevant ministry and through the Rural District Councils should make effort to disclose all information relating to mining agreements, setting up of CSOTs, mechanisms for acquisition of shares and what this means for CSR obligations of the companies, donations and pledges made to the community and any other opportunities available under IEE policy. There is no reason why the CSOT deed of trust cannot be made available through RDC office or the Trust office, where it exist.
7. Since Zimbabwe is a politically divided society, there should be an attempt to convince community residents that the CSOTs are non-partisan and that all are welcome to take part and will benefit from it.
8. Legislate for Community Development Agreements (CDAs) as an official platform for multi-stakeholder engagement and terms of responsibilities for mining companies. This will help address the existing lack of community involvement in CSOTs.

6.1.2 Recommendations for CSOs

1. There is need to deepen grass roots advocacy in the extractive sector governance through workshops and dissemination of information,
2. Advocate for the democratization and decentralization of CSOTs and the inclusion of CBOs and other community level social groups,
3. Target should be placed on building capacity of CBOs as a central focus for extractive sector advocacy,
4. There is need to police the formation and implementation of CSOTs and building local level interests and capacity to demand involvement,
5. There should be a campaign to lobby for the use and legislating of CDAs as a multi-stakeholder platform for engagement with mining companies. This begin through a multi-stakeholder workshop,
6. Encourage government and parliament to learn from international best practice through workshops,
7. More research is required to examine international best practices on community development and natural resource governance and understand how these can be applies to Zimbabwe's situation. This can be a tool to engage with mining companies and policy makers,
8. Insist that disposing 10% shares to CSOTs does not absolve companies of corporate social responsibility and environmental rehabilitation obligations