



The Lesotho legal framework and the protection of the socio- economic interests of host communities affected by diamond mining

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Thesis accepted in fulfilment of the requirements for the
degree *Doctor of Laws* in Perspectives on Law at the
North-West University

Graduation: June 2025

ACKNOWLEDGMENTS

I used to think that I was an ambitious individual. This is why I decided to enrol for an LLD, not knowing that it would be by far the most difficult undertaking of my life. It took over two years, before I settled on a topic that would eventually be approved. This is after I had worked on about seven topics that were abandoned. The changing of supervisors and the advent of the Covid-19 pandemic hit compounded the situation. When things settled, the hard work began. I constantly felt sad, depressed, anxious, and scared. This Doctor of Law (LLD) process made me doubt myself on so many occasions. I was tested to an extreme point. Today, I still cannot believe that I am penning this part of my thesis. I am in disbelief, but grateful.

Prof. Germarié Viljoen years ago I asked you to be my supervisor and you responded positively. I believe that that is when my hope of ever obtaining my LLD was restored. Words fail me, when I think of describing the kind of support and guidance I have received from you over the past years. In my life, you are the epitome of providence, and I will forever be appreciative of that. You have changed my life in ways that no one else has, and I am grateful for that. Thank you for your insightful assistance and comments that have shaped my study into what it is today.

Prof. Nic Oliver I extend my heartfelt gratitude to you, for your invaluable contribution to the matrix incorporated in this thesis. Your expertise and insight have significantly enhanced the depth and rigour of the comparative analysis conducted throughout this study.

Mme le Ntate kea leboha. We did it. I would not have achieved this without your prayers. Without you, I am nothing; and I hope you know that.

I would like to thank my brothers and sisters: Maema, Mantsane, Libuseng and Bibi, for their continued support and encouragement throughout this life-challenging experience. I appreciate everything you have done for me; and, I could never thank you enough.

I would like to express my deepest gratitude to my friend Pakiso, for his unwavering support and encouragement during the most challenging moments of my thesis journey. When I considered abandoning this project, Pakiso was there to motivate me and remind me of my capabilities. I am thankful for his belief in me and his willingness to support me throughout. Thank you, Pakiso, for being a constant source of strength and motivation. Your friendship means the world to me. I would not have finished this project, if it was not for you. No amount of words could ever convey how much I appreciate what you did for me.

I thank my friends Lucia, Ithabeleng, Puleng, Retlotliloe, Phakama, Relebohile Thebe, Pinki, Tseki, Bello, Skady, Maki, and Ausi Mpoi, for their support and constant prayers.

To my babies: Kari, NT, KB, Tebo and Baby Mo, the sky is the limit; your dreams will forever be valid.

To my family Elliot Senior and Elliot Junior. Thank you.

ABSTRACT

Lesotho, amid a recent surge in mining activities, faces critical challenges. These relate to the adequate protection and promotion of the socio-economic rights of diamond mine host communities. Historically, the country has attracted substantial investments in its mining sector. Yet, corresponding legislative and policy frameworks for safeguarding the welfare of local communities have been perceived as lacking. The absence of robust legal provisions mandating corporate social responsibility (hereafter *CSR*) initiatives and equitable participation in mining ventures has left mine host-communities vulnerable to socio-economic disparities and environmental risks. Lesotho's constitutional, policy, and legislative landscape – albeit reflecting a commitment to align with international mining and sustainability standards – engender challenges in the mining sector. This is due to various factors, including institutional limitation. Limited community and governmental equity in mining ventures, coupled with reliance on an external labour force, exacerbate these challenges. This hinders the achievement of sustainable and inclusive development outcomes in Lesotho's diamond mining sector. These dynamics underscore the urgency of comprehensive reforms. These would seek to enhance governance structures, strengthen regulatory frameworks, and ensure an equitable distribution of mining benefits among Lesotho's local communities.

Against this backdrop, this thesis critically examines the extent to which Lesotho's existing constitutional, policy, and legislative frameworks effectively protect and promote the socio-economic rights of diamond mine host communities. Through a comparative analysis involving regional peers such as Botswana and South Africa, known for their established mining governance frameworks, this study seeks to identify best practices. Ultimately, the research strives to propose tailored policy recommendations, to foster equitable and sustainable development in Lesotho's mining regions.

Keywords: Mine host-communities, community participation, socio-economic rights, legislative framework, policy framework, constitutional framework.

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AIDS	Acquired Immune Deficiency Syndrome
AU	African Union
AMV	Africa Mining Vision
Banjul Charter	The African Charter on Human and Peoples' Rights
CALS	Centre for Applied Legal Studies
CBL	Central Bank of Lesotho
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CRC	Convention on the Rights of a Child
CRPD	Convention on the Rights of Persons with Disabilities
CDP	Community Development Programmes
DPSP	Directive Principles of State Policy
DTC	Diamond Trading Company
EITI	Extractive Industry Transparency Initiative
ESG	Environmental, Social and Governance
FDI	Foreign Direct Investment
HIV	Human Immune- Deficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
IRM	Independent Reporting Mechanism

KPC	Kimberly Process Certificate
KPCS	Kimberly Process Certification Scheme
LMDC	Liqhobong Mining Development Company (Pty) Ltd
LRC	Legal Resource Centre
MCDF	Maluti Community Development Forum
MMSDP	The Mining Minerals and Sustainable Development Project
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
NAP	National Action Plans
NEMA	National Environmental Management Act 107 of 1998
NRC	Natural Resource Charter
NRGI	Natural Resource Governance Institute
NWA	The National Water Act
OECD	Organisation for Economic Cooperation and Development
OGP	Open Governance Partnership
OHUNCHR	United Nations High Commissioner for Human Rights
OSISA	Open Society Initiative for Southern Africa
Protocol on Gender-	SADC Protocol on Gender and Development
PPP	People Planet and Profits
PSNR	Permanent Sovereignty over Natural Resources
PWESCR	Programme on Women's Economic, Social and Cultural Rights
PWYP	Publish What You Pay
SADC	Southern African Development Community
SAIIIA	The South African Initiative of International Affairs
SAPL	South African Public Law

SERAC	Social and Economic Rights Action Centre
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations Children's Fund

CHAPTER 1 INTRODUCTION

1.1 Background

Mineral resources and their derived products are essential for the sustenance and growth of modern societies and economies.¹ These resources help to fulfil basic needs and play a key role in areas such as mobility, transportation, energy generation, food supply, and health services.² For mineral products to satisfy the aforementioned developmental needs, mineral resources must be extracted from the land in which they are embedded.³ This is applicable to diamonds and their mining.

As high-value natural resources, diamonds fulfil an important economic function. The diamond-mining sector employs an estimated ten million people globally, both directly and indirectly. Despite this and other potential benefits of the diamond industry, the reality remains that diamonds and diamond mining do not always serve the socio-economic interests of individuals at the community level.⁴ Communities often face the severe social and environmental repercussions of mineral extraction in their vicinity.⁵ Scholars⁶ have termed this phenomenon the 'resource curse'.⁷ The

¹ Lei, Cui and Pan 2013 *Resources Policy* 450. Chiomba 2015 *Towards Sustainable Development through Mineral Policy: Southern Africa* 34.

² Other examples include the use of aluminium in transportation, building construction, electrical, machinery and other applications. The use of copper in building construction, electronic products such as cables, wires, plumbing, transportation equipment, roofing and many more. The use of gold in jewellery, dentistry medicine, and others. Also the use of diamonds in jewellery and engraving hard stones among others. This therefore signifies the importance of minerals to humans. National Mining Association 2016 <https://nma.org/wp-content/uploads/2016/09/NMA-Fact-Sheet-Minerals-and-Uses.pdf>. Minerals Council South Africa Date Unknown <http://www.miningforschools.co.za/lets-explore/diamond/uses-of-diamonds>.

The Mining Minerals and Sustainable Development Project (hereafter *MMSD*) Date Unknown <https://www.pubs.iied.org/pdfs/G00896.pdf>. Carvalho 2017 *Food and Energy Security* 61. Arndt *et al* 2017 *Geochemical Perspectives* 3.

³ Bansard and Schroder 2021 <https://www.iisd.org/system/files/2021-04/still-one-earth-natural-resources.pdf>.

⁴ Bice *Responsible Mining* 5. Ramoshaba *Host Communities Perceptions about Mining Companies in the Goven Mbeki Municipal Area Mpumalanga Province* 2.

⁵ Chuhan-Pole *et al Mining in Africa* 35.

⁶ Auty *Sustaining Development in Mineral Economies: The Resource Curse Thesis* 17. Bice *Responsible Mining* 5. Elmassah and Hassanein 2022 *Sustainability* 2.

⁷ Chuhan-Pole *et al Mining in Africa* 35. Davis and Tilton 2005 *Natural Resources Forum* 233.

'resource curse', also known as the 'paradox of plenty', refers to the significant social, economic, and political challenges faced by resource-rich countries. This is because they have failed to maximise their economic potential, despite their abundant mineral wealth. This phenomenon occurs when countries with abundant natural resources such as diamonds, minerals, or oil experience stagnant economic growth, poor governance, and increased inequality; rather than the anticipated prosperity across society. While mine host communities might reap some benefits from mineral extraction, they predominantly bear the brunt of its social, economic, and environmental impacts.⁸ Their lives, livelihoods, and property are often directly disrupted by mining activities, due to these communities' proximity to the mines.⁹

The above-described situation is valid for Lesotho. Diamond mining has been present in the country since the late 1950s.¹⁰ In 1961, licensed Basotho diggers began artisanal diamond mining¹¹ in areas such as Letšeng-la-Terae (hereafter Letšeng), Kolo, Nqhechane, and Hololo. However, by 1970, unsuccessful prospecting led to a halt in operations.¹² It was only around the year 2000 that diamond mines began to make a significant contribution to Lesotho's economy.¹³

⁸ Mlambo 2022 *Cogent Social Sciences* 2.

⁹ For instance, they are the ones usually expected to relocate, or are deprived of their ancestral land and have their livelihoods affected. Mpaki *Lesotho Times* 1.

¹⁰ In fact, soon after Lesotho's independence from colonial rule in the year 1966, and due to economic reasons, newly established mines had to stop their mining operations. The first prospecting rights were allocated in Lihobong and Kao in 1959. Thabane *Individual Diamond Digging in Lesotho 1955-1970* 48. Makhetha *Small Scale Artisanal Diamond Mining and Rural Livelihood Diversification in Lesotho* 19. Newman 2012 <https://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-It-wz.pdf>. Maleleka 2007 *Resource Insight* 5. Makhetha *Small Scale Artisanal Diamond Mining and Rural Livelihood Diversification in Lesotho* 78.

¹¹ Artisanal diamond mining is a form of informal income-generating activity done to support households in many developing countries. It is done at a small scale with little basic mechanised equipment as compared to commercial mining done by big multinational companies on a large scale. Makhetha *Small Scale Artisanal Diamond Mining and Rural Livelihood Diversification in Lesotho* 19. Vlassenroot and Van Bockstael 2008 *Research Gate* 3.

¹² Central Bank of Lesotho 2012 *Economic Review* 6.

¹³ Which increased from 0.2% in the year 2000 to 7.3% in the year 2009/10. This is a 7.1% increase, an indication that a noticeable role played is by the mining sector in the economy. In the year 2012, the diamond mining sector comprised 5 main mines that is Letšeng, Lihobong, Kao, Kolo and Mothae. These mines operate as foreign direct investment (hereafter *FDI*) companies with the majority shareholding of up to 70 percent by foreign companies. Currently, there are 13 diamond mines in Lesotho, of which seven are still in the prospecting phase, (Malimabatšo Artizens Diamonds, Refela Holdings, Popa Diamonds, Matšoku, Bafali, Alluvial

The resurgence and growth of mining in Lesotho, transitioning from dormancy to boasting fully-operational mines across the country, is the main reason this country was selected as the focus of this study.

The recent revival and expansion of the diamond mining industry in Lesotho raise the question of how the Basotho benefit from their country's diamond wealth.¹⁴ The notion that the Basotho should gain from their country's diamond resources and wealth are encapsulated in the country's Constitution.¹⁵ Accordingly, all of Lesotho's natural resources, including diamonds, are considered 'national property'. However, as will be detailed below, the equal distribution of this national property among its beneficiaries is intricate and multifaceted. One would expect a balance to be achieved. This should ensure that while the entire nation benefits from mining, the directly affected communities, known as 'mine host communities', equally benefit from the nation's diamond resources.¹⁶

1.1.1 The resource curse

Lesotho, along with other mineral-rich African countries such as Angola, Nigeria, Sudan and the Democratic Republic of Congo, paradoxically exhibits low per capita income. Indeed, many of its inhabitants experience a low quality of life. Clearly, the existence of a mineral extraction sector does not guarantee benefits for the

Quthing and Makhoareng Alluvial Diamonds). Two are in full production, namely Kao and Letšeng la Terae. Two are engaging in trial mining, (Kolo and Lemphane). The last two are in the construction phase (Liqhobong and Mothae). It should be noted that these statistics are as of September 2016. This proves that the mining industry in Lesotho is indeed growing. The mining sector in Lesotho contributes significantly towards tax revenues and export earnings. An estimated 3000 people are employed both directly and indirectly in the mining sector. This number is projected to grow with the expected establishment of other mines in the near future. The mining sector is recognised as one of the drivers of economic growth in Lesotho's *National Strategic Development Plan*. National Strategic Development Plan 2012/13- 2016/17 93. Staff Reporter *The Post* 6. CBL 2012 *Economic Review* 6. Newman 2012<https://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-It-wz.pdf>. National Strategic Development Plan 2012/13- 2016/17 93. Phakoana *Informative* 6. *The Lesotho Review: An Overview of the Kingdom of Lesotho's Economy* 29.

¹⁴ *The Lesotho Review: An Overview of the Kingdom of Lesotho's Economy* 29.

¹⁵ Section 107 of *the Constitution* of Lesotho read with Section 3 (1) of the *Lesotho Mines and Minerals Act* which states that rights in minerals are vested in the Basotho Nation.

¹⁶ Allowing mine host communities to benefit from diamond mining would also help in addressing these various conflicts between mine host communities and the mining companies. As there will be the much-needed collaboration between these parties. Mpaki *Lesotho Times* 1.

country's citizens, especially the communities hosting the mines. Rather, mining operations often have adverse socio-economic and environmental impacts on the surrounding populations.

Therefore, the resource curse captures the paradox that, instead of fostering development and prosperity in resource-rich countries, wealth from natural resources is possessed by a select few. Strikingly, it is often the mine host communities – the people living in close proximity of extraction sites - that experience the 'curse'. They do not benefit; instead, they shoulder the negative social, economic, and environmental impacts.

1.1.2 Mine host communities, their exclusion and socio-economic rights¹⁷

Mine host communities are those that reside in close proximity of mining operations. These communities are often situated in remote or rural areas that are socio-economically marginalised. These areas generally experience significant levels of poverty, systemic inequality, displacement, as well as social disruption and exclusion.¹⁸ Excluding local communities from decision-making processes undermines the protection and promotion of the socio-economic rights of diamond mine host communities in Lesotho. Without community involvement, ownership and accountability are lacking, jeopardising the sustainability of mining operations.¹⁹ Historically, mining activities have led to adverse social and environmental impacts, disproportionately affecting vulnerable populations. The absence of community input means that policies and practices may not address local needs and priorities. This exacerbates the negative consequences of diamond mining and limits host communities' potential benefits.²⁰ Additionally, the exclusion of host communities in

¹⁷ Khoza popularly defines socio-economic rights are "those rights that give people access to certain basic needs (resources, opportunities and services) necessary for human beings to lead a dignified life." Khoza *Social-Economic Rights in South Africa* 20. Examples of socio-economic rights include the right to education, right to health, right to fair employment, the right to adequate standard of living e.t.c. This will be discussed in further detail in chapter 2 below.

¹⁸ Murombo 2013 *LEAD* 38. Muntingh *Community Perceptions of Mining: The Rural South African Experience* 31.

¹⁹ Rakolote *Conflicts Between Host Communities and Mining Houses in Bojanala Platinum District Municipality* 5.

²⁰ Rakolote *Conflicts Between Host Communities and Mining Houses in Bojanala Platinum District Municipality* 6.

decision-making fosters a disconnect between the government, mining companies, and host communities. This hinders transparency, trust, and cooperation. This exclusionary approach contradicts international human rights standards and best practices. These highlight the critical need for community involvement, to ensure equitable and just development in the mining sector.²¹

Normally, communities situated in resource-rich areas should be well-positioned for economic growth and development, compared to those in regions with fewer natural resources.²² Such growth would include, for example, the development of infrastructure that could provide access to clean water, sanitation, electricity, housing, and health care facilities. Moreover, skillset development and employment opportunities, sparked by the mining activities, are expected to alleviate poverty and other socio-economic challenges faced by mine host communities.²³

However, the reality contrasts sharply with this expectation. Instead of enjoying the anticipated benefits, mine host communities often endure the negative consequences of mineral extraction. This tends to exacerbate their already precarious living conditions. A case in point is the concerns raised by the Maluti Community Development Forum (hereafter *MCDF*) in the district of Mokhotlong.²⁴ Representing the community, the *MCDF* claimed that mining activities had damaged wetlands crucial for providing clean water. This had left the local community to rely on raw or untreated water. The community's livestock, which they depend on for survival, also suffered. Blasting noises from the mine scared away livestock and wildlife. Furthermore, the razor wire fences, securing the mining area, posed direct

²¹ Rakolote *Conflicts Between Host Communities and Mining Houses in Bojanala Platinum District Municipality* 6.

²² Parlee 2015 *Resources Policy* 425. Kurecic and Seba Date Unknown https://bib.irb.hr/datoteka/820620.The_Resource_Curse_in_Sub_Saharan_Africa.pdf.

²³ Hilson 2002 *Land Use Policy* 66. Muntingh *Community Perceptions of Mining: The Rural South African Experience* 31.

²⁴ The *MCDF* was established in 2013 by conscientious residents of Mokhotlong, Lesotho. Serving as a voice for marginalised communities in the mining areas of Lesotho, the *MCDF* focuses on the communities impacted by key national assets like water resources (wetlands), sandstone mining, global warming, energy and agriculture.

threats to the animals.²⁵ According to the *MCDF*, these issues only give a glimpse into the broader challenges faced by mine host communities.

Beyond these specific issues, the communities grapple with inadequate access to basic services such as electricity, schools and hospitals;²⁶ poor infrastructure;²⁷ endemic unemployment; and poor work conditions.²⁸ Sometimes, mining activities prompt the displacement and relocation of communities away from their ancestral and traditional land. This results in loss of both homes and livelihoods.²⁹ In cases where relocation is not required, mining activities cause noise nuisance³⁰ and other forms of negative environmental, health, and safety impacts.³¹ Mineral extraction inevitably reduces cultivable land, and harms forests and wildlife. In fact, it often pollutes the water and air resources on which local communities depend for their livelihoods.³²

²⁵ Mpaki 2017 <http://lestimes.com/mining-community-mulls-legal-action/>.

²⁶ Nell *Community Perceptions of Sustainable Development Implications for an Approach to Closure Mining* i. United Nations Economic and Social Council, Economic Commission for Africa: Africa Review Report on Mining 3. Chuhan-Pole *et al* 2017 <https://documents.worldbank.org/en/publication/documentsreports/documentdetail/5139148779550281/mining-in-africa-are-local-communities-better-off>.

²⁷ Chuhan-Pole *et al* 2017 <https://documents.worldbank.org/en/publication/documentsreports/documentdetail/5139148775570281/mining-in-africa-are-local-communities-better-off>.

²⁸ SADC Harmonisation of Mining Policies, Standards, Legislative and Regulatory Framework in Southern Africa 3. Chuhan-Pole *et al* 2017 <https://documents.worldbank.org/en/publication/documentsreports/documentdetail/51391487795570281/mining-in-africa-are-local-communities-better-off>.

²⁹ In the district of Mokhotlong Firestone which runs the *LMDC* mine identified 28 families in the adjacent Lihobong village for relocation. This meant that the mine host community had to leave behind their ancestral land, their arable land on which they rely for agricultural purposes, their graveyards, and houses that they built in order to make room for the establishment of the mine. Firestone Diamond Plc 2015 https://sec.report/nsm/Firestone-Diamonds-P-L-C/data-migration/LSE20151006070010_012528022. Mpaki *Lesotho Times* 15. Maqhelepo *Informative* 10.

³⁰ This is because of the nature of equipment usually used like explosives.

³¹ One example is that of the people living around the Kolo mine in the district of Mafeteng in Lesotho, who have been shown to have problems with their eyesight due to the dust emanating from themining activities in that area. Ntlafulang Consultants Reskol Diamond Mining (PTY) Limited- Project Brief (*Diamond Mining at Kolo*) 24. Macheve *The Impact of Coal Mining on the Living Conditions of Rural Communities in Mozambique: A Case Study of Cateeme* 1.

³² Ultimately, host communities' ploughing fields, grazing fields, graveyards, water supply systems, animals, vegetation, property (houses), protected species, alien species, and indigenous species are affected by mining activities. Stevens, Lahn and Kooroshy 2015 https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document.NRGI 2015 https://www.resourcegovernance.org/sites/default/files/NRGI_Readers_Compilation.pdf. Matheka *Public Eye* 22.

These persistent socio-economic grievances and violations often fuel conflicts between mine host communities and mining entities or companies in Lesotho. Sometimes, these tensions escalate to violence. One instance occurred at the Kao Mine, in February 2018. Here, mine host community members protested against the mine's unfulfilled commitments and promises concerning compensation and relocation.³³

1.2 Problem statement

The challenges faced by mine host communities, as canvassed above, have been recognised and considered. This has been done not only in academic literature,³⁴ but also in binding and non-binding international, regional, sub-regional, and other legal instruments. This framework – created through the joint application of the relevant binding and non-binding international, regional, and sub-regional instruments aimed at protecting and promoting the socio-economic interests of mine host communities, forms the core of this study. Specifically, this research seeks to determine whether Lesotho possesses a comprehensive and robust legal framework that sufficiently protects the interests and rights of its mine host communities.

In 2015, Lesotho introduced its *Minerals and Mining Policy*.³⁵ This constituted the nation's first instrument elaborated to guide the country's mineral resources sector. However, a policy is only one of the components that create a regulatory framework for diamond mining. To understand the entire regulatory context, one must examine not only this policy,³⁶ but also the 1993 *Constitution of Lesotho*, the existing mining legislation,³⁷ and other relevant statutes.³⁸ Against the background of the resource curse as well as mine host communities' exclusion and socio-economic rights infringements, it is necessary to consider whether Lesotho's domestic constitutional,

³³ Motsoeli *Lesotho Times* 6. Masoabi *Public Eye* 10.

³⁴ Fuhr 2015 "Avoiding the Resource Curse" 2.

³⁵ Phakoana *Informative* 6. Makhetha *Small Scale Artisanal Diamond Mining and Rural Livelihood Diversification in Lesotho* 19. Maselepo *Informative* 13.

³⁶ *The Minerals and Mining Policy of* (2015).

³⁷ International Finance Corporation (hereafter *IFC*) 2014 *Sustainable and Responsible Mining in Africa* 4.

³⁸ IFC *Sustainable and Responsible Mining in Africa* 4.

policy, and legislative framework sufficiently addresses three important aspects. These include host community participation in diamond mining, the mitigation of various socio-economic challenges, and the distribution of ensuing benefits to mine host communities.

Assessing the 'adequacy' of policy and legal regimes empirically presents challenges.³⁹ However, a critical evaluation against standards drawn from applicable international, regional and sub-regional legal as well as other instruments may assist in determining whether Lesotho's domestic framework aligns with established norms, or whether notable gaps or problems exist. This evaluation is critical to ensure that the socio-economic and other relevant interests of diamond mine host communities in Lesotho are sufficiently protected and promoted.⁴⁰

1.2.1 International instruments

In 2012, the Natural Resource Governance Institute introduced the Natural Resource Charter (hereafter *NRC*).⁴¹ The *NRC* embodies a set of internationally-

³⁹ Assessing the adequacy of policy and legal regimes empirically presents several challenges. Firstly, the complexity and multifaceted nature of socio-economic rights make it difficult to establish clear and measurable indicators for evaluation. These rights encompass a wide range of issues, including health, education, housing, and employment, each requiring distinct metrics and data sources. Secondly, data availability and quality can be significant hurdles. In many regions, including Lesotho, comprehensive and reliable data on the socio-economic conditions of mine host communities may be scarce or outdated. This lack of data hampers the ability to conduct thorough and accurate assessments. Thirdly, the dynamic and evolving nature of policies and legal frameworks means that assessments must be continuously updated to reflect current conditions and changes in the regulatory environment. Additionally, the implementation and enforcement of policies can vary widely, making it challenging to distinguish between the adequacy of the legal framework itself and the effectiveness of its application in practice. Finally, socio-political factors, such as power dynamics, vested interests, and governance issues, can influence both the development and assessment of these regimes, potentially leading to biased or incomplete evaluations.

⁴⁰ This will be discussed in more detail in chapter 6 of this study.

⁴¹ The *NRGI* is an independent non-profit making organisation, which helps people realise the benefits of their countries' endowments of mineral resources. It is through instruments authored by the *NRGI* such as the *NRC*, (a document that offers policy options and practical advice for governments, societies and international communities) that motivate governments and local communities in resource rich countries to effectively govern their resources in a way that promotes sustainable socio-economic development. The *NRGI* works intensively in a dozen 'priority countries' and is involved in some projects in limited engagement countries' and they also compile basic resource governance information on other countries. Lesotho in this case falls under the category of countries rich in mineral resources that have the potential to benefit fully from its resources.

recognised principles designed to steer governments and societies toward optimising extractive resources, for development purposes.⁴² While these principles should not be considered as a 'recipe or blueprint' for policy and institutional construction, they provide the essential components that successful nations have leveraged to ensure that their extractive industry sectors benefit their citizenry.⁴³ The Charter's first principle states that "resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, a clear legal framework and competent institutions".⁴⁴ A country's national strategy can only be inclusive if all the stakeholders, including mine host communities, are actively involved and consulted in shaping extractive resource management decisions. This emphasis on the inclusion of host communities and the idea that they must be heard has given rise to novel concepts such as the "social licence to operate".⁴⁵ The latter resonates in various binding and non-binding international and regional instruments.

Several international documents, both binding and persuasive, emphasise the importance of community participation across all stages of mineral extraction.⁴⁶ The principles that communities should participate in decision-making processes, have access to justice, and benefit from mining activities conducted in their areas are

⁴² NRGi 2015 *Transparency Mechanisms and Movements* 3.

⁴³ NRGi Date Unknown <https://resourcegovernance.org/approach/natural-resource-charter>.

⁴⁴ NRGi Date Unknown https://resourcegovernance.org/sites/default/files/NRCJ1193_natural_resource_charter_19.6.14.pdf "Natural Resource Charter" 7.

⁴⁵ *SLO* is defined as, "the acquisition and ongoing maintenance of the consent of local stakeholders to specific local projects." *SLO* is usually granted by the community and should therefore be properly maintained in order for the mine host community to keep granting it to a mine on an ongoing basis. Where an *SLO* is present, mining companies can carry on with their businesses due to the confidence of the society in the mining company. Yates and Horvath 2013 "*Social License To Operate: How To Get It, And How To Keep It*" 2.

⁴⁶ The categories of binding and non-binding international, regional and sub-regional instruments may provide a matrix of binding and persuasive principles that constitute a framework against which a specific country's policy and legislative framework pertaining to the protection of the interests of host communities affected by mining may be evaluated to determine whether it provides sufficiently for the protection of mine host communities' interests. It essentially sets a minimum standard against which the constitutional, policy and regulatory framework of a country like Lesotho may be evaluated in order to determine whether it meets the minimum standard for ensuring that the socio-economic interests of its mine host communities are met.

captured in a myriad of binding and non-binding international legal instruments.⁴⁷ Representative relevant documents include the *Universal Declaration of Human Rights* of 1948 (*UDHR*),⁴⁸ the *International Covenant on Economic, Social and Cultural Rights* of 1966 (*ICESCR*),⁴⁹ the *International Covenant on Civil and Political Rights* of 1966 (*ICCPR*),⁵⁰ and the *Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters* of 1998 (*Aarhus Convention*).⁵¹

⁴⁷ Binding international legal instruments are usually referred to as hard law and they have a legally binding effect. Examples include international treaties and customary international law while non-binding agreements are usually referred to as soft law instruments, they are agreements without immediate international binding force, but they still carry some authority. Examples are declarations, codes of conduct and guidelines. Beyerlin and Marauhn *International Environmental Law* 289.

⁴⁸ *UDHR* (1948). The 1948 *UDHR* is the foundation of the international legal system which, through development, has transitioned towards accepting more rights like public participation (through interpretation) as part of human rights. Article 27 sub-article (1) of the 1948 *UDHR* states that "everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits." Mutlokwa states that participation in a cultural life involves the contribution of mine host communities by their opinions on how mineral wealth in their territories should be disposed of and what benefits should come their way as the people living in places where these minerals are extracted. Skogvang Date Unknown <https://digitalcommons.law-msu-edu/cgi/viewcontent.cgi?article=1132&context=ilr>. Mutlokwa *Zimbabwe's Approach To Community Participation And Indigenisation In Extractive Activities: Problems and Prospects* 103.

⁴⁹ *ICESCR* (1966). Lesotho ratified this Convention on the 9th September 1992. Article 15 of the 1966 *ICESCR* states that "everyone has a right to take part in a cultural life, to enjoy the benefits of scientific progress and its applications." According to Ward the interpretation hereof indicates the fact that mine host communities and or indigenous people have the right to access to land and mineral resources within their territories. Tied to this right is also the right to participate in decisions relating to the aforementioned assets. Ward 2011 *Northwestern Journal of International Human Rights* 57. Yee 1998 *International and Comparative Law Quarterly* 904.

⁵⁰ *ICCPR* (1966). Lesotho ratified this Convention on the 9th September 1992. Article 1 of the 1966 *ICCPR* states that "All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 1(2) further articulates that "all peoples may for their own ends freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation..." This right to self-determination according to Skogvang includes the right of mine host communities to decide over the management of natural resources, thus giving such communities a chance to participate in the decision making of mineral extraction taking place within their vicinity. Skogvang Date Unknown <https://digitalcommons.law-msu-edu/cgi/viewcontent.cgi?article=1132&context=ilr>. Ward 2011 *Northwestern Journal of International Human Rights* 55.

⁵¹ The Convention advocates for public participation in the decision-making of environmental matters under article 6, it clearly articulates that public participation shall be achieved through the provision of information to the public about environmental decision-making procedures in an adequate, effective manner as to allow the public to prepare and participate effectively during environmental decision-making. This will in turn allow the public to submit in writing or as

1.2.2 Regional instruments

The *African Charter on Human and Peoples' Rights* of 1987 (the Banjul Charter)⁵² is a legally binding document. It asserts that communities and individuals should have the opportunity to be heard and participate in development decisions affecting them.⁵³ Another notable persuasive regional document is the *Africa Mining Vision* of 2009 (*AMV*).⁵⁴ It aims to create a "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development".⁵⁵ Both these documents emphasise the importance of alleviating the burden of mine host communities and ensuring that their interests are sufficiently prioritised during mining operations planning.

1.2.3 Sub-regional instruments

On a sub-regional level, harmonisation frameworks include the *Southern African Development Community* (hereafter *SADC*) *Protocol on Mining* of 1997.⁵⁶ This legally-binding instrument promotes the improvement of the availability of public information in the mining sector.⁵⁷ Additionally, the *SADC* framework emphasises the significance of mine host communities' participation in mining projects, and the equitable sharing of benefits with communities surrounding mining projects.⁵⁸ The *SADC Protocol on Gender and Development* of 2008 (*Protocol on Gender*)⁵⁹ is another binding instrument that encourages female participation in the mining

appropriate any comments, information analyses or opinions considered relevant to the proposed activity before an environmental decision affecting them is made. The Convention also states that as soon as a decision relating to the proposed activity is made, the relevant authority should make sure that they inform the public on what the decision is and the reasons behind that particular decision. This allows room for real public or community participation as they would have had influence on the decisions made. Article 6 of the *Aarhus Convention* (1998). Lee and Abbot 2003 *The Modern Law Review* 99. Kravchenko 2003 *Tulane Environmental Law Journal* 43. McAllister *Colorado Journal of International Environmental Law and Policy* 187.

⁵² *Banjul Charter* (1987). Lesotho ratified this Charter on the 10th of February 1992.

⁵³ A 13 of the *Banjul Charter* of (1987).

⁵⁴ According to Hilson the 2009 *AMV* is a policy document, which means it is a legally non-binding on member states but it can be persuasive on the approach taken by governments when dealing with mineral extraction. Hilson 2020 *Canadian Journal for Development Studies* 421.

⁵⁵ *AMV* (2009).

⁵⁶ *SADC Protocol on Mining* (1997).

⁵⁷ A 2(9) of the *SADC Protocol on Mining* (1997).

⁵⁸ A 6 of the *SADC Protocol on Mining* (1997).

⁵⁹ A 2 (1) (a) of the *SADC Protocol on Gender* (2008).

sector. The Protocol states that historically-disadvantaged people should be empowered in the mining sector.⁶⁰

Lesotho is a signatory to all essential human rights treaties, including the abovementioned international, regional, and sub-regional instruments and undertakings relevant to mining. By acceding to these instruments,⁶¹ Lesotho is obligated to uphold them. Regionally, Lesotho is a member of both the African Union (AU) and the SADC. Consequently, Lesotho carries international, regional, and sub-regional obligations as well as commitments to ensure that mining activities within its jurisdiction do not infringe upon those socio-economic interests.

While the primary focus of this study is Lesotho's constitutional, policy and legislative framework, the research also examines how the socio-economic interests of mine host communities are protected and promoted in Botswana and South Africa.⁶² This analysis is expected to inform and suggest legislative and policy measures. These should help to effectively protect the socio-economic interests of mine host communities in Lesotho.

1.2.4 Botswana

Recognised as the world's leading diamond producer in terms of value,⁶³ and ranking second concerning the volume, Botswana contributes to 25% of the global rough diamond market shares.⁶⁴ While Botswana also extracts other minerals such as copper, nickel and coal, its revenue from diamond mining remains unparalleled.⁶⁵ The extractive industry of Botswana provides a rich perspective on the potential

⁶⁰ A 2(8) of the *SADC Protocol on Mining* (1997).

⁶¹ Lesotho acceded to the 1966 *ICCPR* and the 1966 *ICESCR* on 9th of September 1992. United Nations Human Rights Treaty Bodies 2022 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=97&Lang=EN.

⁶² The South African example is not a perfect example as it still has its own challenges such as an unstable workforce, an issue that usually deters investors from investing in South Africa. However, for the purposes of this study, South Africa is still useful because it is more ahead when it comes to mineral extraction, and it has more regulatory certainty compared to Lesotho.

⁶³ Hillbom and Bolt 2018 *A Modern Economic History: An African Diamond in the Rough* 4. Iimi 2006 <https://imf.org/external/pubs/fit/up/2006/wp06138.pdf>

⁶⁴ Hillbom and Bolt 2018 *A Modern Economic History: An African Diamond in the Rough* 4. Ahmed 2021 <https://see.news/most-top-10-diamond-producing-countries/> 1.

⁶⁵ Botlhale 2010 *Botswana: Turning Resources into Equitable Results for People* 42.

benefits for mine host communities, from mineral resource exploitation. Botswana has successfully demonstrated the advantages of the mining industry, including earning foreign exchange, generating additional government revenue through taxes and royalties, creating employment opportunities, and developing technical and managerial skills.⁶⁶ This success has catalysed rapid socio-economic development. This has positioned Botswana as a good model from which Lesotho can draw valuable lessons.⁶⁷

1.2.5 South Africa

In addition to Botswana, South Africa constitutes one of the world's most mineral-rich nations.⁶⁸ South Africa's mineral wealth encompasses diamonds, gold, platinum, copper, uranium, vanadium, coal, chromium, iron, zirconium, and nickel. This mineral wealth makes South Africa a key player in the mining sector both in Southern Africa and globally. South Africa's inclusion in this study is apt, given its shared membership with Lesotho in both the *AU* and the *SADC*. Both nations are bound by key instruments such as the AU's 2009 *AMV* and the *SADC 1997 Protocol on Mining*. Moreover, both Lesotho and South Africa, being regional neighbours, grapple with similar challenges concerning mining communities. These challenges include environmental degradation due to mining activities, health problems among miners and local populations, as well as socio-economic issues such as unemployment and poverty, and the need for sustainable development practices.

South Africa has developed a comprehensive legislative framework to protect the socio-economic rights of mine host communities. This positions South Africa, alongside Botswana, as a valuable model for Lesotho to consider as it seeks to enhance its own legal and regulatory approaches to mining and community development. A thorough literature review of South Africa's policies, statutes, and

⁶⁶ Botlhale 2010 *Botswana: Turning Resources into Equitable Results for People* 41.

⁶⁷ Matshediso 2005 https://ithuteng.ub.bw/jspui/bitstream/10311/377/1/Matshediso_RP_2005.pdf 2. This will be discussed in further detail in chapter 4 of this study.

⁶⁸ Engelbrecht *An Analysis of the Sustainable Mining of Selected Minerals and Metals in South Africa* 9.

case law pertaining to the protection of the socio-economic interests of mine host communities will be undertaken.

South Africa's legal regime – as exemplified by the *Diamond Act* 56 of 1986⁶⁹ as amended,⁷⁰ the *Precious Metals Act* 37 of 2005,⁷¹ the *Diamonds Export Levy Act* 15 of 2007,⁷² the *Mining and Minerals Policy for South Africa* of 1998, as well as the *Mineral and Petroleum Resources Development Act (MPRDA)* 28 of 2002 supported by the *Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry* (Mining Charter)⁷³ offers a unique and rich comparative backdrop.

1.3 Area of focus

1.3.1 Central research question

The research question that underpins this study is: To what extent does Lesotho's current constitutional, policy, and legislative framework for the protection of the socio-economic interests of host communities affected by diamond mining align with applicable international, regional (AU and sub-regional (*SADC*) binding and persuasive instruments?

⁶⁹ Whose purpose was to establish the South African Diamond Board so that it can oversee the possession, the purchase, sale and processing of the export of diamond. Preamble of the *South Africa's Diamond Act* 56 of (1986).

⁷⁰ By the *Diamonds Amendment Act* 29 of 2005, which established the South African Diamond and Precious Metals Regulator. There was also the *Diamonds Second Amendment Act* 30 of (2005).

⁷¹ This Act provides for the acquisition, possession, smelting, refining, beneficiation, use and disposal of precious metals. Preamble of the *Precious Metal's Act* 37 of (2005).

⁷² Whose purpose is to provide for the imposition of an export levy on unpolished diamonds(excluding synthetic diamonds) and allow for offsets with respect to that levy. Preamble of the *Diamonds Export Levy Act* 15 of (2007).

⁷³ The *Mining Charter* is a government document that lays down black economic empowerment goals and it is a blueprint for transformation of the mining industry. It was first developed in 2004 and amended in 2010. Its third amendment was gazetted on the 27th September 2018. It should be noted however that in the case of *Minerals Council of South Africa v Minister of Mineral Resources and Energy and Others* 2022 1 SA 535 (GP) the mining charter was said to be of a persuasive nature and it cannot be binding as it was not issued in terms of the law and it therefore cannot be enforced. This case will be explored further in chapter 5 of this study. *Minerals Council of South Africa v Minister of Mineral Resources and Energy and Others* 2022 1 SA 535 (GP).

1.3.2 Objectives of the study

The primary objective of this thesis is to determine the extent to which Lesotho's current constitutional, policy, and legislative framework – which addresses the protection of the socio-economic interests of host communities impacted by diamond mining – aligns with applicable international, regional, and sub-regional legally-binding and persuasive instruments. To attain the main objective of this study, the following secondary objectives are set:

- To analyse the constitutional, policy, and legislative frameworks of Botswana and South Africa regarding diamond mining and the protection of the socio-economic rights of mine host communities. This analysis will be conducted through the lens of the social justice theory. The examination will focus on how these frameworks promote equitable treatment and resource distribution. The aim is to ensure that mining benefits are shared fairly among all community members. The resource curse theory will be utilised to assess whether these frameworks have effectively mitigated the negative economic and social impacts often associated with resource-rich regions. The community participation theory will be applied to evaluate the extent to which mine host communities are involved in decision-making processes, and how their voices and interests are represented in these frameworks.
- To critically analyse existing international, regional, and sub-regional legally-binding and persuasive instruments that address the protection of the socio-economic interests of mine host communities. This is to create a reference framework or benchmark against which Lesotho's existing constitutional, policy, and legislative framework pertaining to the protection of the socio-economic interests of host communities affected by the mining of diamonds may be evaluated.
- To identify and document best practices from Botswana and South Africa. These best practices can then inform and enhance Lesotho's constitutional, policy, and legislative frameworks concerning the diamond mining sector. The identified best practices will be scrutinised through the social justice

theory. This is to ensure that they promote fairness and equity within mine host communities. Utilising the resource curse theory, the study will seek practices that have successfully turned resource wealth into sustainable economic growth and development. Through the lens of the community participation theory, the investigation will focus on practices that empower local communities and ensure their active involvement in mining-related decisions.

- To develop a comparative matrix⁷⁴ that highlights the key elements of Botswana's and South Africa's approaches to the protection of the socio-economic rights and interests of mine host communities. The matrix⁷⁵ will be structured to reflect insights from the social justice theory. This will highlight how each country's framework ensures an equitable treatment of mine host communities. It will also incorporate aspects of the resource curse theory. This will show how Botswana and South Africa have addressed or avoided the potential negative impacts of diamond mining. The matrix⁷⁶ will also foreground the community participation theory. This will help to document the mechanisms through which communities in Botswana and South Africa are engaged, and how their interests safeguarded.
- To provide actionable recommendations for the improvement of Lesotho's constitutional, policy, and legislative frameworks. This is to ensure the protection of the socio-economic rights and interests of mine host communities. The recommendations will be grounded in the social justice theory. Their aim is to enhance equity and fairness in the distribution of mining benefits. Drawing from the resource curse theory, the recommendations will focus on the strategies to leverage diamond resources for sustainable development. Based on community participation theory, the

⁷⁴ See Annexure A.

⁷⁵ See Annexure A.

⁷⁶ See Annexure A.

study will suggest ways to strengthen the involvement and empowerment of mine host communities in Lesotho.

1.3.3 Assumptions and hypothesis

1.3.3.1 Assumptions

The following assumptions underlie this thesis:

- 1 Mine host communities bear a heavy burden, when mineral deposits are discovered in the areas where they live.
- 2 International, regional, and sub-regional legally-binding and non-binding instruments provide a matrix⁷⁷ of minimum standards against which national constitutional, policy, and legislative frameworks may be tested. This is to determine whether they meet the required standards pertaining to the protection of the socio-economic interests of mine host communities.
- 3 Botswana's legislative framework regarding the protection of the socio-economic interests of host communities affected by diamond mining exhibits progressive approaches to the regulation of the extractive industry. This benefits mine host communities and the entire Botswana nation.
- 4 The South African constitutional, policy, and legislative framework concerning the protection of the socio-economic interests of host communities affected by mining provides a good example. It strives to adhere to applicable principles regarding the protection of the socio-economic interests of mine host communities, as stipulated in international, regional, and sub-regional legal instruments.

⁷⁷ See Annexure A.

1.3.3.2 Hypothesis

The hypothesis of this study is that serious shortcomings concerning diamond mining regulation and beneficiation for mine host communities exist. The following sub-hypotheses underlie this study.

1.3.3.2.1 Sub-hypothesis One

Key issues about the protection of the socio-economic rights of mine host communities in Lesotho exist; hence, these mine host communities do not benefit significantly from local diamond mining.

1.3.3.2.2 Sub-hypothesis Two

Significant challenges exist at the constitutional, policy, legal, institutional, and implementation levels in Lesotho concerning access to the benefits from diamond mining.

1.3.3.2.3 Sub-hypothesis Three

If the first and second sub-hypotheses are found to be true and correct, it is necessary to strengthen the constitutional, policy, legal, administrative, as well as the funding and monitoring arrangements. This is to ensure the protection of the socio-economic rights of mine host communities and foster the equitable sharing of the proceeds of diamond mining in Lesotho.

1.3.3.2.4 Sub-hypothesis Four

Jurisdictions dealing with the protection and promotion of socio-economic rights in more detail exist outside Lesotho.

1.4 Research methodology

1.4.1 Literature review

The literature review encompasses primary sources such as international, regional, and sub-regional instruments, as well as legislation, policies, case law, and tribunal

decisions. This literature review also covers secondary sources including textbooks, journal articles, theses and dissertations, government publications, newspaper articles, conference papers, encyclopedias, and relevant Internet sources. These materials are essential for assessing Lesotho's current constitutional, policy, and legislative framework concerning the protection of the socio-economic interests of host communities affected by diamond mining.

The focus is on the applicable international, regional, and sub-regional legally-binding and persuasive instruments, as well as the principles and guidelines provided in those documents, regarding the protection of socio-economic rights. These principles will be critically analysed by incorporating scholarly views on the meaning and content of the relevant instruments. The current Lesotho constitutional, policy, and legislative framework pertaining to the protection of the socio-economic interests of host communities affected by diamond mining is critically discussed with reference to the applicable policies, statutes, journal articles, and case law. Furthermore, these sources will be analysed with the aim of developing a matrix⁷⁸ constituting a foundational part of the methodology. This matrix⁷⁹ will then be used to evaluate the alignment and effectiveness of Lesotho's framework in addressing the protection of socio-economic rights. This will offer a structured approach to the assessment of gaps and improvement areas where legislative frameworks are lacking.

1.4.2 Lessons learnt from other jurisdictions

This study will focus on Lesotho's existing mining legislation. However, the research will also delve deeper into how the constitutional, policy, and regulatory frameworks of other Southern African countries, specifically Botswana and South Africa, have paved the way for their thriving diamond-mining industries. It is imperative to determine and compare how these countries have ensured the effective enactment of laws pertaining to the protection of the socio-economic rights and interests of mine host communities affected by diamond mining. It is also important to ensure

⁷⁸ See Annexure A.

⁷⁹ See Annexure A.

that those laws are in line with the applicable international, regional, and sub-regional legally-binding and persuasive instruments. Botswana and South Africa were selected for this study due to their established diamond-mining industries and their comprehensive legal and policy frameworks. Botswana is recognised for its successful economic transformation through diamond mining. This is supported by effective governance and transparent revenue management. These contribute to equitable distribution and national development. South Africa, with its extensive experience in diamond mining, has developed robust policies that balance mining interests with community needs. This experience will provide insights into ways of addressing existing socio-economic challenges and complying with international standards. Analysing the cases of these countries offers a comparative perspective that can inform policy recommendations for Lesotho and similar contexts.

1.5 Study outline

This thesis is organised into seven chapters. The present chapter provides the background to the study, the problem under discussion, the focus area, and the description of the research methodology.

Chapter 2 aims to theoretically examine socio-economic rights and their relevance for mine host communities. The focus will be on the opportunities and challenges faced, particularly by those impacted by diamond mining. The chapter will explore the role of mines in relation to host communities through three theoretical lenses: the social justice theory, the resource curse, and community participation. This approach will provide a comprehensive understanding of how these frameworks address the socio-economic impacts of mining and offer insights into potential improvements in the relationship between mines and host communities.

Chapter 3 critically analyses the existing international, regional, and sub-regional legally-binding-and-persuasive instruments pertaining to the protection of the socio-economic interests of mine host communities. The analysis will inform the matrix⁸⁰ against which Lesotho's present constitutional, policy, and legislative framework

⁸⁰ See Annexure A.

regarding the protection of the socio-economic rights and interests of mine host communities affected by the mining of diamonds may ultimately be evaluated and potentially improved.

Chapter 4 outlines Botswana's approach to the protection of the socio-economic rights of mine host communities affected by diamond mining. This chapter will provide a detailed analysis of Botswana's constitutional, policy, and legislative frameworks. It will highlight successful strategies and practices. The insights gained from Botswana's experience will inform the subsequent constitutional, policy, and legislative framework for the protection of the socio-economic rights and interests of mine host communities in Lesotho.

Furthermore, the findings from Chapter 4 will be systematically incorporated into the matrix⁸¹ table. This will enable a structured comparison and evaluation of the key elements of Botswana's approach. This comparative analysis will help identify best practices and potential areas for enhancement in Lesotho's framework. This will ensure that the lessons learnt are pertinent and actionable. By feeding into the matrix,⁸² Chapter 4 will serve as a critical reference point. It will contribute to comprehensive, evidence-based recommendations for the enhancement of socio-economic protection in Lesotho's diamond mining industry.

Chapter 5 emphasises how South Africa has incorporated measures to protect the socio-economic rights and interests of its mine host communities within its constitutional, policy, and legislative frameworks. This chapter delves into South Africa's specific strategies and mechanisms that have been successful in addressing the needs and rights of these communities. By examining South Africa's approach, the study aims to derive valuable lessons that can be applied to Lesotho's context.

The findings from Chapter 5 will be integrated into the matrix⁸³ table. This will facilitate a structured comparison and evaluation of South Africa's key elements and

⁸¹ See Annexure A.

⁸² See Annexure A.

⁸³ See Annexure A.

practices. This comparative analysis, within the matrix,⁸⁴ will help identify best practices and potential areas for enhancement in Lesotho's frameworks. By referencing the matrix,⁸⁵ Chapter 5 will provide a clear and organised way to present South Africa's successful measures. This will ensure that the insights gained are directly applicable to Lesotho's efforts to improve the socio-economic protection of its mine host communities.

Chapter 6 critically analyses Lesotho's current constitutional, policy, and legal framework pertaining to the protection of the socio-economic interests of mine host communities affected by diamond mining. The aim is to obtain a comprehensive view of the current extent to which the interest and rights of mine host communities affected by the mining of diamonds in Lesotho are promoted and protected.

Chapter 7 highlights the findings and lessons learnt from the comparative analysis undertaken in this study. The chapter concludes with concrete recommendations for the incorporation of measures into Lesotho's constitutional, policy, and legal frameworks. This is to enhance the protection and promotion of the socio-economic rights and interests of mine host communities affected by diamond mining. The elaborated matrix⁸⁶ will be utilised in this chapter to evaluate Lesotho's current framework against the best practices identified in the study. This entails a detailed assessment that distils valuable lessons for the advancement of the socio-economic rights of mine host communities in Lesotho.

⁸⁴ See Annexure A.

⁸⁵ See Annexure A.

⁸⁶ See Annexure A.

CHAPTER 2 THEORETICAL FOUNDATIONS: SOCIO-ECONOMIC RIGHTS IN MINE-HOST COMMUNITIES

2.1 Introduction

The diamond-mining sector stands constitutes one of the most lucrative industries worldwide. It contributes substantially to economic growth and socio-economic development. This is achieved through job creation, infrastructure development, and investments in resource-rich countries.⁸⁷ The African continent, endowed with abundant mineral reserves,⁸⁸ has also registered a significant surge in its diamond sector.⁸⁹ This growth is notable in the *SADC* region.⁹⁰ Here, the diamond industry has the potential to foster economic and social development in the relevant countries, as well as broader regional integration.⁹¹ This demonstrates the importance of the diamond sector's role in the socio-economic development of *SADC* countries. Within this context, Lesotho, rich in diamond resources, emerges as a significant player. This country's commercial diamond mining promises to convert mineral resources into tangible assets. These encompass homes, schools, and essential infrastructure vital for progressive socio-economic development.

Despite the promise of development, the reality in Lesotho is a broader, more intricate situation characterising many mineral-abundant countries. While significant

⁸⁷ European Bank for Reconstruction and Development 2017 *Extractive Mining Industries Strategy* 2018-2022 3.

⁸⁸ Ranging from bauxite, manganese, platinum, diamonds, gold, cobalt, uranium, as well as significant oil and gas reserves. Lebert 2015 <https://newint.org/blog/2015/06/24/africa-a-continent-of-wealth> 1. Dikobe *Natural Resources Foreign Direct Investment and Conflict in South Africa: A Case Study of the Marikana Tragedy* 10. Bryceson *et al Mining and Social Transformation in Africa: Mineralizing and Democratizing Trends in Artisanal Production* 4.

⁸⁹ For example, over the period of 2000 to 2008 mineral extraction contributed more than 30% of Africa's *GDP*, while the annual flow of foreign direct investment into Africa rose for \$9billion and \$62 billion. Chuhan-Pole *et al Mining in Africa: Are Local Communities Better Off?* xvii. Lebert 2015 <https://newint.org/blog/2015/06/24/africa-a-continent-of-wealth> 1. Sharaky 2011 http://www.academia.edu/11051965/Mineral_Resources_and_Exploration_in_Africa 1.

⁹⁰ It is reported that approximately half of the world's vanadium, platinum and diamonds originate in the *SADC* region. These minerals contribute significantly to the *GDP*, employment, exports and foreign exchange earnings which help promote development in the *SADC* territory. *SADC* 2010 <https://sadc.int/themes/economic-development/industry/mining>.

⁹¹ This means that natural resources from the *SADC* countries will be able to perform against natural resources from other parts of the world most probably at a reasonable cost. The Preamble of the *SADC Protocol on Mining* (1997).

potential for socio-economic development exists, diamond mining is often marred by limited economic growth, economic disparities, social conflicts, weaker democracy, and worse development outcomes than those of countries with fewer natural resources.⁹² Resource-rich countries grapple with socio-economic challenges, despite being heavily endowed with mineral resources representing their potential wealth. This has ignited a scholarly discourse⁹³ labelled the 'resource curse'.

The paradox of the 'resource curse'⁹⁴ highlights the importance of a deeper understanding of the socio-economic rights of mine host communities. By addressing economic disparities, environmental degradation, governance issues, social tensions, and the need for sustainable development, socio-economic rights provide a comprehensive framework that ensures that the wealth generated from mining benefits all stakeholders. This should particularly be the case for the local communities that are often the most affected by these activities. Moreover, an investigation into socio-economic rights is paramount. It will uncover the multifaceted impacts of mining operations on local populations, including issues related to health, education, employment, and environmental sustainability. By ensuring that these rights are well-understood, advocated for and enforced, mine host communities will be better positioned to harness their natural-resource wealth for sustainable benefits. This approach would help to ensure that the potential wealth from resources leads to substantive socio-economic development. This would counter the adverse outcomes typically associated with the resource curse. It is for this reason that this chapter endeavours to theoretically examine socio-economic rights and their relevance for mine host communities. and the chapter further seeks to describe the opportunities and challenges confronted by mine host communities. This is especially the case for those impacted by diamond mining. This

⁹² Mancini and Sala 2018 *Resources Policy* 100.

⁹³ Auty 1998 <https://www.wider.unu.edu/sites/default/files/rfa44.pdf>. Organisation for Economic Cooperation and Development (hereafter *OECD*) 2011 https://www.oecd.org/env/outreach/2011_AB_Economic%20significance%20of%20NR%20n%20EECCA_ENG.pdf.

⁹⁴ See para 1.1.1 above.

description helps to understand the role of mines in relation to mine host communities.

This chapter posits that a study of socio-economic rights is intertwined with a comprehensive understanding of the broader human rights framework. Human rights, with their universal legal protections, shield individuals and groups against actions or omissions that undermine their basic freedoms, rights, and human dignity. These rights are categorised into civil, political, and socio-economic rights. They underscore the pivotal role of human rights in dissecting socio-economic issues. This chapter elucidates the nature, scope, and evolution of human rights, with special emphasis on defining and developing the concept of socio-economic rights. Laying this groundwork paves the way for an analysis of socio-economic rights and their relevance for mine host communities. This analysis is underpinned by three theoretical lenses: the social justice theory, the resource curse, and community participation.

The structure of the chapter entails five parts. Part 1 emphasises the indispensability of a comprehensive understanding of human rights for the study of socio-economic rights. This reiterates their integral place within the larger human rights framework. This part introduces the basic principles and legal frameworks underpinning socio-economic rights. It also highlights the importance of human rights in ensuring dignity, equality, and access to essential services for individuals in mine host communities. Part 2 delves into three fundamental theories: social justice, the resource curse, and community participation. Despite their diverse viewpoints, these theories – collectively – address the complex dynamics of socio-economic rights and development, amid resource abundance. This exploration sheds light on how these theories elucidate the complex interplay between diamond-mining operations and the socio-economic wellbeing of host communities.

Part 3 unravels the impacts of mineral extraction on socio-economic rights. It examines both the positive and negative consequences of mining activities on the socio-economic rights of mine host communities. It scrutinises how mining can simultaneously be a source of development and prosperity, as well as a catalyst for

environmental harm, displacement, and social division. This critical exploration seeks to identify pathways towards a sustainable and equitable development paradigm that benefits the communities situated at the heart of mining activities. Part 4 examines the interplay between mining activities and socio-economic rights in mine host communities. By integrating social justice, resource curse, and community participation theories, it stresses the need for a human rights-based approach to ensuring equitable benefits and addressing the adverse impacts of diamond mining. Part 5 integrates the insights gained from the theoretical examination of socio-economic rights, the analysis of relevant theories, and the assessment of the dualistic impacts of mineral extraction. This part aims to offer a coherent understanding of the opportunities and challenges confronting mine host communities. The ultimate goal is to suggest strategies for leveraging diamond mining for genuine socio-economic advancement,. This would ensure that these host communities not only survive but flourish amid resource wealth.

2.2 Establishing a framework for socio-economic rights

2.2.1 Introduction to human rights

The concept of human rights has evolved significantly over centuries. This evolution has been shaped by various philosophical, political, and social movements. This development can be traced through several key historical milestones and intellectual discourses. These have collectively contributed to the modern understanding of human rights.⁹⁵ The roots of human rights can be traced back to ancient civilisations. Philosophers such as Aristotle and Confucius discussed justice, morality, and the inherent dignity of individuals. Aristotle's notion of natural justice as well as the Confucian emphasis on humaneness and ethical conduct laid the early groundwork for the concept of universal human rights. Religious teachings also played a significant role, with major world religions advocating the principles of compassion, equality, and respect for human dignity.

⁹⁵ Council of Europe 2023 <https://www.coe.int/en/web/compass/the-evolution-of-human-rights>.

The Magna Carta, signed in 1215 in England,⁹⁶ originally intended to resolve a dispute between King John and his barons. The Magna Carta laid the groundwork for constitutional governance and the protection of individual rights.⁹⁷ It established principles such as the rule of law, due process, and the protection of personal liberties against arbitrary detention – influencing future legal documents and human rights charters.⁹⁸

The Enlightenment era (17th and 18th centuries) marked a significant shift in the discourse on human rights. Enlightenment thinkers such as John Locke, Jean-Jacques Rousseau, and Immanuel Kant introduced the concept of natural rights. They argued that individuals possess inherent rights simply by virtue of being human.⁹⁹ Locke's theory of life, liberty and property,¹⁰⁰ Rousseau's social contract,¹⁰¹ and Kant's emphasis on individual autonomy and moral law fundamentally shaped modern human rights theories. These ideas posited that human rights are not granted by governments, but that they are inherent and must be protected by governments.

The philosophical advancements of the Enlightenment era were actualised through political revolutions, particularly the American and French Revolutions. The 1776 United States Declaration of Independence¹⁰² and the 1789 French Declaration of the Rights of Man and of the Citizen are pivotal documents. They translated the Enlightenment principles into actionable rights. These documents articulated fundamental rights such as liberty,¹⁰³ equality,¹⁰⁴ and fraternity.¹⁰⁵ They emphasised that governments are instituted to protect these rights. They underscored the belief

⁹⁶ Vincent "Magna Carta From King John to Western Liberty" 25-40.

⁹⁷ Vincent "Magna Carta From King John to Western Liberty" 25-40.

⁹⁸ Vincent "Magna Carta From King John to Western Liberty" 25-40.

⁹⁹ East 2023 <https://www.thelovepost.global/rooted-rights/articles/philosophical-odyssey-exploring-rights-through-brilliant-minds>.

¹⁰⁰ Hunt 2016 *Political Research Quarterly* 546.

¹⁰¹ Rousseau *The Social Contract* 35.

¹⁰² Bradley "The United States and the Global Human Rights Order" 331-336.

¹⁰³ For instance, as stated in A 2 of the *French Declaration of the Rights of Man and of the Citizen (1789)*.

¹⁰⁴ For example as stipulated in A 1 of the *French Declaration of the Rights of Man and of the Citizen (1789)*.

¹⁰⁵ For example as stated in A 3 of the *French Declaration of the Rights of Man and of the Citizen (1789)*.

that human rights are universal and should be safeguarded against tyranny and oppression.

The 19th century witnessed significant advancements in human rights, through abolitionist and suffrage movements. Activists such as Frederick Douglass and Susan B. Anthony expanded the scope of human rights, to include freedom from slavery and the right to vote, respectively. The Industrial Revolution highlighted the need for labour rights. It prompted the establishment of protections against exploitation, and the promotion of fair working conditions.¹⁰⁶

The atrocities of World War II, particularly the Holocaust, galvanised global efforts to protect human rights. The creation of the United Nations and the adoption of the Universal Declaration of Human Rights (hereafter *UDHR*) in 1948 marked a significant milestone. They initiated the international human rights movement. The *UDHR* outlined fundamental human rights to be universally protected. It proclaimed such rights as the right to life, liberty, security, and freedom from torture and slavery, as well as economic, social, and cultural rights.

Following the *UDHR*, numerous international treaties and covenants were established to enforce human rights. Key documents include the 1966 International Covenant on Civil and Political Rights (hereafter *ICCPR*), and the 1966 International Covenant on Economic, Social, and Cultural Rights (hereafter *ICESCR*).¹⁰⁷ Various international bodies, such as the Human Rights Council and the International Criminal Court, were created. Their mandate was to monitor and enforce human rights standards globally. In recent decades, human rights discourse has expanded to address emerging issues. These concern environmental rights, digital privacy, and the rights of marginalised groups. These include *LGBTQ+* individuals, indigenous peoples, and persons with disabilities.

¹⁰⁶ Hay 2018 *Oxford Economic and Social History* 164.

¹⁰⁷ Anthony *Indivisibility of Human Rights* 4. Ahmed and Bulmer *Social and Economic Rights* 8. De Baets 2009 *History and Theory* 20. Macklem 2015 *London Review of International Law* 1. Onyango 1995 *California Western International Law Journal* 10.

Liberal theorists emphasised individual autonomy and the protection of personal freedoms. John Rawls' theory of justice as fairness significantly influenced contemporary human rights thinking. This theory advocated for equal basic liberties and the fair distribution of resources. Critical theories, such as Marxism, feminism, and postcolonialism, challenged traditional human rights discourses. This entailed highlighting issues of power, inequality, and cultural relativism, as well as advocating for a more inclusive and context-sensitive approach.

Regional human rights systems further cemented the protection of human rights. The 1950 European Convention on Human Rights and the establishment of the European Court of Human Rights provided robust mechanisms for the protection of human rights in Europe. The 1969 American Convention on Human Rights and the Inter-American Court of Human Rights played a crucial role in safeguarding human rights in the Americas. The 1981 African Charter on Human and Peoples' Rights emphasised collective rights and the interplay between individual and community rights. This reflects the continent's unique cultural and historical context.

The interconnectedness of the modern world presents both opportunities and challenges for human rights. Issues such as migration, climate change, and global economic inequality require a coordinated international response. The rise of digital technologies and artificial intelligence raises new human rights concerns. These particularly relate to privacy, surveillance, and the digital divide. Human rights remain a dynamic field, continually evolving to address new challenges and incorporate diverse perspectives. The ongoing dialogue between global and local actors is crucial for the continued advancement of human rights protections.

Jurisdiction is another perceived challenge for human rights. In exploring the jurisdiction of human rights, it is essential to understand how these rights are upheld across different legal systems and geographical boundaries. Human rights law operates at both international and domestic levels. International treaties and conventions set universal standards that member states are obligated to respect. Jurisdictional aspects are considered when determining how these international norms are incorporated into national legal frameworks, and how they influence

domestic human rights practices. The effectiveness of human rights protection often hinges on the ability of national courts to enforce international standards. It also depends on states' willingness to align their domestic laws with global commitments. This interplay between international obligations and national implementation underscores the complexity of the endeavour to ensure that human rights are universally protected and respected. This reflects a shared commitment to upholding fundamental freedoms and justice.

The philosophical and revolutionary developments in human rights have laid the foundation for understanding and advocating for socio-economic rights. The inclusion of economic, social, and cultural rights in the *UDHR* as well as the subsequent establishment of international covenants highlight the importance of addressing not only civil and political rights, but also the fundamental needs and welfare of individuals. The next section delves into the specific development and discourse regarding socio-economic rights. It examines their significance in the broader human rights framework as well as their critical role in ensuring the wellbeing and dignity of all individuals.

2.2.2 Evolution of socio-economic rights¹⁰⁸

Socio-economic rights are not ancillary to human rights. They constitute a fundamental subset of the broader human rights framework. Their evolution underscores their critical role in achieving the overarching goals of human rights. This includes the protection and promotion of human dignity, equality, and freedom.

The recognition of socio-economic rights can be traced back to early social and political philosophies. Thinkers such as Thomas Paine, in "Rights of Man" (1791), advocated for welfare provisions. They argued that society owes its members a basic standard of living. Similarly, Karl Marx's critique of capitalism highlighted the

¹⁰⁸ The history of socio-economic rights is relevant for the purpose of this study as it highlights where the socio-economic rights emanated and the importance of their protection worldwide, thus laying the foundation that socio-economic rights are to be respected by mining companies and governments where mineral extraction is taking place.

need for economic rights, to address exploitation and inequality. These early ideas set the stage for later developments in socio-economic rights

The adoption of the *UDHR* in 1948 marked a pivotal moment in the formal recognition of socio-economic rights. Articles 22 to 27 of the 1948 *UDHR* enumerate the rights related to social security, work, education, and an adequate standard of living. This inclusion underscored that socio-economic rights are essential for the full realisation of human dignity and freedom. This positioned them alongside civil and political rights, as integral components of the human rights framework.

Following the 1948 *UDHR*, the *ICESCR* was adopted in 1966. The 1966 *ICESCR*, along with the 1966 *ICCPR*, form the International Bill of Human Rights. The 1966 *ICESCR* elaborates on the socio-economic rights outlined in the 1948 *UDHR*. The *ICESCR* obligates states to take steps to progressively achieve the full realisation of rights. These include the right to work, social security, family life, adequate standard of living, health, and education.

The evolution of socio-economic rights has been enriched by various theoretical contributions. John Rawls' "Theory of Justice" emphasises the importance of a fair distribution of resources and opportunities. It aligns with the principles underlying socio-economic rights. Amartya Sen's "Capability Approach" further advanced the discourse by focusing on individuals' capabilities to lead fulfilling lives. It highlights the necessity of socio-economic rights, to expand people's freedoms and choices.

Regional human rights instruments have also significantly contributed to the evolution and enforcement of socio-economic rights. The 1961 European Social Charter and the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (also known as the Protocol of San Salvador) affirm the importance of these rights and provide mechanisms for their protection and promotion.

In recent decades, the recognition and implementation of socio-economic rights have expanded significantly. The Sustainable Development Goals (hereafter *SDGs*), adopted by the United Nations in 2015, reflect a global commitment to addressing

socio-economic inequalities and ensuring access to basic necessities. These include healthcare, education, and decent work for all. Despite these advancements, challenges persist, including disparities in wealth distribution, access to essential services, as well as the impact of globalisation and economic policies on vulnerable populations.

Many countries have integrated socio-economic rights into their constitutions and legal frameworks. This demonstrates the recognition of their essential role in achieving social justice and equality. South Africa's Constitution, for instance, includes explicit provisions for socio-economic rights. These entail the right to housing, healthcare, food, water, and social security. These constitutional guarantees translate the understanding that socio-economic rights are indispensable for human dignity and the realisation of other fundamental rights.

Socio-economic rights are central to the human rights framework.¹⁰⁹ They address the material conditions necessary for individuals to exercise their civil and political rights effectively. Without access to adequate food, housing, healthcare, and education, individuals cannot fully enjoy their rights to free speech, assembly, and participation in public life. Thus, socio-economic rights are indispensable for the holistic realisation of human rights as well as the overarching goals of human dignity, equality, and freedom.

The evolution of socio-economic rights highlights their centrality within the human rights framework. Recognising and protecting these rights is essential in achieving the broader objectives of human rights, as well as ensuring that all individuals can live with dignity, equality, and freedom. The next section covers specific socio-economic rights and their critical importance in the context of human rights protection and promotion.

¹⁰⁹ Piovesan 2004 *International Journal on Human Rights* 22.

2.2.3 The scope and meaning of socio-economic rights

Socio-economic rights encompass a range of entitlements that ensure individuals' access to essential resources and services. These rights include the right to work, which ensures the opportunity to earn a living by means of work freely chosen or accepted. This right entails just and favourable work conditions, and protection against unemployment.¹¹⁰ The right to social security involves access to social insurance and assistance, to protect against economic and social risks. These include unemployment, sickness, and old age.¹¹¹ The right to family life provides protection and assistance to families. It encompasses maternity leave and child protection measures.¹¹² The right to an adequate standard of living entails access to adequate food, clothing, housing, and the continuous improvement of living conditions.¹¹³ The right to health ensures timely and appropriate healthcare and access to underlying determinants of health such as safe drinking water and sanitation.¹¹⁴ Finally, the right to education guarantees free, compulsory primary education, available secondary education, and accessible higher education – based on merit.¹¹⁵

Socio-economic rights are crucial to the realisation of human dignity and the effective exercise of civil and political rights. They are integral to the human rights framework. They reflect the principles of interdependence and indivisibility. The realisation of socio-economic rights is essential for the enjoyment of civil and political rights. For instance, access to education enables individuals to participate effectively in public life. Moreover, these rights help address inequalities and prevent discrimination. They ensure that marginalised groups have opportunities to improve their socio-economic status. They are fundamental to achieving social justice and

¹¹⁰ A 6 and A 7 of the *ICESCR* (1966).

¹¹¹ A 9 of the *ICESCR* (1966).

¹¹² A 10 of the *ICESCR* (1966).

¹¹³ A 11 of the *ICESCR* (1966).

¹¹⁴ A 12 of the *ICESCR* (1996).

¹¹⁵ A 13 of the *ICESCR* (1966).

sustainable development. They ensure that all individuals have access to the resources and opportunities necessary for a dignified life.

The realisation of socio-economic rights imposes various obligations on states. These obligations are categorised into respect, protection, and fulfilment.¹¹⁶ States must refrain from interfering with individuals' enjoyment of their socio-economic rights, such as avoiding forced evictions. They must prevent third parties from violating these rights. This entails regulating businesses, to ensure fair labour practices. States must take positive steps to ensure the realisation of socio-economic rights. This involves adopting legislative, administrative, budgetary, and judicial measures to facilitate access to essential services and resources.¹¹⁷ This includes the progressive realisation of these rights. This requires continuous efforts, to improve living conditions.¹¹⁸

Implementing socio-economic rights presents several challenges. Limited financial resources can hinder the fulfilment of these rights, necessitating prioritisation and international cooperation. Effective implementation depends on the political will of governments. It requires strong governance and commitment to social justice principles. Monitoring the realisation of socio-economic rights is complex. It necessitates clear indicators and accountability mechanisms to assess progress and address violations.¹¹⁹ Socio-economic rights are central to the wider human rights framework. They ensure that individuals are in the necessary conditions to exercise their civil and political rights and live with dignity. By addressing material needs, socio-economic rights contribute to the overall goal of human rights. This goal entails promoting and protecting the inherent dignity and equality of all individuals.

¹¹⁶ The Preamble of the *ICESCR* (1966)

¹¹⁷ Whereas civil and political rights are referred to as negative rights which require the state to refrain from interfering with these rights. Macklem 2015 *London Review of International Law* 10. Wiles 2006 *HeinOnline* 45. Githii *The Case for Justiciability of Socio-Economic Rights in Kenya: Drawing from Experience in South Africa, India and the United States* 10.

¹¹⁸ A 2 of the *ICESCR* (1966).

¹¹⁹ Lapa *Strengthening Compliance with Economic and Social Rights: A Theoretical and Practical Approach* 6.

Socio-economic rights are indispensable in achieving the overarching goals of human rights. Recognising and protecting these rights is crucial in ensuring social justice, equality, and human development. In line with these historical trends, the socio-economic rights of mine host communities represent a critical intersection of collective and cultural rights. These are essential in ensuring that these communities benefit from and are protected against the impacts of mining activities. These rights span several key areas, each crucial for the holistic development and wellbeing of the communities involved. Thus, these rights should be protected through international, regional, and sub-regional frameworks. Historical milestones, collectively, reinforce the universal and evolving nature of human rights. By tracing the development of human rights, from the Magna Carta to contemporary expansions, a continuous effort to adapt and expand the framework to address emerging issues becomes apparent. This ensures that the human rights framework remains robust, inclusive, and capable of upholding the inherent dignity and equality of all individuals. One such area for the expansion of the human rights framework is the socio-economic rights of mine host communities.

2.2.4 Socio-economic rights in mine host communities

The socio-economic rights framework, as elaborated in Sections 2.2.1 to 2.2.3, is vital in understanding and addressing the specific needs and challenges experienced by mine host communities. These communities, often located in remote and underdeveloped areas, are significantly affected by mining activities. This can lead to both positive and negative socio-economic impacts. Therefore, the comprehensive socio-economic rights framework must be applied. This is to ensure that the rights and wellbeing of mine host communities are adequately protected and promoted.¹²⁰

The relevance of socio-economic rights to mine host communities cannot be overstated. Firstly, the right to work is particularly pertinent in these areas. Here, employment opportunities are often heavily dependent on the mining industry. Fair

¹²⁰ Pike *Social License to Operate; The Relevance of Social License to Operate for Mining Companies* 2.

labour practices and protection against unemployment must be ensured in these contexts. This is because the local economy can be significantly influenced by mining operations.¹²¹ Secondly, access to social security and essential services such as healthcare, education, and housing is vital. This is especially valid given the demographic changes and influx of workers and their families as a result of mining activities.¹²²

Moreover, the right to health is paramount in mine host communities. Indeed, mining operations can lead to environmental degradation and health hazards. Access to healthcare and the maintenance of environmental standards must be ensured, to mitigate these adverse effects.¹²³ The right to an adequate standard of living – including access to adequate food, clothing, and housing – is also critical. Mining activities should contribute to the continuous improvement of living conditions, rather than exacerbate poverty and inequality¹²⁴. Furthermore, the right to education is essential in fostering long-term socio-economic development in mine host communities. Investment in educational infrastructure and programmes by mining companies and governments can extend the benefits of mining to future generations.¹²⁵

To comprehensively understand and address the socio-economic rights of mine host communities, those rights must be examined through various theoretical lenses. This dissertation endeavours to dissect the socio-economic rights framework. This is done using three theories: the resource curse theory, the social justice theory, and the community participation theory.

The resource curse theory explores the paradox that countries rich in natural resources, such as minerals, often attain lower economic growth and poorer development outcomes, when compared to countries with fewer natural

¹²¹ Pegg 2006 *Elsevier* 380.

¹²² ICMM *The Role of Mining in National Economies* 24.

¹²³ Fleming *et al* 2015 *The Australian Journal of Agricultural and Resource Economics* 624.

¹²⁴ Stevens *Resource Impact-Resource Curse or Blessing: A Literature Survey* 13.

¹²⁵ Letšeng Diamonds 2016 <https://www.letsengdiamonds.co.ls/home/2017%20SCHOLARSHIP%20ADVERT.pdf>.

resources.¹²⁶ The economic and social challenges faced by mine host communities and the potential adverse effects of mining on local development can be understood through the application of this theory.¹²⁷

The social justice theory focuses on the fair distribution of wealth, opportunities, and privileges within a society.¹²⁸ By applying the social justice theory, an assessment can be made. This helps establish whether mine host communities receive equitable benefits from mining activities, or whether their rights and interests are adequately protected.¹²⁹

The community participation theory emphasises the importance of involving local communities in decision-making processes that affect their lives.¹³⁰ The extent to which mine-host communities participate in the governance of mining activities and the protection of their socio-economic rights can be evaluated through this lens.¹³¹

Each of these theoretical lenses provides a unique perspective on the socio-economic rights of mine-host communities. This enables a holistic analysis of the impacts of mining and the effectiveness of existing legal and policy frameworks. By dissecting socio-economic rights through these theories, gaps can be identified. As a result, more effective strategies for protecting and promoting the rights and wellbeing of mine-host communities can be proposed.

The socio-economic rights framework is crucial in addressing the specific needs and challenges of mine-host communities. By examining these rights, through various theoretical lenses, a comprehensive understanding of the impacts of mining can be attained. Subsequently, effective measures can be proposed to ensure that the socio-economic rights and interests of mine-host communities are protected and promoted.

¹²⁶ Furh *Avoiding the Resource Curse* 1.

¹²⁷ NRGi *The Resource Curse: The Political and Economic Challenges of Natural Resource Wealth* 1.

¹²⁸ Brand and Heyns *Socio-Economic Rights in South Africa* 18.

¹²⁹ Piovesan 2004 *International Journal on Human Rights* 22.

¹³⁰ Fraser 2018 *Resources Policy* 1.

¹³¹ Hedin and Ranangen 2017 *Extractive Industries and Society* 30.

2.3 Exploring socio-economic dynamics: social justice, the resource curse, and community participation in diamond-mining communities

2.3.1 Introduction

Three foundational theories – social justice, resource curse, and community participation – have been meticulously selected. Each represents a distinct lens for analysing the socio-economic rights of mine-host communities impacted by the extractive industry. Each lens offers a unique perspective. But, together, they form a comprehensive framework for understanding the complex dynamics of socio-economic rights and development in resource-rich regions. By unpacking these theories, this section provides profound insights into how different approaches to justice, economic impacts, and community involvement intersect. Most importantly, these theoretical lenses show how mining activities influence the lives of individuals in mine-host communities. This analysis deepens the existing understanding of the theoretical foundations of socio-economic rights. Moreover, it highlights the practical implications for communities facing the challenges and enjoying the opportunities presented by resource wealth.

This comprehensive theoretical framework will be employed to critically assess the effects of mining on socio-economic rights. This theoretical framework will ensure a holistic analysis that incorporates various dimensions relating to justice, economic conditions, and participatory governance. Such an approach enriches the discourse on socio-economic rights and offers valuable perspectives for formulating policies and practices that better serve mine-host communities.

The social justice theory is an essential framework that can be effectively utilised to advocate for change. It serves as a foundation for promoting policies, practices and interventions that aim to address issues of equity, fairness, and inclusivity. It empowers marginalised and disadvantaged groups such as mine-host communities. It achieves this by amplifying their voices, recognising their rights, and promoting their participation in decision-making processes. Furthermore, it informs the

development of policies, programmes, and interventions. These promote social justice and advocate for the rights and wellbeing of individuals and communities.

The resource curse theory identifies a specific challenge to the attainment of social justice in resource-rights contexts. Here, natural wealth does not automatically translate into socio-economic development. The resource curse theory is useful because it informs policy makers, international organisations, civil society, and other stakeholders such as mine-host communities. It briefs these parties about the potential adverse effects of resource dependency and the importance of implementing related strategies. These aim to mitigate the negative effects of resource extraction and development. This theory also underscores the importance of transparency, accountability, and good governance in the management of revenues from natural resources. This is to ensure that these revenues benefit the community as a whole, rather than just the elite. Additionally, the resource curse theory promotes sustainable development approaches that prioritises environmental conservation, community development, and social inclusion in the management of the mining sector.

The community participation theory offers a practical and democratic means of addressing the resource curse. This is achieved by ensuring that local populations play a direct and active role in how mining resources are managed and how the benefits are distributed. Community participation, as a theory, is relevant in this framework. This is because it stresses the importance of mine-host communities' involvement in decision-making processes related to mineral extraction. This theory further recognises that the communities affected by mining operations should have a say in how extractive processes are undertaken. The views and needs of mine-host communities should always be considered.

The social justice, resource curse, and community participation theories, while distinct, interconnect in addressing the complexities of socio-economic rights and development. Together, these theories form a comprehensive approach to a socio-economic development that prioritises equity and fairness. This helps to mitigate the adverse impacts of mining, foster community empowerment and participation,

ensure accountability and transparency, and promote capacity building and local development. The relevance of these lenses lies in their ability to provide a multifaceted understanding of the socio-economic opportunities enjoyed and challenges experienced by mine-host communities. By applying these interconnected theories, the study aims to propose strategies that are not only theoretically sound, but also practically effective in enhancing the socio-economic rights and wellbeing of these communities. This integrated approach ensures that all critical aspects of socio-economic development are addressed. This, in turn, promotes sustainable and inclusive growth in resource-rich regions.

2.3.2 The social justice theory

Respecting socio-economic rights is foundational to achieving social justice. This entails equitable access to essential resources and opportunities, which helps to address systemic inequalities. When socio-economic rights are upheld, marginalised communities gain the ability to improve their living conditions, actively participate in societal activities, and secure their overall wellbeing. Respecting these rights mitigates disparities and fosters fairness, paving the way for a more just and equitable society. This was reiterated in the Copenhagen Summit on Social Development Report of 1995¹³² thus:

We share the conviction that social development and social justice are indispensable for the achievement and maintenance of peace and security within and among our nations. In turn, social development cannot be attained in the absence of peace and security or in the absence of respect for all human rights and fundamental freedoms.

The significance of socio-economic rights in the pursuit of social justice is highlighted in this extract. This shows that without respect for socio-economic rights by mining companies, social justice cannot be achieved.

¹³² UN *Report of the UN Summit for Social Development* (1995) 5. The Copenhagen World Summit for Social Development held in March 1995 was a platform where governments came together and reached a consensus on the need to put people at the centre of development. United Nations Department of Economic and Social Affairs 2018 <https://www.un.org/esa/socdev/wssd/text-version>.

The concept of social justice is a relatively new term. It first emerged in Western thought and political language as a consequence of the Industrial Revolution and the parallel development of the socialist doctrine.¹³³ Social justice does not have a single definition; however, consensus exists about the core of the term.¹³⁴ As Fuo¹³⁵ explains:

Social justice is the commitment to eradicate poverty and extreme forms of inequalities in access to basic needs in order to ensure that impoverished people command the material resources required to enable them to interact in socio-political life as true equals.

Social justice, in this context, foregrounds the idea of the redistribution of material resources to advance people's quality of life. This is achieved by ensuring that everyone has equal access to their basic socio-economic rights.¹³⁶

2.3.2.1 John Rawls' theory on social justice

In *Theory of Justice*,¹³⁷ Rawls opines that "the basic structure of society, or the way in which the major social institutions distribute fundamental rights and duties determine, the division of advantages from social cooperation."¹³⁸ He argues that this is at the core of what social justice entails. For him, the simple structure of society as well as social and political institutions highly contribute to the distribution of rights and duties. These structures also determine the division of benefits that accrue from social cooperation.¹³⁹

Social justice, as proposed by Rawls,¹⁴⁰ is based on two central principles.¹⁴¹ The first principle is the idea that people's liberties should be preserved in the distribution of resources. The second principle is that any inequality that is permitted should

¹³³ UN Department of Economic and Social Affairs *The International Forum for Social Development* 12.

¹³⁴ Mahiya *The Role of South Africa's Environmental Rights in Transformative Constitutionalism* 22.

¹³⁵ Fuo *Local Government's Role in the Pursuit of Transformative Constitutional Mandate of Social Justice in South Africa* 51.

¹³⁶ Mahiya *The Role of South Africa's Environmental Rights in Transformative Constitutionalism* 22.

¹³⁷ Rawls *A Theory of Justice* 6.

¹³⁸ Rawls *A Theory of Justice* 6.

¹³⁹ Rawls on *Justice as Fairness* in Clayton and Williams *Social Justice* 49.

¹⁴⁰ Rawls *A Theory of Justice* 6.

¹⁴¹ Premchand Date Unknown <https://www1.essex.ac.uk/journals/estro/documents/issue9/vol-9-no-2.pdf>.

only be allowed on the premise that it benefits the least favoured in society, the so-called “difference principle”. The social justice theory starts with an individual assuming a hypothetical position known as the original position. To reach a just system of social distribution, characterised by cooperation, all biases need to be eradicated. This leads to the consensus essential for the good of society. The original position adopts a veil of ignorance presupposing that no one is aware of another person’s social status, income, religion, or natural endowments, when making a decision.¹⁴² This is so that no one can create principles that are in their favour, or which allow them to be influenced by natural chance or the contingencies of social status.¹⁴³

According to Rawls’¹⁴⁴ theory, for mine-host communities to gain access to social justice, they should be able to benefit from the natural resources found where they live. Mining companies should be able to share the benefits they receive from the extraction processes, -regardless of social status, every member of the community should be able to benefit from the mine’s presence in their area. For example, if mines create jobs for the community, they should not just create jobs for the skilled labour. Provision should also be made for the unskilled labour in that community, to ensure fairness among the community members. Regardless of background, all persons with the same potential can have the same life prospects.¹⁴⁵

2.3.2.2 Nancy Fraser’s theory on social justice

Fraser¹⁴⁶ developed her theory of social justice based on the principle of participatory parity.¹⁴⁷ This principle recognises the right of all to participate and interact with each other as peers in social life.¹⁴⁸ For Fraser,¹⁴⁹ “according to this norm justice requires social arrangements that permit that all (adult) member of society to

¹⁴² Taylor *Social Justice: Reframing the "social" in Critical Discourses in Africa* 18.

¹⁴³ Rawls *A Theory of Justice* 11.

¹⁴⁴ Rawls *A Theory of Justice* 12.

¹⁴⁵ Fuo *Local Government’s Role in the Pursuit of Transformative Constitutional Mandate of Social Justice in South Africa* 43.

¹⁴⁶ Fraser “Social Justice in the age of identity Politics” 36.

¹⁴⁷ Liebenberg 2006 *Heinonline* 7.

¹⁴⁸ Liebenberg 2006 *Heinonline* 7.

¹⁴⁹ Fraser “Social Justice in the Age of Identity Politics” 36.

interact with one another as peers.” This means that a society based on social justice is one where participatory parity exists. Fraser¹⁵⁰ further states that for participatory parity to be conceivable, two conditions must be satisfied.

The distribution of material resources must guarantee a participant's independence and voice. This is what Fraser refers to as the “objective” precondition of participatory parity. This requirement necessitates that all forms and levels of material inequality and economic dependence that impede parity of participation be removed.¹⁵¹ For instance, the notion that only men can be hired as miners and not women must be eradicated. Such a view limits women’s economic prospects and has a negative effect on their ability to function as men’s peers in society. Hence, Fraser¹⁵² states that “social arrangements that institutionalise deprivation, exploitation and gross disparities in wealth, income and leisure times, thereby denying some people the means and opportunities to interact with others as peers should be precluded.”

Another condition for participatory parity “requires that institutionalised cultural patterns of interpretation and evaluation express equal respect for all participants and ensure equal opportunity for achieving social esteem.” Fraser¹⁵³ refers to this as an intersubjective condition. This condition, according to Fraser,¹⁵⁴ bars cultural patterns that systematically denigrate some categories of people and their associated qualities. This denies some people the status of full partners in interaction.¹⁵⁵

Fraser further states that both the objective condition and intersubjective condition are essential for participatory parity, neither alone is sufficient. She¹⁵⁶ advocates for equal access to resources, so that everyone can participate on the same level in

¹⁵⁰ Fraser “Social Justice in the Age of Identity Politics” 10.

¹⁵¹ Fuo *Local Government’s Role in the Pursuit of Transformative Constitutional Mandate of Social Justice in South Africa* 51.

¹⁵² Fraser “Social Justice in the age of identity Politics” 17.

¹⁵³ Fraser “Social Justice in the age of identity Politics” 17.

¹⁵⁴ Fraser “Social Justice in the age of identity Politics” 37.

¹⁵⁵ Fraser “Social Justice in the age of identity Politics” 3.

¹⁵⁶ Fraser “Social Justice in the age of identity Politics” 67.

social processes.¹⁵⁷ In the context of mining activities, this means that the mining proceeds benefit every mine-host community member.

The theories of social justice elaborated by Rawls and Fraser propose an understanding that socio-economic rights are indispensable in achieving a fair and impartial society. A mutual agreement holds that achieving social justice mainly focuses on poverty alleviation and the removal of extreme forms of inequalities regarding access to basic needs. In some ways, this requires some form of redistribution of resources, to ensure that disadvantaged people have access to services and rights. Historically, socio-economic rights have evolved in response to societal needs and demands for justice. This means that having mines in various areas should enable mine-host communities to have access to clean water, a healthy environment, employment, education, health facilities, and other socio-economic rights. These can improve mine-host communities' access to dignified lives.

2.3.3 The resource curse theory

Although mining has positive impacts, many resource-rich countries are negatively affected by mineral extraction. The negative impacts range from insufficient national economic growth, inequality, conflict, and negative effects on social progress.¹⁵⁸

The mining industry is usually perceived as an economic-development driver. This is based on the presumption that where mineral wealth exists in a country, development prospects increase. Conversely, countries endowed with natural resources often record slower progress, compared to countries without natural resource endowments.¹⁵⁹ In fact, the mining industry has repeatedly been linked to

¹⁵⁷ Fraser "Social Justice in the age of identity Politics" 67.

¹⁵⁸ Mancini and Sala 2018 *Resources Policy* 100.

¹⁵⁹ As previously mentioned in Chapter 1 countries like Angola, Nigeria, Sudan, and the Republic of Congo are rich in minerals such as oil and diamonds, yet their residents are experiencing low income and low quality of life. While simultaneously Asian peninsulas such as Japan, Singapore, Hong Kong, Korea, and Taiwan but to mention a few have prospered economically even though they do not have any significant amount of natural resources to export. Kurecic and Seba Date Unknown http://bib.irb.hr/datoteka/820620.The_Resource_Curse_In_Sub_Saharan_Africa.pdf. Siegle 2008 *International Social Science Journal* 45.

various, serious negative environmental and economic externalities.¹⁶⁰ It has, for example, been recorded that countries with natural resource wealth have high rates of violent conflict, political instability, misuse of natural resources, underdevelopment, corruption, and lower rates of economic growth, in comparison to their neighbours without resource wealth.¹⁶¹ It is because of these severe negative impacts that mineral wealth is often referred to in literature as a “curse”.¹⁶²

The term “resource curse” gained popularity since the publication of Richard Auty’s work, *Sustaining Development in Mineral Economies: The Resource Curse Thesis*.¹⁶³ The resource curse is often defined as a state in which “countries rich in mineral resources are extremely poor and the general population does not benefit from the nation’s mineral wealth.”¹⁶⁴ The resource curse theory suggests that mineral wealth is deconstructive for a country’s socio-economic development. Within the context of this research, this theory raises various questions. It also probes the reasons for the resource curse. Moreover, it seeks to establish whether the government of Lesotho – through its current constitutional, policy, and legislative framework – can overcome the effects of the resource curse on mine-host communities in Lesotho.¹⁶⁵ For the purposes of this study, the following four

NRGI *The Resource Curse: The Political and Economic Challenges of Natural Resource Wealth* 1. Burton 2014 *Emory International Law Review* 425. Elbra 2013 *The Forgotten Resource Curse: South Africa’s Poor Experience with Mineral Extraction* 557.

¹⁶⁰ Fleming *et al* 2015 *The Australian Journal of Agricultural and Resource Economics* 624. Yelapaala and Ali 2005 *Resources Policy* 155. Eggert *Mining and the Environment: International Perspectives on Public Policy* 143.

¹⁶¹ NRG *The Resource Curse: The Political and Economic Challenges of Natural Resource Wealth* 1. Schultz *Follow the Money A Guide to Monitoring Budgets and Oil and Gas Revenue* 14. Demissie *The Natural Resource Curse in the Sub-Saharan Africa Transparency and International Initiatives* ii. Centre for Environmental Rights *The Threats to Human Rights from Mining and Coal Fired Power Production in South Africa* 2. Eggert *Mining and the Environment: International Perspectives on Public Policy* 143.

¹⁶² Auty *Sustaining Development in Mineral Economies: The Resource Curse Thesis* 1. Murombo 2013 *LEAD* 33. Sachs and Warner 1999 *Journal of Development Economics* 46.

¹⁶³ Auty *Sustaining Development in Mineral Economies: The Resource Curse Thesis* 1. Elbra 2013 *Resource’s Policy* 549.

¹⁶⁴ Sachs and Warner 2001 *European Economic Review* 56. Xu, Xu, Chen, Che 2016 *Resources Policy* 12. Bacon and Tord *Experiences with Oil Funds: Institutional and Financial Aspects* 3.

¹⁶⁵ Burton 2014 *Emory International Law Review* 471. Bacon and Tord *Experiences with Oil Funds: Institutional and Financial Aspects* 4.

elements of the resource curse phenomenon can be distinguished: conflict, corruption, governance, and environmental degradation.

2.3.3.1 Conflict

Precious mineral resources have been identified as one of the main drivers of conflict, in countries endowed with them.¹⁶⁶ Conflict can thus be regarded as one of the variants of the resource curse. This is because conflict can have adverse effects on the country's socio-economic development. For Alao,¹⁶⁷ the relationship between natural resources and conflict is as ancient as human settlement. Wars were fought and kingdoms were overthrown. The victors could access the mineral resources available in the conquered lands.¹⁶⁸ The mineral resource industry is characterised by large amounts of profit.¹⁶⁹ This is because these minerals are usually highly sought after but very scarce. This contributes to a violent rent-seeking attitude that results in civil wars in mineral-rich countries.¹⁷⁰

Switzer,¹⁷¹ in his study on the relationship between armed conflict and natural resources, states that mining can cause conflict over four key elements. These include "control of the resource or resource area, right to participate in decision-making and benefit sharing, social and environmental impacts and lastly, means used to secure mining assets and personnel." Switzer¹⁷² further notes that mining can "finance conflict, benefit from conflict, be targeted by conflict and be a supplier to those who profit from conflict." That is, the cause of conflict is determined by the resources extracted, how revenues from this sector are distributed, and the involvement of mine-host communities in the developmental decisions affecting their region. Conflict, in the context of Lesotho, can either be intra-communal or

¹⁶⁶ De Luca *et al* 2012 <https://media.africaportal.org/documents/ifpridp01193.pdf>. Manamela *The Impact of Mining on Indigenous African Communities in Limpopo South Africa* 58.

¹⁶⁷ Alao *Natural Resources and Conflict in Africa: The Tragedy of Endowment* 1.

¹⁶⁸ Alao *Natural Resources and Conflict in Africa: The Tragedy of Endowment* 1. Manamela *The Impact of Mining on Indigenous African Communities in Limpopo South Africa* 58.

¹⁶⁹ A rent is a level of profit that is above normal, to as sector that has normal competition. Di John 2010 *Real Instituto Elcano* 2.

¹⁷⁰ De Soysa 2002 *Global Environmental Policies* 6.

¹⁷¹ Switzer *Armed Conflict and Natural Resources: The Case of the Minerals Sector* 3.

¹⁷² Switzer *Armed Conflict and Natural Resources: The Case of the Minerals Sector* 3.

between the mine-host communities and the mining companies. For example, in the Lesotho district of Mokhotlong, the heavy machinery necessary for the extraction of diamonds was damaging the local roads. This led to discontent on the part of the members of the host community who closed the roads. This constituted a form of protest against the mining company.

Furthermore, Collier and Hoeffler¹⁷³ argue that natural resources significantly increase the potential of civil conflict and prolong wars in countries rich in mineral wealth. This leaves mine-host communities truly cursed.¹⁷⁴ It is usually difficult to convert mineral resources into opportunities for the citizenry of countries. The mismanagement of funds received from the mineral resources leads to more poverty. This may, in turn, lead to civil wars, because mine-host communities usually have high expectations regarding their benefits from the mineral resources in their vicinity.¹⁷⁵

2.3.3.2 Corruption

Natural resource booms, as highlighted by Di John,¹⁷⁶ are sometimes associated with poor economic indicators. These render resource-rich countries cursed because of practices such as corruption.¹⁷⁷

¹⁷³ Collier and Hoeffler 2001 *Oxford Economic Papers* 595.

¹⁷⁴ According to them a country that has no natural resources has 0.5% probability of civil conflict while a country with natural resource to GDP share of 26% faces a 23% probability of civil conflict. Collier and Hoeffler 2001 *Oxford Economic Papers* 563. Sala-i-Martin and Subramanian *Addressing the Natural Resource Curse: An Illustration from Nigeria International Monetary Fund* 6.

¹⁷⁵ Maconachie and Binns 2007 *Resources Policy* 106. Manamela *The Impact of Mining on Indigenous African Communities in Limpopo South Africa* 58.

¹⁷⁶ Di John 2010 *Real Instituto Elcano* 7.

¹⁷⁷ The definition of corruption is not as clear cut as one would imagine, this is depicted through the various studies carried out to truly understand its meaning. The approaches followed by the different authors in trying to define corruption are either philosophical, theoretical, sociological, political, or economic. These differing approaches have led to sometimes conflicting definitions of the word corruption. Transparency International (hereafter *TI*) defines corruption as "the abuse of entrusted power for private gain." The World Bank also defines corruption as the abuse of public gain for private gain. Both definitions refer to a situation where a public official or someone entrusted with power such as an elected or appointed civil servant commits an unlawful act of enriching themselves or their relatives by misusing the power entrusted to them. An example where corruption in the mining industry was in Sierra Leone, when in 1968 the All-

Bacon and Tord¹⁷⁸ explain that corruption in the mining industry occurs when a country experiencing a natural-resource boom makes significant profit, but has weak institutions. As a result, everyone (mostly government officials) tries to secure profits for themselves one way or another.¹⁷⁹ A considerable challenge to the fight against corruption in mineral wealthy countries is the lack of an adequate legal and administrative framework for the regulation of mining activities. Poor governance, together with corporate secrecy in the extractive industries, exacerbate corruption in developing countries. This hinders socio-economic development in such countries, although they are rich in minerals.¹⁸⁰

2.3.3.3 Governance

Englebert and Ron¹⁸¹ suggest that mineral-rich countries may be resource-cursed due to weak governance.¹⁸² This means that if natural resources are used well, they create greater prosperity for current and future generations. However, where the natural resource revenue generates significant income for the government budget, the civil service lacks the capacity to control the funds. Englebert and Ron¹⁸³ further indicate that the poor choice of projects, lax contracting procedures, and weak project oversight lead to bad performance. This concerns the social output received from the expenditures undertaken.¹⁸⁴ According to the Mineral Governance

People's Congress Party came into power led by President Siaka Stevens. President Stevens was to appoint many of his companions to positions of power and the proceeds of diamonds were used to benefit his supporters. Stevens 2003 http://people.bath.ac.uk/bd20B/docs/stevens_2003.pdf. Maconachie and Binns 2007 *Resources Policy* 115. Transparency International 2019 <http://www.transparency.org/what-is-corruption#>. Komboni *Good Governance in Botswana Fighting Corruption and Maladministration* 28. Mugadza *Combating Corruption in Public Procurement in Developing Countries: A Legal Analysis* 13. Sovacool *et al* 2016 *Resources Policy* 192.

¹⁷⁸ Bacon and Tord *Experiences with Oil Funds: Institutional and Financial Aspects* 4.

¹⁷⁹ IFC 2014 *Sustainable and Responsible Mining in Africa* 12. De Medeiros Costa and Dos Santos 2013 *Resources Policy* 789.

¹⁸⁰ Mailey 2015 *The Anatomy of the Resource Curse: Predatory Investment in Africa's Extractive Industries* 3.

¹⁸¹ Englebert and Ron 2004 *Comparative Politics* 61.

¹⁸² Bacon and Tord *Experiences with Oil Funds: Institutional and Financial Aspects* 4. Sala-i-Martin and Subramanian *Addressing the Natural Resource Curse: An Illustration from Nigeria* *International Monetary Fund* 5.

¹⁸³ Englebert and Ron 2004 *Comparative Politics* 61.

¹⁸⁴ Bacon and Tord *Experiences with Oil Funds: Institutional and Financial Aspects* 4. Acemoglu *et al* 2001 *The American Economic Review* 1369.

Barometer, this is a challenge that faces all the *SADC* countries.¹⁸⁵ Therefore it becomes crucial that the government equips itself with human capital. The latter should be able to monitor and wisely spend public funds, where the mineral industry is performing well. This helps to reduce any possibility of mismanagement of mineral proceeds.

2.3.3.4 Environmental degradation

Murombo¹⁸⁶ opines that environmental degradation caused by mineral extraction is another variable of the resource curse. This is because it creates substantial amounts of water, air and land pollution as well as the degradation of arable land.¹⁸⁷ The environmental damage resulting from mining activities, as highlighted by Chuhan-Pole *et al*,¹⁸⁸ violates the human rights of thousands of members of mine-host communities.¹⁸⁹ The mentioned impacts relate to the daily life of mine-host communities. Indeed, their livelihood is largely based on agriculture and water supply from natural wells or springs. These, more often than not, may be contaminated by mineral extraction activities. An example relates to mine-host communities surrounding the Liqhobong diamond mine situated in the Lesotho

¹⁸⁵ Alence and Mattes *Mineral Governance Barometer* vii.

¹⁸⁶ Murombo 2011 *LEAD* 36.

¹⁸⁷ Murombo 2011 *LEAD* 36.

¹⁸⁸ Chuhan-Pole *et al Mining in Africa* 35.

¹⁸⁹ These range from the right to health where environmental pollution can adversely affect the health of mine host communities for example where their water sources have been contaminated and they catch disease like cholera, skin rashes, malaria, diarrhoea, and others by using water that has been contaminated by chemicals from the mines. Also, the right to a healthy environment is also usually violated when environmental pollution and degradation is caused during mineral extraction. The right to property is also affected for instance where mine host communities maybe evicted, relocated, or deprived of their arable land to pave way for mining activities where diamonds are found in their vicinity. Other rights that are equally affected are the right to food and clean and safe water which are usually impacted by the mining activities that may contaminate the safe drinking water of mine host communities. The right to work and the right to education are also usually affected by mining activities, where mine host communities may lose their access to education because of the intention to make way for mining companies and the schools get closed down or where mine host communities have no skills and therefore are not employable as per the mines standards meaning they could not get access to work even though mining activities are taking place in their vicinity. Mine Host Communities breathe toxic pollutants that contribute to illness or death, violating their rights to life, a healthy environment and health. Yeboah *Environmental and Health Impact of Mining on Surrounding Communities* 3. Murombo 2013 *LEAD* 40. *NRGI* 2015 https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf. Centre for Environmental Rights *The threats to Human Rights from Mining and Coal Fired Power Production in South Africa* 2.

district of Butha-Buthe. Here, communities have been affected by the mining operations which have polluted their once copious wetlands, decreased their grazing fields, and destroyed their water sources.¹⁹⁰

The above literature on the resource curse foregrounds the idea that natural-resource abundance in developing countries is associated with numerous negative development consequences.¹⁹¹ Furthermore, it demonstrates that these negative impacts of mining activities are felt by mine-host communities. These are directly affected by the associated air,¹⁹² water¹⁹³ and noise pollution,¹⁹⁴ as well as land degradation,¹⁹⁵ damage to property,¹⁹⁶ corruption,¹⁹⁷ relocation,¹⁹⁸ human rights violations, as well as conflict among mine-host communities and between these communities and mining companies.¹⁹⁹ All this occurs despite the fact that

¹⁹⁰ Matheka *Public Eye* 22. Mokhethi *Lesotho Times* 8.

¹⁹¹ Maconachie and Binns 2007 *Resources Policy* 106.

¹⁹² Air pollution comes from the emission of dust and chemicals like carbon and sulphur used in the mineral extraction process.

¹⁹³ The water pollution usually stems from the disposal of toxic chemicals used from mineral extraction into water sources like dams around the mine.

¹⁹⁴ The noise pollution usually emanates from the blasting of rocks with explosives.

¹⁹⁵ Land degradation resulting from use of heavy mining equipment and toxic chemicals on the land therefore not making it suitable for agriculture. For instance, mine host communities surrounding the Likhobong diamond mine in Butha-Buthe complain that their normally copious wetlands which provide water to their fertile alluvial soils are being polluted by the ongoing mining operations. They further contested that their arable land that they use for crop production is no longer enough for all of them, as the mine has consumed all their fields and they are forced to share a few that are left. Matheka *Public-Eye* 22.

¹⁹⁶ For example, in the district of Mokhotlong where Letšeng diamond mine is located, mine host communities are enraged stating that ground vibrations caused by the mine's blasting operations have cracked and, in some cases, caused the collapse of houses and toilets of twelve community members in Patisi, Lichecheng and Maloraneng due to the proximity of their households to the mine. Mokhethi *Lesotho Times* 8.

¹⁹⁷ An example is mine host communities around the Kao diamond mine have accused the Lesotho government of making decisions on their behalf not engaging them stating that the government officials "want to fill their bellies, without caring about what the people are going through." This means that the communities are of the opinion that government officials negotiating the opening of these mines with investors do not have at heart their interests as the communities going to feel the pinch of having such mines open in their vicinity, rather the government officials have their own interests that is how is it they can benefit from having investors come to Lesotho to open such mines.

¹⁹⁸ For example, mine host communities located around the Kao diamond mine have continuously argued that the discovery of diamonds is a curse as they saw their fields (which they depend on for farming) swallowed up by the mining activities while they received inadequate compensation. Masoabi *Public Eye* 10. Matheka *Public Eye* 22.

¹⁹⁹ For example, in Mafeteng at the Kolo diamond mine conflict arose between the community of Ha Petlane and the Reskol diamond mine relating to 30 corpses of the community's ancestors

communities in these mineral-rich areas are best positioned for economic opportunity and development. This should have contributed to the improvement of their standard of living.²⁰⁰

2.3.4 The community participation theory

Community participation loosely refers to the active involvement of individuals and groups in decision-making processes, planning, implementation, and the evaluation of projects or policies. In the context of this study, community participation refers to the involvement of mine-host communities in matters that affect their lives and wellbeing. This is as a result of mining activities in their vicinity. Community participation encompasses a range of activities through which community members can effectively contribute knowledge, perspectives, and resources. This is to shape the direction and outcomes of initiatives that impact their community.²⁰¹ According to Fraser,²⁰² community participation is essential in fostering democracy, social justice, and sustainable development. This is achieved by ensuring that decisions and actions in mining activities are responsive to the needs and aspirations of those directly affected by them.²⁰³ Mutlokwa, in his study of *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects*, construes community participation as a human right. The latter can help

who allegedly exhumed without authorisation by the community in May of 2017. When interviewed by the local newspaper one Mr Lesole Thulo indicated that the community had not authorised the exhumation which was done by the Reskol diamond mine and certain community members who he stated had "gone rogue." This clearly shows the divide brought about by the mining activities between the members of the communities. A symptom that clearly illustrates the curse that falls on the mine host communities. MNNCIJ Reporters *Sunday Express* 6. Maqelepo *Informative* 7. Elbra 2013 *Resources Policy* 549. Saferworld *Mining in Uganda: A Conflict Sensitive Analysis* 3.

²⁰⁰ Parlee 2015 *Resources Policy* 425. Noor 2015 <https://issafrica.org/iss-today/communities-key-countering-africas-resource-curse>. Stewart 2012 <https://www.theatlantic.com/international/2012/04/why-natural-resources-are-a-curse-on-developing-countries-and-how-to-fix-it/256508>.

²⁰¹ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects* 19.

²⁰² Fraser 2018 *Resources Policy* 1.

²⁰³ Fraser 2018 *Resources Policy* 1.

empower communities to shape their future and hold governments and other stakeholders accountable for decisions and actions that affect their lives.²⁰⁴

Fraser²⁰⁵ demonstrates that traditional approaches to secure consent are not tantamount to community participation. For instance, granting companies permission to conduct prospecting activities does not constitute community participation. Hedin and Ranangen²⁰⁶ note that, in contrast to corporate social responsibility (hereafter *CSR*)²⁰⁷ which is one-directional (from the company to the mine-host community), community participation is collaborative. It is a two-way sharing of ideas between the company and the community. These scholars further observe that where community participation is enabled, the risks become a shared responsibility between the companies and the communities. Similarly, the benefits that accrue from mining activities should also be shared between the two, where community participation exists.

Tuulenti²⁰⁸ stresses the importance of two-way communication on community development agreements between mine-host communities and mining companies. He emphasises that it is a prerequisite for extractive industries' actions in mine-host communities. He opines that this aspect is crucial enough to be the basis of a legal framework that governs mining processes in mine-host communities. Since community participation is a two-way street, the government and mining companies can also benefit from the knowledge that mine-host communities possess. This means that communities that participate take ownership and are recognised as key stakeholders in mining processes and are thus able to contribute meaningfully.

²⁰⁴ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects* 19.

²⁰⁵ Fraser 2018 *Resources Policy* 1.

²⁰⁶ Hedin and Ranangen 2017 *Extractive Industries and Society* 30.

²⁰⁷ Bice defines *CSR* as A pattern of policies and activities undertaken by companies which are directly or indirectly related to their primary operations, but which are significantly influenced by social norms and expectations as understood by companies and their stakeholders concerning the company's social, environmental and economic behaviours and impacts. Bice *Responsible Mining* 21.

²⁰⁸ Tuulenti 2019 *Resources Policy* 106.

Prno and Slocombe²⁰⁹ contend that a form of participation is achieved when mine-host communities' voices are heard. Social licence to operate (hereafter *SLO*)²¹⁰ enables mine-host communities to have a voice. Thus, to a degree, *SLO*, can be considered as participation.²¹¹ Cesar²¹² notes that even though *SLO* is a form of participation, a higher form of participation exists. The implication of this is that *SLO* does not substitute the requirement of community participation associated with mine-host communities in the extractive processes. This means that community participation should go over and above *SLO* and *CSR*. It should be legislated into a binding framework. An inference can therefore be made: the higher the participation, the higher the *SLO* and *CSR*. This is because *SLO* and *CSR* depend on a limited degree of community participation. Therefore, it is not unreasonable to expect an increase in the quality of *SLO* and *CSR* in a case where a higher level of community participation exists.

The right to free, prior and informed consent (hereafter *FPIC*)²¹³ refers to the rights of indigenous peoples, as recognised in the *2007 United Nations Declaration on the Rights of Indigenous Peoples* (hereafter *UNDRIP*). This empowers them to give or withhold their consent for projects that may affect them.²¹⁴ *FPIC* is a crucial element of community participation, especially in matters concerning indigenous peoples and

²⁰⁹ Prno and Slocombe 2012 *Resources Policy* 347.

²¹⁰ *SLO* is defined as, "the acquisition and ongoing maintenance of the consent of local stakeholders to specific local projects." *SLO* is usually granted by the community and should therefore be properly maintained in order for the mine host community to keep granting it to a mine on an ongoing basis. Where an *SLO* is present, mining companies can carry on with their businesses due to the confidence of the society in the mining company. Yates and Horvath 2013 "Social License To Operate: How To Get It, And How To Keep It" 2.

²¹¹ Prno and Slocombe 2012 *Resources Policy* 347.

²¹² Cesar 2021 *Journal of Cleaner Production* 278.

²¹³ 'Free and Informed Consent' was introduced in A 6 of the International Labour Organization's Convention 169 (hereafter *ILO*).

²¹⁴ This is an international law instrument adopted by the United Nations General Assembly on the 13th September 2007. It is viewed as the most inclusive international instrument on the rights of indigenous peoples. Furthermore, it demonstrates a universal framework of minimum standards for the survival, dignity and wellbeing of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to specific situations of indigenous peoples. Davis 2015 <https://fnec.ca/wp-content/uploads/2015/07/UNDRIP-International-Legal-Framework-Expert-Paper-Prof.Megan-Davis-.pdf>. United Nations Department of Economic and Social Affairs Indigenous Peoples Date Unknown <https://un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

local communities. In the context of this study, *FPIC* is considered a key mechanism of community participation. This is because it provides an avenue through which communities of indigenous peoples can exercise their right to participate in decisions that affect them.²¹⁵

Although the *FPIC* concept applies to the rights of indigenous people, its principles can also be relevant and applicable to non-indigenous people, in certain contexts. For example, in environmental and developmental projects that may affect local communities, such as the mine-host communities in Lesotho, ensuring meaningful consultation, participation and consent upholds the principles of justice, human rights, and sustainable development. This is why the principles of *FPIC* are relevant to the protection of the socio-economic rights of mine-host communities in Lesotho. *FPIC* can be regarded as an additional step, over and above *SLO* and *CSR*, that seeks to protect the rights of indigenous people. This is specifically the case in places where extractive processes unfold.

According to Rodhouse and Vanclay,²¹⁶ the difference between *FPIC* and *CSR* is in their respective approaches. While *FPIC* fosters a human-rights-based approach to development, *CSR* has a neo-liberal economic development approach. This is because *FPIC* principles are mandated by the state, while *CSR* is usually an initiative of mining companies. Furthermore, *CSR* can be used to create an environment conducive to continued *SLO*. Syn²¹⁷ posits that:

Unlike the *CSR* construct, which is often criticised as driven by corporate actors' desires to improve their image or achieve business goals, or *FPIC*, which relies heavily upon the international community's desire to protect the rights of indigenous peoples, the idea of a social license that can be withdrawn represents an assertion of power by the people whose land and human rights have been consistently violated by governments and businesses, and a recognition of that power by the corporate sector.

The relationship between *FPIC*, *CSR*, and *SLO* – in the context of mine-host communities – is essential. It helps in promoting sustainable socio-economic

²¹⁵ A 19 and A 32 of *UNDRIP* (2007).

²¹⁶ Rodhouse and Vanclay 2016 *Journal of Cleaner Energy* 8.

²¹⁷ Syn 2014 *Social Epistemology: A Journal of Knowledge, Culture and Policy* 318.

development in mine-host communities, as well as fostering inclusive development, reducing inequalities, and promoting the wellbeing of stakeholders in the mining sector. Mining companies must engage in transparent and meaningful consultation processes, to secure *FPIC* and establish an *SLO*. *CSR* initiatives with community priorities and development goals can address socio-economic rights issues. These initiatives can also promote social inclusion, contribute to sustainable socio-economic growth, as well as uphold the rights and dignity of affected communities.

The following activities encompass the scope of community participation, in the context of this study, as discussed by various scholars. The activities include community consultations, community representation, community-based monitoring, benefit-sharing agreements, capacity-building, and community development. These activities are discussed in detail below.

2.3.4.1 Community consultations

Mofolo²¹⁸ observes that governments and mining companies can organise regular consultations with local communities and allow such host communities to freely air their opinions on proposed legislation, policies, and mining activities.²¹⁹ These consultations should be inclusive, transparent, and conducted in local languages,²²⁰ to ensure meaningful participation.²²¹ For Matsela,²²² meaningful participation is achieved when communities are not forced to adopt the decisions made by mining companies and the government. Communities should be allowed to participate by expressing their views on issues that will affect them as a result of mining activities.²²³

²¹⁸ Mofolo *Impacts of Large-Scale Extractive Industries on Rights of Women in Polihali and Liqhobong Communities: A Critical Human Rights Crisis in Lesotho* 74.

²¹⁹ Mofolo *Impacts of Large-Scale Extractive Industries on Rights of Women in Polihali and Liqhobong Communities: A Critical Human Rights Crisis in Lesotho* 74.

²²⁰ In Lesotho the local languages are Sesotho and English.

²²¹ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 18.

²²² Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 18.

²²³ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 18.

2.3.4.2 Community representation

Mutlokwa²²⁴ highlights the need to establish mechanisms for the selection of local community representatives. These will sit on decision-making bodies such as advisory committees or regulatory boards. These bodies may ensure that community perspectives and opinions are considered in legislative processes and mining operations. This is so that these representatives advocate that mining should benefit the people affected.²²⁵ These representatives should be democratically chosen by members of the communities, by means of free and fair processes.²²⁶

2.3.4.3 Community-based monitoring

For Manamela²²⁷, community-based monitoring involves the empowerment of local communities. This gives them the opportunity to monitor, evaluate, and report on mining activities. This helps hold mining companies accountable for their environmental and social impacts.²²⁸ He further notes that this can involve training community members to collect data on water quality, air pollution, land use changes, as well as other indicators of environmental and social wellbeing.²²⁹ Monitoring and evaluation play a significant role in guaranteeing that undertakings between mining companies and mine-host communities are fulfilled. This is because they ensure the continuous examination of activities versus results.²³⁰

²²⁴ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects* 20.

²²⁵ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects* 20.

²²⁶ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 57.

²²⁷ Manamela *The Impact of Mining on Indigenous African Communities in Limpopo South Africa* 147.

²²⁸ Manamela *The Impact of Mining on Indigenous African Communities in Limpopo South Africa* 147.

²²⁹ Manamela *The Impact of Mining on Indigenous African Communities in Limpopo South Africa* 147.

²³⁰ Manamela *The Impact of Mining on Indigenous African Communities in Limpopo South Africa* 147.

2.3.4.4 Benefit-sharing agreements

For Conde and Le Billion,²³¹ benefit-sharing agreements encompass the negotiation of agreements between mining companies and mine-host communities. These agreements ensure that communities receive their fair share of the profits generated from mining activities.²³² These scholars state that these agreements can include provisions for revenue sharing, job creation, infrastructure development, as well as support for local businesses and livelihoods. The involvement of mine-host communities in the drafting of these agreements is key. This is because these mine-host communities will view them as legitimate, as opposed to those in which they are not involved.²³³

2.3.4.5 Capacity-building

Capacity-building involves investing in local communities, to enable them to effectively participate in decision-making processes. Developing communities' capacity also equips them to engage with government and industry stakeholders.²³⁴ Capacity-building entails training in areas such as advocacy, legal literacy, environmental management, and business development.

2.3.4.6 Community development

Community development, through the establishment of community development funds supported by mining companies, is an innovative approach advocated by Ngobese.²³⁵ These funds are designed to empower local communities. The funds provide communities with the resources to invest in projects that address their priority needs. These include education, healthcare, infrastructure, and environmental restoration.²³⁶ However, the historical dynamics of community

²³¹ Conde and Le Billion 2017 *The Extractive Industries and Society* 683.

²³² Conde and Le Billion 2017 *The Extractive Industries and Society* 683.

²³³ MMSD 2001 <https://www.iied.org/sites/default/files/pdfs/migrate/G00901.pdf?>.

²³⁴ MMSD 2001 <https://www.iied.org/sites/default/files/pdfs/migrate/G00901.pdf?>.

²³⁵ Ngobese *Examining the Socio-Economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* 42.

²³⁶ MMSD 2001 <https://www.iied.org/sites/default/files/pdfs/migrate/G00901.pdf?>. Ngobese *Examining the Socio-Economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* 42.

participation in diamond mining have been marred by power discrepancies, inadequate representation, and an unequal distribution of benefits.²³⁷ Despite efforts to involve mine-host communities in consultation processes and corporate social responsibility initiatives, central power dynamics often favour mining companies and government authorities. This hampers the rights and interests of the affected communities. Consequently, mine-host communities frequently experience marginalisation, environmental degradation, and socio-economic challenges. These communities bear the brunt of the negative impacts of diamond mining.²³⁸

This study aims to present a novel approach to the theory of community participation in diamond mining. A specific focus is on mine-host communities in Lesotho. The premise of this approach is that mine-host communities, which are directly affected by diamond mining, should be the primary beneficiaries of the resources and opportunities generated by mining activities. This entails prioritising these communities in terms of employment opportunities,²³⁹ infrastructure development,²⁴⁰ socio-economic projects,²⁴¹ access to education, and healthcare.²⁴²

Central to this approach is the principle of decision-making impartiality. The latter asserts that mine-host communities should have primary authority in the decision-making processes related to diamond mining activities. This ensures that their opinions and views are integrated into the governance of mining operations. This fosters a more democratic and participatory framework. By involving mine-host communities in these processes, the approach seeks to correct historical power imbalances. These have often marginalised these communities, in favour of corporate and governmental interests.

²³⁷ Ngobese *Examining the Socio-Economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* 13.

²³⁸ Mofolo *Impacts of Large-Scale Extractive Industries on Rights of Women in Polihali and Liqhobong Communities: A Critical Human Rights Crisis in Lesotho* 2.

²³⁹ Which includes the hiring of the mining workforce from the mine host communities, covering both skilled and unskilled labour. Ngobese *Examining the Socio-Economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* 24.

²⁴⁰ Murombo 2011 *LEAD* 36.

²⁴¹ Murombo 2011 *LEAD* 36.

²⁴² Murombo 2011 *LEAD* 36.

Another critical factor is the fair and impartial distribution of resources. This principle emphasises that mine-host communities should receive priority in the allocation of financial benefits, infrastructure development, and social investment derived from diamond mining. By addressing the historical imbalances in resource distribution, this approach aims to ensure that communities directly impacted by mining activities access the necessary resources to address their socio-economic needs effectively.

The community development theory also incorporates a sustainable development framework. The latter prioritises the long-term welfare and prosperity of mine-host communities. Sustainable development initiatives, under this framework, would focus on improving livelihoods, protecting the environment, and promoting inclusive economic opportunities that benefit host communities. Such initiatives are vital in fostering long-term social and economic resilience. They ensure that the benefits of diamond mining extend beyond immediate financial gains. They should support the overall wellbeing of the host communities.

The proposed theory of community participation in diamond mining offers several significant benefits and implications. Firstly, it promotes a more equitable and inclusive resource-governance method. The latter recognises the fundamental rights of mine-host communities to influence the outcomes of mining activities. By centering their rights and needs, this approach aims to empower local communities and redress historical injustices.

Secondly, this community participation theory promotes sustainable development and environmental stewardship. This is achieved by placing the wellbeing of mine-host communities at the forefront of decision-making processes. This prioritisation encourages the implementation of environmentally-responsible practices and the development of projects that support the long-term sustainability of these communities.

Thirdly, the suggested approach contributes to the enhancement of social cohesion, economic empowerment, and community resilience. By ensuring that mine-host communities are the primary beneficiaries of diamond mining activities, the theory fosters a more inclusive and socially-responsible approach to natural resource

extraction. This, in turn, can lead to stronger, more resilient communities capable of withstanding socio-economic challenges.

The theory of community participation in diamond mining, with a focus on prioritising mine-host communities in Lesotho, represents a significant shift towards a more equitable and sustainable model of resource governance. By addressing historical power imbalances and promoting inclusive decision-making processes, fair resource distribution, and sustainable development, this approach seeks to empower local communities. It also strives to foster a more responsible relationship between diamond-mining operations and the communities they affect. Ultimately, this theory offers a path toward a more socially-responsible and inclusive approach to natural resource extraction. This benefits both the mining industry and mine-host communities.

2.3.5 Concluding remarks

The integration of the social justice theory, the resource curse theory, and the community participation theory offers a comprehensive theoretical framework. The latter helps to assess the impacts of extractive processes on the socio-economic rights of mine-host communities. Through the integrated lens of these three theories, a nuanced understanding of the intricate dynamics that underpin the relationship between mining activities and community wellbeing can be gained. This interdisciplinary approach reveals how varying conceptions of justice, economic ramifications, and community engagement intersect and interact in shaping the lived experiences of those directly affected by extractive processes. An analysis employing this theoretical framework deepens the understanding of the theoretical underpinnings of socio-economic rights. It also sheds light on the practical implications for communities grappling with the challenges and opportunities presented by resource wealth. By critically examining these intersections, avenues for promoting equitable outcomes, empowering affected communities, and fostering sustainable development within mining regions can be identified. This holistic approach contributes to academic discourse. It also serves as a catalyst for the

advocacy of the rights and dignity of mine-host communities, in seeking a more just and equitable future.

2.4 Impacts of mineral extraction on the socio-economic rights of mine-host communities

2.4.1 Introduction

This section is dedicated to unravelling the complex impacts of mineral extraction on the socio-economic rights of mine-host communities. It examines both the positive and negative consequences of mining activities on the socio-economic rights of mine-host communities. Mining can simultaneously be a source of development and prosperity, providing employment opportunities, infrastructure development, and increased local and national revenues. However, it can also be a catalyst of environmental harm, displacement, and social division. This critical exploration seeks to identify pathways towards a sustainable and equitable development paradigm that benefits the communities situated at the heart of mining activities.

This section scrutinises the multifaceted impacts of mineral extraction. The aim is to provide a comprehensive understanding of how mining affects the socio-economic rights of mine-host communities. The goal is to balance the economic benefits of mining with the need to protect and promote the socio-economic rights and wellbeing of these communities. Through this analysis, the section will highlight the importance of adopting suitable strategies. These would ensure that mining contributes to sustainable and inclusive development. This should ultimately benefit the communities directly impacted by mining activities.

2.4.2 Mining as a source of development and prosperity

The extraction of mineral resources, through mining operations, can yield both advantageous and detrimental consequences on the mine-host communities.²⁴³ The strong representation of socio-economic rights in the international law framework

²⁴³ Pegg 2006 *Journal of Cleaner Production* 376.

has created room for mineral extraction to positively impact the socio-economic rights of mine-host communities. This is because the international law framework forms the foundation upon which most policies at international, regional, sub-regional, and domestic levels are based. Positive impacts encompass improvements in revenue generation, technological advancements, employment creation, infrastructure development, skills enhancement, as well as other economic and social activities that benefit mine-host communities.²⁴⁴

2.4.2.1 Revenue generation

Mining is beneficial to a country's economic growth and poverty-reduction efforts. Revenues from natural resources provide poor countries with substantial funds that can be used to alleviate poverty.²⁴⁵ Mining activities also contribute to the *GDP* of countries with natural resources, improving their economies. The *GDP* contribution of mining is defined as the total net income produced by the mining sector.²⁴⁶ Reports show that the mining industry's contribution to Lesotho's *GDP* grew by 30.8%, from M3.9 billion in 2021 to M5.1 billion in 2022.²⁴⁷ As suggested by the data, mining contributes to poverty reduction by generating large revenues for governments to use for specific poverty-reduction programmes.²⁴⁸

Revenues from the mining industry are received through the payment of taxes and royalties to the government.²⁴⁹ While taxes and royalties contribute to government revenue from mining in Southern Africa, taxes (like corporate income tax) are levied on a company's profits. Royalties (like mineral royalties) are a fixed fee per unit of mineral extracted.²⁵⁰ The government receives royalties based on its stake in different mining companies. For example, the government of Lesotho owns 30% of

²⁴⁴ Okyere *et al* 2021 *Journal of Degraded and Mining Lands Management* 3193.

²⁴⁵ Sachs 2013 <https://www.worldpoliticsreview.com/articles/13140/on-solid-ground-toward-effective-resource-based-development>.

²⁴⁶ ICMM *The Role of Mining in National Economies* 23.

²⁴⁷ Lesotho's Chamber of Mines 2022 <https://stormmountaindiamonds.com/downloads/Lesotho-Diamond-Mining-Industry-2022-Performance-Report.pdf>.

²⁴⁸ Cotula *Investment Contracts and Sustainable Development* 8.

²⁴⁹ ICMM *The Role of Mining in National Economies* 21.

²⁵⁰ Yontcheva *et al* 2021 <https://www.elibrary.imf.org/view/journals/087/2021/022/article-A001-en.xml>.

the Letšeng Diamond Mines, 25% of the Kao Mine, and 25% of the *LMDC*.²⁵¹ This means that the government of Lesotho receives revenues based on the percentage it owns in mining companies. Such income can be used to alleviate poverty. The presumption is that mining leads to taxes and royalties for the government. These improve the financing of targeted poverty-alleviation policies, leading to poverty reduction.²⁵²

Minerals represent a large share of exports in many countries.²⁵³ Mining activities contribute to exports and foreign exchange earnings.²⁵⁴ In Lesotho, mining companies are planning substantial expansions of their operations. This would foster growth through projected investment amounting to M5.8 billion. In 2022, Lesotho's diamond exports totalled M7.5 billion, positioning the country as the 21st largest diamond exporter worldwide. That year, diamonds were the top exported product from Lesotho.²⁵⁵

Mining also attracts *FDI* in many developing countries. Many countries increase the level of investment flows into mining projects. This is to support broad socio-economic development.²⁵⁶ For instance, in Lesotho, the government has been working hard to attract *FDI* into the mining industry. This has entailed adopting measures and policies that promote the industry's growth. These policies involve, among other things, giving tax incentives to mining companies and simplifying the process of obtaining mining licences.²⁵⁷

2.4.2.2 Development of infrastructure

Mining operations play a vital role in establishing and maintaining essential socio-economic infrastructure within mine-host communities. Such infrastructure include

²⁵¹ *The Lesotho Review: An Overview of the Kingdom of Lesotho's Economy* 33.

²⁵² Pegg 2006 *Journal of Cleaner Production* 380.

²⁵³ International Council on Mining and Metals (hereafter *ICMM*) *The Role of Mining in National Economies* 19.

²⁵⁴ Muntingh *Community Perceptions of Mining: The South-African Experience* 31.

²⁵⁵ The Observatory of Economic Complexity 2022 <https://oec.world/en/profile/bilateral-product/diamonds/reporter/iso>.

²⁵⁶ Phakoana *Informative* 6. *ICMM The Role of Mining in National Economies* 21.

²⁵⁷ *AFSIC* 2023 <https://www.afsic.net/invest-lesotho-mining>.

roads, healthcare facilities, educational institutions, housing, and utilities such as water and electricity.²⁵⁸ This is because certain infrastructure and upgrades are usually necessary for mining projects to commence.²⁵⁹ According to Pegg,²⁶⁰ “a road that is upgraded to allow heavy equipment to travel from a mine to a port can also be a road that helps farmers get their crops to the market quicker or that brings increased trade between previously unconnected villages.” In Lesotho, Kao Storm Mountains (*Pty*) *Ltd* (hereafter Kao) built and maintains the Tlaeng Road in the district of Butha-Buthe. This road is used by the Kao mine-host community and adjacent communities.²⁶¹

In water infrastructure, the Lihobong Mining Development Company (*Pty*) *Ltd* (hereafter *LMDC*) has contributed to the Lihobong and Pulane villages. It has introduced communal taps across the two villages. These communities’ lives were transformed, from using unprotected springs to using safer sources of water.²⁶² Regarding schools, *LMDC* donated a pre-school to the Lihobong community, as well as two classrooms and two offices to the Lihobong Primary School, in Mphale village. The presumption here is that mineral extraction leads to infrastructure improvements. This leads to expanded economic opportunity and, subsequently, poverty reduction.²⁶³

2.4.2.3 Employment creation

Although modern-day mining, in most countries, is capital-intensive, mining still reduces poverty directly. This is achieved through job creation, which generates income for workers and their families.²⁶⁴ Different jobs are created across all sections of the mine. Examples include miners, cooks, drivers, engineers, accountants, occupational health specialists, and cleaners. These jobs are usually

²⁵⁸ Dubey 2017 <https://www.niti.gov.in/sites/default/files/2019-01/Socio-Economic-Impact-Study-of-Mining-and-Mining-Polices.pdf>.

²⁵⁹ Pegg 2006 *Journal of Cleaner Production* 381.

²⁶⁰ Pegg 2006 *Journal of Cleaner Production* 381.

²⁶¹ Phakoana *Informative* 6.

²⁶² *LMDC Lesotho Times* 11.

²⁶³ Pegg 2006 *Journal of Cleaner Production* 381.

²⁶⁴ ICM *The Role of Mining in National Economies* 24.

well-remunerated, compared to the usual national remuneration rates.²⁶⁵ By the end of 2022, the four mines in Lesotho employed a total of 2,997 workers, with 98% being Lesotho citizens and the remaining 2% comprising expatriates. This indicates a predominantly local workforce, with only a small percentage of foreign workers employed in the mines.²⁶⁶

2.4.2.4 Skills development

Mining improves different specialised mining skills in Lesotho. These include geologists, boiler makers, occupational health and safety officers, and others. This is because these are new skills that were uncommon in Lesotho previously. They are currently needed as mining is gaining popularity in the country. Therefore, mining companies are expected to invest in training Basotho in different fields of the mining sector, to equip them with these skills. For instance, on an annual basis, Letšeng Diamonds offers full scholarships to Basotho students who are studying for tertiary qualifications (including Honours and master's degrees) in courses that are pertinent to Lesotho's extractive industry.²⁶⁷

The Reskol Mine in Kolo, Mafeteng, has hired and trained several labourers. They are able to operate big machines such as front-loaders and excavators.²⁶⁸ Lebohang Thotanyane, the former Minister of Mining, emphasised that one of his ministry's priority was addressing skills development within the mining sector. He observed that while mining companies invest heavily in machinery, they should also allocate substantial funds towards enhancing the skills of Basotho locals.²⁶⁹

²⁶⁵ ICMC *The Role of Mining in National Economies* 24.

²⁶⁶ Lesotho Chamber of Mines 2022 <https://stormmountaindiamonds.com/downloads/Lesotho-Diamond-Mining-Industry-2022-Performance-Report.pdf>.

²⁶⁷ Letšeng Diamonds 2016 <https://www.letsengdiamonds.co.ls/home/2017-%20SCHOLARSHIP%20ADVERT.pdf>.

²⁶⁸ Maqelepo *Informative* 7.

²⁶⁹ Staff Reporter *The Post* 6.

2.4.2.5 Technological advancements

Another positive aspect of mining is the transfer of technological advances and skills to other industries, such as manufacturing.²⁷⁰ This means that mining can bring some innovation and technological advancements into a developing country.²⁷¹ De Ferranti *et al*²⁷² note that “mining was the national learning experience in the United States that led to the building of a strong technological system from which modern manufacturing developed.” The presumption is that resource extraction leads to technological developments. These, in turn, foster expanded economic opportunity and poverty reduction.²⁷³

The realisation of the above-mentioned beneficial outcomes needs responsible and sustainable mining practices. These typically include respect for socio-economic rights, following environmental standards, mine-host community participation, and community consultation. The implementation of responsible mining practices leads to the maximisation of the positive impacts of mining and the minimisation of its adverse environmental and social consequences.

2.4.3 *Mining as a catalyst of environmental degradation, displacement, and social fragmentation*

Mineral extraction engenders certain negative challenges. These encompass air and water pollution, land degradation, and the relocation of mine-host communities to surrounding areas. This relocation often renders those mine-host communities cursed.²⁷⁴ The following section delves into the specificities of the socio-economic rights usually affected by mining activities.

²⁷⁰ Anon 2017 https://www.uma.on.ca/en/ontariominning/resources/Millionaire_100_innovations_en.pdf.

²⁷¹ Cotula *Investment Contracts and Sustainable Development* 1.

²⁷² De Ferranti *et al* 2002 <http://documents.worldbank.org/curated/en/563331468088167696/pdf/multi0page.pdf>.

²⁷³ Pegg 2006 *Journal of Cleaner Production* 381.

²⁷⁴ See para 2.4 above.

2.4.3.1 The right to health

Mining activities engender negative impacts on the health of mine-host communities.²⁷⁵ According to Stephens and Ahern,²⁷⁶ mining remains one of the most perilous occupations in the world. It causes more fatalities than other jobs, both in terms of short-term injuries and deaths. This is also due to long-term impacts such as cancers and respiratory conditions. Examples include silicosis, asbestosis, and pneumoconiosis. These result from environmental exposures to air,²⁷⁷ dust, water,²⁷⁸ soil,²⁷⁹ and noise pollution.²⁸⁰

Furthermore, non-environmental exposures such as mining disasters and pit closures also exist. They affect mine-host communities' health indirectly and directly. Yeboah's²⁸¹ study of migrant labourers in South Africa shows that migrant labourers have historically played a vital role in the transmission of the Human Immunodeficiency Virus (hereafter *HIV*) and Acquired Immunodeficiency Syndrome (hereafter *AIDS*). This is due to the behaviour of miners in some mine-host communities.²⁸² In Lesotho, mine-host communities around the Kolo Diamond Mine in the district of Mafeteng complain about eyesight problems. These are due to the dust emanating from the explosives used in the Kolo Diamond Mine.²⁸³

²⁷⁵ Dikobe *Natural Resources Foreign Direct Investment and Conflict in South Africa* 10. International Finance Corporation *Large Mines and Local Communities Forging Partnerships Building Sustainability* 3.

²⁷⁶ Stephens and Ahern 2001 <https://pubs.iied.org/pdfs/G01051.pdf>.

²⁷⁷ For example, lung damage which maybe cause by all the dust arising from the drilling at mining sites, there is also black lung disease or silicosis which are diseases that can affect mine host communities.

²⁷⁸ For example, people living around mining operations suffer from diseases like diarrhoea, malaria, cholera, skin rashes and others because the water they used is contaminated by chemicals from the mines.

²⁷⁹ The fact that mining activities use a lot of water, this water loss can leave the land barren and unusable for farming or raising animals.

²⁸⁰ For instance, the loud noise from the machines can cause hearing problems. Anon 2017 https://www.hesperian.org/pdf-en_cgeh_2012_21.

²⁸¹ Yeboah *Environmental and Health Impact of Mining on Surrounding Communities* 44.

²⁸² Campbell 2000 *Resources Policy* 479. Pegg 2006 *Journal of Cleaner Production* 387. Yeboah *Environmental and Health Impact of Mining on Surrounding Communities* 44.

²⁸³ Ntlafulang Consultants Reskol Diamond Mining (Pty) Ltd *Project Brief Diamond Mining at Kolo* 24.

2.4.3.2 The right to a healthy environment

The right to health is closely linked to the right to a healthy environment. Mining activities have numerous adverse environmental impacts.²⁸⁴ These include soil erosion, dust, noise, and water pollution.²⁸⁵ Other negative environmental impacts on mine-host communities are the loss of wildlife, biodiversity, and arable land,²⁸⁶ as well as damage to aquatic ecosystems.²⁸⁷ The environmental pollution and degradation caused during mineral extraction also threaten the health of mine-host communities.²⁸⁸ Examples of such threat are respiratory, skin, and eye diseases.²⁸⁹

The case of *Social and Economic Rights Action Centre (hereafter SERAC) and another v Nigeria*²⁹⁰ discussed multiple human rights abuses and violations of the Ogoni people by the Nigerian government and Shell Corporation. The allegation raised was that the mining company had exploited oil reserves in Ogoniland. This was done without considering the environment and the health of local communities. This took the form of disposing toxic waste into the environment and local waterways. This action by the mining company resulted in the contamination of water, soil, and air. This contamination had serious short- and long-term health impacts. These included skin infections, gastrointestinal and respiratory ailments, increased risk of cancer, as well as neurological and reproductive problems.²⁹¹ This illustrates how negatively the environment can be affected by mining activities.

²⁸⁴ Yeboah *Environmental and Health Impact of Mining on Surrounding Communities* 23. Edwards *et al Mining and The African Environment* 1.

²⁸⁵ Murombo 2013 *LEAD* 36. Mathabatha *The Impact of Mining Companies on Community Development in the Dilokong and Ga Pila Villages in the Sekhukhune and Waterberg Districts of Limpopo Province* 14.

²⁸⁶ Land degradation usually affects the lives of mine host communities whose livelihood largely depends on natural resources and the land. Mohamed 2006 *Environmental Rights Afforded To Residents Affected By Mining Activities: A Case Study In Hondeklip Bay* 1.

²⁸⁷ Chuhan-Pole *et al* 2017 *Mining in Africa* 8. Dikobe *Natural Resources Foreign Direct Investment and Conflict in South Africa* 46.

²⁸⁸ Chuhan-Pole *et al* 2017 *Mining in Africa* 9. Yeboah *Environmental and Health Impact of Mining on Surrounding Communities* 45.

²⁸⁹ UNICEF *Children's Rights and the Mining Sector* 13.

²⁹⁰ *SERAC and another v Nigeria* 2001 (AHRLR) 60.

²⁹¹ *SERAC and another v Nigeria* 2001 (AHRLR) 60. Brand and Heyns *Socio-Economic Rights in South Africa* 8.

2.4.3.3 The right to property

Mineral extraction may result in the confiscation of land from indigenous people, and forced displacement. This could constitute a direct infringement of their right to property, which is encapsulated in the *UDHR*.²⁹² The trend in rural communities is the dependence of the local community on their land as a source of livelihood. In Lesotho, for instance, 'Mamokuena Bulane of Kolo, Ha-Petlane – where Reskol Diamond Mine is situated – told the *MNV* Center for Investigative Journalism that her two houses built in 1984 and 1998, respectively, have cracked due to the mining operations. This means that she would have to be relocated to another place. Bulane's predicament is shared by other households in the village of Ha-Petlane. In the district of Mokhotlong, Firestone, which operates the *LMDC* Mine, identified 28 families in the adjacent Liqhobong village for relocation elsewhere in the village. The mining company built houses for these community members, and they were relocated. The relocation of mine-host communities may not always satisfy all members of the community. This is because they must abandon their arable land, ancestral land, and grazing fields.²⁹³

2.4.3.4 The right to access to clean and safe water

The Environmental Mining Council of British Columbia refers to water as "mining's most common causality."²⁹⁴ Mining activities increasingly threaten water sources on which human beings depend.²⁹⁵ The need to ensure the purity and quality of water, against irresponsible mineral extraction, is the responsibility of mining companies. The United Nations General Assembly, on 28th July 2010 – through resolution 64/292 – declared access to safe and clean drinking water and sanitation a human right essential for the full enjoyment of life and all other human rights.²⁹⁶ The resolution called upon all states and international organisations to provide financial resources,

²⁹² A 17 of the *UDHR* (1948).

²⁹³ MNNCIJ Reporters *Sunday Express* 6.

²⁹⁴ Matandare *et al* 2019 *International Journal for Scientific Research and Development* 634.

²⁹⁵ Fuggle and Rabbie *Building A New South Africa Environment Reconstruction and Development* 108.

²⁹⁶ United Nations General Assembly Resolution 64/292.

capacity-building, and technology transfer. This is to help countries, particularly developing ones, to provide safe, clean, accessible and affordable drinking water as well as sanitation for all.²⁹⁷

Large-scale mining activities contaminate rivers and groundwater sources. These activities contribute to air pollution and land degradation.²⁹⁸ In South Africa, in 2015, it was reported that in Carolina, a town situated 250 kilometres to the east of Johannesburg, mine-host communities did not have access to clean water. Contaminated water was running from the mine-host communities' taps in their homes. This contamination was caused by the outflow of acidic water from the mine's "acid mine drainage."²⁹⁹ The Boesmanspruit Dam, which serves as Carolina's primary water source, was found to have a pH level of 3.7, at a particular juncture. This highlights concerns regarding the adverse effects of acidic water on skin and eye health during washing and bathing activities.³⁰⁰ This underscores the imperative for collaborative efforts between mining companies and governmental bodies. The aim is to safeguard the water supply of mine-host communities. Such endeavours should prioritise the mitigation of the impact of mining activities on water quality and minimising water losses in these communities. This would foster the realisation of socio-economic rights.

To address these impacts, all relevant stakeholders (mining companies, governments, and mine-host communities) must work together. This would enable them to minimise the negative impacts, ensure equitable benefits, and promote sustainable development in mine-host communities. This can be achieved by embracing responsible mining practices. These underscore the importance of

²⁹⁷ United Nations Department of Economic and Social Affairs Date Unknown https://www.un.org/waterforlifedecade/humanright_to_water.shtml. Explicit references to safe drinking water and sanitation can be found in various international conventions for example, The 1989 Convention on the Rights of a Child (hereafter *CRC* A 24), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (hereafter *CEDAW* A 14(2), the 2007 Convention on the Rights of Persons with Disabilities (hereafter *CRPD* A 28).

²⁹⁸ BothEnds Date Unknown https://www.bothends.org/uploaded_files/document/1digital_water_case.pdf.

²⁹⁹ Legal Resource Centre (hereafter *LRC*) *A Practical Guide for Mining Affected Communities* 36.

³⁰⁰ Fuggle and Rabbie *Building A New South Africa Environment Reconstruction and Development* 108.

meaningful community engagement and participation, environmental stewardship, as well as the protection and promotion of socio-economic rights.

2.5 Socio-economic rights protection: towards participation, inclusive growth and sustainable development in the mining sector

Mining has the potential to significantly contribute to socio-economic development.³⁰¹ However, without appropriate management and frameworks, it can also exacerbate inequalities and lead to adverse social and environmental impacts.³⁰² The nexus between mining and sustainable development necessitates a focus on socio-economic rights protection. It emphasises participation, inclusive growth, and sustainable development.³⁰³

The theory of social justice³⁰⁴ calls for a fair distribution of resources and benefits. It ensures that all members of society, including marginalised and vulnerable groups, have equitable access to opportunities and resources. In the mining sector, this implies that the wealth generated from mineral resources should benefit the entire population, not just a privileged few. It also involves safeguarding the rights of those affected by mining operations, such as local communities, workers, and future generations.

The resource curse theory³⁰⁵ posits that countries rich in natural resources, such as diamonds, often experience slower economic growth and worse development outcomes than countries with fewer natural resources. This paradox occurs due to factors such as the mismanagement of resource revenues, corruption, and the neglect of other economic sectors.³⁰⁶ In the context of mining, the resource curse can manifest as environmental degradation, social displacement, and economic

³⁰¹ Cotula *Investment Contracts and Sustainable Development* 8.

³⁰² Mlambo 2022 *Cogent Social Sciences* 2.

³⁰³ Nell *Community Perceptions of Sustainable development: Implications for An Approach to Closure Mining* 14.

³⁰⁴ Piovesan 2004 *International Journal on Human Rights* 22.

³⁰⁵ Auty *Sustaining Development in Mineral Economies: The Resource Curse Thesis* 8.

³⁰⁶ Sala-i-Martin and Subramanian *Addressing the Natural Resource Curse: An Illustration from Nigeria International Monetary Fund* 6.

dependency on volatile commodity prices. These factors undermine sustainable development.³⁰⁷

The community participation theory³⁰⁸ emphasises the importance of involving local communities in decision-making processes that affect their lives. In the mining sector, this entails engaging mine-host communities in discussions about mining projects. This should happen from initial planning stages to implementation and monitoring. Effective community participation can lead to more equitable outcomes, and reduce conflicts. It can also ensure that the benefits of mining are more widely shared.

Mining and the pursuit of sustainable development goals (hereafter *SDGs*) are intrinsically linked. Mining activities can significantly impact several *SDGs*, including poverty reduction,³⁰⁹ decent work and economic growth,³¹⁰ reduced inequalities,³¹¹ and environmental sustainability.³¹² However, achieving these goals requires a careful balancing act between exploiting mineral resources and protecting the rights and wellbeing of mine-host communities.

To address social justice concerns in mining, it is essential to implement policies that ensure the fair distribution of mining revenues and benefits. This includes investing in local infrastructure, healthcare, education, and other social services that can enhance the quality of life for mine-host communities. Additionally, regulatory frameworks must be established, to protect workers' rights, ensure safe working conditions, and promote gender equality in the mining sector.

Combating the resource curse requires a transparent and accountable governance of mineral resources.³¹³ Governments and mining companies must collaborate, to

³⁰⁷ Murombo 2013 *LEAD* 39.

³⁰⁸ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects* 19.

³⁰⁹ SDG 1 United Nations 2024 <https://www.un.org/sustainabledevelopment/poverty/>.

³¹⁰ SDG 8 United Nations 2024 <https://www.un.org/sustainabledevelopment/poverty/>.

³¹¹ SDG 10 United Nations 2024 <https://www.un.org/sustainabledevelopment/poverty/>.

³¹² SDG 15 United Nations 2024 <https://www.un.org/sustainabledevelopment/poverty/>.

³¹³ Harguth *Extracting Ghana's Potential Dodging the Resource Curse and Promoting Development* 32.

create mechanisms for transparent revenue management, combat corruption, and invest in economic diversification. By doing so, mining-dependent economies can reduce their vulnerability to commodity-price shocks and build more resilient and sustainable economic structures.³¹⁴

Promoting community participation in mining activities involves creating inclusive platforms for dialogue and decision-making.³¹⁵ This can be achieved through community consultation processes, participatory environmental impact assessments, and the establishment of community development agreements. By giving mine-host communities a voice in mining projects, their concerns and aspirations can be better addressed. This would lead to more socially and environmentally responsible mining practices.

Key frameworks and principles such as *CSR*, *SLO*, and *FPIC* are essential in ensuring the protection of socio-economic rights.³¹⁶ *CSR* entails holding companies accountable for the social, environmental, and economic impacts of their operations, as well as ensuring that they operate ethically and responsibly. *SLO* refers to the ongoing acceptance and approval of a company and its operations by local communities and other stakeholders.³¹⁷ It emphasises the importance of maintaining positive relationships and trust between mining companies and mine-host communities. *FPIC* is a specific right that pertains to indigenous peoples. It requires that they be adequately informed and have the opportunity to give or withhold consent regarding projects that may affect their lands, resources, or rights.

To realise the potential of mining in achieving inclusive growth and sustainable development, it is imperative to develop and implement frameworks that protect the socio-economic rights of mine-host communities.³¹⁸ These frameworks should ensure fair benefit sharing, establish mechanisms to distribute mining revenues

³¹⁴ Mailey *The Anatomy of the Resource Curse: Predatory Investment in Africa's Extractive Industries* 69.

³¹⁵ Murombo 2013 *LEAD* 39.

³¹⁶ Rodhouse and Vanclay 2016 *Journal of Cleaner Production* 786.

³¹⁷ Stuart *et al* 2023 *Resources Policy* 3.

³¹⁸ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.aspx>.

equitably, and prioritise investments in community development and poverty alleviation. They should promote transparency and accountability by implementing transparent systems for managing mining revenues and contracts, reducing opportunities for corruption, and ensuring that resources are used for public benefit.³¹⁹

Protecting environmental and social rights encompasses enforcing regulations. This is to minimise the environmental damage and social disruption caused by mining activities. It ensures that communities' health, livelihoods, and cultural heritage are preserved.³²⁰ Fostering community participation requires the creation of inclusive and participatory processes. These should empower communities to influence decisions about mining projects, from planning to closure.³²¹ Supporting economic diversification involves investing in alternative economic activities. This is to reduce dependence on mining, and build more diversified and resilient local economies.³²² By integrating these elements into national and regional policies, mining can become a catalyst for sustainable development. This integration can ensure that the benefits of mineral wealth are shared broadly and equitably, and that the rights and wellbeing of mine-host communities are protected.

2.6 Conclusion

The theoretical examination of socio-economic rights in mine-host communities underscores the complexity and interdependence of human rights, social justice, and sustainable development. Using human rights as a foundational framework, this chapter has provided a comprehensive understanding of socio-economic rights. The chapter emphasises their universal importance and the imperative for their protection and promotion.

³¹⁹ Chawani *Towards the Adoption of the Extractive Industries Transparency Code and Implications for Transparency in Malawi's Mining Sector* 45.

³²⁰ Nell *Community Perceptions of Sustainable Development: Implications for an Approach to Closure Mining* 1.

³²¹ Murombo 2013 *LEAD* 38.

³²² ICMM *The Role of Mining in National Economies* 24.

Through the lenses of the social justice theory, the resource curse theory, and the community participation theory, the chapter garnered critical insights. The social justice theory highlighted the moral imperative to address inequalities and ensure the equitable distribution of resources and opportunities. It stresses that socio-economic rights are not only legal obligations, but also necessities that ensure all community members benefit from mining activities.

The resource curse theory provides a cautionary tale of how mineral wealth, if not managed properly, can lead to socio-economic detriments. These encompass corruption, environmental degradation, and economic disparity. It underscores the need for robust governance frameworks, to prevent such outcomes and to harness mineral wealth for sustainable development.

The community participation theory emphasises the importance of involving community members in decision-making processes. It demonstrates that sustainable and inclusive development is achievable when community members are empowered to actively participate. By fostering a sense of ownership and accountability, community participation can mitigate conflicts and enhance the overall benefits of mining for local populations.

The impact of mineral extraction on socio-economic rights presents a dual narrative. On the one hand, mining brings economic benefits such as job creation and infrastructure development. On the other hand, it can lead to negative consequences. These include environmental damage, displacement, and social inequality. This duality underscores the necessity of a balanced approach to mining that maximises benefits while minimising adverse effects.

To protect the socio-economic rights of mine-host communities, this chapter has elaborated a theoretical framework that emphasises several key principles. These include the active involvement of community members in decision-making processes. Ensuring that community members have a say in the planning and implementation of mining projects helps to address their concerns and incorporate their needs and aspirations. This participatory approach not only builds trust

between mining companies and host communities, but it also leads to more sustainable and equitable outcomes.

Mining should aim for long-term benefits that are shared equitably among community members. This involves prioritising environmental sustainability and social equity in mining operations. Inclusive growth ensures that the economic gains from mining are distributed fairly, reducing poverty and enhancing the overall wellbeing of the community. Sustainable development practices help to protect the environment and ensure that future generations can also benefit from mineral resources.

Empowering local communities to monitor the impacts of mining activities is essential in ensuring compliance with environmental and social standards. Community-based monitoring enables real-time reporting and addressing of any negative impacts. It also fosters transparency and accountability, as communities can directly observe and report on the activities of mining companies. This participatory monitoring helps to build community trust and ensures that mining operations do not compromise the health and safety of the people and the sustainability of the environment.

Mechanisms should be established to ensure that the economic benefits of mining are fairly distributed among all stakeholders, particularly the local communities. Benefit-sharing agreements can include provisions for financial compensation, as well as investment in local infrastructure, healthcare, education, and other social services. These agreements help to ensure that communities receive a fair share of the profits from mining activities. The latter should contribute to their host communities' overall development and wellbeing.

Holding all stakeholders, especially mining companies and government entities, accountable for their actions is fundamental to the protection of socio-economic rights. This involves implementing transparent systems for the management of mining revenues and contracts. The aim is to reduce opportunities for corruption and ensure that resources are used for public benefit. Accountability mechanisms can include legal frameworks, independent audits, and community oversight.

Ensuring accountability helps to prevent abuses of power, and ensures that mining activities contribute positively to the development of host communities.

By integrating these principles, mine-host communities can actively engage in shaping the socio-economic landscape. This is to ensure that their rights are upheld and that their developmental needs are met. However, for this to happen, robust legal frameworks are essential. These frameworks must be designed and implemented to protect the rights of mine-host communities. This is so that mining activities contribute to sustainable development and social justice.

The need for such legal frameworks is further explored in subsequent chapters. The focus will be on practical strategies and policy recommendations for enhancing the protection of socio-economic rights in mine-host communities. This integrated approach aims to create a more equitable and sustainable mining sector that benefits all stakeholders, particularly those directly affected by mining activities.

CHAPTER 3 INTERNATIONAL, AU, AND SADC INSTRUMENTS PERTAINING TO THE PROTECTION OF THE SOCIO-ECONOMIC INTERESTS OF MINE-HOST COMMUNITIES

3.1 Introduction

Chapter 2 theoretically explored the socio-economic rights of mine-host communities. It provided a theoretical framework enabling these communities to actively shape their socio-economic landscape. This would ensure that their rights are protected and that their development needs are met. The research emphasised the complexity and interdependence of human rights, social justice, and sustainable development in the context of mining. By using human rights as a foundational framework, the chapter offered a comprehensive understanding of socio-economic rights. It stressed their universal importance and the necessity for their protection and promotion. The chapter also incorporated insights from the social justice theory,³²³ the resource curse theory,³²⁴ and the theory of community participation.³²⁵

However, as indicated in Chapter 2, diamond mining presents a complex array of impacts on the socio-economic rights of mine-host communities.³²⁶ While essential infrastructure development and economic growth can be catalysed, significant challenges such as environmental degradation,³²⁷ health risks,³²⁸ and social displacement also arise. This duality underscores the necessity of a balanced approach to mining that maximises benefits while minimising adverse effects.

³²³ See para 2.3.2 above.

³²⁴ See para 2.3.3 above.

³²⁵ See para 2.3.4 above.

³²⁶ See para 2.4 above.

³²⁷ Mohamed 2006 *Environmental Rights Afforded To Residents Affected By Mining Activities: A Case Study In Hondeklip Bay* 1.

³²⁸ Yeboah *Environmental and Health Impact of Mining on Surrounding Communities* 3. Murombo 2013 *LEAD* 39. Kinney 2001 *Indiana Law Review* 1457.

Therefore, prioritising the promotion and protection of the rights and interests of these communities – from a socio-economic perspective – is crucial.³²⁹

This necessitates a robust legal framework that mandates responsible mining operations. This framework would ensure a fair reinvestment of profits into community development. Laws and regulations must be designed to enforce environmental protection, health and safety standards, as well as fair compensation practices. Additionally, legal mechanisms should require mining companies to engage in transparent, accountable practices. These mines should enter into benefit-sharing agreements with host communities. These legal provisions are essential in fostering sustainable growth and enhancing the overall wellbeing of residents in mining areas. Building upon this foundation, this chapter undertakes an examination of the international, regional, and sub-regional legally-binding and non-binding instruments concerning the protection of the socio-economic rights of mine-host communities. This examination aims to identify and analyse the existing legal mechanisms that can be leveraged to protect these rights.

Broadening the focus, the aim of this chapter is to establish a comprehensive reference framework against which Lesotho's current constitutional, policy, and legislative framework can be evaluated through the creation of a matrix.³³⁰ The latter will serve as a tool to systematically assess Lesotho's alignment with international standards and best practices regarding the protection and promotion of the socio-economic rights of diamond mine-host communities. By conducting this evaluation, the strengths and opportunities for the improvement of Lesotho's framework will be identified. This will reveal areas where Lesotho can better align its policies with global, regional, and sub-regional legal mechanisms. This should foster the enhancement of the socio-economic rights of these communities.

In relation to the socio-economic issues faced by mining communities, the international legal framework – including conventions, declarations, and guidelines from global bodies such as the United Nations – provides essential benchmarks for

³²⁹ Murombo 2013 *LEAD* 39.

³³⁰ See Annexure A.

national legislation. These instruments establish fundamental socio-economic rights that apply universally and help shape national policies regarding equitable development and resource management.

Regionally, frameworks developed by organisations such as the African Union (hereafter *AU*) address the unique challenges encountered by mining communities in Africa. For instance, the African Charter on Human and Peoples' Rights underscores the right to development and the equitable distribution of benefits derived from natural resources. This regional framework complements international standards by focusing on the specific needs and rights of communities affected by mining activities.

At a sub-regional level, the Southern African Development Community (hereafter *SADC*) has established additional legal frameworks tailored to the socio-economic contexts of mining communities in Southern Africa. These frameworks offer further protection and guidance. They aim to address local challenges and ensure that the benefits of mining activities are more equitably shared among the affected populations.

Through an in-depth exploration of these legal instruments, insights will be gained on how they can be effectively leveraged. This would help to ensure that the benefits of diamond mining are equitably shared. This equitable distribution is essential in achieving sustainable development and enhancing the wellbeing and prosperity of mine-host communities in Lesotho. Ultimately, this chapter seeks to demonstrate that, by adopting and adapting international best practices, Lesotho can ensure that its diamond-mining industry promotes socio-economic rights and sustainable development. This would improve the lives of those directly affected by mining activities.

In addition to these legal frameworks, international mining-governance initiatives are crucial in shaping the regulatory landscape for mining activities and addressing socio-economic issues. Initiatives such as the Extractive Industries Transparency Initiative (hereafter *EITI*) and the Kimberley Process Certification Scheme (hereafter

KPCS) play a significant role in promoting transparency, accountability, and responsible resource management within the extractive sector.

The *EITI* focuses on ensuring that revenues from mining are transparently reported and properly managed. By requiring member countries to disclose detailed information about resource revenues and how they are spent, the *EITI* aims to reduce corruption and mismanagement. This can otherwise lead to economic disparities and hinder equitable development. Transparency helps to ensure that the socio-economic benefits of mining – such as community investments, infrastructure development, and fair employment opportunities – are more accurately aligned with the needs of the affected communities.

As for the *KPCS*, it aims to prevent the trade of conflict diamonds. These are often used to fund armed conflicts that disrupt socio-economic stability in mining regions. By enforcing strict certification processes, the *KPCS* seeks to ensure that diamond revenues do not exacerbate conflict or undermine social cohesion. This contributes to the broader socio-economic interest of maintaining peace and stability. These are essential for sustainable development in mining communities.

Both the *EITI* and the *KPCS*, by enforcing adherence to specific standards and reporting requirements, help mitigate the negative socio-economic impacts of mining. They contribute to a more equitable distribution of benefits among stakeholders. These initiatives support community development, and promote a fairer and more sustainable mining sector. The four-part structure of this chapter is designed to provide a comprehensive analysis of the protection of socio-economic interests within mine-host communities as per the international legal framework and mining governance initiatives. The ultimate aim is to develop a comparative matrix³³¹ that highlights the key elements of Botswana's and South Africa's approaches to protecting the socio-economic rights and interests of mine-host communities. Part 1 delves into international, regional (*AU*), and sub-regional (*SADC*) binding (legal) and non-binding instruments. The analysis focuses on assessing the extent to which

³³¹ See Annexure A.

these instruments protect the socio-economic interests of communities hosting diamond mines. The discussion in Part 2 broadens to include various stakeholders in the mining sector and the roles they play in the implementation of the aforementioned international, *AU* and *SADC* instruments. This part also analyses relevant international transparency initiatives that are formulated to mitigate negative impacts and advocate for the socio-economic rights of communities affected by mining. Synthesising insights from the first two parts, Part 3 establishes a benchmark to evaluate Lesotho's existing policy, constitutional, and legislative framework. This benchmark specifically relates to the protection of the socio-economic rights and interests of the communities impacted by mining.

In Part 4, the benchmark is used to evaluate Lesotho's mining policy. This is achieved by comparing it to international, regional, and sub-regional standards. This analysis, detailed in Chapter 6, aims to identify gaps in its alignment with global best practices, regional frameworks such as the African Charter on Human and Peoples' Rights, and sub-regional guidelines from the *SADC*. The ultimate goal of this benchmarking exercise is to align Lesotho's mining policy and legislation with international conventions and regional standards. Identifying discrepancies and areas for improvement helps to provide recommendations for the enhancement of the legislative framework. These recommendations focus on improving socio-economic rights in the mining sector. They also ensure that mining activities contribute positively to the development and welfare of Lesotho's communities. Lastly, the recommendations aim to address any socio-economic challenges highlighted by the benchmark comparisons.

3.2 International, regional, and sub-regional instruments in the mining sector

3.2.1 Binding and non-binding instruments in mining

In the complex landscape that forms the regulatory framework system, both binding and non-binding instruments play pivotal roles. These instruments offer diverse approaches to governance and oversight in the mining sector. This discussion sets

the stage for exploring how the human rights framework³³² intersects with these instruments, particularly in safeguarding the socio-economic rights of mine-host communities. Binding instruments are treaties that are enforceable under public international law. As legally-binding instruments, treaties have important legal consequences. They are characterised by *pacta sunt servanda*,³³³ state responsibility for violations, and legal remedies for breaches. Such remedies include reparations³³⁴ and countermeasures.³³⁵ As for a non-binding instrument, it does not impose any legal duty to comply.³³⁶ Breach or non-compliance with the non-binding instrument yields no international legal consequences. Bradley *et al*³³⁷ clarify that:

This does not mean that nonbinding agreements lack any relationship to binding international law. To the contrary, nonbinding agreements can serve as the basis for or precursor to binding instruments made later provide interpretive guidance for binding agreements, clarify or expand upon the requirements of binding obligations be embedded or incorporated into a binding obligation or instrument and influence the development of customary international law.

This section highlights the imperative for Lesotho to align its regulatory framework with relevant international, regional, and sub-regional instruments to which it is a signatory. The aim, in examining these arrangements, is to identify best practices and establish a benchmark that Lesotho can use to enhance its own policies. These frameworks can provide crucial guidance, particularly when local laws are insufficient. This would ensure that Lesotho can effectively pursue socio-economic interests and improve the impact of its mining regulations.

3.2.2 International legal instruments and non-binding instruments for mining

For the purposes of this study, international legal frameworks are defined as binding instruments that impact multiple countries across various regions uniformly. This definition excludes frameworks that are specific to regions outside of Africa. This is

³³² See para 2.2.1 above.

³³³ Pillay *The Impact of Pacta Sunt Servanda in the Law of Contract* 9.

³³⁴ Reparations refer to compensation provided to the injured party as a result of a breach, this can include financial compensation.

³³⁵ Countermeasures are actions taken by an injured state in response to a breach of treaty obligations by another state. Bradley *et al* 2023 *The University of Chicago Law Review* 1286.

³³⁶ Bradley *et al* 2023 *The University of Chicago Law Review* 1290.

³³⁷ Bradley *et al* 2023 *The University of Chicago Law Review* 1290.

because they are not pertinent to the socio-economic rights of mine-host communities in Lesotho.³³⁸ Non-binding instruments are treated as commitments guiding the actions and behaviours of states by providing suggestions and guidelines.³³⁹ These commitments lack enforceable penalties in instances of non-compliance.³⁴⁰ Legal instruments in the mining industry play a crucial role in shaping the governance of this sector. They address socio-economic and environmental concerns. They also protect the rights and interests of affected mine-host communities. This section explores the evolution of both international legal instruments and non-binding commitments. It also assesses their impact on various aspects, including regulatory frameworks,³⁴¹ environmental protection,³⁴² community participation,³⁴³ transparency, and good governance.³⁴⁴

3.2.2.1 The 1948 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (hereafter *UDHR*), ratified in December 1948 by 48 members of the United Nations,³⁴⁵ is recognised as 'soft law', and is

³³⁸ For this chapter, this delineation will help differentiate between instruments that affect countries in specific regions and sub-regions as those may still technically be classified as international in nature.

³³⁹ Brünner and Königsberger *Soft in Outer Space: The function of non-binding norms in International Space Law* 54.

³⁴⁰ Brünner and Königsberger *Soft in Outer Space: The function of non-binding norms in International Space Law* 54.

³⁴¹ Which highlights the roles and responsibilities of the relevant stakeholders as tabulated in various international covenants.

³⁴² Which is seen to stress the importance of environmental protection and awareness to achieve responsible mining.

³⁴³ Which advocates for the engagement of mine host communities in the decision-making processes related to mining activities.

³⁴⁴ Which emphasises the need for disclosure of information related to mining activities and ensuring accountability to promote responsible mining for the benefit of mine host communities.

³⁴⁵ The Universal Declaration of Human Rights (*UDHR*) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. The 1948 *UDHR* is widely recognized as having inspired and paved the way for, the adoption of more than seventy human rights treaties, applied today permanently at global and regional levels all containing references to it in their preambles. Sener 2021 *International Journal of Political Studies* 6.

therefore non-binding.³⁴⁶ Its fundamental objective was to declare human rights as universal and ensure that they are enjoyed by everyone, irrespective of who they are and where they lived.³⁴⁷ Before the promulgation of the 1948 *UDHR*, human rights were regarded as the domestic affair of the state within whose jurisdiction they fell.³⁴⁸ The unconscionable horrors of World War II demonstrated that this situation could no longer be tolerated. Hence the need for the universal protection of human rights for everyone.³⁴⁹ The 1948 *UDHR* initiated the international human rights movement,³⁵⁰ a significant breakthrough in the progressive recognition of human rights in general, inclusive of socio-economic rights.³⁵¹

In its preamble, the 1948 *UDHR* endeavours to commit member states to take progressive actions that secure the universal and effective recognition and observance of human rights.³⁵² For the full enjoyment of rights and freedoms as enshrined in the 1948 *UDHR*, human beings are bestowed with the right to take an active part in the life of their community. This principle aligns with the theory of community participation,³⁵³ which emphasises that meaningful involvement in communal decision-making processes is essential for the realisation of socio-economic rights and overall wellbeing. Active community participation ensures that

³⁴⁶ Although the *UDHR* is not itself a legally binding instrument, it is recognised as a founding document and it is used as a basis for the development of legally binding human rights conventions. Ahmed and Mustofa 2016 *Global Journal of Politics and Law Research* 1. Thurer 2000 *Soft Law in Encyclopedia of Public International Law* 452. Sener 2021 *International Journal of Political Studies* 7.

³⁴⁷ Preamble of the *UDHR* (1948). Brown *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World* 13. Corella 2018 *The Age of Human Rights Journal* 12. Marks *Human Rights: A Brief Introduction* 7.

³⁴⁸ See para 2.2.1 above.

³⁴⁹ World War II saw great violations of human rights as there was a huge number of casualties and destruction. Programme on Women's Economic Social and Cultural Rights (hereafter *PWESCR*) *Human Rights For All* 12. Brown *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World* 1. Corella 2018 *The Age of Human Rights Journal* 1.

³⁵⁰ See para 2.2.1 above.

³⁵¹ These socio-economic rights include the right to work as reflected in article 23 of the 1948 *UDHR*, the right to an adequate standard of living as reflected in article 25 of the 1948 *UDHR*, the right to education as reflected in article 26 of the 1948 *UDHR*, the right to participate freely in a cultural life as reflected in article 27 of the 1948 *UDHR*. Sener 2021 *International Journal of Political Studies* 7.

³⁵² Preamble of the *UDHR* (1948). Brown *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World* 20.

³⁵³ See para 2.3.4 above.

individuals have a voice in shaping policies and practices that directly affect their lives. This fosters a sense of ownership and responsibility. This participatory approach not only strengthens democratic governance, but also enhances the effectiveness of human rights protections. This is achieved by ensuring that the needs and aspirations of all community members are addressed.

Article 17 of the 1948 *UDHR* states that everyone has the right to own property, alone or in association with others, and that no one shall be arbitrarily deprived of their property. In the context of this study, property rights specifically refer to the land rights of mine-host communities. These rights fall within the scope of property rights protected under Article 17. Any violation of land rights, such as forced relocations or confiscation of land, contravenes Article 17 and undermines the socio-economic stability of the relevant communities.

Article 23 of the 1948 *UDHR* emphasises the right to work, which, in this study, encompasses the rights of mine-host communities. This includes provisions for just and favourable conditions of work and the right to form and join trade unions. For mine-host communities, Article 23 ensures the protection of workers' rights in the mining sector, advocating for fair treatment and representation.³⁵⁴ This is crucial in maintaining socio-economic wellbeing and safeguarding against exploitation.

Article 25 of the 1948 *UDHR* stipulates that everyone has the right to a standard of living adequate for theirs and their families' health and wellbeing. This includes food, clothing, housing, and medical care. In the context of mine-host communities, this right highlights the imperative to ensure that mining activities do not compromise people's basic needs and quality of life. It underscores the responsibility of mining operations and the state to protect the health and wellbeing of these communities. This ensure that the benefits of mining are not outweighed by its negative socio-economic impacts.

³⁵⁴ However, in Lesotho this is typically not the case as usually mining companies import their labour from outside the mine host communities. This is usually because the diamond mining processes in Lesotho require highly skilled labour which is usually not found in mine host communities.

Article 28 of the 1948 *UDHR* states that everyone is entitled to a social and international order in which socio-economic rights can be fully realised. In the context of this study, the absence or existence of weak institutions within the mining industry often leads to the abuse of the socio-economic rights of mine-host communities. The weakness of institutions manifests through a lack of transparency, accountability, and effectiveness. This results in exclusionary or discriminatory actions that reinforce inequality and societal injustices.³⁵⁵ Based on Article 28, it is inferred that governments are obliged to create a social and international environment that enables the full realisation of the socio-economic rights of mine-host communities.³⁵⁶ Together, these articles from the 1948 *UDHR* provide a comprehensive framework for understanding and protecting the socio-economic rights of mine-host communities. By contextualising property rights, the right to work, standards of living, and the need for robust institutions, this study emphasises the importance of aligning mining practices with international human rights standards. This is to ensure the wellbeing and equitable treatment of affected communities.

3.2.2.2 The 1966 International Covenant on Economic, Social and Cultural Rights

While the 1948 *UDHR* lacked direct enforcement mechanisms, it laid the foundational principles for protecting socio-economic rights. These principles are critical for mine-host communities, as they constitute a foundation for the development of binding agreements. These encompass the 1966 International Covenant on Economic, Social and Cultural Rights (hereafter *ICESCR*) as well as the 1966 International Covenant on Civil and Political Rights (hereafter *ICCPR*), which established such mechanisms.³⁵⁷ The focus is exclusively on the 1966 *ICESCR*, because it directly addresses the rights most relevant to mine-host communities. The *ICESCR* encapsulates critical areas such as the right to work, just and favourable conditions of work, the right to form and join trade unions, the right to an adequate standard of living, and the right to health. These socio-economic rights are essential

³⁵⁵ Brinks *et al* 2019 *Elements in Politics and Society in Latin America* 1.

³⁵⁶ Michael and Menaldo *Authoritarianism and the Elite Origins of Democracy* 19.

³⁵⁷ Sener 2021 *International Journal of Political Studies* 20.

in ensuring economic stability, fair labour practices, and the overall wellbeing of mine-host communities.

In contrast, the *ICCPR* primarily deals with civil and political rights, such as freedom of expression, assembly, and the right to a fair trial. Although these rights are important, they are less directly connected to the specific socio-economic challenges faced by mine-host communities. The *ICCPR* addresses broader governance and personal freedoms. These do not directly tackle the immediate economic and social issues arising from mining activities. By focusing on the *ICESCR*, a more relevant and effective analysis of the issues impacting mine-host communities is achieved. The emphasis is on the rights most pertinent to their wellbeing. This helps to better advocate for policies and practices that ensure these communities benefit from mining operations, and that their socio-economic rights are protected and promoted.

The *ICESCR* is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966. It entered into force on 3 January 1976.³⁵⁸ This convention commits parties to work toward the protection and promotion of socio-economic and cultural rights. These encompass labour rights,³⁵⁹ the right to health,³⁶⁰ the right to education,³⁶¹ and the right to an adequate standard of living.³⁶² Socio-economic rights are said to impose positive obligations on member states towards their fulfilment.³⁶³

The 1966 *ICESCR* protects an individual's right to the enjoyment of their rights, free from interference from the government and third parties. Furthermore, it imposes an obligation on the state to adopt appropriate measures toward the full realisation

³⁵⁸ UN General Assembly <http://www.refworld.org/docid/3ae6b3bc0.html>. Entry into force refers to the process by which a treaty comes to have legal force and effect.

³⁵⁹ A 6 of the *ICESCR* (1966).

³⁶⁰ A 12 of the *ICESCR* (1966).

³⁶¹ A 13 of the *ICESCR* (1966).

³⁶² A 14 of the *ICESCR* (1966).

³⁶³ These rights are interpreted by the courts of law, as the representation of goals to be achieved progressively by the state, as stated in the case of *Government of the Republic of South Africa and Others v Grootboom* 2001 1 SA 4 (CC).

of socio-economic rights.³⁶⁴ Additionally, state parties under the 1966 *ICESCR* have the responsibility to facilitate, provide, protect and promote social, economic and cultural rights.³⁶⁵ State parties are expected to achieve this through proactive measures such as enacting legislation, and allocating and providing resources.³⁶⁶ Article 2 of the 1966 *ICESCR* obliges governments to make efforts to improve the enjoyment of socio-economic and cultural rights, through progressive realisation.³⁶⁷ This entails taking steps, within a reasonably short time, to fulfil the enjoyment of these rights.³⁶⁸ To achieve this, member states are expected to create a legal framework that satisfies these provisions.³⁶⁹

Article 6 of the 1966 *ICESCR* recognises the right of everyone to work, encompassing the right to a livelihood freely chosen or accepted. This includes just and favourable conditions of work as well as the right to form and join trade unions. For mine-host communities, this article ensures fair labour practices, the protection of workers' rights, and representation. This directly impacts their socio-economic stability and wellbeing. Unlike Article 23 of the 1948 *UDHR*, Article 6 of the 1966 *ICESCR* is legally-binding, because it is a treaty – which is a binding document.

Article 11 of the 1966 *ICESCR* emphasises the right to an adequate standard of living, including adequate food, clothing, and shelter. This right also includes the progressive improvement of living conditions, the assurance of basic income, as well as social and cultural rights. For mine-host communities, Article 11 ensures that mining activities do not compromise their basic needs and quality of life. This article mandates continuous efforts to improve their living conditions. Similar to Article 6,

³⁶⁴ Preamble of the *ICESCR* (1966). PWESCR *Human Rights For All* 11.

³⁶⁵ PWESCR *Human Rights For All* 11.

³⁶⁶ A 2(1) of the *ICESCR* (1966).

³⁶⁷ A 2(1) *ICESCR* (1966) which states “each state party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, to achieve progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”

³⁶⁸ PWESCR *Human Rights For All* 11.

³⁶⁹ A 2(1) of the *ICESCR* (1966).

it has a binding effect, in contrast to the non-binding nature of Article 25 of the 1948 *UDHR*.

Article 13 of the 1966 *ICESCR* ensures the right to education, which is particularly significant for mine-host communities. Education empowers these communities by equipping them with the knowledge and skills to understand and advocate for their rights effectively. This empowerment is crucial in fostering socio-economic development and protecting their interests.

Article 15 of the 1966 *ICESCR* protects the right to participate in cultural life and enjoy the benefits of scientific progress. This includes benefiting from the protection of moral and material interests resulting from any scientific, literary, and artistic production. For mine-host communities, Article 15 ensures active engagement in cultural practices and access to the benefits of advancements in science and technology. This right enhances their quality of life and fosters cultural preservation. This is essential in maintaining their socio-economic and cultural identity.

The 1966 *ICESCR* provides a comprehensive and binding framework for the protection of the socio-economic rights of mine-host communities. By addressing critical areas such as the right to work, adequate living standards, education, and cultural participation, it ensures that these communities can achieve a higher quality of life and equitable treatment in the face of mining activities.

3.2.2.3 Concluding remarks

The 1948 *UDHR* laid the groundwork for recognising human rights universally, including socio-economic rights. This was achieved by articulating a broad spectrum of fundamental freedoms and rights to which all human beings are entitled. While the 1948 *UDHR* is a non-binding instrument, it established the foundational principles and norms that guided the development of subsequent legally-binding agreements. Its recognition of socio-economic rights, such as the right to work, the right to an adequate standard of living, and the right to education, provided a universal framework that underscored the importance of these rights for human dignity and wellbeing.

The 1948 *UDHR*'s principles set the stage for the 1966 *ICESCR*, which expanded on these rights and made them legally-binding for its signatories. The 1966 *ICESCR* obligates parties to protect and promote socio-economic rights, including the rights to work, health, education, and an adequate standard of living. This treaty imposes positive obligations on member states to take proactive measures towards the realisation of these rights. These measures include creating robust legal frameworks, allocating the necessary resources, and progressively improving living conditions for all individuals.

For mine-host communities, the 1948 *UDHR* and the 1966 *ICESCR* are significant. The mining sector often poses unique challenges to these communities. Such challenges include displacement, environmental degradation, and labour exploitation. The socio-economic rights outlined in these documents provide essential protections for these communities. The 1948 *UDHR* and the 1966 *ICESCR* form a comprehensive human rights framework that safeguards the socio-economic rights of mine-host communities. These rights are crucial in upholding the welfare, dignity, and fundamental freedoms of these communities. This is in the face of the challenges posed by extractive industries. By mandating states to take proactive measures, create legal frameworks, and allocate resources, the 1966 *ICESCR* ensures protects and promotes the socio-economic rights of mine-host communities. This contributes to their overall wellbeing and development.

3.2.3 The African Union instruments³⁷⁰

Transitioning to the regional context, the African Union (hereafter *AU*) stands as a beacon of hope for addressing the unique socio-economic rights challenges encountered by mine-host communities in Africa. Through instruments such as the African Charter on Human and Peoples' Rights (hereafter African Charter), the AU builds upon the foundational principles articulated in the 1948 *UDHR* and the 1966 *ICESCR*. These provide tailored protections and mechanisms for redress within the African context.

³⁷⁰ There are other initiatives such as the *African Mining Vision* will be discussed below in para 3.3.

The African Charter emphasises socio-economic rights, including the right to development and the equitable sharing of natural resource benefits. These are particularly relevant to mine-host communities. The latter often face significant socio-economic disruptions due to mining activities. Such disruptions encapsulate displacement, environmental degradation, and inadequate labour conditions. Therefore, it is imperative to have a regional instrument that specifically addresses the protection of their socio-economic interests and rights. This creates a framework or benchmark for the mining sector.

Such a framework is necessary as it ensures that the socio-economic benefits derived from mining activities are equitably shared, and that the negative impacts are mitigated. By aligning regional standards with international principles, the *AU* can offer more contextualised and effective protections for mine-host communities. This ensures that their rights and interests are safeguarded amid the extractive operations.

In this study, attention is paid to both binding and non-binding regional instruments, specifically the 1981 African Charter on Human and Peoples' Rights (hereafter African Charter) and the 2009 Africa Mining Vision (hereafter *AMV*). The 1981 African Charter provides legally-binding obligations for member states to protect human and peoples' rights, including socio-economic rights. As for the 2009 *AMV*, it offers a strategic framework aimed at fostering transparent, equitable, and sustainable mineral resource development in Africa. Both instruments are crucial for analysing and establishing a benchmark for the protection of the socio-economic interests of the mine-host communities affected by diamond mining.

3.2.3.1 The 1981 African Charter

The 1981 *African Charter* is a legally-binding human rights instrument that creates a framework for the protection and promotion of human rights in Africa.³⁷¹ The *African Charter* was adopted in June 1981 and came into force in October 1986.³⁷²

³⁷¹ The Preamble of the *African Charter* (1981). Ekhatior 2015 *Commonwealth Law Bulletin* 253.

³⁷² The African Commission on Human and People's Rights <https://achpr.org/statepartiestotheafricancharter>.

To date, it has been ratified by fifty-four African Union (hereafter *AU*) member states.³⁷³ The 1981 African Charter on Human and Peoples' Rights is crucial for this study. This is because it encompasses a range of human rights, including those essential for the protection of mine-host communities' socio-economic interests.³⁷⁴ It ensures fair labour practices through the right to work,³⁷⁵ supports community empowerment via access to education,³⁷⁶ and guarantees that communities benefit from their natural resources. This is possible through the right to free disposal of natural wealth.³⁷⁷ Moreover, the Charter addresses environmental concerns by protecting the right to a satisfactory and clean environment.³⁷⁸ Thus, it mitigates the adverse effects of mining activities. By incorporating these provisions, the 1981 African Charter provides a comprehensive regional framework that builds upon international human rights standards. This framework offers vital protections tailored to the specific challenges faced by mine-host communities.

One of the most relevant provisions regarding the human rights impact of the mining industry is Article 21 of the 1981 *African Charter*. This article guarantees the right to free disposal of wealth and natural resources. This article states that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as an adequate compensation. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity solidarity. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their people's to fully benefit from the advantages derived from their national resources.

³⁷³ The African Commission on Human and People's Rights <https://achpr.org/statepartiestotheafricancharter>. Lesotho ratified the *African Charter* in 1992. Claiming Human Rights 2010 <http://www.claiminghumanrights.org/lesotho.html>.

³⁷⁴ The Preamble of the African Charter (1981). Ssenyonjo *Economic Social and Cultural Rights in International Law* 11.

³⁷⁵ A 15 of the *African Charter* (1981).

³⁷⁶ A 17 of the *African Charter* (1981).

³⁷⁷ A 21 of the *African Charter* (1981).

³⁷⁸ A 24 of the *African Charter* (1981).

The 1981 *African Charter*, particularly Article 21, supports the utilisation of Africa's natural resources for the continent's socio-economic advancement. This should be achieved without exploitation or deprivation of people's right to freely dispose of their natural resource wealth.³⁷⁹ To attain this, the *Charter* enforces the right of communities to partake in decision-making processes concerning the use of natural resources for their best interest.³⁸⁰ Nkologolo³⁸¹ notes that Article 13 of the 1981 *African Charter* has been interpreted by the *African Commission of Human Rights* (hereafter the African Commission) to include the right of local communities to effective participation in the governance of their natural resources. The African Commission is also instrumental in addressing the human rights violations committed in the mining industry, within the framework of its mandate. For instance, in the case *Social and Economic Rights Action Centre & the Centre for Economic and Social Rights v Nigeria*,³⁸² it was stated that the foundation of Article 21 of the 1981 *African Charter* can be traced to colonialism. This is a period during which Africa's mineral resources were exploited for the benefit of European countries and not that of Africans. Article 21 of the 1981 African Charter on Human and Peoples' Rights is pivotal in challenging the prevailing status quo.³⁸³ This is done by urging African governments to prioritise the economic and social development of their people, especially in mineral-rich regions. This article calls for a transformative shift in the narrative regarding natural resource management and its impact on local communities.

³⁷⁹ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in the Extractive Industries Problems and Prospects* 87.

³⁸⁰ This is stated in Article 13 of the 1981 *African Charter* which states that, "every citizen shall have the right to participate in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law." Nkologolo 2014 *African Journal of Democracy and Governance* 89.

³⁸¹ Nkologolo 2014 *African Journal of Democracy and Governance* 89.

³⁸² This was a case that dealt with human rights violations in Ogoniland, due to the oil spillage done by the Royal Dutch Shell Company while extracting oil in that area. These spills led to among others soil and water pollution which made Ogoni traditional farming and fishing impossible. The contaminated water also affected the health of the Ogoni people due to the carcinogens. Communication No.155/96 at paragraph 56.

³⁸³ Which is that historically, African communities had mineral wealth and did not benefit from the exploitation of minerals on their continent.

Traditionally, mineral-rich regions in Africa have often experienced a paradox of plenty (resource curse).³⁸⁴ Here, abundant natural resources lead to economic disparity and social challenges, rather than prosperity. Article 21 aims to shift this narrative by emphasising that the benefits of natural resources should be equitably distributed and utilised to enhance the overall wellbeing of communities. It advocates for the development of policies and practices which ensure that mineral wealth contributes to meaningful socio-economic development, rather than exacerbating inequality.

The transformative shift encouraged by Article 21 involves moving from a model in which resource extraction is primarily driven by external interests and often results in local communities bearing the brunt of environmental degradation and social disruption. The move should be to a model in which resource management is closely aligned with the needs and rights of these communities. This shift entails the implementation of policies that ensure fair distribution of resource wealth, enhance local capacities, and promote sustainable development practices.

By prioritising the economic and social development of people in mineral-rich regions, Article 21 seeks to foster a more equitable and inclusive approach to resource management. This approach aims to improve living standards and protect socio-economic rights. It also endeavours to empower local communities to play a central role in the management and benefits derived from their natural resources. Thus, Article 21 is instrumental in reshaping the discourse on natural resource management in Africa. It ensures that the discourse aligns with human rights principles and promotes genuine development outcomes for resource-rich communities. The principle enshrined in Article 21 of the 1981 *African Charter* emphasises the imperative to ensure that mine-host communities derive tangible benefits from mining activities occurring in their vicinity. Mine-host communities should not only bear the brunt of negative effects caused by mineral extraction,³⁸⁵

³⁸⁴ See para 2.3.3 above.

³⁸⁵ Such as pollution, soil erosion, relocation, land degradation, etc.

but they should also benefit from having those natural resources.³⁸⁶ Mine-host communities should also have a say in how minerals should be extracted. Therefore, it is incumbent upon governments to enact robust mining legislation to ensure the protection of their citizens. This is done by minimising or eradicating any human rights violations within mine-host communities around which mineral extraction activities occur.

Articles 21, 22 and 24 of the 1981 *African Charter* can be associated with impacts of socio-economic rights of mine-host communities in the mining industry. Article 22 of the 1981 *African Charter* recognises the right to development.³⁸⁷ It is not far-fetched to assert that through mineral extraction, mine-host communities have a right to socio-economic development. Therefore, the government has a duty to ensure that the socio-economic rights of mine-host communities are protected, promoted, and realised.

Closely linked to Article 22 of the 1981 *African Charter* is Article 24, which states that “all people ‘s shall have the right to a general satisfactory environment favourable to their development.” This means that mineral extraction by mining companies should not be done in a way that causes harm to the environment. Mine-host communities should still be able to function in a healthy environment, during and after mining companies have engaged in mineral extraction on their land. For example, mine-host communities should be able to use their land for subsistence farming and fishing. They should also be able to have access to fresh water uncontaminated by chemicals used in the mines.

Article 9 of the 1981 *African Charter* guarantees the right to information. This emphasises the importance of having the mining industry’s information available for everyone. This is so that people are well-informed on how the mining industry

³⁸⁶ For instance, they should have access to employment in the mines, access roads, water, and electricity to mention a few.

³⁸⁷ Article 22 (1) It states that “All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. Article 22(2) further states that “states shall have the duty, individually or collectively to ensure the exercise of the right to development.

operates. Understanding the legal framework governing the mining industry, the obligations of mining companies, their revenue generation, and their economic impact on taxes and *GDP* significantly empowers mine-host communities. This awareness often serves as a catalyst for communities to pursue the ownership of mines, or assert their rights when affected negatively by mining activities.³⁸⁸

At regional level, Article 14 of the *African Charter* protects the right to property. The latter encompasses the right to own property individually or collectively, as well as the freedom to dispose of one's wealth and resources. This is subject to the betterment of society and in accordance with the principles of collective solidarity, environmental protection, and sustainable development.³⁸⁹ The provision in Article 14 protects the rights of mine-host communities to their land and their freedom to trade with any party they so desire. It also provides for their right to dispose of their rights to the land in their possession.³⁹⁰

Article 15 of the 1981 *African Charter* provides for the protection of the right to work, including just, equitable, and satisfactory conditions of employment, as well as the right of workers to form and join trade unions.³⁹¹ This provision is crucial in protecting mine workers forming part of host communities. This is because it ensures fair labour practices in mining, safeguarding workers from exploitative conditions. The empowerment through unionisation provided by Article 15 gives mine workers a collective voice to negotiate better employment terms. This contributes to improved living standards and economic stability for host communities. Moreover, integrating Article 15 into national laws strengthens legal frameworks, ensuring mining companies uphold high labour standards. This, in turn, stimulates socio-economic development, leading to improvements in local infrastructure, education, and healthcare. Thus, Article 15 of the 1981 *African*

³⁸⁸ Centre for Applied Legal Studies (hereafter *CALS*) and Open Society Initiative for Southern Africa (hereafter *OSISA*) *Best Practice Guidelines for Mining in the SADC Region* 15.

³⁸⁹ Lumina 2006 *OBITER* 317.

³⁹⁰ While the 1981 African Charter does not specifically mention minerals, the right to property can be interpreted to include natural resources such as minerals. This means that individuals and communities have a right to own and benefit from their property including any minerals found on their land.

³⁹¹ This is same as A 23 of the *UDHR* (1948), A 6 of the *ICESCR* (1966).

Charter is vital in safeguarding mine workers' rights, promoting fair labour practices, and fostering the socio-economic development of mine-host communities.³⁹²

Article 16 of the 1981 *African Charter* acknowledges the right of every individual to enjoy the best attainable state of physical and mental health.³⁹³ This provision has significant implications for the mining sector. The provision mandates that mining operations be conducted in a manner that safeguards the health of mine-host communities. It requires the adoption of stringent health and safety standards. These help to prevent environmental degradation, pollution, and occupational hazards that could adversely affect community health.³⁹⁴ Ensuring compliance with Article 16 means that mining companies must implement effective health monitoring and impact assessment mechanisms. These companies must provide regular health services and interventions to address any health issues arising from mining activities. Furthermore, governments are obligated to enforce these health protections through robust regulatory frameworks and oversight. By prioritising the health of mine-host communities, the sector can mitigate negative health impacts and contribute to the overall community wellbeing. This fosters sustainable socio-economic development. This holistic approach underscores the importance of integrating health considerations into mining practices. This ensures that the benefits of mining are not overshadowed by detrimental health outcomes.³⁹⁵

Article 17 of the 1981 *African Charter* guarantees the right to education, including free and compulsory primary education.³⁹⁶ This right is crucial for mine-host communities, as access to education empowers individuals, fosters community development, and enhances their ability to advocate for their socio-economic rights. Ensuring this right requires collaboration between mining companies and governments. This is to support the development of educational infrastructure and provide the necessary resources.³⁹⁷ Access to quality education promotes skill

³⁹² Lumina 2006 *OBITER* 317.

³⁹³ Amnesty International *Mining and Human Rights in Senegal* 22.

³⁹⁴ Amnesty International *Mining and Human Rights in Senegal* 22.

³⁹⁵ Amnesty International *Mining and Human Rights in Senegal* 22.

³⁹⁶ Lumina 2006 *OBITER* 324.

³⁹⁷ Handelsman *Human Rights in the Minerals Industry* 66.

development, reduces dependency on mining, and supports sustainable development. Implementing this right necessitates robust policies, funding, and monitoring. These ensure that educational standards are met, ultimately contributing to the long-term socio-economic growth and stability of mine-host communities.³⁹⁸

The 1981 *African Charter* establishes a robust foundation for the protection and promotion of the socio-economic rights of mine-host communities at the regional level, in Africa. This document ensures that the wellbeing, dignity, and fundamental rights of these communities are upheld in the context of mineral extraction. The *Charter* advocates for the active involvement of communities in developmental decisions related to the disposal of mineral resources. It ensures that the benefits of such activities are shared equitably with those directly impacted. By mandating meaningful engagement with communities, particularly where decisions may affect them, the Charter aims to eliminate all forms of foreign economic exploitation.³⁹⁹ Consequently, member states are obliged to advance the socio-economic rights of mine-host communities. This helps to foster sustainable and equitable development, in alignment with the principles contained in the Charter.⁴⁰⁰

3.2.3.2 The 2009 Africa Mining Vision

The 2009 *Africa Mining Vision (hereafter AMV)* is a non-binding continental landmark initiative on mining. It was unanimously adopted by the *AU* in the year 2009,⁴⁰¹ with the view of harnessing the natural resource endowments that are key to Africa's development. The underlying goal of the 2009 *AMV* is the creation of "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based

³⁹⁸ Handelsman *Human Rights in the Minerals Industry* 66.

³⁹⁹ A 21 of the *African Charter* (1981).

⁴⁰⁰ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects* 144.

⁴⁰¹ The *AMV* is one of the various efforts made at a continental, sub-regional, and international level to enhance and create legal and regulatory frameworks to promote the development outcomes of mineral extraction. These include among others the Johannesburg Declaration on Sustainable Development, The Yaoundé Vision on Artisanal and Small-Scale Mining, The Africa Mining Partnerships Sustainable Development Charter and Mining Policy Framework. Busia and Akong *2017 Journal of Sustainable Development Law and Policy* 145.

sustainable growth and socio-economic development.”⁴⁰² The 2009 *Mining Vision* may be achieved through the creation of “a sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities.”⁴⁰³

The main instruments of the 2008 *AMV* are its action plan⁴⁰⁴ and its guidebook on how to undertake the country’s mining vision (hereafter *CMV*).⁴⁰⁵ The Action Plan is based on nine programme activity clusters built around the following key tenets:

- Mining revenues and mineral rents management.
- Geological and mining information systems.
- Building human and institutional capacities.
- Artisanal and small-scale mining (ASM).
- Mineral sector governance.
- Research and development.
- Environmental and social issues.
- Linkages and diversification.
- Mobilising mining and infrastructure investment.⁴⁰⁶

These tenets illustrate that the 2009 *AMV* is not only about mining, but also about development. It is about using mineral resource wealth to support the continent’s socio-economic growth.⁴⁰⁷ More pertinent to this study is the necessity for mine-host communities to be afforded opportunities to engage in decision-making processes pertaining to the management of mineral resource wealth. This fosters their socio-economic development and advancement.⁴⁰⁸ The 2009 *AMV* Action Plan

⁴⁰² The African Union Commission *The Africa Mining Vision* 1. Lwabukuna 2015 *Africa Insight* 47. Ramdoo 2017 <https://ecdpm.org/great-insights/mining-fordevelopment/africa-country-mining-visions>.

⁴⁰³ Pedro 2015 *Springer* 2.

⁴⁰⁴ As adopted in 2011.

⁴⁰⁵ Which was adopted in 2014.

⁴⁰⁶ African Union Commission 2011 https://au.int/sites/default/files/documents/29812-doc-action_plan_final_version_jan_2012.pdf.

⁴⁰⁷ Chiomba *Towards Sustainable Development Through Mineral Policy* 54.

⁴⁰⁸ Chiomba *Towards Sustainable Development Through Mineral Policy* 54.

aims to maximise the share of mineral revenues flowing to resource-rich economies.⁴⁰⁹ The 2009 *AMV* translates Africa's desires related to the mining sector and the need for it to be implemented at a national level through a *CMV*.⁴¹⁰ This is to achieve the much needed change at member-state level.⁴¹¹ The *CMV* is expected to create national ownership by using multi-stakeholder processes for consultation and dialogue. These processes help in determining priorities for the mining sector, identifying the roles and responsibilities of all relevant stakeholders, and vitalising reforms to national legislation, policies and regulations required for mineral-based development.⁴¹² The *CMV* is based on seven clusters of the 2009 *AMV* Action Plan, which are:

- fiscal regime and revenue management.
- geological and mineral information system.
- building human and institutional capacity.
- artisanal and small-scale mining.
- mineral sector governance.
- linkages, investment, and diversification
- environmental and social issues.⁴¹³

A Country Mining Vision (hereafter *CMV*) fosters transformative conversations about mining. This is because it moves beyond traditional revenue-focused measures.

⁴⁰⁹ Busia and Akong 2017 *Journal of Sustainable Development Law and Policy* 95.

⁴¹⁰ The *CMV* serves as a tailored plan for African countries to exploit their mineral resources in alignment with the 2009 *AMV*. It adapts the 2009 *AMV*'s principles to specific national contexts, prioritising sustainable development, stakeholder involvement, and transparent, equitable benefits. Key themes addressed include fair contracts, economic diversification, and environmental and social responsibility, ensuring that mining contributes to broader development goals beyond profit maximisation. African Union 2013 https://au.int/sites/default/files/newsevents/workingdocuments/14528-wd-ti10726_e_original_mali.pdf.

⁴¹¹ OXFAM 2017 <https://www.cdn.oxfam.org/s3fs-public/bp-africa-mining-vision-090317-en.pdf>.

⁴¹² The 2009 *AMV*. Busia and Akong 2017 *Journal of Sustainable Development Law and Policy* 95.

⁴¹³ OXFAM 2017 <https://www.cdn.oxfam.org/s3fs-public/bp-africa-mining-vision-090317-en.pdf>. Ramdoo 2017 <https://ecdpm.org/great-insights/mining-for-development/africa-country-mining-visions>.

According to the 2023 African Development Bank's *African Mineral Development Index*, 27 African countries have integrated the *CMV* framework into their national legislation.⁴¹⁴ The *CMV* broadens mining policies, to include economic diversification, social inclusion, and environmental sustainability. By engaging diverse stakeholders, it ensures inclusive dialogue and decision-making.⁴¹⁵

The *CMV* emphasises local content policies, mandating the use of local labour, goods, and services. It also promotes beneficiation-adding value to minerals, before export. It enforces stringent environmental and social safeguards. It improves community wellbeing through sustainable practices and better infrastructure.⁴¹⁶ Advocating robust governance and transparency, the *CMV* establishes clear legal standards, effective monitoring, and transparent revenue management. It invests in capacity-building through training, education, and institutional support. This ensures effective local management. Addressing potential conflicts through dialogue and aligning mining with national development goals, the *CMV* integrates mining with strategies for economic growth, poverty reduction, and sustainable development. This comprehensive approach ensures that mining contributes positively to the host country's economic, social, and environmental wellbeing.

The 2009 *AMV* stresses the need to translate decades of mineral exploitation into lasting development, for the benefit of mine-host communities and a country's citizenry.⁴¹⁷ Furthermore, the 2009 *AMV* provides a unique opportunity for mine-host communities to express their opinions.⁴¹⁸ This can be achieved through the establishment of multi-stakeholder groups comprised of different stakeholders in the mining sector. These groups are aimed at promoting community participation. This can be realised through a *CMV*, which is a domestication mechanism provided

⁴¹⁴ These are Angola, Burkina Faso, Central African Republic, Chad, Republic of Congo, Ivory Coast, Democratic Republic of Congo, Ethiopia, Equatorial Guinea, Gambia, Ghana, Kenya, Lesotho, Malawi, Mali, Mozambique, Niger, Rwanda, Sierra Leone, Tanzania, Zambia and Zimbabwe, with the coordinated help by the African Minerals Development Centre (hereafter *AMDC*) which provides strategic operational support for the 2009 *AMV* and its action plan. *OXFAM* 2017 <https://www.cdn.oxfam.org/s3fs-public/bp-africa-mining-vision-090317-en.pdf>.

⁴¹⁵ Busia and Akong 2017 *Journal of Sustainable Development Law and Policy* 165.

⁴¹⁶ Africa Centre for Energy Policy 2024 <http://www.jstor.org/stable/resrep31231>.

⁴¹⁷ Busia and Akong 2017 *Journal of Sustainable Development Law and Policy* 146.

⁴¹⁸ Chikova and Chilunjika 2021 *International Journal of Law and Public Policy* 15.

for in the 2009 *AMV*. The successful implementation of such a *CMV* means that mine-host communities are included in all decision-making processes regarding the mineral extraction undertaken in their vicinity.

3.2.3.3 Concluding remarks

The 1981 *African Charter* and the 2009 *AMV* play pivotal roles in advocating for the protection and promotion of socio-economic rights within mine-host communities in Africa. The 1981 *African Charter* provides a robust legal framework obliging member states to ensure that communities benefit from the exploitation of mineral resources, while safeguarding their rights to a clean environment, education, work, and property ownership. Article 21 of the Charter specifically underscores the right of communities to freely dispose of their wealth and natural resources. It urges governments to prioritise socio-economic development. Complementing this, the 2009 *AMV* outlines a comprehensive strategy for leveraging mineral resource wealth for sustainable development across the continent. The 2009 *AMV* emphasises transparency, equitable distribution of revenues, and inclusive governance structures. The *AMV*'s focus on promoting multi-stakeholder dialogue and the domestication of its principles through *CMVs* highlights the importance of local ownership and community empowerment in the mining sector. Both frameworks underscore the necessity for African countries to prioritise the socio-economic wellbeing of mine-host communities in mineral-rich areas. The lessons from regional initiatives, such as the adoption of *CMVs*, demonstrate a growing recognition that community involvement and empowerment are critical to shaping the future of the mining industry. By implementing robust legal frameworks, fostering inclusive governance structures, and promoting stakeholder dialogue, African nations can effectively harness their mineral wealth for the benefit of all citizens, with a particular focus on mine-host communities.

3.2.4 SADC instruments

3.2.4.1 SADC Treaty

The *AU* and the *SADC* are key players in Africa's quest for socio-economic development. This includes initiatives benefiting mine-host communities. While the *AU* establishes continental frameworks and policies and promotes best practices, the *SADC* implements these initiatives within its jurisdictional area. This includes ensuring that mining activities contribute to local community development through various programmes and environmental safeguards.

SADC countries have embarked on the road for regional cooperation for survival since the 1970s. Nine Southern African countries, namely, Angola, Lesotho, Malawi, Botswana, Swaziland, Zambia, Zimbabwe, Mozambique, and Tanzania came together in 1980. They formed the Southern African Development Coordination Conference (hereafter *SADCC*) which was held in Lusaka, Zambia.⁴¹⁹ Each member state was subsequently tasked with overseeing an area of common interest for the benefit of the region. Zambia was given the mandate to synchronise the mining sector.⁴²⁰ The *SADCC* had four prime objectives:

- To reduce member state dependence, particularly, but not only apartheid South Africa.
- To forge links to create genuine and equitable regional integration.
- To mobilise member state resources to promote the implementation of national, interstate, and regional policies.
- To concert action to secure international cooperation within the framework of the strategy of economic liberation.

⁴¹⁹ Hwang 2007 *ResearchGate* 55. Cleary 1999 <https://jpia.princeton.edu/sites/g/files/toruqf1661/files/1999-1.pdf>.

⁴²⁰ SADC *Harmonisation of Mining Policies, Standards, Legislative and Regulatory Frame-Work in Southern Africa* 1.

The above-mentioned objectives illustrate that the plan was to work together as Southern African countries, to help each other achieve socio-economic independence. On 17 August 1992, the *SADCC* reorganised itself into the *SADC*. This was done through the signing of the binding *SADC Treaty* in Windhoek, Namibia. This was concluded with a declaration of the treaty giving the organisation a legal character, thereby making it a binding legal instrument.⁴²¹ Currently, the *SADC* is comprised of fifteen member states, after the Republic of Seychelles, the Democratic Republic of the Congo, the Republic of South Africa, Madagascar, Namibia, and Mauritius were accepted into the organisation.⁴²² The *SADC's* aims are expressed in Article 5 of the 1992 *SADC Treaty*. They are, among others, to:

- Achieve development and economic growth, alleviate poverty, enhance the standard and the quality of life of the peoples of Southern Africa, as well as support the socially disadvantaged through regional integration.
- Promote and maximise productive employment and utilisation of the resources of the region.
- Achieve sustainable utilisation of natural resources and the effective protection of the environment.

The above is an illustration that the *SADC's* objective is to cooperate and promote social and economic integration. This is to ensure the wellbeing and improved livelihoods of the people currently living in the *SADC* region and their future generations. This can be achieved through the sustainable utilisation and protection of natural resources. Although the 1992 *SADC Treaty* does not explicitly address the promotion and protection of the socio-economic rights of mine-host communities, it does, however, emphasise socio-economic development and human rights within its member states.

⁴²¹ Saunders and Nagar 2013 https://www.mattersburgerkreis.at/dl/LNnnJMjLknJqx4KooJK/JEP-4-2013_02_SAUNDERS-NAGAR_South-Africa-and-the-Southern-African-Development-Community.pdf.

⁴²² Saurombe 2012 *PELJ* 456.

This section has highlighted the importance of the *SADC* within the region, particularly regarding the establishment of a harmonised mining industry. This cohesion creates a stable business environment, making the region more attractive to potential investors.⁴²³ Additionally, *SADC* member states benefit from cross-border investments and deeper regional integration. Furthermore, these countries face shared challenges, including political, social, and economic issues such as poverty, unemployment, and the *HIV/AIDS* pandemic.⁴²⁴ Collaboration among *SADC* nations presents an opportunity to effectively address these challenges within the mining sector.

3.2.4.2 The 1997 *SADC* Protocol on Mining

The *SADC* countries, after recognising the importance of a comprehensive regional strategy and plan for the development of the mining sector, ratified the legally-binding 1997 *SADC Protocol on Mining* in the year 2000. This was done with the intention of promoting the interdependence and integration of mining policies. The aim was to foster the accelerated development and growth of the mining sector in the region.⁴²⁵ Member states must ensure that their legal frameworks are in line with the objectives the 1997 *SADC Protocol on Mining* seeks to achieve.

The 1997 *SADC Protocol on Mining* lays down ten applicable principles in Article 2. These are:

- 1 Member states recognise that a thriving mining sector can contribute to economic development, the alleviation of poverty, and the improvement of the standard and quality of life throughout the region.
- 2 Member states shall seek to harmonise national and regional policies, strategies, and programmes related to the development and exploitation of mineral resources.
- 3 Member states agree to bear their own costs of participation in institutional mechanisms for the effective implementation of this Protocol, with the

⁴²³ *SADC Harmonisation of Mining Policies, Standards, Legislative and Regulatory Framework in Southern Africa* ix.

⁴²⁴ *SADC Harmonisation of Mining Policies, Standards, Legislative and Regulatory Framework in Southern Africa* 5.

⁴²⁵ The Preamble of the *SADC Protocol on Mining* (1997).

exception that the Mining Co-ordinating Unit administrative cost shall be borne by the hosting Member State.

- 4 Member States agree to decide all matters related to the implementation of the Protocol by consensus.
- 5 Member States agree to cooperate in facilitating the development of human and technological capacity.
- 6 Member States shall encourage the development, transfer and mastery of science and technology throughout the region.
- 7 Member States shall encourage private sector participation in the exploitation of mineral resources.
- 8 Member States shall promote the economic empowerment of the historically disadvantaged in the mining sector.
- 9 Member States agree that their governments and the *SADC* shall improve the availability of public information to the private sector, Member States and other countries.
- 10 Member States undertake to jointly develop and observe internationally-accepted standards of health, mining safety, and environmental protection.

3.2.4.2.1 Analysis of the Protocol's key principles impacting socio-economic rights

The first principle⁴²⁶ emphasises that a robust mining sector can drive economic development, alleviate poverty, and enhance the standard of living. For Lesotho, the discovery of minerals presents an opportunity to achieve significant economic growth.⁴²⁷ An effective management of the mining sector can become a major contributor to government revenue. It can also help in addressing challenges such as poverty, inequality, unemployment, and poor health standards. The resultant economic development would provide well-paying jobs, and improve access to education, shelter, water, electricity, sanitation, and healthcare. This would improve the quality of life for the Basotho people.

The second principle⁴²⁸ calls for the harmonisation of national and regional policies related to mineral resources. Countries must prioritise the creation and refinement

⁴²⁶ Economic Development and Quality of Life.

⁴²⁷ National Strategic Development Plan 2012/13-2016/17 43.

⁴²⁸ Harmonisation of Policies.

of laws, policies, and strategies aimed at fostering socio-economic development. This is achieved through a responsible utilisation of extractive resources. For example, Lesotho's mining policies should align with the Africa Mining Vision, which advocates for transparent, equitable, and the optimal exploitation of mineral resources. This helps to support sustainable growth and socio-economic development. Harmonising policies within the *SADC* region can create a stable environment for investors. It can also connect the mining sector to other economic drivers such as tourism, agriculture, and manufacturing. Moreover, harmonisation can enhance governance, through appropriate coordination systems.⁴²⁹

Encouraging private sector participation⁴³⁰ is essential for investment in the mining sector. While foreign investment is common, there is a need to promote local ownership and participation, especially by mine-host communities.⁴³¹ For instance, in Lesotho, the government only owns 30% of the shares in Letšeng Diamonds, with the remaining 70% being held by Gem Diamonds. Encouraging local investment can increase job creation, skills development, and economic growth. Local ownership ensures that income circulates within the country and benefits mine-host communities directly.⁴³²

Transparency and accountability⁴³³ in the mining sector are vital. Governments should adopt a participatory approach. They should allow mine-host communities to be involved in decisions affecting their lives and livelihoods.⁴³⁴ For example, before granting mining licenses, companies should inform the communities living on potential mining land and consider their views. This promotes sustainable development and builds trust. Improved availability of public information can attract private sector investment, create more jobs, and enhance community participation.

⁴²⁹ *SADC Harmonisation of Mining Policies, Standards, Legislative and Regulatory Framework in Southern Africa* x.

⁴³⁰ Principle 7 of the *SADC Protocol on Mining* (1997)

⁴³¹ A (6)2 of the *SADC Protocol on Mining* (1997) advocates for the promotion of private sector participation, which for the purpose of this study refers to community participation as described in Chapter 2 above.

⁴³² National Strategic Development Plan 2012/13-2016/17 94.

⁴³³ Principle 9 of the *SADC Protocol on Mining* (1997).

⁴³⁴ See Chapter 2 para 2.3.3 above.

3.2.4.2.2 Implementation and compliance mechanisms within the *SADC* framework

The 1997 *SADC Protocol on Mining* includes mechanisms to ensure that member states comply with the established principles. Article 8(1) obligates states to promote a sustainable approach to mineral extraction and environmental protection. This benefits mine-host communities directly. However, mining activities have significant environmental impacts, such as water and air pollution as well as biodiversity loss.⁴³⁵ Lesotho must incorporate environmental protection in its laws. It should require environmental impact assessments (hereafter *EIAs*) before granting mining licenses. It should also legislate for mine rehabilitation and sustainable development.

Legislation should prioritise health and safety standards for mine workers and visitors. This ensures maximum productivity and protection. The monitoring and evaluation of these standards should be mandatory, to ensure compliance. The binding SADC legal framework emphasises community participation in mineral activities and equitable benefit-sharing with mine-host communities. This contributes to broader economic benefits such as infrastructure development.

The 1997 *SADC Protocol on Mining* provides a comprehensive framework for the integration of regional mining policies. By aligning national frameworks with SADC protocols, member states can promote sustainable economic development, enhance community participation, and ensure the equitable distribution of mining benefits.⁴³⁶

3.2.4.2.3 Impact on the socio-economic rights of communities hosting diamond mines

One of the core principles of the 1997 *SADC Protocol on Mining* is promoting community participation and ensuring that local communities benefit from mining activities. Member states are encouraged to adopt policies that involve communities in decision-making processes, particularly those affecting their livelihoods and

⁴³⁵ Principle 8 of the *SADC Protocol on Mining* (1997).

⁴³⁶ A 5 of the *SADC Treaty* (1992). Chauhan 2018 <https://journals.co.za/doi/pdf/10.10520/EJC-120d00f642>.

environment. Benefit-sharing mechanisms, such as royalties, community development funds, and local employment opportunities, are vital in ensuring that mining activities contribute to the socio-economic development of host communities.

The 1997 *SADC Protocol on Mining* emphasises the importance of sustainable mining practices and environmental protection. Member states are required to conduct *EIAs*, before granting mining licenses, and to implement measures for mine rehabilitation and environmental conservation. Compliance with these standards helps mitigate the adverse effects of mining on the environment. Compliance also ensures that communities can sustainably benefit from mineral resources.

Ensuring the health and safety of mine workers and communities is a critical aspect of the 1997 *SADC Protocol on Mining*. Member states must establish and enforce health and safety regulations that protect workers from occupational hazards and promote safe-mining practices. Regular monitoring and evaluation of these standards are essential in ensuring compliance and addressing any health and safety issues promptly.

Transparency and accountability are fundamental to the effective implementation of the 1997 *SADC Protocol on Mining*. Member states are required to provide public information on mining activities, policies, and regulations, as well as to involve communities in the decision-making processes. This transparency fosters trust between governments, mining companies, and communities. This ensures that mining activities are conducted responsibly and sustainably.

3.2.5 Concluding remarks

The *AU* and the *SADC* play indispensable roles in fostering socio-economic development and promoting responsible mining practices within the region. Through initiatives such as the 1997 *SADC Protocol on Mining*, *SADC* member states aim to harness the potential of the mining sector to drive economic growth, alleviate poverty, and enhance the quality of life for their citizens. The principles outlined in the 1997 *SADC Protocol on Mining* stress the importance of harmonising policies,

encouraging private sector participation, and ensuring transparency and accountability in the mining sector. These principles reflect a collective commitment to promoting sustainable development and equitable benefit-sharing, particularly with mine-host communities. By prioritising community participation and environmental protection, *SADC* member states seek to maximise the socio-economic benefits of mineral extraction while mitigating its adverse impacts.

A comparative analysis of the protections afforded by international, *AU*, and *SADC* instruments reveals both strengths and gaps in the current frameworks. International instruments such as the 1981 *African Charter* provide a robust legal foundation for protecting socio-economic rights, as well as obligating member states to ensure that communities benefit from mineral resource exploitation while safeguarding their rights to a clean environment, education, work, and property ownership. The 2009 *AMV* further emphasises the need for transparency, equitable revenue distribution, inclusive governance, the promotion of local ownership, and community empowerment in the mining sector.

The 1997 *SADC Protocol on Mining* complements these international frameworks by focusing on regional cooperation and integration. It underscores the importance of harmonising policies across member states, encouraging private sector participation, and ensuring transparency and accountability in the mining sector. These regional initiatives are crucial in addressing shared challenges and maximising development opportunities within the mining sector. However, the effectiveness of these instruments depends significantly on their implementation at the national level, where gaps and overlaps often emerge.

One major gap identified is the inconsistency in the implementation of these frameworks across different countries. While some *SADC* member states have integrated these principles into their national legislation and policies, others lag in enforcement and practical application. This inconsistency can lead to unequal protection of socio-economic rights and varying degrees of benefit for mine-host communities. Additionally, overlaps between international, regional, and national

frameworks can create confusion and inefficiencies in governance and accountability mechanisms.

To enhance the legal protection of socio-economic rights at different governance levels, several recommendations are made. Firstly, there should be a concerted effort to harmonise national laws and policies with international and regional standards. This would ensure consistent application and enforcement across all member states. This requires capacity-building and technical support, which would help countries align their legal frameworks with best practices. Secondly, increasing stakeholder engagement is crucial. Governments, civil society, and the private sector must work collaboratively to promote transparency, accountability, and inclusive governance. This includes establishing multi-stakeholder groups to facilitate dialogue and decision-making processes that include the interests and input of mine-host communities.

Furthermore, strengthening monitoring and enforcement mechanisms is essential to ensure compliance with established standards. This can be achieved through initiatives such as the Extractive Industries Transparency Initiative (hereafter *EITI*) and the Kimberley Process Certification Scheme (hereafter *KPCS*). These promote transparency and ethical practices in the mining sector. Finally, fostering regional cooperation and integration through bodies such as the *SADC* can help address shared challenges and leverage collective strengths to promote sustainable development and inclusive growth in the mining sector.

While significant progress has been made in establishing frameworks to protect the socio-economic rights of mine-host communities, more needs to be done to ensure their effective implementation and enforcement. By harmonising laws and policies, engaging stakeholders, strengthening monitoring mechanisms, and fostering regional cooperation, *AU* and *SADC* member states can better protect and promote the socio-economic rights of communities affected by mining activities.

3.3 Stakeholder roles and transparency initiatives for the protection of the socio-economic rights of mine-host communities

3.3.1 Introduction

Strengthening monitoring and enforcement mechanisms is pivotal in ensuring adherence to established standards in the mining sector. This is particularly the case in the endeavour to safeguard the socio-economic rights of host communities. This objective can be effectively pursued through various initiatives that emphasise transparency and ethical conduct. Among these, the *EITI* and the *KPCS* emerge as key frameworks promoting accountability and responsible practices within the industry. In this context, the roles of diverse stakeholders including governments, civil society, mining companies, local communities, non-governmental organisations (hereafter *NGOs*), as well as international organisations become crucial. Each stakeholder group has a unique and indispensable role in enhancing transparency and enforcing compliance. This contributes to the protection of the socio-economic interests of those affected by mining activities. The discussion below delves into the specific roles of these stakeholders and assesses the significance of their contributions to the effective realisation of international standards in the context of mining.

3.3.2 Stakeholders

Various stakeholders⁴³⁷ are important in ensuring the effective implementation and enforcement of international, *AU*, and *SADC* legal instruments pertaining to the protection of the socio-economic rights and interests of mine-host communities. These stakeholders include mining companies, governments, civil society organisations, and international organisations.

3.3.2.1 Governments

National governments play a pivotal role in enabling the mining industry to boost the national economy. This is achieved through the ratification and implementation

⁴³⁷ Stakeholders are a segment of individuals negatively or positively affected by mineral extraction.

of international, *AU*, *SADC* instruments related to the protection and promotion of the socio-economic rights of mine-host communities.⁴³⁸ Governments are responsible for creating policies, promulgating laws, and enforcing compliance with established standards and regulations. This is to ensure that the rights and interests of these communities are safeguarded.⁴³⁹

The role of national governments is crucial in adopting and operationalising these international and regional instruments. The domestication of frameworks, such as the 1981 *African Charter*, has led to significant improvements in community rights protection in several jurisdictions.⁴⁴⁰ Nevertheless, challenges such as limited institutional capacity, corruption, and inadequate enforcement mechanisms often impede progress.

Case studies provide illustrative examples of both successful government initiatives and the challenges faced. For instance, in Botswana, the government's proactive policy framework and strategic partnerships with mining companies have resulted in substantial socio-economic benefits for host communities, including enhanced infrastructure and health services.⁴⁴¹ Conversely, in the Democratic Republic of Congo, despite the ratification of various international conventions, the lack of robust governance structures and ongoing conflict have significantly hampered the effective protection of community rights. These examples underscore the necessity for governments to not only ratify international instruments, but also to ensure their comprehensive implementation through the establishment of strong institutions, the promotion of transparency, and active community engagement.

3.3.2.2 Civil society organisations

Civil society plays a critical role in advocating for and protecting the socio-economic rights of mine-host communities. Comprising *NGOs*, community-based

⁴³⁸ Handelsman *Human Rights in the Minerals Industry* 66.

⁴³⁹ Chawani *Towards the Adoption of the Extractive Industries Transparency Code and Implications for Transparency in Malawi's Mining Sector* 45.

⁴⁴⁰ Ssenyonjo 2011 *Economic Social and Cultural Rights in International Law* 360.

⁴⁴¹ Dougherty 2011 *SSRN Electronic Journal* 6.

organisations (hereafter *CBOs*), advocacy groups, and other non-state actors, civil society serves as a bridge between communities and the state. They ensure that the voices of mine-host communities are heard and that their rights are upheld.⁴⁴²

CSOs engage in a variety of activities, including raising awareness, monitoring compliance with laws and regulations, and holding both governments and mining companies accountable.⁴⁴³ They play an instrumental role in policy advocacy, pushing for the adoption and implementation of international, *AU*, and *SADC* instruments related to community rights. *CSOs* also provide essential services such as legal assistance, education, and capacity-building, to empower communities to advocate for themselves.⁴⁴⁴

Examining the role of civil society reveals its effectiveness in mobilising communities and influencing policy changes.⁴⁴⁵ In the Democratic Republic of Congo, the International Institute for Environment and Development partnered with African Resources Watch to conduct field research and policy analysis. They disseminated their findings and mobilised artisanal miners to advocate for their rights in the cobalt sector.⁴⁴⁶ However, civil society faces significant challenges, including limited funding, political interference and, sometimes, hostile environments that restrict their operations.

Case studies highlight both the successes and obstacles encountered by civil society. In Ghana, *CSOs* have successfully campaigned for more stringent environmental regulations and greater community involvement in mining projects. This has led to enhanced protection of community rights.⁴⁴⁷ Conversely, in countries such as

⁴⁴² Van Wessel 2022 *ResearchGate* 35.

⁴⁴³ International Institute for Environment and Development 2024 <https://www.iied.org/promoting-better-policy-citizen-agency-mining-sector>.

⁴⁴⁴ Mate *Communities Civil Society Organisations and the Management of Mineral Wealth* 6.

⁴⁴⁵ Igbuzor 2024 <https://dawodu.com/articles/sustainable-development-and-mining-host-communities-1612>.

⁴⁴⁶ International Institute for Environment and Development 2024 <https://www.iied.org/promoting-better-policy-citizen-agency-mining-sector>.

⁴⁴⁷ Adu-Baffour *et al* 2021 *Land Use Policy* 14.

Zimbabwe, civil society efforts are often stifled by repressive laws and government crackdowns, which undermine their ability to effect meaningful change.⁴⁴⁸

These examples underscore the importance of a vibrant and independent civil society in advocating for the rights of mine-host communities. For civil society to effectively fulfil its role, it requires an enabling environment, adequate resources, and the ability to operate without undue restrictions.

3.3.2.3 Mining companies

Mining companies are key stakeholders in the mining sector. They have significant responsibilities in respecting and promoting the socio-economic rights of mine-host communities.⁴⁴⁹ These responsibilities are mandated by international, *AU*, and *SADC* legal instruments. These advocate for the protection and promotion of these rights.⁴⁵⁰ Compliance with these standards is essential for mining companies to operate ethically and sustainably.⁴⁵¹

Mining companies are expected to engage in several practices, to fulfil their obligations. Effective engagement with mine-host communities is paramount. It should involve transparent and inclusive dialogue, to understand and address community concerns.⁴⁵² Companies must also provide adequate and prompt compensation for land acquisition and other disruptions caused by mining activities.⁴⁵³ Moreover, implementing sustainable development initiatives that benefit host communities, such as building infrastructure, supporting local education and health services, and creating employment opportunities, is crucial.

*CSR*⁴⁵⁴ is a key component of mining companies' efforts to align with legal frameworks and promote community wellbeing. *CSR* initiatives should go beyond

⁴⁴⁸ Dendere and Taodzera 2023 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10033284/>.

⁴⁴⁹ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects* 123.

⁴⁵⁰ Handelsman *Human Rights in the Minerals Industry* 21.

⁴⁵¹ Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in Extractive Activities Problems and Prospects* 123.

⁴⁵² Dendere and Taodzera 2023 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10033284/>.

⁴⁵³ Dendere and Taodzera 2023 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10033284/>.

⁴⁵⁴ See para 2.3.4 above.

mere compliance, striving to make a positive impact on local communities. This includes adhering to the principles outlined in international frameworks such as the United Nations Guiding Principles on Business and Human Rights. These principles emphasise the corporate responsibility to respect human rights.

Some companies have set benchmarks by integrating comprehensive *CSR* strategies that align with legal standards, and genuinely contribute to community development. For example, companies operating in Botswana have partnered with local governments and *NGOs* to enhance infrastructure and social services. This demonstrates their strong commitment to sustainable development.⁴⁵⁵

However, challenges persist, including instances where companies fall short in their *CSR* commitments, leading to community grievances and social unrest.⁴⁵⁶ In some cases, companies may engage in tokenistic or superficial *CSR* activities that do not address the root causes of community issues.⁴⁵⁷ Ensuring genuine and impactful *CSR* requires robust mechanisms for accountability as well as continuous engagement with all stakeholders.⁴⁵⁸

These examples highlight the importance of mining companies' adoption of responsible practices and robust *CSR* strategies, to fulfil their obligations towards mine-host communities.⁴⁵⁹ By aligning their operations with international and regional legal frameworks and prioritising the wellbeing of local communities, mining companies can contribute to sustainable development and foster positive relationships with the communities they impact.

3.3.2.4 Local communities

Local communities, particularly those hosting mining operations, are crucial stakeholders in the mining sector. These communities are directly impacted by

⁴⁵⁵ Hore 2024 <https://businessweekly.co.bw/columns/market-research-your-business/corporate-social-responsibility-in-botswana-a-catalyst-for-business-impact>.

⁴⁵⁶ Bezzola *et al* 2022 *World Development* 1.

⁴⁵⁷ Bezzola *et al* 2022 *World Development* 2.

⁴⁵⁸ Bezzola *et al* 2022 *World Development* 10.

⁴⁵⁹ Etikan 2023 *Journal of Public Relations* 6.

mining activities and thus have a vested interest in ensuring that their socio-economic rights are protected and promoted.⁴⁶⁰ The involvement and active participation of local communities are essential in fostering sustainable development and equitable benefit-sharing.

Local communities play a fundamental role in advocating for their own rights and interests. Their participation is vital in the decision-making processes related to mining activities, including consultations, impact assessments, and benefit-sharing agreements.⁴⁶¹ Empowered communities can effectively negotiate with mining companies and governments to secure fair compensation, adequate environmental protection, and access to essential services such as healthcare, education, and infrastructure.⁴⁶²

Examining the role of local communities reveals their potential to influence policy and practice when they are well-organised and informed. Successful examples include the indigenous communities in Canada, where robust legal frameworks and strong community advocacy have resulted in significant gains in terms of land rights, environmental protections, and economic benefits.⁴⁶³ Challenges, however, remain prevalent, including limited access to information, lack of resources, and political marginalisation.

In Peru, indigenous communities have successfully utilised legal mechanisms and international support to halt harmful mining projects and secure better terms of engagement with mining companies.⁴⁶⁴ Conversely, in countries such as Papua New Guinea, local communities often struggle with inadequate legal protections and the overwhelming power of mining corporations, leading to adverse social and environmental impacts.⁴⁶⁵

⁴⁶⁰ Dendere and Taodzera 2023 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10033284/>.

⁴⁶¹ See para 2.3.4 above.

⁴⁶² See para 2.3.4 above.

⁴⁶³ OECD *Linking Indigenous Communities with Regional Development in Canada* 23.

⁴⁶⁴ Armstrong *et al* *Mining and Community Engagement in Peru: Communities Telling their Stories to Inform Future Practice* 19.

⁴⁶⁵ Mudd *et al* 2020 *Science of the Total Environment* 6.

These examples highlight the imperative to empower local communities. This entails the legal recognition of their rights, capacity-building initiatives, and ensuring their meaningful participation at all stages of mining projects. Strengthening community governance structures and fostering collaboration with other stakeholders, such as civil society organisations and international bodies, are also critical in achieving sustainable and equitable outcomes.

3.3.2.5 Non-Governmental Organisations (hereafter *NGOs*)

NGOs play a pivotal role in advocating for the protection and promotion of the socio-economic rights of mine-host communities.⁴⁶⁶ *NGOs* act as intermediaries between communities, governments, and mining companies, providing crucial support in areas such as legal assistance, capacity-building, and policy advocacy.⁴⁶⁷ Their involvement is instrumental in ensuring that the rights and interests of affected communities are recognised and upheld.

NGOs engage in various activities to support mine-host communities. These include conducting research, raising awareness about the impacts of mining, and advocating for the adoption and implementation of international, *AU*, and, *SADC* instruments. *NGOs* also monitor compliance with environmental and social regulations, ensuring that mining operations do not violate community rights.⁴⁶⁸ Additionally, they offer direct services such as legal aid, health services, and educational programmes, which help empower communities to undertake self-advocacy.

An examination of the role of *NGOs* has revealed their effectiveness in mobilising resources, influencing policy changes, and holding stakeholders accountable. Successful initiatives include the work of *NGOs* in Tanzania, where sustained advocacy and litigation have led to improved regulatory frameworks and greater

⁴⁶⁶ Mugo *Safeguarding Rights of Mining Communities in South Africa* 11.

⁴⁶⁷ Eguny and Boakye-Danquah 2024 *The Extractive Industries and Society* 8.

⁴⁶⁸ Mondoloka "Approaches to Supporting Local and Community Development The View from Zambia" 611-632.

community involvement in mining activities.⁴⁶⁹ However, *NGOs* face significant challenges, including limited funding, political resistance, and restrictive legal environments that hinder their operations.

In Ghana, *NGOs* have successfully campaigned for stricter environmental regulations and enhanced community participation in mining projects. This has resulted in better protection of community rights.⁴⁷⁰ Conversely, in countries such as Zimbabwe, *NGOs* often operate under repressive conditions that stifle their efforts to promote community rights and hold mining companies accountable.⁴⁷¹ These examples underscore the critical role of *NGOs* in advocating for mine-host communities. For *NGOs* to effectively fulfil their role, they require adequate resources, an enabling legal environment, and the ability to operate without undue restrictions. Strengthening partnerships with local communities, governments, and international organisations can further enhance the impact of *NGO* initiatives.

3.3.2.6 Intergovernmental organisations (hereafter IGOs)

IGOs play a significant role in the protection and promotion of the socio-economic rights of mine-host communities. *IGOs*, such as the *UN*, the *AU*, and the *SADC*, establish frameworks and standards that guide national policies and practices in the mining sector.⁴⁷² Their involvement is crucial in setting international norms, providing technical assistance, and fostering cooperation among member states, to ensure the rights of affected communities are upheld.

IGOs engage in various activities to support mine-host communities. They develop and promote international treaties, conventions, and guidelines that set standards for environmental protection, labour rights, and community engagement.⁴⁷³ *IGOs* also offer platforms for dialogue and cooperation, facilitating the exchange of best practices and experiences among countries. Additionally, they provide technical

⁴⁶⁹ Mutagwaba *et al* Artisanal and Small Scale Mining in Tanzania Evidence to Inform an 'Action Dialogue' 54.

⁴⁷⁰ Adu-Baffour *et al* 2021 *Land Use Policy* 16.

⁴⁷¹ Dendere and Taodzera 2023 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10033284/>.

⁴⁷² See para 3.2.2 to 3.2.4 above.

⁴⁷³ Erturk 2015 *Journal of International Social Research* 334.

assistance and capacity-building programmes to help member states implement and comply with these international standards.⁴⁷⁴

IGOs are effective in shaping national policies and fostering international cooperation.⁴⁷⁵ Successful initiatives include the work of the International Labour Organisation (hereafter *ILO*)⁴⁷⁶ in promoting labour standards, and the African Union's efforts through the *AMV*⁴⁷⁷ to ensure that mining activities contribute to sustainable development. However, *IGOs* face challenges such as limited enforcement mechanisms, varying levels of commitment among member states, and geopolitical tensions that can impede their efforts.

Case studies reveal both the successes and challenges encountered by *IGOs*. For example, the UN's involvement in the Kimberley Process Certification Scheme has significantly reduced the trade in conflict diamonds, promoting more ethical mining practices.⁴⁷⁸ Conversely, the implementation of the *EITI* in some countries has been hindered by weak governance and lack of political will. These factors have limited its impact on the improvement of transparency and accountability in the mining sector.⁴⁷⁹ These examples highlight the critical role of *IGOs* in advocating for the rights of mine-host communities. For *IGOs* to effectively fulfil their role, they require strong mandates, adequate resources, and the active participation of member states. By enhancing collaboration with national governments, *NGOs* and local communities can further strengthen the impact of *IGOs* initiatives and promote the sustainable development of mining sectors worldwide.

3.3.3 Mineral resource governance towards transparency and accountability

Various international initiatives encourage and enhance accountability and transparency in the mining sector. This is known as mineral resource governance.

⁴⁷⁴ Erturk 2015 *Journal of International Social Research* 335.

⁴⁷⁵ Dzhyhora *et al* 2024 *Multidisciplinary Reviews* 5.

⁴⁷⁶ See para 2.3.4 above.

⁴⁷⁷ See para 3.2.3.2 above.

⁴⁷⁸ Mailey *The Anatomy of the Resource Curse: Predatory Investment in Africa's Extractive Industries* 69.

⁴⁷⁹ Nyirongo 2010 *PWYP and EITI in Zambia* 49.

According to Gomez and Gomez,⁴⁸⁰ mineral resource governance organises and manages mining through formal and informal practises, as well as methods and processes based on the collective action of the mining sector. The latter includes mining companies, the government, and mine-host communities.⁴⁸¹ Examples of mineral resource governance initiatives include the *Publish What You Pay* (hereafter *PWYP*) coalition, the *Extractive Industries Transparency Initiative* (hereafter *EITI*), and the *Kimberly Process Certification Scheme* (hereafter *KPCS*).

3.3.3.1 The publish what you pay (*PWYP*) coalition

PWYP is a global membership-based coalition of more than 800 civil society organisations in more than 40 countries. It calls for an open and accountable extractive sector. This is to ensure that the extractive industry in mineral-rich countries benefits their citizens; more importantly, mine-host communities.⁴⁸² The *PWYP* originated from a 1999 oil and corruption report on Angola by the Global Witness that called upon oil companies operating in Angola to publish what they pay to the government.⁴⁸³ Le Billion⁴⁸⁴ states that the campaign calls for “transparent and accountable management and expenditure of public funds to address the poverty, corruption, and autocracy that too often plague resource-rich countries.” *PWYP* aims to create an environment in which oil, gas, and mining revenues are used to improve the lives of women, men, and the youth in resource-rich countries.⁴⁸⁵

The *PWYP*’s collective strength makes it effective, as countries can rely on global cooperation to solve problems when they arise.⁴⁸⁶ Initiatives such as this discourage

⁴⁸⁰ Gomez and Gomez 2021 *The Extractive Industries and Society* 1.

⁴⁸¹ Jessop 1998 *International Social Science Journal* 29.

⁴⁸² Natural Resource Governance Institute Reader 2015
https://resourcegovernance.org/sites/default/files/nrgi_PWYP.pdf.

⁴⁸³ Global Witness *Rigged the Scramble for Africa’s Oil Gas and Minerals* 6.

⁴⁸⁴ Le Billion 2011 *Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives* 15.

⁴⁸⁵ LeBillion 2011 *Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives* 15. Bravink *et al Conflicts over Natural Resources in the Global South-Conceptual Approaches* 25.

⁴⁸⁶ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 26.

government officials from misusing the funds received from mineral extraction to line their private bank accounts.⁴⁸⁷ As previously discussed in the section on the resource curse, it is a recurring phenomenon that government officials in numerous resource-rich nations transition into entrepreneurs. They employ the funds derived from mineral extraction to construct lavish residences or invest in properties abroad.⁴⁸⁸ This is done instead of investing in alleviating poverty and addressing the basic socio-economic rights of mine-host communities.⁴⁸⁹ Government accountability reduces poverty and conflict. It also helps create a stable climate for international investment. Hence, it is crucial to note that Lesotho, despite its significant diamond mining activities, is not a member of the *PWYP* initiative. This absence underscores the need for Lesotho to consider joining such platforms to enhance transparency and accountability in the management of revenue generated from mineral extraction. This would ensure an equitable distribution of benefits to both the nation and mine-host communities. Due to its success, the *PWYP* initiative led to the emergence of *EITI*.⁴⁹⁰

3.3.3.2 The extractive industries transparency initiative (hereafter *EITI*)

The *EITI* is a global standard that guarantees transparency around countries' mineral resources, oil, and gas.⁴⁹¹ The concept of *EITI* was first introduced in 2002 by the former UK Prime Minister, Tony Blair, in his speech at the 2002 World Summit on Sustainable Development in Johannesburg (*WSSD*), also referred to as the Earth Summit.⁴⁹² The *EITI* was officially launched in June 2003, led by the United

⁴⁸⁷ Nyirongo 2010 *PWYP and EITI in Zambia* 49.

⁴⁸⁸ Chapter 2 para 2.3.2 above.

⁴⁸⁹ For example, right to water, electricity, infrastructure and many more.

⁴⁹⁰ Botswana and South Africa are members of the *PWYP*, while Lesotho on the other hand is not a member. Publish What You Pay 2023 <https://www.pwyp.org/members/>. Compaoré 2013 *The South African Initiative of International Affairs* (hereafter *SAIIA*) 6. Nyirongo 2010 *PWYP and EITI in Zambia* 49.

⁴⁹¹ Alao *Natural Resources and Conflict in Africa* 274. Haufler 2010 *Global Environmental Politics* 53.

⁴⁹² Macheve *The Impact of Coal Mining on the Living Conditions of Rural Communities in Mozambique: A Case Study of Cateme* 13. Compaoré 2013 *The South African Initiative of International Affairs* 5.

Kingdom, with the establishment of 12 *EITI* principles.⁴⁹³ This voluntary initiative is supported by a coalition of governments, companies, civil society, investors, and international organisations. It serves as a measure to curb the resource curse in developing countries.⁴⁹⁴ *EITI* promotes the disclosure to the public of mining revenues received by governments and payments made to government by mining companies. To put this in plain language, mining companies and governments are encouraged to publish what they pay and earn.⁴⁹⁵ The revenues and payments are then scrutinised against each other, to identify any inconsistencies.⁴⁹⁶

As previously stated,⁴⁹⁷ the distribution of mineral wealth in Africa is still controversial. Funds are usually mismanaged or used for the benefits of high-ranking officials.⁴⁹⁸ The mismanagement of these funds continues to delay development projects that could possibly improve the socio-economic rights or interests of mine-host communities. The latter continue to live in dire conditions, even though they are the hosts of the various mining companies.⁴⁹⁹ It is for this reason that initiatives such as *EITI* were created. They aim to provide mine-host

⁴⁹³ Which among others include the fact that state parties share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly can create negative economic and social impacts, the recognition of state parties that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent, and the recognition by state parties that public understanding of government revenues and expenditure over time could help the public debate and inform the choice of appropriate and realistic options for sustainable development. *EITI* Date Unknown <https://eiti.org/files/documents/eiti-principles.pdf>. Chiomba *Towards Sustainable Development Through Mineral Policy* 60. Compaoré 2013 *SAIIA* 6.

⁴⁹⁴ Chiomba *Towards Sustainable Development Through Mineral Policy* 60. Murombo 2013 *LEAD* 34. Sepo *The Socio-Economic Impact of Mining: A Comparative Study of Botswana and Zambia* 39. Matsika *et al* 2014 *International Journal of Sustainable Development* 91. Aaronson 2011 *Public Administration and Development* 53.

⁴⁹⁵ Lesotho, South Africa, and Botswana are not signatories to the *EITI*. Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho Lessons from South Africa* 3.

⁴⁹⁶ It should be noted that the *EITI* is termed as soft law as it is not enforceable, it is just voluntary in nature. Cotula *Investment Contracts and Sustainable Development How to Make Contracts for Fairer and More Sustainable Natural Resource Investments* 40. Chawani *Towards the Adoption of the Extractive Industries Transparency Code and Implications for Transparency in Malawi's Mining Sector* 60. Aaronson 2011 *Public Administration and Development* 50.

⁴⁹⁷ In chapter 2.

⁴⁹⁸ This has been previously defined by various literature authors as the "resource curse." See para 2.3.2 above.

⁴⁹⁹ LeBillion 2011 *Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives* 3.

communities with effective tools, as encapsulated in *EITI*'s twelve principles, to hold governments to account for the manner in which public funds are used.⁵⁰⁰

EITI has numerous advantages. Firstly, it shows governments' promise to transparency in the extractive industry. This leads to an enhanced investment climate in countries which form part of it, thereby ensuring that natural resources benefit of the entire society.⁵⁰¹ Secondly, *EITI* promotes strong accountability and good governance. Thirdly, *EITI* endorses socio-economic and political stability, preventing conflict that may arise in the extractive industry. This encourages investors to invest in countries that are party to *EITI*, as they are assured that conflict will not affect their investment, due to transparency.⁵⁰²

Aaronson⁵⁰³ explains how the *EITI* works by stating that:

First governments oblige mining companies in their countries to "publish what they pay" to the policymakers for the right to explore and extract minerals. Then the government officials are expected to record the revenues received and engage an independent administrator to compare extractive sales and revenues. The government is further tasked with establishing a multi-stakeholder group which includes civil society representatives. Then the established multi-stakeholder group is tasked with the duty to evaluate the information provided by the businesses and government and review the independent evaluation. Lastly an outside organisation checks or validates the report.

This is done to minimise any acts of corruption. Initiatives of this nature can help develop Lesotho into a country that engages in mineral extraction for the benefit of the Basotho nation and, more especially, mine-host communities in areas such as Butha-Buthe, Mokhotlong, and Mafeteng, where mineral extraction occurred. For countries to be *EITI* compliant, they must be able to show that they have met all the seven *EITI* requirements stipulated in the 2019 *EITI* Standard:

⁵⁰⁰ Cotula *Investment Contracts and Sustainable Development How to Make Contracts for Fairer and More Sustainable Natural Resource Investments* 40. Macheve 2014 *The Impact of Coal Mining on the Living Conditions of Rural Communities in Mozambique: A Case Study of Cateme* 13. Haufler 2010 *Global Environmental Politics* 53.

⁵⁰¹ Sepo *The Socio-Economic Impact of Mining: A Comparative Study of Botswana and Zambia* 38.

⁵⁰² Chiomba *Towards Sustainable Development Through Mineral Policy* 60.

⁵⁰³ Aaronson 2011 *Public Administration and Development* 50.

Firstly, that there should be effective multi-stakeholder oversight including a functioning multi-stakeholder group that involves the government, companies and full independent, active and effective participation of civil society.⁵⁰⁴

The second requirement is that there should be disclosures on how the extractive sector is managed, enabling stakeholders to understand the laws and procedures for the award of exploration and production rights, the legal, regulatory and contractual frameworks that apply to the extractive sector and the institutional responsibilities of the state in the managing sector.⁵⁰⁵

The third requirement is that there should be disclosures of information related to exploration and production, enabling stakeholders to understand the potential of the sector.⁵⁰⁶ The fourth requirement is an understanding of company payments and government revenues in order to inform public debate about the governance of the extractive industries. The *EITI* demands a comprehensive disclosure of company payments and government revenues from the extractive industries.⁵⁰⁷

The fifth requirement is that there needs to be disclosures of information related to revenue allocations, enabling stakeholders to understand how revenues are recorded in the national and, where applicable, subnational budgets, as well as tracking social expenditures by companies.⁵⁰⁸

The sixth requirement is that there should be disclosure of information related to the revenue management and expenditures, helping stakeholders to access whether the extractive sector is leading to the desirable social and economic and environmental impacts and outcomes.⁵⁰⁹

The last (seventh) requirement is that there should be regular disclosures of extractive industry data with public awareness, so as to help the public understand what the figures mean. Thereby allowing for the public debate about how resources can be used effectively.⁵¹⁰

Harguth⁵¹¹ is of the view that the *EITI* is indeed an initiative that seeks to foster transparency in the mining industry but needs to be paired with other institutional methods, for effectiveness.⁵¹² The *EITI* is largely considered as a success story, as it has become a “recognised international brand and

⁵⁰⁴ *EITI* Standard 2019 10.

⁵⁰⁵ *EITI* Standard 2019 15.

⁵⁰⁶ *EITI* Standard 2019 21.

⁵⁰⁷ *EITI* Standard 2019 22.

⁵⁰⁸ *EITI* Standard 2019 27.

⁵⁰⁹ *EITI* Standard 2019 29.

⁵¹⁰ *EITI* Standard 2019 31.

⁵¹¹ Harguth *Extracting Ghana’s Potential Dodging the Resource Curse and Promoting Development* 32.

⁵¹² Harguth *Extracting Ghana’s Potential Dodging the Resource Curse and Promoting Development* 32.

consolidating transparency as a global norm.”⁵¹³ The implementation of the *EITI* increases the validity of a country globally. This is because it indicates the enthusiasm of a country to reform and its intention to control corruption. This is likely to attract investors who prefer countries where there is stability.⁵¹⁴ These are the persistent challenges faced by numerous mineral-rich, developing countries such as Lesotho. This underscores the potential benefits of Lesotho’s participation in initiatives such as the *EITI*. Lesotho’s absence from *EITI* membership highlights the missed opportunity for improved transparency and accountability in its management of mineral resources.

3.3.3.3 Open government partnership (hereafter *OGP*)

The *OGP* and the *EITI* are closely related initiatives aimed at enhancing governance and fostering trust through transparency and citizen participation, especially in resource management. These initiatives are highly relevant to the protection and promotion of the socio-economic rights of mine-host communities in South Africa and other resource-rich countries.

With thirty of the fifty-two *EITI* countries also being *OGP* members, there is a significant intersection between the two initiatives. This highlights their complementary roles in promoting transparency, accountability, and public engagement in the extractive sector. While the *OGP* actively encourages resource-rich countries to join the *EITI*, South Africa has instead opted for *OGP* membership. This decision emphasises South Africa’s commitment to open government and the principles of transparency and public participation espoused by the *OGP*.

By promoting open data and citizen involvement, the *OGP* contributes significantly to the empowerment of mine-host communities. It ensures that

⁵¹³ Due to the fact that it has a great number of mineral-rich countries devoted to it and the support it receives from donors and non-governmental organisations and various mining companies. Rustard *et al* 2017 *Resources Policy* 151.

⁵¹⁴ Corrigan 2014 *Resources Policy* 20. Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 30.

these communities have a voice in decision-making processes that affect their socio-economic rights. Examples include equitable benefit distribution, environmental protection, and economic opportunities. This alignment between South Africa's *OGP* membership and the broader goals of transparency initiatives such as the *EITI* is crucial in fostering sustainable development and ensuring that the exploitation of mineral resources positively impacts the lives of people living in mining areas.

3.3.3.4 The Kimberley Process Certification Scheme (hereafter *KPCS*)

KPCS is another international initiative that encourages transparency and accountability in the mineral extraction sector. Its relevance to the protection and promotion of the socio-economic rights of mine-host communities lies in its role in reducing conflict-driven exploitation and corruption. In this way, it fosters more stable and equitable economic conditions and improves governance in the mining sector. The *KPCS* is an international scheme involving governments, the diamond mining industry, and the civil society in an effort to eradicate "conflict diamonds" or "blood diamonds".⁵¹⁵ Officially launched in 2003,⁵¹⁶ the *KPCS* was created to introduce a certification scheme for rough diamonds designed to exclude conflict diamonds.⁵¹⁷ The *KPCS* mandates that rough diamonds be wrapped as a parcel with a forgery-resistant certificate that shows that the diamonds meet the *KPCS* requirements.⁵¹⁸ The forgery-resistant certificate will serve as proof that the diamonds are not from conflict zone markets. State parties are expected to guarantee that exports and imports of diamonds are

⁵¹⁵ Kimberly Process 2021 <https://www.kimberlyprocess.com>1. Mutlokwa *Zimbabwe's Approach to Community Participation and Indigenisation in the Extractive Industries Problems and Prospects* 8.

⁵¹⁶ By the United Nations General Assembly Resolution A/RES/55/56. Supported by the United Nations Security Council in its Resolution 1459 passed in January 2003.

⁵¹⁷ Preamble of the *KPCS*. Mailey *The Anatomy of the Resource Curse: Predatory Investment in Africa's Extractive Industries* 69.

⁵¹⁸ LeBillion 2011 *Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives* 16.

wrapped in containers, properly certified; and that they do not come from identified conflict zones.⁵¹⁹

State parties are also expected to have internal controls designed to exclude conflict diamonds as imports or exports.⁵²⁰ There must be a system of industry self-regulation which:

Will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by the industry. Which will help to facilitate the full traceability of rough diamond transactions by government authorities.⁵²¹

For Lesotho, as a member of the *KPCS*, it remains crucial to enact legislation ensuring compliance with *KPCS* standards, particularly in the absence of comprehensive mining regulations. This measure underscores Lesotho's dedication to upholding ethical practices in diamond trade, and fostering transparency within its mining industry.⁵²² Matsela⁵²³ opines that there is proof that the *KPCS* has reduced the negative impacts on people living in states where conflict diamonds endangered civilian lives and threatened human rights. The *KPCS* has succeeded in reducing the trade of conflict diamonds.

Matsela⁵²⁴ holds that the cornerstone of good governance rests on accountability and transparency. It is imperative to have measures that hold the government accountable by promoting disclosure in the diamond-mining sector.⁵²⁵ The above-mentioned international (*EITI*) and African (*KPCS*)

⁵¹⁹ Section III (C) of the *KPCS* 2003.

⁵²⁰ Section IV of the *KPCS* 2003.

⁵²¹ Section IV of the *KPCS* 2003. Haufler 2009 *The Journal of Business Ethics* 13.

⁵²² Since joining the *KPCS* in 2003, Lesotho, Botswana and South Africa are members. Kimberly Process 2023 <https://www.kimberleyprocess.com/en/participants>.

⁵²³ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 36.

⁵²⁴ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 36.

⁵²⁵ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 36.

initiatives encourage transparency, good governance, consultation with affected host communities, and disclosure of all the information relating to revenues.⁵²⁶

3.3.3.5 Concluding remarks

Effective implementation and enforcement of international, *AU*, and *SADC* legal instruments regarding the protection of socio-economic rights in mine-host communities rely on the collaboration of various stakeholders. Governments play a pivotal role in ratifying and enforcing these instruments, while civil society organisations advocate for accountability and promote community rights. Mining companies, on the other hand, must comply with set standards and engage in sustainable development initiatives. Mineral resource governance initiatives such as *PWYP*, *EITI*, and *KPCS* further enhance transparency and accountability in the sector, promoting socio-economic development and stability. Lesotho's potential membership in these initiatives underscores the importance of transparency and ethical practices in maximising the benefits of mineral extraction for all stakeholders, especially mine-host communities.

3.4 Concluding remarks: Preliminary benchmark

This chapter aimed to critically analyse existing international, regional, and sub-regional legally-binding and persuasive instruments addressing the protection of socio-economic interests of minehost communities. This was to establish a benchmark for evaluating Lesotho's constitutional, policy, and legislative framework.

The foundational role of the 1948 *UDHR*⁵²⁷ in recognising socio-economic rights universally cannot be overstated. Although a non-binding instrument, the 1948 *UDHR* laid the groundwork for subsequent legally-binding agreements, emphasising the importance of socio-economic rights for human dignity and wellbeing. The 1966 *ICESCR*⁵²⁸ expanded these principles, obligating signatories to protect and promote

⁵²⁶ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 36.

⁵²⁷ See para 3.2.2.1 above.

⁵²⁸ See para 3.2.2.2 above.

socio-economic rights through proactive measures and robust legal frameworks. This covenant is particularly relevant for mine-host communities that often face unique challenges such as displacement, environmental degradation, and labour exploitation.

Regional instruments, such as the 1981 African Charter and the 1997 *SADC Protocol on Mining*,⁵²⁹ complement these international frameworks by focusing on regional cooperation and sustainable development. The 2009 *AMV*⁵³⁰ further emphasises transparency, equitable revenue distribution, and inclusive governance. This instrument advocates for local ownership and community empowerment in the mining sector.

Despite these comprehensive frameworks, gaps and inconsistencies in implementation across different countries remain a significant challenge. Some *SADC* member states have successfully integrated these principles into their national legislation, whereas others lag in enforcement and practical application. This results in an unequal protection of socio-economic rights for mine-host communities.⁵³¹

Through the application of the theoretical framework comprising the resource curse theory, the social justice theory, and the community participation theory, as outlined in chapter 2 above, valuable insights into the strengths and limitations of these instruments were gained. The analysis showed that while international, *AU*, and *SADC* instruments provide comprehensive guidelines for protecting socio-economic rights, their effectiveness in addressing the multifaceted challenges faced by mine-host communities remains limited. The disparities in implementation and enforcement, as well as local adaptation issues highlight the need for more effective and context-specific mechanisms. Resource curse⁵³² dynamics, such as environmental degradation and social unrest, underscore the necessity of sustainable resource management and equitable benefit-sharing mechanisms.

⁵²⁹ See para 3.2.4.2 above.

⁵³⁰ See para 3.2.3.2 above.

⁵³¹ See para 3.2.4 above.

⁵³² See para 2.3.3 above.

To enhance legal protection at different governance levels, a harmonisation of national laws and policies with international and regional standards is crucial. This requires capacity-building, technical support, and increased stakeholder engagement, including governments, civil society, and the private sector. Strengthening monitoring and enforcement mechanisms, such as the *EITI*⁵³³ and the *KPCS*,⁵³⁴ is essential to ensuring compliance with established standards. Furthermore, fostering regional cooperation through bodies such as the *SADC* can address shared challenges and leverage collective strengths for sustainable development.

Social justice principles emphasise fairness and equity in resource distribution and access to opportunities. However, gaps in enforcement and sovereignty concerns often hinder the comprehensive protection of socio-economic rights. Community participation⁵³⁵ principles underscore the significance of empowering local communities to engage actively in decision-making processes. Yet, meaningful participation opportunities for mine-host communities are often lacking, leading to a sense of disenfranchisement and powerlessness.

Crafting a future legal framework for mine-host communities in Lesotho requires specificity, accessibility, and enforceability. Specificity ensures a tailored protection of socio-economic rights. Accessibility mandates inclusivity and removes barriers to participation. Enforceability enables redress and accountability through mechanisms for justiciability. For example, legislation concerning education should explicitly protect the rights of diamond mine-host communities in Lesotho, to avoid ambiguity and ensure comprehensive protection.

Moving forward, addressing these challenges requires a multifaceted approach that integrates policy, legal, and grassroots initiatives. This includes specific domestic law instruments and the establishment of robust mineral resource governance structures. Incorporating enforceable obligations in mining licenses and promoting

⁵³³ See para 3.3.3.2 above.

⁵³⁴ See para 3.3.3.4 above.

⁵³⁵ See para 2.34 above.

dialogue and collaboration between stakeholders are essential steps toward ensuring the protection and promotion of socio-economic rights of mine-host communities. By harnessing the principles of social justice, resource curse mitigation, and community participation, it is possible to forge a path towards sustainable and equitable development in the mining sector. This would ensure that the rights and wellbeing of mine-host communities are safeguarded and upheld.

The subsequent chapter examines Botswana's existing constitutional, policy, and legislative framework concerning the safeguarding of the socio-economic rights of mine-host communities. This analysis serves as a foundation for a comparative study with Lesotho, in a subsequent chapter. The aim is to identify areas of alignment and divergence. The ultimate goal is to inform the development of future legislation that aligns with international conventions and standards aimed at protecting the socio-economic rights of mine-host communities. This includes the development of a comprehensive matrix⁵³⁶ to guide legislative improvement. This matrix⁵³⁷ would also serve as a tool to systematically assess Lesotho's alignment with international standards and best practices in the protection and promotion of socio-economic rights for diamond mine-host communities. By conducting this evaluation, strengths and opportunities for improvement within Lesotho's framework are identified. This facilitates the identification of areas where Lesotho can better align its policies with global, regional, and sub-regional legal mechanisms, to enhance the socio-economic rights of these communities.

⁵³⁶ See Annexure A.

⁵³⁷ See Annexure A.

CHAPTER 4 BOTSWANA'S APPROACH TO THE PROTECTION OF THE SOCIO-ECONOMIC RIGHTS OF MINE HOST COMMUNITIES AFFECTED BY DIAMOND MINING

4.1 Introduction

Chapter 3 critically analysed existing international, regional, and sub-regional legally-binding and persuasive instruments addressing the protection of the socio-economic interests of mine-host communities. This analysis established a benchmark for the evaluation of Lesotho's constitutional, policy, and legislative frameworks. The findings underscored the significant role of international instruments such as the 1948 Universal Declaration of Human Rights (hereafter *UDHR*)⁵³⁸ and the 1966 International Covenant on Economic, Social and Cultural Rights (hereafter *ICESCR*),⁵³⁹ as well as that of regional frameworks such as the 1981 African Charter and the 2009 African Mining Vision (here after *AMV*).⁵⁴⁰ Despite the comprehensive nature of these frameworks, challenges in implementation and enforcement persist. These highlight the need for effective, context-specific mechanisms.

Building upon the critical analysis presented in Chapter 3, Chapter 4 shifts focus to an in-depth examination of Botswana's constitutional, policy, and legislative frameworks. This examination aims to provide valuable insights and recommendations for enhancing the protection of socio-economic rights in Lesotho, particularly within the context of its burgeoning diamond-mining sector.⁵⁴¹

Botswana is a signatory to various pivotal human rights treaties and regional agreements that influence its mining practices. Its membership in both the African Union (hereafter *AU*) and the Southern African Development Community (hereafter *SADC*) necessitates adherence to the standards set at these levels, particularly those

⁵³⁸ See para 3.2.2.1 above.

⁵³⁹ See para 3.2.2.2 above.

⁵⁴⁰ See para 3.2.3.2 above.

⁵⁴¹ Marobela 2011 *Research Gate* 3.

concerning the socio-economic interests of mine-host communities. Notably, Botswana's strong governance structures and mechanisms for managing mineral revenues demonstrate its commitment to ensuring that the benefits of mining extend to all citizens, including those directly impacted by mining activities.⁵⁴² The country's focus on investing mining revenues in education, healthcare, and infrastructure reflects a dedication to long-term sustainable development.⁵⁴³ Additionally, Botswana's proactive approach to community engagement and empowerment underscores its commitment to involving mine-host communities in decision-making processes and ensuring that they benefit directly from mining operations.

As the world's foremost diamond producer by value and the second-largest by volume, Botswana's diamond mining sector provides significant socio-economic benefits.⁵⁴⁴ The country's success in leveraging mineral resources⁵⁴⁵ for development evident in increased foreign exchange, government revenue, job creation, and skills development positions it as a model in the *SADC* region.⁵⁴⁶ The comparison aims to identify best practices and the development of a comprehensive matrix⁵⁴⁷ to guide legislative improvements and strategies that could be adapted to improve Lesotho's legal and policy frameworks for the protection of the socio-economic rights of mine-host communities.

The five-part structure of this chapter is designed to provide a comprehensive analysis of the protection of socio-economic interests within mine-host communities in Botswana. Part 1 explores how Botswana manages the benefits and challenges

⁵⁴² Botswana's Minerals Policy (2022).

⁵⁴³ Staff Reporter 2023 <https://skillings.net/botswana-seals-improved-agreement-with-de-beers-bolstering-diamond-production-share/>.

⁵⁴⁴ Brook 2019 *Botswana Notes and Records* 147. Damarupurshad 2023 <https://www.linkedin.com/pulse/review-world-diamond-production-trade-2022-dr-ashok-damarupurshad>.

⁵⁴⁵ Botswana is endowed with mineral wealth such as nickel, copper, coal and steel. However, since the discovery of diamonds in 1967, the diamond mining sector has been the core of Botswana's economy as diamonds are the main contributor to around 50% of government revenue (in the form of taxes and dividends), 80% of export earnings and over 30% gross domestic product (hereafter *GDP*) Kojo 2010 <http://econworldbank.org>. Mzumara 2012 *International Journal of Management Sciences and Business Research* 2.

⁵⁴⁶ Botlhale 2010 *Botswana: Turning Resources into Equitable Results for People* 41.

⁵⁴⁷ See Annexure A.

of its diamond-mining sector. It assesses the economic gains, such as revenue and infrastructure improvements, against challenges such as restricted local employment, environmental damage, and community displacement. The section evaluates Botswana's strategies for balancing these factors, and provides insights for improving Lesotho's approaches. Part 2 delves into the constitutional and legislative bedrock governing Botswana's diamond sector. Beginning with Botswana's international commitments and standards, followed by the 1966 *Botswana Constitution*, emphasis is on socio-economic rights, particularly those of mine-host communities. A detailed analysis follows, navigating through pivotal acts such as *The Mineral Rights in Tribal Territories Act* of 1967 and *The Mines and Minerals Act* of 1999, culminating in recent legislation such as *The Tribal Land Act* of 2018 and *The Environmental Assessment Act* of 2011. These statutes form the bulwark of protection for the socio-economic rights of diamond mine-host communities. Part 3 scrutinises Botswana's judicial landscape, assessing the jurisprudence surrounding socio-economic rights. Through precedent analysis, the efficacy of judicial intervention in safeguarding these rights is explored. Part 4 discusses challenges and lessons learned from Botswana's case study. This part further identifies gaps and limitations in Botswana's framework. Part 5 concludes the chapter with preliminary benchmark recommendations for Lesotho, which are essential for the matrix⁵⁴⁸/benchmark for several reasons. These recommendations are designed to align Lesotho's frameworks with the international and regional standards highlighted in Chapter 3, ensuring adherence to socio-economic rights norms. The comparative analysis of Botswana's frameworks helps to identify gaps and opportunities for enhancing Lesotho's legal provisions. The recommendations address specific weaknesses in Lesotho's protection mechanisms, tailored to its unique context, as captured in the matrix⁵⁴⁹ for practical application.

⁵⁴⁸ See Annexure A.

⁵⁴⁹ See Annexure A.

4.2 Balancing benefits and challenges in Botswana's diamond Mining

Botswana's economic growth has been significantly fueled by its diamond-mining industry. Yet, the benefits of this lucrative resource have not uniformly reached the communities living in close proximity of these mines.⁵⁵⁰ Large-scale diamond-mining operations in Botswana often favour importing skilled labour, sidelining local populations and restricting their participation in the economic gains.⁵⁵¹ This practice not only limits opportunities for local advancement, but also perpetuates economic dependency and marginalisation. Environmental impacts from mining activities, including dust and pollutants, pose significant health risks such as respiratory illnesses among residents. Improper waste management further exacerbates these environmental concerns, threatening the wellbeing of affected communities.⁵⁵²

The potential displacement of communities, due to mining developments, presents another critical challenge. Such a displacement disrupts established social structures and forces residents to abandon traditional livelihoods such as herding or farming. This intensifies their vulnerability to economic marginalisation.⁵⁵³ Moreover, the remote locations of these communities often translate into inadequate access to essential services such as healthcare and education, impeding their ability to exercise fundamental rights.⁵⁵⁴ Despite these challenges, diamond revenues hold the promise of positive socio-economic transformation. Investments in community infrastructure, such as roads, schools, and healthcare facilities, have the potential to significantly enhance local living conditions and improve access to essential services.⁵⁵⁵ Responsible mining practices, including investments in education and

⁵⁵⁰ International Monetary Fund 2018 <https://www.imf.org/en/News/Articles/2018/09/05/na090518Botswana>.

⁵⁵¹ International Monetary Fund 2018 <https://www.imf.org/en/News/Articles/2018/09/05/na090518Botswana>.

⁵⁵² Hillboom 2008 *The Journal of Modern African Studies* 3.

⁵⁵³ Owen and Kemp 2015 *Journal of Cleaner Production* 479.

⁵⁵⁴ Mandishekwa and Mutenheri 2020 *Ghana Journal of Development* 117.

⁵⁵⁵ Debswana 2016 https://www.debswana.com/Media/Reports/Debswana%20RTS_2016_Interactive.pdf.

skills training programmes. This empowers local residents to participate meaningfully in the mining industry and diversify their livelihood options.⁵⁵⁶

Achieving sustainable development through diamond mining in Botswana demands a robust framework that prioritises responsible management practices. This framework must uphold transparency in decision-making, to maximise local employment opportunities, mitigate environmental impacts, and allocate resources effectively for social services.⁵⁵⁷ By adhering to these principles, diamond mining can transform from a potential threat to socio-economic rights to a catalyst for further community empowerment and equitable distribution of Botswana's mineral wealth.

At the heart of this framework should lie the social justice theory.⁵⁵⁸ This would ensure fairness and equity in the distribution of economic benefits among communities. By prioritising local hiring practices and inclusive economic opportunities, diamond mining can reduce inequalities and enhance community wellbeing. Mitigating the resource curse is another critical aspect. Strict regulations and monitoring mechanisms are vital in addressing environmental concerns such as pollution and ecosystem degradation. These measures not only protect natural resources, but also stabilise local economies – against the volatility often associated with resource extraction. Furthermore, community participation plays a pivotal role in shaping sustainable development outcomes.⁵⁵⁹ Engaging local stakeholders in decision-making processes fosters mutual understanding, addresses community concerns, and empowers residents to actively participate in their own development.⁵⁶⁰

⁵⁵⁶ Debswana 2016 https://www.debswana.com/Media/Reports/Debswana%20RTS_2016_Interactive.pdf.

⁵⁵⁷ Silva 2024 <https://www.afsic.net/the-impact-of-mining-in-botswana/>.

⁵⁵⁸ See para 2.3.2 above.

⁵⁵⁹ Silva 2024 <https://www.afsic.net/the-impact-of-mining-in-botswana/>.

⁵⁶⁰ Silva 2024 <https://www.afsic.net/the-impact-of-mining-in-botswana/>.

4.3 Legislative framework for mining in Botswana

4.3.1 International commitments and standards

Botswana, a steadfast advocate for human rights and regional cooperation, has demonstrated its commitment to international and regional norms by ratifying several pivotal agreements. These include the 1948 Universal Declaration of Human Rights (hereafter *UDHR*), the 1966 International Covenant on Civil and Political Rights (hereafter *ICCPR*),⁵⁶¹ and the 1981 African Charter on Human and Peoples' Rights.⁵⁶² Additionally, Botswana has aligned itself with the principles of the 1992 Southern African Development Community (hereafter *SADC*) Treaty⁵⁶³ and the 1997 *SADC Protocol on Mining*. However, it is noteworthy that Botswana has not ratified the 1966 International Covenant on Economic, Social and Cultural Rights (hereafter *ICESCR*); nor has it endorsed the Africa Mining Vision (hereafter *AMV*). These commitments and exclusions underscore Botswana's selective approach to international agreements, balancing human rights advocacy with strategic development goals.⁵⁶⁴

Given the limitations of the international frameworks discussed in Chapter 3, including both binding and non-binding aspects, Botswana's most effective framework for promoting and protecting the socio-economic rights of mine host communities is found within its own constitutional, policy, and legislative structures.

Responsible and sustainable diamond mining in Botswana is regulated and achieved by a strict governance policy and a legislative framework that support and promote growth in the mining industry.⁵⁶⁵ In 1999, Botswana reformed its mining law, to promote great certainty and guarantee the benefits of its regulatory climate.⁵⁶⁶

⁵⁶¹ Botswana signed and ratified this convention on the 8th of September 2000. University of Minnesota 2023 <http://hrlibrary.umn.edu/research/ratification-botswana.html>.

⁵⁶² Botswana ratified this on the 17th of July 1986. University of Minnesota 2023 <http://hrlibrary.umn.edu/research/ratification-botswana.html>.

⁵⁶³ Botswana is a founding member.

⁵⁶⁴ University of Minnesota 2023 <http://hrlibrary.umn.edu/research/ratification-botswana.html>.

⁵⁶⁵ Koitsiwe *The Impact of Mining Sector on Economic Development in Botswana* 9.

⁵⁶⁶ Jeffery *Daily Maverick* 1. Mining for Zambia 2016 <https://miningforzambia.com/botswana-africas-model-mining-destination/>.

Countries such as Lesotho can adopt Botswana's strategic legislative and regulatory approach in mineral-resources optimisation. This is especially valid in the context of the protection and promotion the socio-economic rights of mine-host communities. The existing legal framework governing the mining industry includes the *1966 Constitution of Botswana*, *The Mineral Rights in Tribal Territories Act 31 of 1967*, *The Mines and Minerals Act 17 of 1999*, *The Tribal Land Act 1 of 2018*, *The Environmental Assessment Act 10 of 2011*, and *The Land Tribunal Act 4 of 2014*.

4.3.2 Constitutional provisions

Enacted in 1966, the Constitution of Botswana does not explicitly address the protection and promotion of socio-economic rights, particularly those pertinent to mine-host communities.⁵⁶⁷ However, an analysis of Section 8 of the 1966 Constitution of Botswana, which addresses the right not to be deprived of property, suggests that this provision can be linked to socio-economic rights.⁵⁶⁸ Traditionally classified as a civil and political right and located under Chapter II of the 1966 Constitution of Botswana, which covers civil and political rights, the right to property can intersect with socio-economic rights in certain contexts.⁵⁶⁹

In particular, the right to property can encompass socio-economic dimensions, when considered in relation to access to housing, land, and resources.⁵⁷⁰ This broader interpretation aligns with socio-economic rights such as the right to adequate housing, the right to work, and the right to an adequate standard of living.⁵⁷¹ By safeguarding property rights, Section 8 implicitly supports socio-economic wellbeing and addresses inequalities. Moreover, Section 8 of the 1966 Constitution of Botswana mandates compensation for property deprivation resulting from the extraction of mineral resources. This provision is significant as it ensures that

⁵⁶⁷ Dinokopila *et al Aspects of Socio-Economic Rights in Botswana* 3.

⁵⁶⁸ Ramadi 2013 *Journal of African Law* 57.

⁵⁶⁹ Wahi 2014 *Social and Economic Rights in Theory and Practice* 138.

⁵⁷⁰ Moyo 2011 *Malawi Law Journal* 87.

⁵⁷¹ See para 2.2.3 above. Wahi 2014 *Social and Economic Rights in Theory and Practice* 138.

individuals affected by mining activities receive prompt compensation. This reflects an effort to mitigate the adverse impacts of mining on local communities.

While Botswana's 1966 Constitution primarily focuses on civil and political rights, Section 8 can be interpreted as supporting socio-economic rights. It achieves this by promoting equitable access to property and ensuring compensation for impacts related to mineral resource extraction.⁵⁷² This interpretation underscores the potential of property rights to advance social justice and economic equity within the context of mining and resource management.

4.3.3 National laws and regulations

4.3.3.1 The Mineral Rights in Tribal Territories Act 31 of 1967

Botswana's *Mineral Rights in Tribal Territories Act* 31 of 1967 significantly shifted the control of mineral rights from specified tribal authorities to the government of Botswana. Prior to this Act, mineral rights in tribal territories were largely managed by local chiefs and communities.⁵⁷³ However, this Act aimed to centralise control over mineral resources to benefit the nation as a whole.

The effect of the *Mineral Rights in Tribal Territories Act* 31 of 1967 is that the government is granted authority to acquire mineral rights in tribal territories, for the benefit of the nation. The conferment was done by tribal chiefs and local communities who had, prior to the *Mineral Rights in Tribal Territories Act* 31 of 1967, held control over mineral rights in their own territories.⁵⁷⁴ The *Mineral Rights in Tribal Territories Act* 31 of 1967 significantly diminished their authority in this regard and opened up tribal territories to exploration and exploitation by mining companies, leading to increased investment in the mining sector.⁵⁷⁵

The law had several effects on the socio-economic rights of the affected communities. As a result, tribal communities lost control over their mineral

⁵⁷² Moyo 2011 *Malawi Law Journal* 87.

⁵⁷³ Gwebu 2012 *Journal of Contemporary African Studies* 612.

⁵⁷⁴ Botlhale 2017 *Development Southern Africa* 96.

⁵⁷⁵ Botlhale 2017 *Development Southern Africa* 96.

resources, leading to a decrease in their autonomy and decision-making powers regarding resource exploitation. It also impacted economic development in that even though it aimed to promote economic development through mining activities, the benefits were not always evenly distributed among affected communities. Some of these experienced marginalisation and exploitation by mining companies.

On the other hand, the Botswana government gained control over mineral revenues. These could potentially be used for socio-economic development initiatives benefiting the entire nation, including infrastructure, education, and healthcare. The *Mineral Rights in Tribal Territories Act* 31 of 1967 expanded mining operations into tribal territories and engendered adverse environmental and social impacts. These included land degradation, pollution, displacement, and the disruption of the traditional livelihoods of the local communities. *The Mineral Rights in Tribal Territories Act* 31 of 1967 marked a major shift in Botswana's approach to mineral resource management. This had implications for both the government and affected communities in terms of socio-economic rights and development.

4.3.3.2 The Mines and Minerals Act 17 of 1999

The *Mines and Minerals Act* 17 of 1999⁵⁷⁶ is the principal Act that controls and regulates the exploitation of minerals in Botswana. It provides for the renewal and termination of mineral concessions,⁵⁷⁷ the payment of royalties and any other matters incidental to the mining industry.⁵⁷⁸ Section 3 of the *Mines and Minerals Act* 17 of 1999, in furtherance of the provisions of the *Mineral Rights in Tribal Territories Act* 31 of 1967, reiterates that "...all rights of ownership in minerals are vested in the Republic and the Minister shall ensure, in the public interest, that the mineral

⁵⁷⁶ The first enactment of the *Mines and Minerals Act* 17 was in 1967, and since then it has been revised twice in 1997 and 1999. Wilcox *Mining Regulation and Development in Botswana* 85.

⁵⁷⁷ According to S 2 of the 1999 *Mines and Minerals Act* 17 mineral concession refers to either a prospecting license, a retention license, a mining license or minerals permit.

⁵⁷⁸ The Preamble of the *Mines and Minerals Act* of (1999).

resources of the Republic are investigated and exploited in the most efficient, beneficial and timely manner.”⁵⁷⁹

The provision in Section 3 separates the right to land and the rights mine-host communities had on the resources found on their land. Furthermore, it is implied that all Batswana should benefit from mineral resources, regardless of whether such resources are found on their land or in other parts of Botswana.

Section 7 of the *Mines and Minerals Act* 17 of 1999 depicts the power of certain officers to enter concession agreements. This reinforces the government’s position as custodian of minerals in Botswana. This alludes to the existence of a strong institutional basis that has powers to protect the socio-economic rights of mine-host communities through monitoring and evaluation mechanisms.

Under Section 12, the *Mines and Minerals Act* 17 of 1999 mandates that holders of mineral concessions should be given preference for materials and products made in Botswana,⁵⁸⁰ as well as the services located in Botswana.⁵⁸¹ Section 12 further states that during the recruitment process in all phases of the mining operations, the holder of a mineral concession should give first preference to the citizens of Botswana.⁵⁸² The *Mines and Minerals Act* 17 of 1999 highlights that a mineral concession holder should facilitate training programmes for the benefit of Batswana employees, in consultation with the Minister. This ensures that these employees qualify for advancement within the employment sphere.⁵⁸³ Section 12 affects the socio-economic right to employment by requiring mining companies to prioritise the employment of local mine-host community members and provide training opportunities to enhance their skills and employability. Training promotes skill and

⁵⁷⁹ S3 of the *Mines and Minerals Act* of 1999 states that “subject to the provision of the mineral rights in *Tribal Territories Act* all rights of ownership in minerals are vested in the Republic and the Minister shall ensure, in the public interest that the mineral resources of the Republic are investigated and exploited in the most efficient beneficial and timely manner.”

⁵⁸⁰ S12 (1) (a) of the *Mines and Minerals Act* of (1999).

⁵⁸¹ S12 (1) (b) of the *Mines and Minerals Act* of (1999).

⁵⁸² S12 (2) of the *Mines and Minerals Act* of (1999).

⁵⁸³ S12 (3) of the *Mines and Minerals Act* of (1999).

capacity development and boosts the career progression of mine-host community members.

Section 60 of the *Mines and Minerals Act* 17 of 1999 concerns the right of landholders and occupiers in relation to mining and prospecting activities. Specifically, it limits the rights of the holder of a concession license by stating that holding the licence does not give that holder the authority to enter or occupy land without the consent of the landholder or occupier. This section emphasises the importance of the consent of landholders and occupiers in prospecting and mining activities. It can be concluded that it protects the socio-economic rights of mine-host communities to property. This is done by protecting these communities (who are usually landowners or occupiers) from arbitrary entry by holders of concession licenses.

Section 61 of the *Mines and Minerals Act* 17 of 1999 states that within a mineral concession area, landowners or lawful occupiers maintain the right to graze livestock or cultivate the land surface. This is if doing so does not disrupt prospecting, retention, or mining activities.⁵⁸⁴ It also stipulates that in mining, retention, or permit areas, erecting buildings or structures on the land by the landowner or lawful occupier requires consent from the relevant license or permit holder.⁵⁸⁵ Sub-section 3 indicates that mineral concession holders must exercise their rights reasonably, minimising the impact on landowners' interests. Additionally, concession holders are prohibited from creating hazards, such as unprotected pits or waste dumps. These could endanger the livestock, crops, or the lawful activities of the landowners or occupiers. It can reasonably be concluded that this section caters to the protection of the socio-economic rights to property and the healthy environment of mine-host communities in Botswana.

Section 63 of the *Mines and Minerals Act* 17 of 1999 caters for compensation for the disturbance of rights. The law states that the mineral concession holder is expected to pay to the lawful occupier of any land subject to the concession a fair

⁵⁸⁴ S 61 (1) of the *Mines and Minerals Act* of (1999).

⁵⁸⁵ S 61 (2) of the *Mines and Minerals Act* of (1999).

and reasonable amount for the disturbance (of rights of such owner) and damage done to the environment by the mining activities.⁵⁸⁶ This benefits mine-host communities affected by relocation or environmental degradation. When determining the payable compensation, any improvement effected by the mineral concession holder should be considered.⁵⁸⁷ Section 63 (2) introduces arbitration as a dispute resolution mechanism, in cases where the mineral concession holder fails to pay compensation as dictated by the *Mines and Minerals Act 17* of 1999. The claim for compensation is expected to be within the period of four years from the date when such claim accrued.⁵⁸⁸ This makes it easy for mine-host communities affected by mineral extraction to seek recourse in a court of law, where mining activities affected their land and property. This is if they do not receive the applicable compensation.

Section 65 of the *Mines and Minerals Act 17* of 1999 deals with the environmental obligation of a holder of a mineral concession. This obligation relates to the holder of a mineral concession's duty to ensure that mineral extraction is done sustainably, through its adequate assessment of the impact on the natural environment. It also involves minimising and controlling waste and ensuring that there is no loss or damage to natural resources.⁵⁸⁹ Section 65(2) mandates that an environmental impact assessment be prepared and submitted upon licence application or renewal. This section further states that holders of mineral concessions must ensure that the land they are working on is rehabilitated from time to time.⁵⁹⁰ This ensures that the topsoil is restored and left in the condition in which it was before the mining operations began.⁵⁹¹ Arbitration is an identified means of dispute resolution, should those holding mineral concessions fail to meet their environmental obligation as stated in Section 65.⁵⁹²

⁵⁸⁶ S 63 of the *Mines and Minerals Act* of (1999).

⁵⁸⁷ S 63 (1) (ii) of the *Mines and Minerals Act* of (1999).

⁵⁸⁸ S 63 (3) of the *Mines and Minerals Act* of (1999).

⁵⁸⁹ S 65 of the *Mines and Minerals Act* of (1999).

⁵⁹⁰ S 65 (3) of the *Mines and Minerals Act* of (1999).

⁵⁹¹ S 65 (4) of the *Mines and Minerals Act* of (1999).

⁵⁹² S 65 (5) of the *Mines and Minerals Act* of (1999).

Sections 70 and 71 stipulate the annual charges that must be paid to the government and the land board⁵⁹³ of the mine-host community concerned, where mineral extraction occurs. These provisions ensure that mine-host communities receive direct financial benefits from mining activities. Additionally, Section 75 mandates that upon the withdrawal and cessation of mining operations, the concession license holder must conduct a survey. This is to facilitate the rehabilitation and reclamation of the mining or prospecting land.

Section 77 states that the Director of Mines must be made aware of any potentially hazardous substances, structures, or excavations in the area. This section mandates the Director to implement actions such as certifying the necessity of certain fixed machinery for area maintenance, requiring the removal of specific buildings or machinery, or directing the removal or securing of hazardous substances, structures, or excavations. If the removal of specified assets is prohibited, the government will compensate the landholder. Any subsequent concession holder must reimburse the government for this compensation. When operations cease, the mining area typically reverts to the owner, unless the Director of Mines determines that it should be retained, in which case fair compensation is paid to the owner. Additionally, any freshwater dam and its impounded waters must remain intact upon cessation of operations or termination of a mineral concession. This promotes the right of mine-host communities to the socio-economic right to a healthy environment. It also protects them from a potentially hazardous environment and accidents, and further protects their right to property.

Overall, *the Mines and Minerals Act* 17 of 1999 provides a robust framework for ensuring that mine-host communities in Botswana benefit from mining activities in multiple ways. It mandates equitable sharing of mineral wealth, promotes local employment and economic growth, protects environmental and property rights, ensures compensation for adverse impacts, and requires sustainable land use practices. These provisions collectively uphold and promote the socio-economic

⁵⁹³ Over tribal land the board should be given fifty percent of all monies received pertaining to the land mined.

rights of mine-host communities, ensuring that mining activities contribute positively to their development and wellbeing.

4.3.3.3 The Tribal Land Act 1 of 2018

The *Tribal Land Act 1 of 2018* establishes the authority and responsibilities of land boards in managing tribal land. Enacted in 2018, it is a comprehensive framework governing the management and administration of tribal land, also known as communal land, across Botswana. At its core, the *Tribal Land Act 1 of 2018* outlines procedures for the allocation and utilisation of tribal land. This encompasses diverse purposes such as residential, agricultural, commercial, and mining activities. Central to the implementation of the *Tribal Land Act 1 of 2018* are the Land Boards, established as the primary authorities entrusted with managing tribal land.⁵⁹⁴ These boards play a crucial role in overseeing land allocation, mediating disputes, and ensuring adherence to regulatory standards.⁵⁹⁵ Emphasising community rights and participation, the Act acknowledges the integral role of local communities in tribal land management. It also advocates for their active involvement in decision-making processes. Moreover, the Act incorporates provisions for conservation and environmental protection, underscoring the importance of preserving natural resources and ecosystems on tribal land. *The Tribal Land Act 1 of 2018* is designed to foster effective governance, sustainable development, and community empowerment in the management of tribal land in Botswana. It promotes equity, resilience, and prosperity for all stakeholders.

The Tribal Land Act 1 of 2018 holds significant implications for mine-host communities in safeguarding their socio-economic rights. This is done by emphasising community rights, participation, and sustainable development. Firstly, by recognising the rights of these communities to participate in decisions concerning the use and management of tribal land, including those related to mining activities, the *Tribal Land Act 1 of 2018* ensures that their voices are heard and that their interests are considered. This participatory approach fosters a more equitable and

⁵⁹⁴ S 4 of *Tribal Land Act* (2018).

⁵⁹⁵ S 5 of *Tribal Land Act* (2018).

inclusive decision-making process. It ultimately contributes to the protection of the socio-economic interests and concerns of mine-host communities. Secondly, the *Tribal Land Act 1 of 2018* contains provisions for resource management and environmental protection that are crucial in mitigating the potential adverse impacts of mining on the livelihoods and wellbeing of these communities. By safeguarding natural resources and the environment on tribal land, the *Tribal Land Act 1 of 2018* indirectly protects the socio-economic rights of mine-host communities. It ensures the sustainability of their livelihoods and ecosystems.⁵⁹⁶ Lastly, through its procedures for land use planning and allocation, including mining purposes, the *Tribal Land Act 1 of 2018* seeks to balance economic development with social welfare. By considering the socio-economic needs and interests of mine-host communities in land allocation decisions, the *Tribal Land Act 1 of 2018* strives to achieve a harmonious coexistence between mining activities and community wellbeing. In this way, it upholds and promotes the socio-economic rights of mine-host communities in Botswana.

4.3.3.4 The Land Tribunal Act 4 of 2014

The *Land Tribunal Act 4* of Botswana, enacted in 2014, lays the groundwork for the establishment and operation of the Land Tribunal. This is a specialised quasi-judicial body designed to resolve land disputes ranging from issues of ownership and occupation to disputes over land use rights. The composition of the Tribunal is outlined in the Act, with members (including a chairperson) appointed by the Minister responsible for Land Management.⁵⁹⁷ These members bring expertise in various relevant fields to ensure fair and informed decisions. The *Land Tribunal Act 4 of 2014* also clearly defines the jurisdiction of the Land Tribunal. It specifies the types of disputes it has the authority to hear and resolve, which may include matters related to land allocation, boundaries, and compensation for land use.⁵⁹⁸ Furthermore, the *Land Tribunal Act 4 of 2014* establishes procedures for the conduct of hearings and provides for an appeals process. It allows dissatisfied

⁵⁹⁶ S 52 (1) (e) of the *Tribal Land Act* (2018).

⁵⁹⁷ S 4 and S 5 of the *Land Tribunal Act* (2014).

⁵⁹⁸ S 7 of the *Land Tribunal Act* (2014).

parties to seek redress through the High Court of Botswana.⁵⁹⁹ In summary, the *Land Tribunal Act 4 of 2014* serves as a vital tool in providing an accessible and efficient mechanism for resolving land disputes, as well as contributing to the promotion of justice, fairness, and stability in Botswana's land management practices.

The Land Tribunal Act 4 of 2014 holds significant implications for the socio-economic rights of mine-host communities in Botswana. By establishing the Land Tribunal as a specialised quasi-judicial body tasked with adjudicating land disputes, the Act provides a formal avenue for mine-host communities to seek recourse in cases where their rights are infringed upon or conflicts arise with mining companies. This enhances access to justice and ensures that the socio-economic interests of mine-host communities are protected within the legal framework. Additionally, the *Land Tribunal Act 4 of 2014* emphasises that efficient dispute resolution helps prevent delays in mining projects. These delays are generally caused by unresolved conflicts. Avoiding delays helps in promoting economic development and stability in mine-host communities. Overall, the *Land Tribunal Act 4 of 2014* plays a crucial role in protecting and promoting the socio-economic rights of mine-host communities in Botswana. It achieves this by providing a fair and accessible mechanism for resolving land disputes and ensuring that their interests are upheld within the legal system.

4.3.3.5 The Environmental Assessment Act 10 of 2011

The *Environmental Assessment Act 10 of 2011* provides for environmental impact assessments to be used in the assessment of the potential effects of planned developmental activities, including mineral extraction. This is to determine and provide mitigation measures for the negative impacts on the environment. The Act establishes a monitoring process and evaluation of the environmental impacts of implemented activities. It also provides for matters incidental to these activities.

⁵⁹⁹ S 8 of the *Land Tribunal Act* (2014).

The Act prioritises environmental protection and sustainability. For mining projects, the Act mandates environmental impact assessments (hereafter *EIAs*) which ensure that potential environmental issues associated with mining activities are identified and addressed before project commencement, helping to prevent or mitigate adverse impacts.⁶⁰⁰

The Environmental Assessment Act 10 of 2011 emphasises community participation in the environmental assessment process.⁶⁰¹ Mining companies must submit a project brief that outlines the potential environmental impacts. Furthermore, community participation is actively encouraged through consultations and hearings. This allows stakeholders, including mine-host communities and environmental organisations, to voice their concerns, provide input, and contribute to the decision-making process regarding mining projects.

The Act contributes to environmental protection by requiring mining companies to implement measures that minimise air and water pollution, manage waste disposal responsibly, and rehabilitate mined areas to their natural state. Moreover, the Act promotes sustainable mining practices that balance economic development with environmental conservation. It ensures that mining activities contribute to long-term environmental and social wellbeing. Additionally, in the case of affected communities and stakeholders, mining companies are held accountable for their environmental practices.⁶⁰² As a result, the decision-making process becomes more transparent. *The Environmental Assessment Act 10 of 2011* further governs the parameters of social license to operate (hereafter *SLO*), free prior informed consent (hereafter *FPIC*), and corporate social responsibility (hereafter *CSR*) through Section 7, which provides that:

⁶⁰⁰ S 6 of the *Environmental Assessment Act* of Botswana (2011).

⁶⁰¹ S 7 of the *Environmental Assessment Act* of Botswana (2011).

⁶⁰² This can be through a combination of regulatory frameworks, community engagement, monitoring, legal consequences and voluntary sustainability practices all aimed at protecting the environment and the rights of affected communities.

- (1) An applicant shall before undertaking or implementing an activity engage a practitioner to do a scoping exercise.
- (2) The applicant shall, during a scoping exercise,
 - (a) publicise once the intended activity, its effects and benefits in the mass media using the official languages for a period of not less than 21 days; and
 - (b) after the expiration of the period of 21 days, ensure that the practitioner referred to under subsection (1) holds meetings with the affected people or communities to explain the nature of the activity and its effects.⁶⁰³

Botswana's legal framework for diamond mining reflects a multifaceted approach. The latter is aimed at balancing economic development with the protection and promotion of socio-economic rights, particularly those of mine-host communities. Through legislation such as the 1999 *Mines and Minerals Act*, the 2018 *Tribal Land Act*, and the 2011 *Environmental Assessment Act*, Botswana has established robust mechanisms. These help in regulating mining activities, safeguarding environmental integrity, and ensuring an equitable distribution of benefits. While challenges persist, including issues of community consultation and environmental sustainability, Botswana's legal framework provides a solid foundation for responsible and sustainable diamond mining that respects the socio-economic rights of all stakeholders.

4.3.3.6 Concluding remarks: legislative framework for mining in Botswana

Botswana's legal framework for diamond mining is designed to balance economic development with the protection and promotion of socio-economic rights,

⁶⁰³ Which states that (1) An applicant shall before undertaking or implementing an activity engage a practitioner to do a scoping exercise. (2) The applicant shall during a scoping exercise —(a) publicise once the intended activity, its effects and benefits in the mass media using the official languages for a period of not less than 21 days; and (b) after the expiration of the period of 21 days, ensure that the practitioner referred to under subsection (1) holds meetings with the affected people or communities to explain the nature of the activity and its effects.

particularly those of mine-host communities. Key legislative acts, including *the Mines and Minerals Act 17 of 1999*, the *Tribal Land Act 1 of 2018*, and the *Environmental Assessment Act 10 of 2011*, collectively establish comprehensive mechanisms to regulate mining activities, ensure environmental sustainability, and promote equitable benefit distribution.

The Mines and Minerals Act 17 of 1999 emphasises local employment and economic growth by mandating that mineral concession holders prioritise Batswana for employment and training. It upholds property rights by requiring the consent of landholders for mining activities, and provides compensation for any disturbances caused. Moreover, it mandates environmental assessments and rehabilitation, highlighting the importance of sustainable mining practices. The *Tribal Land Act 1 of 2018* reinforces community rights by involving local communities in decision-making processes regarding land use and management, including mining activities. This participatory approach ensures that the socio-economic interests of mine-host communities are considered and protected. The Act also includes provisions for environmental conservation. These indirectly safeguard the livelihoods and wellbeing of these communities by ensuring the sustainability of their ecosystems.

The *Environmental Assessment Act 10 of 2011* mandates comprehensive environmental impact assessments for mining projects, prioritising environmental protection and sustainability. It promotes community participation by requiring consultations with affected communities, ensuring that their concerns are addressed. The Act holds mining companies accountable for their environmental practices, promoting transparency and responsible mining operations.

While challenges persist, such as ensuring effective community consultation and maintaining environmental sustainability, Botswana's legal framework provides a solid foundation for responsible and sustainable diamond mining. By integrating socio-economic rights into mining legislation, Botswana demonstrates a commitment to ensuring that the benefits of its mineral resources are shared equitably and sustainably. This is done in a manner that respects the rights and considers the wellbeing of all stakeholders.

4.3.4 Institutional framework and implementation strategies: (actors, agencies and institutions)

4.3.4.1 Department of Mines and its role in the mining industry in Botswana

In Botswana, the *Ministry of Mineral Resources, Green Technology and Energy Security* (hereafter Ministry of Mineral Resources) is responsible for the provision of services in the mineral and energy sectors – for national prosperity.⁶⁰⁴ The Ministry of Mineral Resources is divided into different entities, namely, the Department of Corporate Services, the Department of Mines, the Department of Energy, the Mineral Affairs Division, the Diamond Hub, and the Projects and Energy Development Unit.⁶⁰⁵ For the purposes of this study, the focus is on the Department of Mines, which is directly responsible for the regulation and promotion of the mining sector in Botswana.⁶⁰⁶ The aim of the Department of Mines is to, among others, ensure that mineral resources are prospected and exploited sustainably and ethically.⁶⁰⁷ It also seeks to distribute the socio-economic, financial and other benefits of mining to the Botswana as a whole. Additionally, the Department of Mines monitors compliance with all the relevant regulatory frameworks pertaining to prospecting and mining activities.⁶⁰⁸ To achieve its mandate, the Botswana Department of Mines is equipped with well-trained staff members who are also well-remunerated⁶⁰⁹ and supported by a good working environment.⁶¹⁰ This illustrates

⁶⁰⁴ The Government of Botswana 2023 <https://www.gov.bw/ministries/ministry-mineral-resources-green-technology-and-energy-security-mmge>.

⁶⁰⁵ The Government of Botswana 2023 <https://www.gov.bw/ministries/ministry-mineral-resources-green-technology-and-energy-security-mmge>.

⁶⁰⁶ Accounting for over 30% of Botswana's GDP. Kojo 2010 <http://econworldbank.org>. Mzumara 2012 *International Journal of Management Sciences and Business Research* 2.

⁶⁰⁷ The Department of Mines of Botswana grants mining licenses and permits to applicants, ensures compliance with environmental and safety protocols as well as promoting sustainable mining practices. World Bank Group *Botswana Mining Investment and Governance Review* 15.

⁶⁰⁸ The Government of Botswana 2023 <https://www.gov.bw/ministries/ministry-mineral-resources-green-technology-and-energy-security-mmge>. Wilcox *Mining Regulation and Development in Botswana* 83.

⁶⁰⁹ Within the SADC Region, thus promoting local employment leading to the contribution of the local economy.

⁶¹⁰ World Bank Group *Botswana Mining Investment and Governance Review* 15.

that it is a well-established institution with the capacity to promote and protect the socio-economic rights of mine-host communities in Botswana, through policies.

The Department of Mines is responsible for the administration of the extractive processes in Botswana and the issuance of mineral concessions in accordance with the provisions of the *Mines and Minerals Act* 17 of 1999. Moreover, the Department of Mines plays a crucial role in overseeing the conduct of mine companies. It enforces regulations, conducts inspections, and provides guidance to ensure that mining activities adhere to environmental standards and prioritise the wellbeing of host communities. Through regulatory oversight and collaboration with stakeholders, including mining companies and local communities, the Department of Mines contributes to fostering sustainable and responsible mining practices that protect the socio-economic rights of mine-host communities.

Botswana's Department of Mines generally monitors production, sales, trade and compliance aspects during mining operations.⁶¹¹ It plays a crucial role in ensuring that Botswana maximises the benefits of mineral extraction for the country and its citizenry through sustainable mineral extraction practices.

4.3.4.2 Land Boards

In Botswana, Land Boards are critical actors in managing communal land. Established in terms of the *Tribal Land Act* 54 of 1968,⁶¹² they are significant for the country's mining industry. This is because tribal lands are vested in them.⁶¹³ Land Boards are responsible for overseeing the allocation and management of communal land. They grant rights for various purposes, including residential, commercial, agricultural, and industrial use.⁶¹⁴

When mining activities target communal land, Land Boards collaborate with the Department of Mines to grant permission for exploration and mining activities. This

⁶¹¹ World Bank Group *Botswana Mining Investment and Governance Review* 15.

⁶¹² Which repealed the 1968 *Tribal Land Act* 54.

⁶¹³ The Preamble of the *Tribal Land Act* (2018).

⁶¹⁴ S 5 of the *Tribal Land Act* (2018).

is to ensure proper land use procedures and consultations with local communities, to safeguard their interests.⁶¹⁵ Additionally, Land Boards act as representatives of these communities, negotiating compensation and resettlement arrangements with mining companies, when necessary. While the specifics of revenue-sharing mechanisms are not publicly available, Land Boards may receive a portion of mining royalties or fees to fund community development projects on communal land.

4.3.4.3 Land Tribunals

Established and provided for under the *Land Tribunal Act* 4 of 2018, the Land Tribunal is an appellate body of the Land Board under the Ministry of Land.⁶¹⁶ Botswana's Land Tribunal plays a crucial role in resolving land disputes, especially in the context of the extractive industry, where communal land is often involved. The Tribunal acts as a quasi-judicial body responsible for adjudicating disputes related to communal land. Comprising a legally-qualified chairperson and other appointed members,⁶¹⁷ it plays a vital role in resolving conflicts arising between communities and mining companies regarding compensation, land allocation decisions by land boards, and conflicting claims among community members.⁶¹⁸

By providing a designated forum for dispute resolution, the Land Tribunal enhances efficiency in resolving conflicts. This prevents delays in mining projects and promotes stability in the extractive industry. In addition, it safeguards community rights by ensuring fair compensation and offers an avenue for communities to voice their concerns. Its presence contributes to a more equitable and transparent extractive industry in Botswana, ultimately benefiting both communities and mining stakeholders.

⁶¹⁵ Bornegrim and Collin *Administration of Land in Botswana* 20.

⁶¹⁶ Bornegrim and Collin *Administration of Land in Botswana* 16.

⁶¹⁷ S 4 of the *Land Tribunal Act* (2014).

⁶¹⁸ S 7 of the *Land Tribunal Act* (2014).

4.3.4.4 Mining companies

Mining companies in Botswana contribute actively to the promotion and protection of the socio-economic rights of mine-host communities, through various initiatives.⁶¹⁹ *SLO* refers to “the acquisition and ongoing maintenance of the consent of local stakeholders to specific local projects.”⁶²⁰ *FPIC* is the right of indigenous peoples, as recognised in the *2007 United Nations Declaration on the Rights of Indigenous Peoples*, to give or withhold their consent to projects that may affect them.⁶²¹ *SLO* and *FPIC*⁶²² are both provided for in the *Mines and Minerals Act* 17 of 1999 and the *Environmental Assessment Act* 10 of 2011. These laws⁶²³ provide the framework for engaging with communities and obtaining *FPIC* and maintaining *SLO* in Botswana's mining sector.

Corporate Social Responsibility (hereafter *CSR*)⁶²⁴ initiatives play a vital role in advancing community development in Botswana. Through investments in education, healthcare, and infrastructure projects, mining companies contribute by laying the groundwork for sustainable progress. This is illustrated in a collaborative effort involving various mining firms such as Debswana and *Bamangwato Concessions Ltd*, which have jointly funded the construction of schools and healthcare centres in underserved regions.⁶²⁵ These companies prioritise local employment, providing job opportunities that uplift the economic status of community members and empowering them financially. Moreover, mining companies engage in responsible mining practices, to minimise environmental impact and ensure the preservation of natural resources vital for mine-host communities’ livelihoods.

⁶¹⁹ *SLO, FPIC* and *CSR* initiatives.

⁶²⁰ Yates and Horvath 2013 “Social License To Operate: How To Get It, And How To Keep It” 2.

⁶²¹ United Nations Department of Economic and Social Affairs Indigenous Peoples DateUnknown <https://un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

⁶²² See para 2.3.3 above.

⁶²³ Including the *Tribal Land Act* of 2018 which specifically provides for *FPIC*. S 33 of the *Tribal Land Act* (2018).

⁶²⁴ See para 2.3.3 above.

⁶²⁵ Hore 2024 <https://businessweekly.co.bw/columns/market-research-your-business/corporate-social-responsibility-in-botswana-a-catalyst-for-business-impact>.

4.3.4.5 Botswana's Mineral Policy 2022

Botswana's Mineral Policy of 2022 is anchored on several statutory tools and powers found under different institutions, chief among them, the Ministry of Mineral Resources and the Ministry of Land. Aligned with the country's *National Vision 2036* and the *Botswana Excellence Strategy* of 2008, this policy aims to tackle key hurdles in mineral development. These include ensuring a fair distribution of benefits such as revenue and job creation, as well as promoting local supply chains. Moreover, it addresses growing concerns around climate change, environmental protection, and ethical practices, reflecting a commitment to sustainable and responsible mining practices.

Contained within the policy are the mineral development objectives. These include the generation of local employment opportunities, sustainable mineral development that supports environmental conservation and protection, as well as increased opportunities for citizens to participate directly in mining as contributors of capital, labour, goods or services, to the greatest extent possible. This is consistent with the maintenance of commercial conditions attractive to minerals investments.

Regarding the socio-economic rights of mine-host communities, *Botswana's Minerals Policy of 2022* prioritises a balanced approach to economic development. It emphasises maximising benefits for local communities by implementing measures such as revenue-sharing, local procurement requirements, and community development projects funded by mineral revenues.⁶²⁶ The policy also underscores the importance of environmental sustainability and responsible mining practices in safeguarding the wellbeing of communities.⁶²⁷ Additionally, it promotes local employment and skills development in the mining sector. This is to empower community members and enhance their socio-economic rights.⁶²⁸ Overall, the policy aims to ensure that mining activities contribute positively to the economic, social,

⁶²⁶ This is pursuant to S 12 of Botswana's *Mines and Minerals Act* (1999).

⁶²⁷ This is pursuant to S 65 of Botswana's *Mines and Minerals Act* (1999).

⁶²⁸ This is pursuant to S 12 of Botswana's *Mines and Minerals Act* (1999).

and environmental welfare of all stakeholders. It has a strong focus on enhancing the rights and wellbeing of mine-host communities.

4.3.4.6 Botswana and the *KPCS*

Botswana's involvement in the *KPCS*⁶²⁹ is integral to safeguarding the socio-economic rights of mine-host communities within the country. As a founding member of the *KPCS*, Botswana demonstrates its commitment to transparent and accountable diamond-mining practices. These directly impact the wellbeing of local communities.⁶³⁰ The *KPCS* framework ensures that rough diamonds exported from Botswana are legitimate and ethically sourced. This prevents the trade of conflict diamonds that could fund armed conflicts against legitimate governments. By adhering to the *KPCS* regulations, Botswana protects its mine-host communities from the adverse effects of conflict and instability. These could jeopardise their socio-economic rights, including their right to security, livelihoods, and development.

The *KPCS* promotes an equitable distribution of benefits from diamond-mining activities. By certifying diamonds as conflict-free, Botswana can attract responsible investors and maintain stable diamond markets. The revenue generated from legitimate diamond trade can then be channeled towards socio-economic development initiatives benefiting mine-host communities. Examples include infrastructure projects, education, healthcare, and job creation. Additionally, the *KPCS* framework fosters accountability in the diamond supply chain. It ensures that all stakeholders, including mining companies, adhere to ethical and environmental standards. Accountability helps protect mine-host communities from exploitation and environmental degradation, and safeguards their rights to a healthy environment and sustainable livelihoods.

Overall, Botswana's participation in the *KPCS* plays a vital role in promoting and protecting the socio-economic rights of mine-host communities. This is achieved by

⁶²⁹ See para 3.3.2.3 above.

⁶³⁰ Kimberly Process 2023 <https://www.kimberleyprocess.com/en/botswana-0>.

upholding transparency, accountability, and ethical practices in diamond mining. This contributes to the long-term prosperity and wellbeing of these communities.

The *KPCS*⁶³¹ is an open, global initiative established in 2003, to eliminate the trade of illicit rough diamonds, as well as diamonds mined in war areas and sold to finance armed conflict against governments.⁶³² Each shipment of rough diamonds crossing an international border must be transported in a tamper-resistant container accompanied by a validated government certificate.⁶³³ Each certificate is supposed to be uniquely numbered and should describe shipment contents. The latter can only be exported from one *KPCS* member country to another.⁶³⁴ Finally, the importing country's customs have the responsibility to check the shipment content. Botswana is a founding member of the *KPCS*, as it joined in 2003 upon its establishment.⁶³⁵ The *KPCS* mandates transparent and accountable mining practices. It ensures that communities benefit fairly from diamond-mining activities and are not subjected to exploitation or marginalisation.

4.3.4.7 Botswana and the 2009 *AMV*

As discussed in Chapter 3, the 2009 *AMV* is a policy framework created by the African Union in 2009, to ensure that Africa utilises its mineral resources strategically for broad-based, inclusive development. However, Botswana has not endorsed the *AMV*. Its mining policies share some alignment with the goals of the *AMV*, potentially affecting mine-host communities both positively and negatively. The *AMV* advocates for transparent and accountable mineral revenue management, investment in mineral wealth for broad-based development, and the empowerment of mining communities.⁶³⁶ These goals resonate with Botswana's policies, as discussed above. These include frameworks for managing mineral revenue and directing some of it towards national development and infrastructure projects.

⁶³¹ See para 3.3.2.3 above.

⁶³² The Preamble of the *KPCS* (2003).

⁶³³ S II of the *KPCS* (2003).

⁶³⁴ S III of the *KPCS* (2003).

⁶³⁵ Kimberly Process 2023 <https://www.kimberleyprocess.com/en/botswana-0>.

⁶³⁶ Pedro 2015 *Springer* 2.

4.3.4.8 Concluding remarks on policy frameworks

Botswana's approach to managing its mineral resources offers several key lessons. These underscore the importance of sustainable and ethical practices in the mining sector. The Department of Mines plays a pivotal role in ensuring that mining activities are conducted responsibly, with a focus on enhancing the socio-economic benefits for local communities. Through robust regulatory oversight, well-trained staff, and collaboration with stakeholders, the Department of Mines fosters an environment where mineral resources are exploited sustainably. This not only maximises the economic benefits for the country, but also ensures that the socio-economic rights of mine-host communities are protected and promoted.

The collaborative efforts between land boards, the Department of Mines, and mining companies highlight the significance of effective governance in managing communal land and mining activities. Land boards play a crucial role in granting land rights and negotiating with mining companies. This is to ensure fair compensation and resettlement arrangements for affected communities. The presence of the Land Tribunal further strengthens this governance framework by providing a dedicated forum for resolving land disputes. This enhances stability and promotes a transparent extractive industry. This multi-faceted approach ensures that local communities are actively involved in decision-making processes. This safeguards their interests and fosters a more equitable distribution of mining benefits.

Botswana's commitment to international frameworks such as the *KPCS* underscores the country's dedication to ethical and sustainable mining practices. By adhering to these frameworks, Botswana promotes transparency and accountability in the mining sector. This attracts responsible investors and ensures that mining revenues contribute to socio-economic development. The country's mineral policies, including the 2022 Mineral Policy, emphasise local employment, environmental sustainability, and community development. This reflects a balanced approach to economic growth. These policies and practices collectively ensure that mining activities contribute positively to the wellbeing of mine-host communities, enhance their socio-economic rights, and foster long-term prosperity.

4.3.5 Corporate social responsibility in the mining sector

*CSR*⁶³⁷ refers to the practices and policies undertaken by companies to have a positive impact on the world, particularly in the areas of social, environmental, and economic development.⁶³⁸ In the mining sector, *CSR* is especially significant, as the industry often operates in developing countries such as Botswana and Lesotho. Here, mining activities can profoundly affect mine-host communities and the environment. The importance of *CSR* in these regions lies in its potential to mitigate negative impacts, promote sustainable development, and enhance the quality of life for affected populations. Key stakeholders in *CSR* activities include mining companies, which implement and fund *CSR* initiatives; governments, which regulate and support these efforts; and local communities, the primary beneficiaries. These stakeholders must collaborate effectively to ensure that *CSR* initiatives are impactful and sustainable, thereby fostering positive socio-economic outcomes in mining communities.

Debswana, a joint venture between the government of Botswana and De Beers, plays a pivotal role in Botswana's economy and demonstrates a strong commitment to *CSR*. Their *CSR* initiatives span various areas, including education, healthcare, economic development, infrastructure, and environmental stewardship.⁶³⁹ In education, Debswana invests in building and refurbishing schools, offers scholarships and bursaries, and supports vocational training centers.⁶⁴⁰ Healthcare efforts include funding and operating clinics and hospitals, along with health campaigns such as *HIV/AIDS* awareness and vaccination drives.⁶⁴¹ The company also fosters economic development by prioritising local procurement and supporting small and medium enterprises (hereafter *SMEs*) with financial assistance, training, and mentorship.⁶⁴² Additionally, Debswana invests in essential infrastructure projects, such as roads, water supply systems, and housing. It significantly improves

⁶³⁷ See para 2.3.3 above.

⁶³⁸ Solis and Moroka 2010 <https://www.redalyc.org/pdf/395/39515424006.pdf>.

⁶³⁹ Debswana 2024 <https://www.debswana.com/Sustainability/Pages/Our-Community.aspx>.

⁶⁴⁰ Debswana 2024 <https://www.debswana.com/Sustainability/Pages/Our-Community.aspx>.

⁶⁴¹ Debswana 2024 <https://www.debswana.com/Sustainability/Pages/Our-Community.aspx>.

⁶⁴² Debswana 2024 <https://www.debswana.com/Sustainability/Pages/Our-Community.aspx>.

the quality of life for community members. Its commitment to sustainable mining practices and land rehabilitation projects further highlights its dedication to environmental stewardship.

Debswana's community engagement strategy involves regular consultations with stakeholders. This is to ensure that its initiatives align with community needs, fostering transparency and accountability.⁶⁴³ The impact of these comprehensive *CSR* efforts is evident in the enhanced quality of life, economic empowerment, and social wellbeing of the host communities.⁶⁴⁴ Investments in education and healthcare have resulted in better health outcomes and educational achievements. Local procurement and *SME* support have boosted economic activity and job creation.⁶⁴⁵ Through these multifaceted initiatives, Debswana not only fulfils its corporate responsibilities, but also significantly contributes to the wellbeing and empowerment of local populations. It offers a valuable model for improving the socio-economic rights of mine-host communities in regions such as Lesotho.⁶⁴⁶

4.3.6 Community participation

While Debswana articulates its commitment to community engagement, the company does not explicitly specify the international standards it adheres to on its website. Nonetheless, several general principles associated with international standards for community consultation can be inferred. These include Free, Prior, and Informed Consent (hereafter *FPIC*), and Social License to Operate (hereafter *SLO*).⁶⁴⁷ The implementation of *SLO* and *FPIC* by Debswana significantly promotes and protects the socio-economic rights of mine-host communities in Botswana, through meaningful community participation.⁶⁴⁸ These principles ensure that

⁶⁴³ Debswana 2024 <https://www.debswana.com/Sustainability/Pages/Our-Community.aspx>.

⁶⁴⁴ Debswana 2024 <https://www.debswana.com/Sustainability/Pages/Our-Community.aspx>.

⁶⁴⁵ Debswana 2024 <https://www.debswana.com/Sustainability/Pages/Our-Community.aspx>.

⁶⁴⁶ Solis and Moroka 2010 <https://www.redalyc.org/pdf/395/39515424006.pdf>.

⁶⁴⁷ See para 2.3.3 above.

⁶⁴⁸ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.aspx>.

communities' rights and wellbeing are respected and upheld. This fosters an environment where both the company and the communities can thrive.⁶⁴⁹

*FPIC*⁶⁵⁰ ensures that communities are fully informed about mining activities, provided with ample time to consider them, and can give their consent without coercion before any operations commence. This fundamental principle protects the rights of indigenous and local communities by giving them a voice in decisions that affect their land and livelihoods. By integrating *FPIC* into its operational framework, Debswana engages in meaningful consultations with host communities. This involves transparent communication about the potential impacts and benefits of mining projects. This ensures that communities are not only aware, but also actively participate in the decision-making process. Community participation in these consultations fosters trust and aligns with international standards for responsible mining practices. It promotes the socio-economic rights of the communities by ensuring they have control over their resources and future.

The concept of *SLO*, which refers to the ongoing acceptance and approval of a company's operations by its stakeholders, particularly local communities, is equally pivotal.⁶⁵¹ *SLO* goes beyond legal requirements, emphasising the importance of building and maintaining trust, legitimacy, and mutual respect.⁶⁵² For Debswana, earning and sustaining *SLO* involves continuous community engagement, investment in local development, and adherence to ethical and sustainable practices. This approach ensures that the benefits of mining extend to the community. This promotes socio-economic rights by improving living standards, creating job opportunities, and supporting local businesses. Community participation is central to this process, as it requires the active involvement of community members in monitoring and providing feedback on mining operations. This ensures that their needs and concerns are addressed.

⁶⁴⁹ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.asp>

⁶⁵⁰ See para 2.3.3 above.

⁶⁵¹ Cesar 2021 *Journal of Cleaner Production* 278.

⁶⁵² Prno and Slocombe 2012 *Resources Policy* 347.

Moreover, prioritising *FPIC* and *SLO* helps to mitigate conflicts and enhance community development.⁶⁵³ When communities are involved in the decision-making process and see tangible benefits from mining activities, such as improved healthcare, better educational opportunities, and enhanced infrastructure, their overall quality of life improves. This holistic approach supports the protection of socio-economic rights by addressing both economic and social needs.⁶⁵⁴

Environmental stewardship, a key component of *SLO*, further protects the socio-economic rights of host communities and ensures a sustainable use of natural resources. Debswana's commitment to reducing environmental impact and promoting sustainability safeguards the long-term prosperity and health of the communities. It prevents the degradation of their natural environment which is essential for their livelihoods. Community participation in environmental initiatives, such as reforestation and conservation projects, ensures that local knowledge and priorities are incorporated into sustainability efforts.⁶⁵⁵

The implementation of *FPIC* and *SLO* by Debswana significantly promotes and protects the socio-economic rights of mine-host communities in Botswana, through robust community participation.⁶⁵⁶ These principles ensure that communities are informed, involved, and benefit from mining activities. This fosters sustainable and inclusive growth.⁶⁵⁷ By adhering to these best practices, Debswana demonstrates its commitment to responsible mining and the sustainable development of Botswana's mining communities, ensuring that their voices are heard and that their rights are upheld.⁶⁵⁸

⁶⁵³ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.aspx>.
⁶⁵⁴ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.aspx>.
⁶⁵⁵ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.aspx>.
⁶⁵⁶ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.aspx>.
⁶⁵⁷ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.aspx>.
⁶⁵⁸ Debswana 2024 <https://www.debswana.com/Careers/4Cs/Connection/Pages/InvestingInCommunities.aspx>.

4.4 Enforcement of socio-economic rights

The Botswana judicial system is based on English common law, with three tiers: the Magistrates' Courts, the High Court, and the Court of Appeal. Magistrates' Courts handle minor criminal and civil cases. The High Court deals with more serious matters and serves as the court of original jurisdiction for most cases.⁶⁵⁹ The Court of Appeal hears appeals from the High Court and other lower courts.⁶⁶⁰ The judiciary in Botswana is independent and plays a vital role in upholding the rule of law in the country.

As previously mentioned,⁶⁶¹ socio-economic rights are recognised under various international instruments.⁶⁶² These include the 1948 *Universal Declaration of Human Rights* (hereafter *UDHR*), the 1966 *International Covenant on Economic Social and Cultural Rights* (hereafter *ICESCR*), and the 1981 *African Charter on Human and People's Rights* (hereafter *African Charter*).⁶⁶³ The 1966 *Constitution of Botswana* largely focuses on the protection of civil and political rights relating to the right to life,⁶⁶⁴ the right to personal liberty,⁶⁶⁵ protection from slavery and forced labour,⁶⁶⁶ protection from torture as well as other cruel, inhuman, or degrading treatment or punishment,⁶⁶⁷ freedom of expression,⁶⁶⁸ protection from discrimination,⁶⁶⁹ the right to privacy,⁶⁷⁰ freedom of conscience⁶⁷¹ and the protection of the law.⁶⁷²

⁶⁵⁹ The High Court has original jurisdiction in respect of human rights matters. S18 of the *Constitution of Botswana* (1966).

⁶⁶⁰ Dinokopila 2013 *Journal of African Law* 115.

⁶⁶¹ See para 2.2. above.

⁶⁶² For instance, declarations, regional human rights treaties and thematic international instruments.

⁶⁶³ Khoza *Social Economic Rights in South Africa* 19.

⁶⁶⁴ S4 of the *Constitution of Botswana* (1966).

⁶⁶⁵ S5 of the *Constitution of Botswana* (1966).

⁶⁶⁶ S6 of the *Constitution of Botswana* (1966).

⁶⁶⁷ S7 of the *Constitution of Botswana* (1966).

⁶⁶⁸ S12 of the *Constitution of Botswana* (1966).

⁶⁶⁹ S15 of the *Constitution of Botswana* (1966).

⁶⁷⁰ S9 of the *Constitution of Botswana* (1966).

⁶⁷¹ S11 of the *Constitution of Botswana* (1966).

⁶⁷² S10 of the *Constitution of Botswana* (1966).

However, the 1966 *Constitution of Botswana* lacks specific or explicit provisions for socio-economic rights.⁶⁷³ Instead, the socio-economic rights of mine-host communities in Botswana are incidental to the right to property, which is protected by the 1966 *Constitution*. This protection ensures that individuals and communities have secure tenure over their land and resources, providing a legal framework that supports their livelihoods and wellbeing. The constitutional right to property acts as a foundation for safeguarding the broader socio-economic rights of mine-host communities, including the right to fair compensation, equitable benefit distribution from mining activities, and participation in decision-making processes that affect their land and resources.

The judiciary, in the exercise of its duties in the interpretation of the law in cases that concern socio-economic rights in general, does not have a constitutional foundation. The implication is that the High Court of Botswana has to be creative in its decisions on matters of socio-economic rights in Botswana.⁶⁷⁴ An example is the dissenting judgement of Justice Unity Dow in *Sesana's case*⁶⁷⁵ where she was of the view that the terminated services⁶⁷⁶ were indeed basic and essential for the survival of the applicants. This is why the termination thereof endangered life and was an infringement of the constitutionally guaranteed right to life. The following case law

⁶⁷³ Moyo 2011 *Malawi Law Journal* 87. Dinokopila 2013 *Journal of African Law* 115.

⁶⁷⁴ Dinokopila 2011 *African Human Rights Law Journal* 282.

⁶⁷⁵ An application brought by 215 individuals who were either born in the CKGR. The applicants lived as hunter-gatherers but have for more than 20 years augmented their diet with services provided by the Government. These services primarily involved a range of weekly water deliveries but also included the provisions of rations to registered destitutes and orphans provision of transport for children to and from school and provision of health care through a mobile clinic and an ambulance service. The respondent began to implement a scheme to encourage residents to relocate from the CKGR to neighbouring settlements outside the Reserve. In 2001 the respondent announced that in six months it would be terminating the provision of all services to the CKGR. *Roy Sesana & Others v The Attorney-General* MISCA 52 of 2002, reported as *Sesana & Others v The Attorney-General* 2002 1 BLR 452 (HC).

⁶⁷⁶ These services included providing drinking water, maintaining borehole water supply, offering rations to the destitute and orphans, arranging transport for children to school, and healthcare through mobile clinics and ambulances. The termination of these services was part of the government's strategy to encourage the Basarwa to relocate from the CKGR to designated settlements outside the reserve. The cessation of these services had a profound impact on the Basarwa, making it difficult for them to continue their traditional lifestyle and forcing many to leave the CKGR in search of basic necessities. The withdrawal of these services was a central issue in the legal case brought by Roy Sesana and others, as it was seen as a coercive measure that violated their rights to live on their ancestral land and maintain their way of life.

forming part of the judicial precedent of Botswana illustrates the role of the judiciary in the protection of socio-economic rights.

4.4.1 Matsipane Mosetlhanyane and others v The Attorney General of Botswana

In 2006, the Botswana government's action to expel the Basarwa community from the Central Kalahari Game Reserve (hereafter *CKGR*) was deemed unlawful and unconstitutional by the High Court of Botswana. The government argued that the Basarwa community would be responsible for any water scarcity, as the government would not supply it since the community did not want to vacate the *CKGR*. The Basarwa community petitioned the Botswana High Court, seeking a declaration affirming their entitlement to freely extract water, without restriction, from an unspecified number of boreholes. The High Court ruled against the Basarwa on the basis that the *Water Act* 40 of 1967 prohibits access to or the drilling of new boreholes within the reserve.

The petitioners lost their claim in the High Court of Botswana and the matter moved to the Court of Appeal of Botswana, which ruled⁶⁷⁷ in favour of the Basarwa community. It determined that the denial of water access to indigenous peoples in the *CKGR*, particularly at Mothomelo, constituted human suffering. Permission to use water from the borehole was granted to indigenous people based on the interpretation of sections 6 and 9 of the *Water Act* 40 of 1967. While Section 6 does not explicitly establish a right to water, it permits lawful landowners or occupants to seek or deepen wells or boreholes. The Court stated that, as lawful occupants of *CKGR* settlements, the Basarwa have the right to extract water for domestic purposes. The government failed to demonstrate that it had the authority to seal the Mothomelo borehole. The Court asserted that for the Basarwa community's occupation to be meaningful, access to underground water must be assured. Furthermore, the Botswana government violated the 1966 *Constitution* by denying

⁶⁷⁷ *Matsipane Mosetlhanyane and others v The Attorney General of Botswana Civil Appeal No. CACLB-074-10.*

access to water. It contravened the constitutional provision safeguarding individuals from inhuman and degrading treatment.

Despite socio-economic rights not being expressly enshrined in the Botswana Bill of Rights, the Court interpreted constitutional provisions on civil and political rights purposively, to establish the Basarwa's right to water access. The Court viewed the denial of water access as a form of inhumane and degrading treatment. Hence, it adopted a progressive constitutional interpretation that safeguards the Basarwa Community's fundamental human rights. Additionally, the Court of Appeal acknowledged the rights of indigenous peoples under international law, citing Article 7(1) of the *United Nations Declaration on the Rights of Indigenous Peoples*⁶⁷⁸ and the United Nations General Assembly Resolution 64/292. The latter refers to the human right to water and sanitation recognising the right to safe and clean drinking water as essential for the enjoyment of life and all human rights.⁶⁷⁹ The Court criticised the Botswana government for failing to fulfil its constitutional obligations toward the Basarwa, subjecting them to degrading and inhuman treatment.

4.5 Challenges and lessons learnt

Botswana's experience in managing its mineral resources provides several key lessons. These have shaped its approach to mining and the protection of the socio-economic rights of mine-host communities. One crucial lesson is the importance of collaborative regulation. Effective collaboration between government entities such as the Department of Mines and land boards and stakeholders including local communities and mining companies is essential for ensuring compliance with regulations and protecting community rights. This cooperative approach fosters a well-regulated mining environment that upholds ethical standards and prioritises the welfare of affected communities.⁶⁸⁰

Emphasising sustainable and ethical mining practices is another significant lesson. By focusing on sustainability, Botswana ensures that the long-term socio-economic

⁶⁷⁸ Passed by the United Nations in 2007.

⁶⁷⁹ Passed on 28 July 2010 A RES/64/292

⁶⁸⁰ See para 4.3.4 above.

benefits of mineral extraction are realised. This approach maximises the economic gains from mining, while ensuring that these benefits are shared equitably among all Batswana. This enhances community welfare and promotes inclusive development.⁶⁸¹

Community engagement has emerged as a critical factor in the success of Botswana's mining sector. Actively involving local communities in decision-making processes, through principles such as the *SLO* and *FPIC*, fosters trust and cooperation. This engagement ensures that the voices and concerns of local communities are heard and addressed, leading to more harmonious and mutually beneficial mining operations.⁶⁸²

Efficient conflict resolution mechanisms, such as the Land Tribunal, are vital in maintaining stability and protecting community interests. The Tribunal's role in adjudicating land disputes and ensuring fair compensation helps prevent project delays and promotes a stable mining environment. This stability is crucial for attracting investment and ensuring that mining activities proceed smoothly, benefiting all stakeholders.⁶⁸³ Transparency is another key lesson. Adherence to frameworks such as the *KPCS* promotes transparency and accountability in the diamond-mining sector. This transparency attracts responsible investment, ensures ethical practices, and protects communities from exploitation and environmental harm.⁶⁸⁴

The implications of these lessons for the socio-economic rights of mine-host communities in Botswana are profound. Enhanced welfare is a direct result of mining activities that contribute positively to community development. Investments in infrastructure, education, and healthcare – funded by mineral revenues – improve living standards and provide tangible benefits to local communities.⁶⁸⁵ Employment opportunities are another significant implication. Local employment and skills

⁶⁸¹ See para 4.3.7 above.

⁶⁸² See para 4.3.6 above.

⁶⁸³ See para 4.3.4.3 above.

⁶⁸⁴ See para 4.3.4.6 above.

⁶⁸⁵ See para 4.3.5 above.

development initiatives empower community members. These initiatives boost their economic status and provide them with sustainable livelihoods. This empowerment not only enhances individual welfare, but also strengthens the economic fabric of the communities.⁶⁸⁶

Environmental protection is a crucial consideration. Responsible mining practices safeguard natural resources, ensuring that the environment, which is vital for the livelihoods of mine host communities, is preserved. This protection helps maintain the ecological balance, and supports the long-term sustainability of mining activities.⁶⁸⁷ Equitable benefit distribution is essential for ensuring that the gains from mining activities are shared fairly. Mechanisms such as revenue-sharing and local procurement requirements ensure that communities benefit from mining, fostering economic equity and social cohesion.⁶⁸⁸

The coordinated efforts of Botswana's mining governance framework – including the Department of Mines, Land Boards, the Land Tribunal, and mining companies, supported by progressive policies and international frameworks – demonstrate a commitment to balancing economic development with the protection and enhancement of socio-economic rights. These lessons and their implications highlight Botswana's model for sustainable and inclusive growth in the mining sector. This model would ensure that mining activities contribute positively to the welfare of mine-host communities.

However, this model has limitations. One significant challenge is the lack of clear constitutional protection and explicit mention of socio-economic rights in the Botswana Constitution.⁶⁸⁹ Unlike some jurisdictions, such as South Africa, where socio-economic rights are enshrined in the 1996 *Constitution of the Republic of South Africa* and have legal standing, Botswana's Constitution does not provide explicit recognition or protection of these rights. This omission leaves socio-

⁶⁸⁶ See para 4.3.5 above.

⁶⁸⁷ See para 4.3.3 above.

⁶⁸⁸ See para 4.3.3 above.

⁶⁸⁹ See para 4.3.2 above.

economic rights vulnerable to infringement and undermines the ability of mine-host communities to assert and defend their rights in legal and policy contexts.

Firstly, the absence of explicit constitutional protection for socio-economic rights creates ambiguity and uncertainty regarding the legal status and enforceability of these rights. Without constitutional recognition, socio-economic rights may be viewed as secondary or less fundamental than other rights, such as civil and political rights. This may lead to inadequate protection and prioritisation in policy and decision-making processes. Secondly, the lack of constitutional safeguards for socio-economic rights limits the avenues for legal recourse and redress for mine-host communities in cases of rights violations. Without constitutional backing, affected communities may struggle to assert their rights effectively through the judicial system. They may face challenges such as high litigation costs, lengthy legal processes, and limited access to justice.

Moreover, the absence of the explicit mention of socio-economic rights in the Constitution may result in a lack of political will and commitment to address these rights in legislative and policy frameworks. Governments and policymakers may prioritise other issues or interests, relegating socio-economic rights to the periphery of the policy agenda. Additionally, the absence of constitutional protection for socio-economic rights may hinder efforts to hold state and non-state actors accountable for their actions or omissions that impact the socio-economic wellbeing of mine-host communities. Without clear legal obligations stemming from the Constitution, there may be a lack of accountability mechanisms to ensure that mining activities respect and uphold the rights of affected communities.

In conclusion, while Botswana's approach to mining provides valuable lessons in the protection and promotion of socio-economic rights for mine-host communities, the lack of clear constitutional protection and explicit mention of these rights presents a significant limitation. Addressing this gap requires constitutional reforms to recognise and safeguard socio-economic rights, providing a robust legal foundation for the protection of mine-host communities' rights and wellbeing. Such reforms

would enhance the ability of mine-host communities to assert their rights and ensure that the benefits of mining are shared equitably and sustainably.

4.6 Conclusion: recommendations for Lesotho

Drawing from Botswana's experiences, Lesotho can significantly enhance the socio-economic rights of mine-host communities through a strategic approach. The latter should focus on institutional strengthening, state participation in the mining sector, and community engagement. These measures can ensure sustainable development and equitable benefit distribution. This would protect and promote the rights of the communities affected by mining activities. The establishment of institutions similar to Land Boards⁶⁹⁰ is crucial for the protection of socio-economic rights. Decentralising land administration through regional and local Land Boards can effectively manage land allocations, resolve disputes, and oversee land use planning. Including representatives from local communities on these Boards ensures that decisions reflect local needs and priorities. Transparent procedures for land allocation, registration, and titling can reduce corruption and increase public trust. Setting clear criteria and maintaining accessible records of land ownership and transactions are essential components of this transparency.

The creation of independent Land Tribunals⁶⁹¹ is another critical step toward safeguarding community rights. These tribunals can handle land disputes efficiently and fairly, and would be accessible to all citizens. With their streamlined processes, they would be able to resolve conflicts quickly. Developing a robust legal framework to support the functioning of these tribunals, including clear laws on land rights, inheritance, and compensation for land acquisitions, would further strengthen this initiative.

Capacity-building and training are fundamental to the success of land boards and tribunals in protecting community rights. Ongoing training for members on land management, legal frameworks, and conflict resolution is essential. Exchange

⁶⁹⁰ See para 4.3.4.2 above.

⁶⁹¹ See para 4.3.4.3 above.

programmes with Botswana can provide valuable insights and best practices. Additionally, public awareness campaigns can inform citizens about their land rights and the roles of land boards and tribunals, ensuring a well-informed populace capable of engaging with these institutions effectively.

Lesotho can also enhance the socio-economic rights of mine-host communities through increased state participation in the mining sector. Following the Debswana model, the state should negotiate substantial equity stakes in major mining companies operating within its borders. This can be achieved through joint ventures or direct investments, ensuring that the state benefits from the profits generated by these enterprises. Establishing strong governance structures for state-owned stakes in mining companies, including clear accountability mechanisms, is vital to ensure transparency and prevent corruption.

Revenue management and reinvestment are key to maximising the benefits from mining for host communities. Creating a sovereign wealth fund to manage mining revenues can ensure that the wealth generated is invested in other sectors of the economy, for long-term sustainability. Additionally, allocating a portion of mining revenues to community development funds can finance local infrastructure, education, and healthcare projects, directly benefiting mine-host communities. Local content and employment policies are also essential for the protection of community rights. Developing policies that encourage mining companies to source goods and services locally can foster the growth of local businesses and industries. Mandating the employment of local workers and the provision of training programmes can enhance the skills of the local workforce, ensuring that the community benefits from job creation and skills development.

Effective community engagement is another critical component fostering the safeguarding socio-economic rights. Institutionalising regular consultations with mine-host communities – through town hall meetings, public hearings, and advisory committees – can ensure that community concerns and needs are addressed. Establishing mechanisms for ongoing feedback from communities allows continuous improvement in addressing their issues.

Benefit-sharing mechanisms can further protect and promote community rights. Requiring mining companies to enter into community-development agreements can outline specific benefits. These include infrastructure projects, social services, and economic opportunities for host communities. Ensuring that a portion of mining revenues is directly invested in community-development projects, such as building schools, clinics, and roads, can significantly improve living standards.

*CSR*⁶⁹² initiatives play a crucial role in this strategy. Encouraging mining companies to adopt comprehensive *CSR* programmes that address the specific needs of the communities in which they operate can foster sustainable development and long-term benefits. Establishing mechanisms to monitor and evaluate *CSR* initiatives ensures that they are effective and aligned with community priorities.

Practical initiatives can illustrate the impact of these recommendations on the socio-economic rights of mine-host communities. For instance, establishing a centralised land registry system can streamline land registration and ensure accurate records, protecting land rights. Developing a transparent framework for allocating mining revenues can ensure equitable distribution to regions and communities impacted by mining. Partnering with mining companies, to fund and operate health clinics in mining regions, can improve access to healthcare services, which addresses health rights. Using mining revenues to build and maintain critical infrastructure, such as roads, bridges, and water supply systems, can further enhance the quality of life in mining communities. This supports the right to an adequate standard of living.

By implementing these comprehensive recommendations, Lesotho can enhance its institutional framework, maximise the benefits from its natural resources, and foster sustainable development and community wellbeing. Drawing on the successful experiences of Botswana, this multifaceted approach can ensure that mine-host communities are not only protected, but also empowered to thrive economically and socially. The next chapter examines South Africa's constitutional, policy, and legislative framework for the protection of the socio-economic rights of mine-host

⁶⁹² See para 4.3.5 above.

communities. The examination of the Botswana and South African jurisdictions provides a foundation for a comparative study with Lesotho, which is undertaken in a later chapter. The objective of this comparative analysis is to develop future legislation for Lesotho, in line with international conventions and standards for the protection of the socio-economic rights of mine host communities.

CHAPTER 5 SOUTH AFRICA'S APPROACH TO THE PROTECTION OF THE SOCIO-ECONOMIC RIGHTS OF MINE-HOST COMMUNITIES AFFECTED BY DIAMOND MINING

5.1 Introduction

Chapter 4 analysed Botswana's frameworks for the protection of the socio-economic interests of mine-host communities, drawing insights to improve Lesotho's approaches. The chapter covered Botswana's management of its diamond-mining sector's benefits and challenges, its constitutional and legislative frameworks focusing on socio-economic rights, and the effectiveness of judicial interventions. It identified challenges and lessons from Botswana's experience, and concluded with preliminary recommendations that would help Lesotho to align its frameworks with international and regional standards.

The findings suggest that Lesotho can enhance the socio-economic rights of mine-host communities by adopting strategies from Botswana.⁶⁹³ This includes establishing Land Boards, decentralising land administration, and creating independent Land Tribunals. Increased state participation in mining and strong governance can ensure that profits benefit local communities. Revenue management strategies, such as sovereign wealth and community development funds, can finance infrastructure, education, and healthcare. Effective community engagement, benefit-sharing mechanisms, and practical initiatives such as a centralised land registry and transparent revenue allocation, can significantly improve living standards.

Chapter 5 examines South Africa's constitutional, policy, and legislative framework for the protection of the socio-economic rights of mine-host communities. This provides a foundation for a comparative study with Lesotho. The comparison aims

⁶⁹³ See para 4.6 above.

to identify best practices and the development of a comprehensive matrix.⁶⁹⁴ The latter would help to guide legislative improvements and strategies that could be adapted to improve Lesotho's legal and policy frameworks for the protection of the socio-economic rights of mine-host communities. This analysis aims to develop future legislation for Lesotho that aligns with international standards.

The discovery of diamonds in South Africa started around early 1867, when a 15-year-old boy named Erasmus Jacobs was playing with stones on a farm named De Kalk at Hopetown next to the orange river.⁶⁹⁵ He found a small shining stone which he took home. This stone was later identified as a diamond by Dr Guybon Atherstone who was an expert in minerals.⁶⁹⁶ There was general scepticism as to the existence of diamonds in South Africa. Despite this, more diamonds were discovered along the Vaal River in South Africa.⁶⁹⁷ In March 1906, an 83^{1/2} carat diamond was discovered and bought by one Van Niekerk from a Griqua. This diamond was named "the Star of South Africa." It was initially bought for 500 sheep, 10 oxen, and a horse.⁶⁹⁸

The discovery of the Star of South Africa served as the catalyst for the diamond rush that ensued. It ignited a mining revolution that would significantly shape the socio-economic landscape of South Africa.⁶⁹⁹ This historic event marked the beginning of a new era. The latter was characterised by the exploration and exploitation of the country's rich mineral resources. Similar to Lesotho and Botswana, South Africa is a party to various crucial human rights treaties. It spans international, regional, and sub-regional instruments pertinent to mining activities, as discussed in Chapter 3 above. By ratifying these instruments, South Africa is committed to upholding their principles. Regionally, South Africa is a member of

⁶⁹⁴ See Annexure A.

⁶⁹⁵ The Solomon 2023 <https://www.thesolomon.co.za/heyday-of-diamond-mining.html>.

⁶⁹⁶ Davenport *Colonial Mining Policy of the Cape of Good Hope: An Examination of the Evolution of Mining Legislation in the Cape Colony 1853-1910* 55.

⁶⁹⁷ Davenport *Colonial Mining Policy of the Cape of Good Hope: An Examination of the Evolution of Mining Legislation in the Cape Colony 1853-1910* 55.

⁶⁹⁸ Davenport *Colonial Mining Policy of the Cape of Good Hope: An Examination of the Evolution of Mining Legislation in the Cape Colony 1853-1910* 55.

⁶⁹⁹ Davenport *Colonial Mining Policy of the Cape of Good Hope: An Examination of the Evolution of Mining Legislation in the Cape Colony 1853-1910* 69.

both the African Union (hereafter *AU*) and the Southern African Development Community (hereafter *SADC*). It is obliged to ensure that mining operations within its borders respect socio-economic interests, according to standards set at those levels. While the primary focus of this study is examining Lesotho's constitutional, policy, and legislative frameworks, it also aims to explore how the socio-economic rights of mine-host communities are protected in South Africa. This analysis seeks to offer insights and recommend constitutional, policy and legislative measures to strengthen the safeguarding of these communities' socio-economic interests in Lesotho.

South Africa serves as an important regional case study for leveraging the extractive industry for development. Renowned as one of the world's foremost producers of precious metals, such as gold and platinum, South Africa makes significant contributions to the global mineral market. Additionally, while South Africa extracts other minerals such as coal, iron ore, and manganese, the revenue generated from precious metal mining surpasses them all.⁷⁰⁰ South Africa's success in the mining industry is evident in various facets, including earning foreign exchange, increasing government revenue through taxes and royalties, creating job opportunities, and nurturing technical and managerial skills. This has led to rapid socio-economic development, positioning South Africa as a model from which Lesotho can draw lessons.

Mineral extraction in South Africa continues to drive economic development and job creation.⁷⁰¹ This leads to the construction of crucial infrastructure such as railways and roads.⁷⁰² South Africa's wealth of mineral resources, accompanied by legislation aimed at safeguarding the socio-economic rights of mine-host communities, despite significant non-compliance, firmly establishes it as a pivotal case study for assessing Lesotho's frameworks. In analysing South Africa's existing constitutional, policy, and

⁷⁰⁰ Department of Mineral Resources and Energy 2022 *The Exploration Strategy for the Mining Industry of South Africa* 2.

⁷⁰¹ Alao *Natural Resources and Conflict in Africa: The Tragedy of Endowment* 53. Chauhan 2018 *OBITER* 345. Maswanganyi *Social Justice Corporate Social Responsibility and the South African Mining Industry* 1.

⁷⁰² Obratzsova 2021 <https://www.rough-polished.com/en/analytics/123526.html>.

legal framework concerning the protection and promotion of socio-economic rights of mine-host communities, this chapter focuses on South Africa's constitutional provisions, policy documents, legislation, court rulings, and academic literature. This approach aims to facilitate a comparative analysis between South Africa's current frameworks and those of Lesotho. The emphasis is on enhancing Lesotho's existing frameworks for the protection of the socio-economic rights of mine-host communities affected by diamond mining.

This chapter has a five-part structure. Part 1 offers a comprehensive introduction to South Africa's mining industry and its impact on the country's development. It highlights South Africa's position as one of the world's leading producers of precious metals and delves into the historical context of mineral discovery in colonial South Africa. It deals with the impacts of diamond mining on the socio-economic rights of mine-host communities in South Africa. Part 2 examines South Africa's constitutional, policy and legislative framework. It initially focuses on South Africa's international commitments and standards, as well as relevant constitutional provisions. Subsequently, it analyses legislative instruments such as the Mineral and Petroleum Resources Development Act 28 of 2002 (hereafter *MPRDA*), the National Environmental Management Act 107 of 1998 (hereafter *NEMA*), and the National Water Act 36 of 1998 (hereafter *NWA*), and the Municipal Systems Act 32 of 2000 (hereafter *MSysA*). These underpin the protection of socio-economic rights of mine-host communities in South Africa. Part 3 investigates South African case law on socio-economic rights and assesses the extent to which judicial precedent can be leveraged to promote and protect the socio-economic rights of communities affected by mining activities. Part 4 discusses the challenges and lessons learnt from South Africa's case study. This part further identifies gaps and limitations in South Africa's framework, aiming for a comparative analysis with Lesotho's framework in a subsequent Chapter. Part 5 concludes the chapter with recommendations for Lesotho.

5.2 Balancing benefits and challenges in South Africa's diamond mining

In light of South Africa's complex historical narrative, safeguarding the socio-economic rights of mine-host communities emerges as a pressing and pivotal subject. With the mining industry being a cornerstone of South Africa's economic development, understanding the ramifications of mining activities on these communities is crucial for advocating their rights and wellbeing.

South Africa is one of the world's most mineral-rich countries, with its diamond mining sector significantly contributing to the nation's *GDP*.⁷⁰³ However, the duality of the extractive industry reveals both its potential benefits and inherent challenges. While mining has led to improvements in infrastructure and job creation, it also presents numerous social,⁷⁰⁴ economic,⁷⁰⁵ and environmental issues.⁷⁰⁶ Therefore, South Africa must address the importance of socio-economic development and its obligation to protect the environment from degradation, for the sake of future generations, while mitigating the negative social impacts on mine host communities.

Mining communities and miners in South Africa have endured immense hardships due to the discriminatory and unfair apartheid laws in place before 1994. During apartheid,⁷⁰⁷ the diamond-mining industry was predominantly controlled by white-owned companies. Black South Africans were largely excluded from ownership and meaningful participation. This exclusion entrenched socio-economic disparities and marginalised black communities. It leaves lasting impacts that continue to influence the present-day dynamics of the mining sector. Post-apartheid, efforts have been made to rectify these historical injustices.⁷⁰⁸ Several laws have been promulgated to

⁷⁰³ Maswanganyi *Social Justice Corporate Social Responsibility and the South African Mining Industry* 1.

⁷⁰⁴ Social consequences include issues like displacement of mine host communities.

⁷⁰⁵ Economic consequences may include the destruction of mine host communities.

⁷⁰⁶ Environmental consequences include issues like soil erosion, water pollution and deforestation. Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁷⁰⁷ Apartheid is a word translated from Afrikaans meaning "apartness." Apartheid was an ideology of the National Party (hereafter NP) government introduced in 1948 in South Africa. Apartheid called for the separate development of the different racial groups in South Africa. Apartheid established legislation that forced different racial groups to live separately and develop separately

⁷⁰⁸ Mthembu *A Dream of Azania* 67.

address the protection and promotion of the socio-economic rights of mine-host communities affected by diamond mining. These legislative measures aim to ensure more inclusive and equitable development outcomes from mining activities.⁷⁰⁹

Despite the economic significance of diamond mining, local communities often face limited employment opportunities. Large-scale mining operations tend to import skilled labour from outside, bypassing local job seekers. This practice marginalises residents and perpetuates economic disparities, hindering the potential for local economic mobility and development.⁷¹⁰ The environmental toll of diamond mining is substantial, with dust and pollutants from mining activities infiltrating the air and water sources. This contamination leads to widespread respiratory illnesses and other health complications among nearby residents.⁷¹¹ Additionally, improper waste disposal exacerbates environmental issues, polluting local ecosystems and threatening biodiversity. The establishment and expansion of diamond mines often necessitate the displacement of entire communities.⁷¹² This displacement severs communities' ties to ancestral lands and disrupts traditional livelihoods such as farming and herding. This causes economic instability and social fragmentation.⁷¹³ Despite the substantial wealth generated from their lands, many host communities feel marginalised in benefiting from diamond-mining activities. Perceived inequities in benefit-sharing foster resentment and distrust towards mining companies and government authorities, exacerbating social disparities within affected communities.⁷¹⁴

Notwithstanding the negative socio-economic impacts, diamond-mining revenues have been used to develop infrastructure projects within a number of mine-host communities. These projects include roads, schools, healthcare facilities, and other essential services. These developments enhance daily living conditions and improve

⁷⁰⁹ Mthembu *A Dream of Azania* 67.

⁷¹⁰ Morris and Baartjes 2010 *The Southern African Institute of Mining and Metallurgy* 294.

⁷¹¹ Chauhan 2018 *OBITER* 345.

⁷¹² Mancini and Sala 2018 *Resources Policy* 98.

⁷¹³ Mancini and Sala 2018 *Resources Policy* 100.

⁷¹⁴ Department of Mineral Resources and Energy *The Exploration Strategy for the Mining Industry of South Africa* 4. Ramatji *A Legal Analysis of the Mineral and Petroleum Resources Development Act 28 of 2002 and its impact in Mining Operations in the Limpopo Province* 2.

access to vital services, promoting overall community well-being.⁷¹⁵ While challenges remain in local employment practices, diamond-mining operations do create job opportunities. These exist both directly within the mines and indirectly through ancillary industries. These opportunities help mitigate unemployment rates and provide stable income sources for some community members, contributing to economic stability.⁷¹⁶

Responsible mining companies invest in education and skills development programmes tailored to equip community members with relevant skills. These programmes prepare individuals for employment within the mining sector and foster entrepreneurial ventures and alternative livelihoods. This enhances economic resilience and individual prospects.⁷¹⁷ Diamond mining generates significant revenue for the government through taxes, royalties, and other contributions. If managed transparently, this revenue can fund critical social programmes, including healthcare, education, and infrastructure development. This benefits mine-host communities and the broader population.⁷¹⁸

The legacy of apartheid continues to shape the socio-economic landscape of diamond mining in South Africa. To promote equitable and sustainable development outcomes in South Africa's diamond-mining sector, it is essential to address historical legacies through inclusive policies and practices.⁷¹⁹ Achieving this goal demands a robust framework that prioritises responsible management practices. This entails emphasising transparency in decision-making to maximise local employment opportunities, mitigate environmental impacts, and allocate resources effectively for social services.

⁷¹⁵ Mancini and Sala 2018 *Resources Policy* 100.

⁷¹⁶ Masuku 2023 <https://www.saimm.co.za/press-releases/1063-skills-development-in-mining-a-solution-to-a-changing-industry>.

⁷¹⁷ Masuku 2023 <https://www.saimm.co.za/press-releases/1063-skills-development-in-mining-a-solution-to-a-changing-industry>.

⁷¹⁸ Masuku 2023 <https://www.saimm.co.za/press-releases/1063-skills-development-in-mining-a-solution-to-a-changing-industry>.

⁷¹⁹ Ramatji *A Legal Analysis of the Mineral and Petroleum Resources Development Act 28 of 2002 and its impact in Mining Operations in the Limpopo Province 2*.

At the heart of this framework must lie social justice and equity, ensuring fairness in the distribution of economic benefits among communities. By prioritising local hiring practices and fostering inclusive economic opportunities, diamond mining can reduce inequalities and enhance community wellbeing.⁷²⁰ Mitigating the resource curse is another critical aspect. Implementing strict regulations and monitoring mechanisms is vital to address environmental concerns such as pollution and ecosystem degradation.⁷²¹ These measures not only protect natural resources, but also stabilise local economies against the volatility often associated with resource extraction.⁷²²

Community participation plays a pivotal role in shaping sustainable development outcomes. Engaging local stakeholders in decision-making processes fosters mutual understanding, addresses community concerns, and empowers residents to actively participate in their own development.⁷²³ This participatory approach ensures that the voices and needs of host communities are integral to shaping sustainable development outcomes. By adhering to these principles, diamond mining can transform from a potential threat to socio-economic rights into a catalyst for community empowerment and equitable distribution of South Africa's mineral wealth.⁷²⁴

5.3 Legislative framework of mining in South Africa

5.3.1 International commitments and standards

South Africa is a signatory to various international and regional human rights instruments. This reflects its commitment to upholding fundamental rights and principles. These include the International Covenant on Civil and Political Rights (hereafter *ICCPR*),⁷²⁵ and the African Charter on Human and Peoples' Rights

⁷²⁰ O'Faircheallaigh 2014 *Journal Business Ethics* 2.

⁷²¹ O'Faircheallaigh 2014 *Journal Business Ethics* 3.

⁷²² O'Faircheallaigh 2014 *Journal Business Ethics* 5.

⁷²³ Rijal 2023 *Journal of Contemporary Administration and Management* 84.

⁷²⁴ Rijal 2023 *Journal of Contemporary Administration and Management* 84.

⁷²⁵ South Africa signed the *ICCPR* on the 3rd of October 1994 and ratified on the 10th of December 1998. Office of the United Nations High Commissioner for Human Rights (hereafter *OHCHR*)

(hereafter *African Charter*).⁷²⁶ Importantly, South Africa is also a signatory to the International Covenant on Economic, Social and Cultural Rights (hereafter *ICESCR*),⁷²⁷ which guarantees a wide range of socio-economic rights. These include the right to work,⁷²⁸ health,⁷²⁹ education,⁷³⁰ and an adequate standard of living.⁷³¹

Given South Africa's adherence to the *ICESCR* and other international commitments, its constitutional, policy and legislative, framework remains crucial for promoting and protecting the socio-economic rights of mine-host communities. The human rights framework serves as the primary mechanism for translating international obligations into actionable measures at the national level. This ensures that the benefits of diamond mining are equitably distributed, and that the rights of affected communities are safeguarded.

South Africa aligns itself with the African Mining Vision (hereafter *AMV*),⁷³² a policy framework adopted by the African Union in 2009. The *AMV* aims to promote sustainable mining development across Africa. This is achieved by emphasising responsible resource governance, value addition, and socio-economic development. As a staunch supporter of the *AMV*, South Africa demonstrates its commitment to advancing the principles of sustainable mining within the continent. South Africa is a member of the Southern African Development Community (hereafter *SADC*) and has ratified the 1997 *SADC Protocol on Mining*.⁷³³ By participating in the 1997 *SADC Protocol on Mining*, South Africa contributes to regional efforts aimed at fostering a conducive environment for responsible and sustainable mining activities.

Responsible and sustainable diamond mining in South Africa is governed by a comprehensive set of laws and regulations. These are aimed at balancing economic

2023 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=n. See para 3.2.3.1 above.

⁷²⁶ South Africa acceded on 9th of July 1996.

⁷²⁷ South Africa signed the *ICESCR* on the 3rd of October 1994 and ratified it on 12th of January 2015. See para 3.2.2.2 above.

⁷²⁸ A 6 of the *ICESCR* (1966).

⁷²⁹ A 12 of the *ICESCR* (1966).

⁷³⁰ A 13 of the *ICESCR* (1966).

⁷³¹ A 11 of the *ICESCR* (1966).

⁷³² See para 3.2.3.2 above.

⁷³³ See para 3.2.4.2 above.

development with social and environmental considerations.⁷³⁴ By leveraging its legal and regulatory framework, South Africa seeks to promote inclusive growth, environmental sustainability, and community empowerment within the mining sector. Furthermore, by studying South Africa's constitutional, policy and legislative measures, Lesotho can identify best practices and tailor them to its own frameworks. This would help it to better address the needs of its mine-host communities and ensure sustainable development in the context of diamond mining. South Africa's existing legal framework governing the mining sector encompasses various statutes. These include the 1996 *Constitution of South Africa*, the 2002 *MPRDA 28*, the *NEMA 107*, the 2000 *MSysA 32*, and the 1998 *NWA 36*. These laws provide the regulatory framework for the promotion and regulation of the mining industry, while prioritising the socio-economic interests of mine-host communities.⁷³⁵

5.3.2 Constitutional provisions

The 1996 *Constitution* of the Republic of South Africa (hereafter 1996 *RSA Constitution*) is the highest law in the country. It contains the Bill of Rights which prescribes the South African human rights framework.⁷³⁶ The 1996 *RSA Constitution* recognises the injustices of the past.⁷³⁷ The achievement of equality is one of the values and founding provisions of the 1996 *RSA Constitution* found in Section 9 of the Bill of Rights.⁷³⁸ This was noted in the case of *Minister of Finance v Van Heerden*,⁷³⁹ wherein the Constitutional Court stated:

The achievement of equality goes to the bedrock of our constitutional architecture. The Constitution commands us to strive for a society built on the democratic values and freedom. Thus, the achievement of equality is not only guaranteed and

⁷³⁴ Muswaka 2017 *Sustainable Mining in South Africa* 2.

⁷³⁵ Department of Mineral Resources and Energy *Annual Performance Plan for 2022–2023* 31.

⁷³⁶ Chapter 2 of the Constitution of South Africa (1996). Ndlazi 2021 *Law Democracy and Development* 228.

⁷³⁷ The Preamble of the *Constitution of South Africa* (1996).

⁷³⁸ S 9 (1) states that everyone is equal before the law and has the right to equal protection and benefit of the law. S 9 (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality legislative and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination may be taken

⁷³⁹ *Minister of Finance v Van Heerden* 2004 6 SA 121 (CC).

justiciable right in our Bill of rights but also a core and foundational value a standard which must inform all law and against which all law must be tested for constitutional consonance.

This is in line with international conventions ratified by South Africa, namely, Article 1 and Article 7 of the 1948 *Universal Declaration on Human Rights* (hereafter *UDHR*),⁷⁴⁰ Article 3 of the 1966 *International Convention on Civil and Political Rights* (hereafter *ICCPR*), and Article 3 of the 1966 *International Convention on Economic and Social Rights* (hereafter *ICESCR*). The 1996 *RSA Constitution* places a duty on the government to ensure, consider and protect the rights of communities, before mining companies can be allowed to continue with mining activities within a specific area. The rights of communities that may be affected by mining activities are the right to just administrative action,⁷⁴¹ the right to access to information,⁷⁴² the right to a healthy environment,⁷⁴³ the right to food and water,⁷⁴⁴ and the right to property.⁷⁴⁵ Nevertheless, exceptions to this right exist. Section 25 of the 1996 *RSA Constitution* allows for expropriation of property for a public purpose or if such expropriation is in the public interest.

5.3.2.1 The right to a healthy environment

The 1996 *RSA Constitution* mandates that the country's mineral and petroleum resources should be developed in an orderly, ecologically and sustainable manner. This should be done while promoting justifiable social and economic development.⁷⁴⁶ The Constitution states, in Section 24 ,that everyone has the right

(a) to an environment that is not harmful to their health or wellbeing; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that;

⁷⁴⁰ See para 3.2.2.1 above.

⁷⁴¹ S 33 of the *Constitution of South Africa* (1966).

⁷⁴² S 32 of the *Constitution of South Africa* (1966).

⁷⁴³ S 24 of the *Constitution of South Africa* (1966).

⁷⁴⁴ S 27 (b) of the *Constitution of South Africa* (1966).

⁷⁴⁵ S 25 of the *Constitution of South Africa* (1966).

⁷⁴⁶ Ramatji *A Legal Analysis of the Mineral and Petroleum Resources Development Act 28 of 2002 and its impact in Mining Operations in the Limpopo Province* 11.

- (i) prevent pollution and ecological degradation.
- (ii) promote conservation; and
- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Muswaka⁷⁴⁷ states that the right to a healthy environment encapsulated in Section 24(a) of the 1996 *RSA Constitution* extends health rights beyond Section 27(1) which is limited to the provision of health care services. Muswaka⁷⁴⁸ makes an example that a particular environment may be damaging to people's health, yet not necessarily infringe a person's right to healthcare services. If, for instance, atmospheric pollution emanating from mining is to be subjected to constitutional challenge on the grounds that people's health is being affected, the legal challenge would have to be brought in terms of the environmental provision and not in terms of Section 27 of the 1996 *RSA Constitution*.

Mahiya⁷⁴⁹ is of the opinion that the main mandate of Section 24(a) of the 1996 *RSA Constitution* is to improve people's quality of life by protecting their health and wellbeing. She further states that "health" relates to people's ability to stay in an environment where its degradation does not cause threats to the physical, mental, or social livelihood of communities.⁷⁵⁰ She⁷⁵¹ defines "well-being" as a much wider concept that goes beyond health. However, it must be consistent with the idea of environmental integrity and case where a person's environmental interests can be affected.⁷⁵² Mahiya⁷⁵³ concludes that the environmental right as encapsulated in the 1996 *RSA Constitution* affords everyone the right to an environment that does not

⁷⁴⁷ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁷⁴⁸ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁷⁴⁹ Mahiya *The Role of South Africa's Environmental Rights in the Transformative Constitutionalism* 44.

⁷⁵⁰ Mahiya *The Role of South Africa's Environmental Rights in the Transformative Constitutionalism* 45.

⁷⁵¹ Mahiya *The Role of South Africa's Environmental Rights in the Transformative Constitutionalism* 46.

⁷⁵² Du Plessis 2011 *SAJHR* 295.

⁷⁵³ Mahiya *The Role of South Africa's Environmental Rights in the Transformative Constitutionalism* 47.

harm their health and wellbeing. Instead, it improves their quality of life, which is a noble and important transformative goal.

Section 24(b) states that the government is mandated to protect the environment. This entails taking positive actions through reasonable legislative and other measures that otherwise “secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”⁷⁵⁴ Even though the case did not deal with an environmental matter, the Constitutional Court of South Africa had a chance to determine how the South African government could meet its constitutional obligation stipulated in Section 24 in the case of the *Government of The Republic of South Africa v Grootboom*.⁷⁵⁵ It was stated that:

The state is required to take reasonable legislative and other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariable (sic) have to be supported by appropriate, well directed policies and programs implemented by the executive. These policies and programs must be reasonable both in their conception and their implementation. The formulation of a program is only the first stage in meeting the state’s obligations. The program must also be reasonably implemented. An otherwise reasonable program that is not implemented reasonably will not constitute compliance with the state’s obligation.

In *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture Conservation and Environment Mpumalanga Province and Others*,⁷⁵⁶ the *Fuel Retailers Association of Southern Africa*, the applicant in the proceedings in the *Constitutional Court*, objected to the construction of a filling station on various grounds. These included the view that the

⁷⁵⁴ Du Plessis 2008 *PER* 17.

⁷⁵⁵ Grootboom is a case where the respondents together with their children had moved on to private land from an informal settlement owing to the appalling conditions in which they were living. The respondents were evicted from the private land that they were unlawfully occupying. After the eviction the respondents camped on a sports field in the area. However, the said respondents could not erect adequate shelters as most of their building materials had been destroyed. The respondents then applied to court based on a social, economic and cultural right, that the court should grant an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation. *Government of the Republic of South Africa V Grootboom* 2001 (1) SA 46 (CC) para 42.

⁷⁵⁶ *Fuel Retailers Association of Southern Africa v Director General Environmental Management, Department of Agriculture Conservation and Environment Mpumalanga Province and Others* 2007 (6) SA 4 (CC) 44.

construction of the filling station would have adverse effects on the environment. The applicant insisted that the environmental authorities should consider whether the proposed filling station would be socially, environmentally, and economically sustainable as required by the laws governing the protection of the environment.

The *Constitutional Court* at paragraph 44, indicated that to protect people's health and wellbeing development must be sustainable.⁷⁵⁷ It stated that:

What is immediately apparent from section 24 is the explicit recognition of the obligation to promote justifiable "economic and social development. Economic and social development is essential to the well-being of human beings but development cannot subsist on a deteriorating environmental base. Unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development. Promotion of development requires the protection of the environment. Yet the environment cannot be protected if development does not pay attention to the costs of environmental destruction. The environment and development are thus inexorably linked.

It should be noted that socio-economic development should not degrade the environment to the point where it can harm people's health and wellbeing. It is therefore imperative to always strike a balance between these seemingly always competing interests.⁷⁵⁸ The 1996 *RSA Constitution* plays a significant role in safeguarding the socio-economic rights of mine-host communities impacted by diamond mining. Its emphasis is achieving equality and promoting sustainable economic and social development, while ensuring environmental protection. Section 24 guarantees the right to a healthy environment. The latter extends beyond healthcare, to encompass broader environmental integrity and community wellbeing. Mandates to promote sustainable development highlight the interplay between economic progress and environmental preservation. Overall, the Constitution provides a robust framework for balancing socio-economic advancement with environmental conservation. Thus, the Constitution ensures the wellbeing of mine-host communities amid diamond-mining activities.

⁷⁵⁷ Mahiya *The Role of South Africa's Environmental Rights in the Transformative Constitutionalism* 44.

⁷⁵⁸ Feris 2008 *SAJHR* 43. Du Plessis 2011 *SAJHR* 299.

For mine-host communities affected by diamond mining, this constitutional framework ensures that their socio-economic rights are protected. This is attained by promoting an environment that supports their health and wellbeing. The development of mineral resources must be balanced with environmental preservation to prevent harm to these communities. The 1996 *RSA Constitution* provides a robust framework for balancing socio-economic advancement with environmental conservation. This balance is crucial in promoting justifiable economic and social development that does not hamper environmental integrity and community health.

5.3.2.2 The right to property

Section 25 of the 1996 *RSA Constitution* lays a crucial foundation for the socio-economic rights of mine-host communities, particularly in the context of mining activities. This constitutional provision not only safeguards the right to property, but also establishes principles that ensure the protection, compensation, and overall wellbeing of communities affected by mining.⁷⁵⁹ Firstly, Section 25 guarantees that no one may be arbitrarily deprived of their property. This protection is fundamental for mine-host communities whose lands and resources may be subject to expropriation for mining purposes. By stipulating that expropriation can only occur for a public purpose or in the public interest, the *1996 RSA Constitution* mandates that such actions must consider and prioritise the broader societal benefits. These include the socio-economic rights of affected communities.⁷⁶⁰

Moreover, the requirement for just and equitable compensation under Section 25 ensures that communities are fairly recompensed for the loss of their property or resources.⁷⁶¹ Compensation must not only reflect the market value of the property but also its social, cultural, and economic significance to the community.⁷⁶² This

⁷⁵⁹ Coggin 2021 *Constitutional Court Review* 3.

⁷⁶⁰ *Agri South Africa v Minister for Minerals and Energy* (CCT 51/12) [2013] ZACC 9; 2013 (4) SA 1 (CC); 2013 (7) BCLR 727 (CC) (18 April 2013).

⁷⁶¹ Van der Walt and Pienaar *Introduction to the Law of Property* 307.

⁷⁶² *Florence v Government of the Republic of South Africa* (2014) ZACC 22.

provision prevents communities from bearing disproportionate burdens or being economically-disadvantaged due to mining activities.⁷⁶³

In the specific context of mine-host communities, whose livelihoods often depend directly on the land and resources being exploited, Section 25 becomes particularly relevant. It provides a legal framework that obligates the state and mining companies to engage with communities in a fair and transparent manner. Communities are entitled to participate in decision-making processes that affect their land and resources, ensuring their voices are heard and their rights respected.⁷⁶⁴ Section 25 contributes to sustainable development by promoting a balance between economic advancement through mining and the preservation of community wellbeing. By requiring that expropriation and development activities be in the public interest, the Constitution encourages practices that minimise environmental degradation, protect cultural heritage, and enhance the overall quality of life for mine host communities.⁷⁶⁵

In conclusion, Section 25 of the 1996 *RSA Constitution* forms a solid foundation for the socio-economic rights of mine-host communities in South Africa. This is achieved by protecting their property rights, ensuring fair compensation, and promoting sustainable development practices. It sets standards that guide policy and decision-making processes. It aims to achieve equitable outcomes and mitigate potential harms associated with mining activities. As such, Section 25 plays a pivotal role in upholding the dignity, rights, and socio-economic wellbeing of mine-host communities. It aligns with broader constitutional principles of equality, justice, and sustainable development.

5.3.2.3 The right to healthcare, food, water, and social security

The constitutional provision in Section 27 of the 1996 *RSA Constitution* safeguards the socio-economic rights of mine-host communities, particularly within the challenging context of mining activities. This section asserts the fundamental right

⁷⁶³ Mostert, Badenhorst, Pienaar *et al* *The Principles of the Law of Property in South Africa* 126.

⁷⁶⁴ Mostert, Badenhorst, Pienaar *et al* *The Principles of the Law of Property in South Africa* 126.

⁷⁶⁵ Van der Walt and Pienaar *Introduction to the Law of Property* 307.

of every individual to access sufficient food and water. The section places a crucial obligation on the state to enact legislative and other measures aimed at progressively realising these rights within its available resources.⁷⁶⁶

For mine-host communities, whose livelihoods are deeply intertwined with the land and natural resources affected by mining, Section 27 assumes a foundational role.⁷⁶⁷ These communities rely heavily on agriculture, livestock, and natural water resources for sustenance. This underscores the importance of protecting food, land and water resources from the potential adverse impacts of mining operations.⁷⁶⁸

Moreover, Section 27 reflects South Africa's commitment to promoting sustainable development practices that prioritise the wellbeing and dignity of all its citizens.⁷⁶⁹ By mandating the state to take reasonable measures to achieve food and water security, the 1996 *RSA Constitution* fosters an environment where mining activities can coexist harmoniously with community interests.⁷⁷⁰ This proactive approach not only addresses immediate health and nutritional needs, but also strengthens the long-term resilience and prosperity of mine-host communities.⁷⁷¹ The right to food and water enshrined in Section 27 aligns with international human rights standards. This reaffirms South Africa's adherence to the global principles of equity and justice in the face of industrial development.⁷⁷² It empowers mine-host communities to assert their rights and demand accountability from stakeholders. This is to ensure their inclusion in decision-making processes that impact their daily lives and future prospects.⁷⁷³

In conclusion, Section 27 of the *1996 RSA Constitution* serves as a fundamental pillar for advancing the socio-economic rights of mine-host communities affected by mining activities. By guaranteeing access to sufficient food and water and

⁷⁶⁶ Nkrumah 2019 *De Jure Law Journal* 47.

⁷⁶⁷ Shackleton 2020 *Land Use Policy* 1.

⁷⁶⁸ Shackleton 2020 *Land Use Policy* 2.

⁷⁶⁹ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁷⁷⁰ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁷⁷¹ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁷⁷² McLaren, Moyo and Jeffery *The Right to Food in South Africa* 16.

⁷⁷³ McLaren, Moyo and Jeffery *The Right to Food in South Africa* 16

mandating protective measures, this constitutional provision mitigates potential adverse impacts. It also promotes inclusive and sustainable development.

5.3.2.4 The right to access to information

The right to access information, enshrined in Section 32, guarantees every individual the ability to obtain information held by the state or any other entity that is necessary for exercising or protecting their rights.⁷⁷⁴ For mine-host communities, grappling with the socio-economic impacts of mining, this right becomes indispensable. These communities often face significant challenges. These range from environmental degradation to socio-economic displacement. Addressing these challenges necessitates full access to information regarding mining operations, environmental assessments, resource utilisation, and community impact assessments.

By granting mine host communities access to pertinent information, section 32 empowers them to monitor and evaluate potential risks and impacts associated with mining activities. This includes understanding the terms of mining licenses, environmental mitigation plans, and corporate social responsibility commitments that influence community well-being. Moreover, transparency fostered by section 32 ensures that decisions affecting mine host communities are made openly, with public scrutiny, minimising the risk of neglecting community interests or environmental concerns. Furthermore, the right to access information facilitates meaningful engagement and negotiation between mine host communities, government agencies, and mining companies. Armed with comprehensive information, communities can assert their rights, articulate concerns, and demand accountability in decision-making processes that directly affect their land, resources, and future prospects.

Internationally, section 32 aligns with human rights norms, reinforcing South Africa's commitment to transparency, accountability, and equitable access to information in

⁷⁷⁴ Lovells 2016 <https://www.lexology.com/library/detail.aspx?g=fc8e3bf1-2e27-4dba-b145-e6e41727433c>.

environmental governance and resource management. By promoting informed decision-making and community participation, this constitutional provision underpins sustainable development practices that prioritise socio-economic rights and the well-being of mine host communities.

Section 32 of the 1996 *RSA Constitution* serves as a fundamental pillar for protecting and advancing the socio-economic rights of mine host communities impacted by mining activities. By ensuring unfettered access to critical information, this constitutional provision empowers communities to safeguard their interests, participate actively in development processes, and hold stakeholders accountable for decisions that shape their environment and livelihoods. It exemplifies South Africa's constitutional commitment to fostering inclusive and sustainable development, where transparency and community empowerment are essential principles in managing the intricate dynamics of mining operations while ensuring the long-term welfare of mine host communities.

5.3.2.5 The right to just administrative action

The right to just administrative action, as articulated in section 33 mandates that decisions regarding mining licenses, environmental permits, and community consultations must be fair and equitable. This ensures that communities are not unfairly burdened or marginalised by decisions that prioritise commercial interests over their socio-economic well-being. By requiring administrative actions to be reasonable and procedurally fair, the 1996 *RSA Constitution* aims to mitigate the adverse effects of mining activities and uphold the dignity and rights of affected communities.

The right to receive written reasons for administrative decisions empowers mine host communities to understand the rationale behind regulatory and developmental choices that impact their lives. This transparency enhances accountability, allowing communities to challenge decisions that may disproportionately affect their socio-economic rights and cultural heritage. Section 33 is a reflection of South Africa's constitutional commitment to principles of good governance and human rights,

ensuring that administrative processes in the mining sector align with global standards of justice and equity.

In conclusion, Section 33 of the 1996 *RSA Constitution* serves as a cornerstone for advancing the socio-economic rights of mine host communities affected by mining activities. By demanding that administrative actions uphold fairness, reasonableness, and procedural fairness, this constitutional provision empowers communities to assert their rights, engage meaningfully in decision-making processes, and hold stakeholders accountable for decisions that impact their environment and livelihoods.

5.3.3 National laws and regulations

5.3.3.1 The National Environmental Management Act 107 of 1998 (hereinafter NEMA)

The 1998 *NEMA* stands as an important document for the protection of both the environment and the socio-economic rights of communities affected by industrial activities, particularly in the mining sector. In the context of mine host communities, where the delicate balance between economic development and environmental preservation is often tested, the 1998 *NEMA* serves as a guiding framework. In its Preamble the 1998 *NEMA* recognises the inalienable right of every individual to an environment that fosters health and well-being. This fundamental principle underscores the significance of sustainable development, where the relationship of environmental, social, and economic factors is key in decision-making processes.

The Preamble to the 1998 *NEMA* also emphasises the need for cooperative environmental governance, wherein all spheres of government collaborate to safeguard the environment and uphold the rights of affected communities. This cooperative approach recognises the interconnectedness of environmental preservation and socio-economic development, advocating for holistic solutions that benefit both present and future generations.

Section 2⁷⁷⁵ of the 1998 *NEMA* underscores a fundamental commitment to the respect, promotion, and protection of socio-economic rights as enshrined in Chapter 2 of the 1996 *RSA Constitution*. By recognising the right to an environment free from harm, the 1998 *NEMA* inherently acknowledges the intrinsic link between environmental quality and socio-economic well-being. This provision underscores the legislative imperative to align environmental management practices with constitutional mandates, ensuring that the pursuit of sustainable development through mineral extraction enhances, rather than undermines, the socio-economic rights of everyone.

Building upon this foundation, Section 2⁷⁷⁶ of the 1998 *NEMA* imposes a duty upon the state to take reasonable measures to prevent pollution, promote conservation, and secure sustainable development. This obligation underscores the proactive role of the government in mitigating environmental harm, conserving natural resources, and fostering sustainable practices that benefit present and future generations. By integrating environmental considerations into policymaking and implementation processes, the 1998 *NEMA* seeks to reconcile the imperatives of economic development with the imperative of environmental protection, thereby safeguarding the socio-economic rights of mine host communities.

Section 2⁷⁷⁷ also emphasises the overarching importance of integrating environmental principles into all spheres of government action. This provision underscores the need for coordinated and collaborative efforts across various governmental bodies to ensure that environmental considerations are mainstreamed into decision-making processes at all levels. By embedding environmental management principles within governmental mandates, the 1998 *NEMA* strives to foster a culture of environmental stewardship and accountability, thereby advancing the socio-economic rights of mine host communities through effective governance mechanisms.

⁷⁷⁵ S 2(1)(a) of the *NEMA* (1998).

⁷⁷⁶ S 2(2) of the *NEMA* (1998).

⁷⁷⁷ S 2(3) of the *NEMA* (1998).

The principles outlined in Section 2⁷⁷⁸ further elucidate the holistic approach to environmental management mandated by the 1998 *NEMA*. From promoting ecologically sustainable development to enhancing public participation and accountability, these principles provide a comprehensive framework for addressing the complex interplay of environmental, social, and economic factors in decision-making processes. By embracing principles such as intergenerational equity, environmental justice, and cooperative governance, the 1998 *NEMA* seeks to ensure that mine host communities are empowered to participate meaningfully in environmental decision-making processes, thereby advancing their socio-economic rights and promoting inclusive and sustainable development.

Section 28 of the 1998 *NEMA* imposes a fundamental duty on all individuals, companies, and organs of state to prevent and mitigate significant environmental harm.⁷⁷⁹ This duty reflects a proactive approach to environmental management, rooted in the principles of responsibility and accountability. In the context of mine host communities in South Africa, Section 28 of the 1998 *NEMA* emerges as a crucial legal instrument for the protection and promotion of socio-economic rights.

Mine host communities often bear the brunt of environmental degradation and pollution resulting from mining activities. In this context, section 28 mandates that stakeholders in the mining sector take proactive measures to prevent environmental harm, such as conducting thorough environmental impact assessments before beginning operations and implementing strict control measures to minimise pollution and ecological degradation. By prioritising the prevention of environmental harm, section 28 aspires to protect the socio-economic rights of mine host communities, including their right to a clean and healthy environment, access to clean water and air, and protection of their livelihoods.

Section 28 highlights the importance of remediation and minimisation in cases where environmental harm cannot be entirely prevented. This includes obligations for mining companies to clean up polluted areas, rehabilitate degraded ecosystems,

⁷⁷⁸ S 2(4)(a) -(r) of *NEMA* (1998).

⁷⁷⁹ S 28(1) of the *NEMA* (1998).

and compensate affected communities for environmental losses. By requiring mining companies to take responsibility for the environmental impacts of their activities, section 28 promotes environmental justice and ensures that mine host communities are not disproportionately burdened by the adverse effects of mining operations.

Failure to comply with the obligations outlined in section 28 may result in legal consequences, including fines, penalties, and civil lawsuits.⁷⁸⁰ This legal accountability serves as a deterrent against environmental wrongdoing and reinforces the principle that mining companies must prioritise the protection of the environment and the socio-economic rights of mine host communities. The 1998 *NEMA* represents a vital legislative instrument that not only seeks to protect the environment but also upholds the socio-economic rights of everybody in South Africans, including mine host communities. Through its provisions and principles, the 1998 *NEMA* embodies a commitment to environmental justice, sustainable development, and inclusive governance, thereby laying the groundwork for a more equitable and sustainable future for generations to come.

5.3.3.2 The Mineral and Petroleum Resources Development Act 28 of 2002 and the Mineral and Petroleum Resources Development Regulations of 2004

Rooted in the broader framework of environmental governance established by the 1998 *NEMA*, the 2002 *MPRDA* stands as a pivotal piece of legislation that governs the exploration, exploitation, and beneficiation of mineral and petroleum resources.⁷⁸¹ Its scope covers a comprehensive regulatory regime that navigates the intricate balance between harnessing natural resources for economic development and ensuring environmental sustainability. By building upon the foundational principles⁷⁸² and framework set forth by the 1998 *NEMA*, the 2002 *MPRDA* lays the groundwork for responsible mineral resource management, intertwining environmental protection with socio-economic considerations to

⁷⁸⁰ S 28 (15) of the *NEMA* (1998).

⁷⁸¹ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁷⁸² Sustainable development, prevention of environmental harm, duty of care, polluter pays principle and public participation. S 2 and S 28 of *NEMA* (1998).

advance the nation's developmental objectives while safeguarding the rights and interests of present and future generations.

The 2002 *MPRDA* was enacted to give effect to section 24⁷⁸³ of the 1996 *RSA Constitution* by ensuring that South Africa's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development.⁷⁸⁴ The 2002 *MPRDA* makes provision for equitable access to and the sustainable development of the nation's mineral and petroleum resources and to provide for matters connected therewith.⁷⁸⁵ The Preamble emphasises the following:

- Recognises that minerals and petroleum are non-renewable natural resources.
- Acknowledges that in South Africa the mineral and petroleum resources belong to the nation and that the state is the custodian thereof.
- Affirms the obligation of the state to protect the environment for the benefit of present and future generations to ensure ecological sustainable development of mineral and petroleum resources and to promote economic and social development.
- Recognises the need to promote local and rural development and the social upliftment of communities affected by mining.
- Reaffirms the state's commitment to reform and bring about equitable access to South Africa's mineral and petroleum resources.
- Is committed to eradicating all forms of discriminatory practices in the mineral and petroleum industries.
- Considers the obligation of the state under the constitution to take legislative and other measures to redress the results of past racial discrimination.
- Reaffirms the commitment of the state to guaranteeing security of tenure in respect of prospecting and mining operations; and

⁷⁸³ S 24 of the *Constitution* (1996) guarantees every individual the right to live in an environment that fosters health and well-being. It places a duty on the state to enact reasonable legislative and other measures aimed at safeguarding the environment for the benefit of both current and future generations. These measures are specifically directed towards preventing pollution and ecological degradation, promoting conservation efforts, and facilitating sustainable development practices.

⁷⁸⁴ Ramatji *A Legal Analysis of the Mineral and Petroleum Resources Development Act 28 of 2002 and its impact in Mining Operations in the Limpopo Province* 13. S 2 (h) of the *MPRDA* (2002).

⁷⁸⁵ The Preamble of the *MPRDA* (2002).

- Emphasises the need to create an internationally competitive and efficient administrative and regulatory regime.

Emphasising the state ownership of mineral resources, section 3 of the 2002 *MPRDA* asserts that these resources are the common heritage of all South Africans. This provision underscores the importance of distributing the benefits derived from mining activities equitably among the populace, including mine host communities.⁷⁸⁶ Furthermore, the 2002 *MPRDA* designates the state as the custodian of mineral and petroleum resources, reinforcing its obligation to manage these resources in a manner that serves the collective interests of the nation. This custodianship implies a responsibility to prioritise the well-being of mine host communities in resource management decisions.⁷⁸⁷

The 2002 *MPRDA* outlines a comprehensive application process for prospecting rights, emphasising the importance of consultation with landowners and affected parties. This consultation process aims to ensure community participation, address concerns, and incorporate local perspectives into decision-making, fostering a more inclusive approach to resource management.⁷⁸⁸ Section 10 of the 2002 *MPRDA* underscores the imperative of consultation with interested and affected parties prior to the granting of prospecting or mining rights, ensuring inclusivity and stakeholder engagement in decision-making processes. Furthermore, Section 12 gives content to the 2002 *MPRDA*'s commitment to redressing historical disparities by promoting assistance to historically disadvantaged individuals within the mineral and petroleum industries, fostering equity and empowerment.

Section 20 provides a regulatory framework that grants permission to remove and dispose of minerals during prospecting, subject to specific conditions such as the Minister's written consent thereby balancing resource extraction with environmental considerations. The 2002 *MPRDA* further promotes beneficiation, as highlighted in section 26, encouraging value addition to minerals before export to maximise economic benefits and promote local development. Additionally, section 30

⁷⁸⁶ S 3 of the *MPRDA* (2002).

⁷⁸⁷ S 3 of the *MPRDA* (2002).

⁷⁸⁸ S 16 of the *MPRDA* (2002).

regulates the disclosure of information obtained during prospecting or mining operations, balancing the need for transparency with the protection of proprietary and confidential data.

As it pertains to environmental management, sections 35, 37, 38, 39, and 41 outline a comprehensive set of principles and obligations that mitigate environmental impacts associated with mineral extraction. While granting rights for prospecting and mining, the 2002 *MPRDA* mandates adherence to environmental principles, including integrated environmental management and the development of environmental management plans. Holders of retention permits are also obligated to comply with environmental management requirements, ensuring responsible stewardship of resources.

Section 41 mandates the provision of financial resources to cover the costs of environmental cleanup resulting from prospecting or mining activities, emphasising accountability and ensuring that environmental liabilities are adequately addressed. In the pursuit of equitable access to mineral resources and the empowerment of communities, section 104 of the 2002 *MPRDA* enables communities to apply for preferential prospecting or mining rights, provided they demonstrate commitment to community development,⁷⁸⁹ submit a detailed development plan,⁷⁹⁰ show anticipated benefits to the community,⁷⁹¹ and have access to necessary resources.⁷⁹² The Minister may grant such rights for up to five years, renewable, subject to conditions.⁷⁹³ However, these rights won't be granted where other mining rights or permits are already in place to avoid conflicts.⁷⁹⁴ Overall, this section aims to empower communities while ensuring regulatory clarity and stability in mineral resource management.

⁷⁸⁹ S 104 (2) (a) of the *MPRDA* (2002).

⁷⁹⁰ S 104 (2) (b) of the *MPRDA* (2002).

⁷⁹¹ S 104 (2) (c) of the *MPRDA* (2002).

⁷⁹² S 104 (2) (d) of the *MPRDA* (2002).

⁷⁹³ S 104 (3) of the *MPRDA* (2002).

⁷⁹⁴ S 104 (4) of the *MPRDA* (2002).

The 2002 *MPRDA* stands as a foundation of South Africa's mineral development framework, setting forth broad principles for the regulation of prospecting and mining activities. However, the implementation of these principles requires a more thorough approach, which is where the 2004 *MPRDA* Regulations come into play. The 2004 *MPRDA Regulations* serve as a detailed extension of the 2002 *MPRDA* by providing a clearer roadmap for navigating the complexities of the mining sector. Furthermore, the 2004 *MPRDA Regulations* offer clarity and specificity to the general principles laid out in the 2002 *MPRDA*. While the 2002 *MPRDA* emphasises the importance of environmental management, the regulations delineate the precise steps involved in conducting environmental impact assessments,⁷⁹⁵ ensuring that companies have clear guidance on how to comply with environmental standards.

The regulations streamline processes by outlining detailed application procedures for prospecting⁷⁹⁶ and mining rights.⁷⁹⁷ By stipulating the required documentation and associated fees, they create a more predictable and efficient system for mining companies operating within the sector. This not only reduces ambiguity but also fosters an environment conducive to investment and growth.

The 2004 *MPRDA Regulations* further contribute to the realm of enforcement, by establishing specific requirements for compliance. The Regulations make it easier to enforce the provisions of the 2002 *MPRDA*, thereby safeguarding fairness and protecting the environment and communities potentially impacted by mining activities.⁷⁹⁸ These regulations offer detailed guidance on several aspects of the 2002 *MPRDA*, providing clarity on technical competency standards for personnel involved in mining operations and outlining consultation procedures with affected communities. This ensures that companies have a comprehensive understanding of their obligations and responsibilities under the law, facilitating smoother operations and promoting sustainable practices.

⁷⁹⁵ R 50 of the *MPRDA Regulations* (2004).

⁷⁹⁶ R 5 of the *MPRDA Regulations* (2004).

⁷⁹⁷ R 10 of the *MPRDA Regulations* (2004).

⁷⁹⁸ R 63 of the *MPRDA Regulation* (2004). This regulation deals with administrative fine for non-compliance.

The 2004 *MPRDA Regulations* serve as a critical bridge between the wide gap between the broad principles of the 2002 *MPRDA* and the practical realities of mineral extraction in South Africa. The 2004 *MPRDA Regulations* offer a detailed roadmap for companies, that addresses environmental and social concerns and contributes to a well-managed and sustainable mining sector, and play a pivotal role in shaping the future of mineral development in the country.

Within these regulations, specific provisions regarding Social and Labour Plans (hereafter *SLPs*) are outlined to ensure the promotion of socio-economic development and the protection mine host communities. Regulation 41 describes the core objectives of *SLPs*, emphasising their role in promoting employment opportunities, advancing the social and economic welfare of all South Africans, and contributing to the transformation of the mining industry. Furthermore, *SLPs* are designed to ensure that holders of mining rights actively contribute to the socio-economic development of the areas in which they operate, thereby fostering sustainable growth and equitable distribution of benefits.

Regulation 42 stipulates the submission of an *SLP* as a prerequisite for obtaining a mining right. Included in the application must be a comprehensive plan detailing various aspects of social and labour initiatives, as outlined in Regulation 46. Such initiatives encompass human resources development programmes, local economic development projects, and measures for managing downscaling and retrenchment. Additionally, the *SLP* must include provisions for financial resources to facilitate the implementation of these initiatives.

Highlighted in Regulation 43 is the applicability of *SLPs*, specifying that once lodged with the Regional Manager, they remain valid until a closure certificate is issued. This underscores the permanent commitment required from mineral rights holders to uphold their social and labour obligations throughout the duration of the mining operation. To ensure compliance and accountability, Regulation 44 mandates that any amendment or variation to an *SLP* requires the consent of the Minister after the granting of the mining right. Furthermore, Regulation 45 necessitates the

submission of annual reports on *SLP* compliance to the relevant Regional Manager, thereby fostering transparency and oversight.

In conclusion, the 2002 *MPRDA* and the 2004 *MPRDA Regulations* collectively underscore the government's dedication to protecting the socio-economic rights of mine host communities in South Africa. The 2002 *MPRDA* promotes these rights by facilitating community participation in decision-making, addressing historical disparities, mitigating environmental impacts, and providing avenues for economic empowerment. By integrating socio-economic considerations into the regulatory framework for mineral resource governance, it ensures that resource exploitation benefits all stakeholders, especially those in mining areas. The 2004 *MPRDA Regulations* further this commitment by establishing clear guidelines and requirements to foster sustainable development and equitable benefit distribution. These regulations ensure that mining activities contribute positively to the socio-economic development of mine host communities and South Africa as a whole.

5.3.3.3 The *National Water Act* 36 of 1998 (hereafter NWA)

The 1998 *NWA* introduced a new regulatory water regime in South Africa with the purpose of reforming the law relating to water resources.⁷⁹⁹ The Preamble embodies the fundamental principles guiding water resource management. It acknowledges that water is a scarce and essential national resource, emphasising its unitary and interdependent nature. Furthermore, it acknowledges historical injustices that have hindered equal access to water and underpins the government's responsibility for the equitable allocation and management of water resources. The Preamble highlights the overarching goal of achieving sustainable water use for the benefit of all users and stresses the importance of protecting water quality. It also recognises the necessity of integrated water resource management, including delegation to regional or catchment levels to facilitate broad participation. Within this context, this discussion sets the stage for an exploration of how water resource management intersects with the socio-economic rights of mine host communities. The purpose of

⁷⁹⁹ Viljoen 2016 *Water as Public Property A Parallel Evaluation of South African and German Law* i.

the 1998 *NWA* is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in an efficient, equitable and sustainable manner while ensuring that the basic human needs of everyone in South Africa are met while also promoting social and economic development.⁸⁰⁰

Section 3 of the 1998 *NWA* establishes the principle of public trusteeship⁸⁰¹ over the nation's water resources, with the national sphere of government serving as the custodian. These provisions underscore the government's crucial role as steward of the country's water heritage, charged with safeguarding this vital resource for present and future generations. Importantly, this commitment to equitable water management also intersects with the protection of the socio-economic right to water, for everyone in South Africa inclusive of mine host communities.⁸⁰² By ensuring equitable access to water resources and promoting beneficial use in the public interest, the government can address historical injustices and contribute to the socio-economic development of these communities. Thus, section 3 of the 1998 *NWA* not only establishes the framework for sustainable water management but also reinforces the government's obligation to protect and advance the socio-economic rights of everyone in South Africa, including those in mine host communities.

Section 4 of the 1998 *NWA* intersects with the protection of socio-economic rights, particularly for mine host communities, as outlined in section 3 above. By establishing clear entitlements to water use and prioritising sustainable and equitable management, the 1998 *NWA* contributes to addressing historical injustices and promoting the socio-economic development of marginalised communities. Access to water for domestic purposes, agriculture, and other essential activities is essential for the well-being and livelihoods of mine host communities. Therefore,

⁸⁰⁰ S 2 (a) – (k) of *NWA* (1998).

⁸⁰¹ Public trusteeship is the responsibility of a public trustee to manage and protect public assets, resources or interests for the benefit of the community or society as a whole. While custodianship involves the care and management of specific assets or resources typically on behalf of another party. A custodian is responsible for safeguarding these assets but may not have the same level of authority or responsibility as a trustee.

⁸⁰² S 27 of the *RSA Constitution* (1996).

the entitlement to water use under section 4, when coupled with the government's role as a public trustee of water resources under section 3, reinforces the commitment to protecting and advancing the socio-economic rights of everyone in South Africa, including those in mine host communities.

Additionally, in its role as the pivotal regulatory framework governing water use across various sectors, including the mining industry, the 1998 *NWA* plays a critical role in the extraction process, particularly in the removal of gangue materials.⁸⁰³ In accordance with the 1998 *NWA*, all water use activities, including the taking and storing of water, activities that reduce stream flow, waste discharges, and disposals, must be licensed unless specified otherwise in Schedule I of the Act.⁸⁰⁴

For diamond mining companies operating in South Africa, obtaining a water use license is imperative to ensure compliance with regulatory requirements. This licensing process serves as a mechanism to mitigate potential adverse impacts on water resources, particularly regarding pollution prevention. Diamond mining activities have the potential to introduce pollutants into water sources, necessitating the implementation of reasonable measures to prevent, mitigate, and remediate pollution.⁸⁰⁵

Under the 1998 *NWA*, reasonable measures to prevent water pollution may include ceasing, modifying, or controlling activities contributing to pollution, complying with prescribed waste standards and or management practices, containing or preventing the movement of pollutants, eliminating pollution sources, and remedying the effects of pollution or disturbance to watercourse beds.⁸⁰⁶ By enforcing these measures, the 1998 *NWA* aims to safeguard water quality and protect the interests of, among others mine host communities residing in proximity to mining operations.

⁸⁰³ Worthless rock or other impurities that surround and are mixed with a valuable mineral in an ore deposit, essentially considered waste material.

⁸⁰⁴ S 86 of the *NWA* (1998).

⁸⁰⁵ S 19(1) (a)-(b) of *NWA* (1998).

⁸⁰⁶ S 19 (2) (a)-(f) of *NWA* (1998).

Moreover, the requirement for water use licenses ensures that water resources are managed in a manner that promotes equitable access and sustainable use. By considering the needs of communities, the licensing process facilitates community engagement and participation in water resource management decisions. This approach aligns with the broader objectives of the 1998 *NWA*, which seeks to balance economic development with environmental protection and social equity.⁸⁰⁷

The 1998 *NWA* mandates the licensing of water use activities in diamond mining to safeguard water resources, prevent pollution, and promote equitable and sustainable water management practices.⁸⁰⁸ Through this regulatory framework, the communal needs, and by extension, the needs of mine host communities are considered, contributing to the overarching goal of ensuring the responsible and sustainable utilisation of water resources in South Africa's mining sector.⁸⁰⁹

5.3.3.4 The *Local Government Municipal Systems Act* 32 of 2000 (hereafter *MSysA*)

The 2000 *MSysA* serves as a framework for promoting and safeguarding socio-economic rights within mine host communities, despite not explicitly addressing these rights. Within its provisions, particularly in Chapters 5, 6, 7, and 10, the 2000 *MSysA* lays down a comprehensive roadmap for municipalities to integrate the needs and priorities of these communities into their developmental agendas.

The Integrated Development Plans (hereafter *IDPs*) and its processes emerges as a foundation for addressing community needs.⁸¹⁰ Sections 25(2) and (3) of the 2000 *MSysA* mandate that *IDPs* must consider the unique socio-economic circumstances of the municipality, which include those of mine host communities, ensuring that their aspirations and challenges are reflected in the planning process. This section underscores the importance of public participation⁸¹¹ thereby empowering

⁸⁰⁷ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁸⁰⁸ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁸⁰⁹ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁸¹⁰ Chapter 5 of the *MSysA* (2000).

⁸¹¹ S 27(1) and (2) of the *MSysA* (2000).

community members to actively contribute to the formulation of these plans, thereby ensuring that their voices are heard, and their concerns addressed.

Chapter 6 of the 2000 *MSysA* focuses on performance management, accentuating the alignment of performance indicators with the objectives outlined in *IDPs*. Section 38 directs municipalities to set indicators that directly correlate with the socio-economic needs identified within mine host communities. This linkage ensures that projects and initiatives are tailored to address the specific challenges faced by these communities, thus boosting the impact of municipal interventions.

Chapter 7 compels municipalities to develop service delivery plans aimed at guaranteeing the provision of essential services within mine host communities (section 76). By prioritising the delivery of services crucial to socio-economic development, such as water, sanitation, and infrastructure, the 2000 *MSysA* contributes to enhancing the quality of life and promoting economic opportunities within these communities.

Chapter 10 of the 2000 *MSysA* accentuates community participation in municipal decision-making processes.⁸¹² By providing various mechanisms for engagement, including public meetings, forums, and advisory structures, the 2000 *NWA* ensures that mine host communities have a direct stake in shaping policies and programs that impact their socio-economic rights. This participatory approach fosters ownership and accountability, fostering a sense of empowerment among community members.

While the 2000 *MSysA* may not explicitly mention socio-economic rights, its provisions lay a substantial foundation for promoting and protecting these rights within mine host communities. Through the integration of community needs into *IDPs*, the alignment of performance indicators, the provision of essential services, and mechanisms for community participation, the 2000 *MSysA* fosters inclusive and sustainable development, ultimately advancing the socio-economic well-being of mine host communities. The above discussion gives evidence that the legal

⁸¹² S 100 of the *MSysA* (2000).

framework established by the 1996 *RSA Constitution*, the 1998 *NEMA*, the 2000 *NWA* the 2002 *MPRDA* and its regulations and plays a crucial role in safeguarding the socio-economic rights of mine host communities impacted by industrial activities, particularly in the mining sector. These legislative instruments recognise the inalienable right of individuals to a healthy environment and prioritise sustainable development while promoting justifiable economic and social progress.

Through provisions such as section 24 of the 1996 *RSA Constitution* and section 2 of the 1998 *NEMA*, the South African legal framework stresses the interdependence between environmental protection and socio-economic well-being. It mandates the government to take reasonable measures to prevent pollution, promote conservation, and secure sustainable development, thereby ensuring that mining activities enhance, rather than undermine, the livelihoods of affected communities.

The legal framework enforces accountability through legal consequences for non-compliance, thereby promoting environmental justice and ensuring that mine host communities are not disproportionately affected by the adverse effects of mining operations. Furthermore, the 1998 *NWA* and the 2000 *MPRDA* prioritise the responsible management of natural resources while promoting equitable access to benefits and protections for all citizens, including mine host communities. The 2000 *MPRDA*, together with its 2004 Regulations, sets out clear guidelines for the exploration and exploitation of mineral resources, emphasising community engagement, environmental stewardship, and socio-economic empowerment. By promoting inclusive decision-making processes and requiring companies to adhere to strict environmental standards, the 2000 *MPRDA* aims to ensure that mining activities contribute positively to the well-being of mine host communities. Furthermore, the provisions of the 2004 *MPRDA Regulations* regarding *SLPs* highlight the government's commitment to protecting the socio-economic rights of mine host communities in South Africa. By establishing clear guidelines and requirements, these regulations aim to ensure that mining activities contribute positively to the socio-economic development of these communities and the nation as a whole. The 1998 *NWA* establishes principles of equitable water management, recognising water as a scarce resource essential for sustainable development.

Through the licensing process, the 1998 *MMA* ensures that mining companies consider the needs of local communities and mitigate potential environmental impacts, safeguarding the rights of mine host communities to clean water and a healthy environment.

The 2000 *MSysA* complements these laws by providing a framework for municipalities to address the specific needs of mine host communities through integrated development planning, performance management, and service delivery. By fostering community participation and tailoring municipal initiatives to local priorities, the 2000 *MSysA* facilitates the realisation of socio-economic rights at the grassroots level. Overall, the South African legal framework for the protection of the socio-economic rights of mine host communities serves as a model for balancing economic development with environmental conservation. By integrating principles of sustainability, justice, and accountability, it lays the basis for a more equitable and sustainable future for all South Africans.

5.3.4 Institutional framework and implementation strategies (actors, agencies and institutions)

5.3.4.1 A Minerals and Mining Policy for South Africa 1998

South Africa's 1998 *White Paper on Minerals and Mining Policy* was developed through an inclusive public consultation process. Initially, a *Green Paper* was released in 1998 to gather public input, which was subsequently incorporated into the final document approved by the government. The introduction sets the stage by recognising South Africa's mining industry as a vital economic pillar, highlighting the need to address upcoming challenges during the industry's transition. It acknowledges the industry's significance and the necessity to adapt to changing policies, regulations, and global competition to ensure sustainable growth. The review process aims to tackle industry issues within the context of evolving policies and economic landscapes, emphasising the importance of preparedness and adaptability.

Chapter 2 of the Policy delves into the historical challenges faced by black individuals in South Africa concerning ownership opportunities within the mining sector.⁸¹³ It outlines the systemic barriers that have historically hindered black ownership in mining, shedding light on the need for transformative initiatives to rectify these disparities. Moreover, section 2.3 of the chapter underscores the slow progress of black representation in management roles, attributing this lag to discriminatory practices prevalent in the industry. This section emphasises the critical importance of promoting diversity and inclusivity within the mining sector to address these issues effectively.⁸¹⁴

Section 2.3 of Chapter 2 emphasises the imperative for proactive measures to dismantle historical inequalities and foster a more inclusive mining sector. It advocates for the creation of pathways that enable black individuals to access ownership and management roles, thereby contributing to a more representative and equitable industry landscape. By addressing the challenges of discrimination and limited opportunities faced by black individuals, the chapter, particularly in sections 2.1 and 2.3, advocates for structural changes that not only enhance diversity but also play a pivotal role in the broader socio-political transformation of South Africa's mining sector.

The government policy detailed in Chapter 2 of the document focuses on promoting a broader spread of ownership within the mining sector, aiming to incrementally facilitate changes that guarantee security of tenure despite alterations in mineral rights dispensation.⁸¹⁵ By recognising constitutional constraints while striving to enable equitable access to land and mineral rights, the policy sets the stage for a more inclusive and diverse ownership landscape in the industry.⁸¹⁶ This approach not only addresses historical disparities but also paves the way for increased participation of various stakeholders, including local communities, in the ownership and management structures of mining operations.

⁸¹³ S 2.1 *A Minerals and Mining Policy for South Africa* (1998).

⁸¹⁴ S 2.3 *A Minerals and Mining Policy for South Africa* (1998).

⁸¹⁵ S 2.3.1 *A Minerals and Mining Policy for South Africa* (1998).

⁸¹⁶ S 1.3.6.1 *A Minerals and Mining Policy for South Africa* (1998).

The government's policy framework set out in Chapter 2 underscores the significance of community participation and the promotion and protection of the socio-economic rights of mine host communities. By ensuring security of tenure and equitable access to land and mineral rights, the policy seeks to empower local residents and communities economically. This empowerment is crucial in enabling mine host communities to actively engage in and benefit from mining activities, thereby contributing to their social and economic development. Through these measures, the government aims to create a more inclusive and sustainable mining sector that not only drives economic growth but also uplifts the livelihoods of communities directly impacted by mining operations.

Chapter 3 of the 1998 *Policy* places a significant emphasis on promoting a safer, healthier, and more equitable environment for all stakeholders within the mining sector.⁸¹⁷ This entails implementing measures to enhance health and safety standards, ensuring that mining operations prioritise the well-being of workers and surrounding communities. Additionally, the 1998 *Policy* seeks to address issues related to environmental sustainability and social responsibility, aiming to create a more sustainable and ethical mining industry.⁸¹⁸ By prioritising the protection of stakeholders' rights and fostering a culture of responsible mining practices, the intent is to establish a sector that not only drives economic growth but also upholds the principles of social and environmental stewardship. The 1998 *Policy* does not explicitly mandate *CSR* in the mining sector. However, it emphasises the importance of promoting social responsibility, ethical practices, and sustainable development within the industry. While there may not be a specific mandate for *CSR*, the document encourages mining companies to engage in responsible practices that benefit society, the environment, and stakeholders. This aligns with the broader goal of creating a more sustainable and socially conscious mining sector.

Chapter 3 of the Policy contributes to the protection and promotion of the socio-economic rights of mine host communities in South Africa by addressing key issues

⁸¹⁷ S 3.1 *A Minerals and Mining Policy for South Africa* (1998).

⁸¹⁸ S 1.4.4.4 *A Minerals and Mining Policy for South Africa* (1998).

such as housing, living conditions, and community participation.⁸¹⁹ The chapter emphasises the need to improve housing standards for mine workers and their families, advocating for the democratisation of hostel management and the provision of family housing with community services and facilities.⁸²⁰ Additionally, it highlights the importance of involving communities in environmental impact assessments and promoting their participation in decision-making processes related to mining activities. By prioritising these aspects, Chapter 3 of the Policy aims to empower mine host communities economically, enhance their living conditions, and ensure their active involvement in the mining sector, ultimately safeguarding their socio-economic rights and well-being.

Chapter 4 of the Policy focuses on environmental management within the mining sector, acknowledging the fundamental right to a healthy environment and sustainable development as enshrined in the 1996 *RSA Constitution*.⁸²¹ The chapter underscores the necessity of legislative frameworks to prevent pollution, promote conservation efforts, and ensure the sustainable use of resources in an ecologically responsible manner. It highlights the critical areas of policy intervention, such as managing environmental impacts throughout the mining lifecycle, including exploration, operation, and rehabilitation phases, to uphold environmental integrity.⁸²² Emphasising the integration of environmental considerations into economic activities, Chapter 4 of the Policy advocates for a balanced approach that harmonises developmental needs with environmental preservation, aligning with the overarching objective of sustainable development.

In Chapter 4 of the Policy, the primary intent is to establish a comprehensive framework within the mining sector that places a strong emphasis on environmental protection, sustainable development, and the preservation of natural resources. This framework is designed to ensure that mining activities adhere to environmental regulations, prioritise pollution prevention, support conservation initiatives, and

⁸¹⁹ S 3.3 *A Minerals and Mining Policy for South Africa* (1998).

⁸²⁰ S 3.3.1 *A Minerals and Mining Policy for South Africa* (1998).

⁸²¹ S 4.1 *A Minerals and Mining Policy for South Africa* (1998).

⁸²² S 4.1 *A Minerals and Mining Policy for South Africa* (1998).

embed environmental considerations across all phases of mining operations.⁸²³ By integrating these principles, the chapter aims to create a balance between economic growth and environmental sustainability, promoting responsible resource management and ecological integrity within the industry.

Chapter 4 of the Policy plays a pivotal role in safeguarding the socio-economic rights of mine host communities by establishing a framework that prioritises environmental protection and sustainable development within the mining sector. By integrating environmental impact management into all economic activities related to mining, this chapter ensures that operations not only comply with environmental regulations but also actively work towards preventing pollution, promoting conservation efforts, and embedding environmental considerations throughout the mining lifecycle. This approach directly impacts the well-being and livelihoods of mine host communities by fostering a balance between economic growth and environmental sustainability, thereby creating a conducive environment for the communities to thrive. By upholding environmental integrity and minimising negative impacts on ecosystems, these policies contribute to enhancing the quality of life, health, and overall well-being of the communities residing near mining operations. Through the promotion of responsible resource management, ecological integrity, and sustainable practices, Chapter 4 of the Policy not only safeguards the environment but also ensures that mine host communities benefit from a harmonious relationship between economic development and environmental preservation, ultimately supporting the socio-economic rights and prosperity of these communities.

Chapter 5 of the Policy deals with regional co-operation within the mining industry, shedding light on potential transactions in the small-scale sector and the proactive role of major corporations in facilitating these processes.⁸²⁴ It stresses the importance of eradicating discrimination through legal amendments, educational initiatives, and corporate strategies as well as advocating for inclusive participation

⁸²³ S 4.1 *A Minerals and Mining Policy for South Africa* (1998).

⁸²⁴ S 5.4 *A Minerals and Mining Policy for South Africa* (1998).

by promoting investment and growth rather than imposing strict directives to enhance the involvement of black individuals in ownership and management roles.

Chapter 5 of the Policy emphasises the significance of broadening ownership structures, supporting ongoing transformations, and fostering investment and expansion to enable effective participation in ownership and management within the mining sector. It also highlights the stance that while increased participation is crucial, government interference is deemed unnecessary, and drastic alterations to corporate governance mechanisms are deemed premature given the ongoing reform initiatives. In essence, chapter 5 accentuates the value of regional collaboration, anti-discrimination measures, and creating a conducive environment for investment and development in the mining industry. The chapter emphasises the involvement of stakeholders and affected communities in discussions dealing with mineral development activities and decision-making processes within the mining industry. It advocates for active engagement and participation of all relevant parties, including communities, to ensure their voices are heard and considered in matters related to mining operations and regional co-operation.

The provisions in Chapter 5 promote and protect the socio-economic rights of mine host communities in South Africa by advocating for regional cooperation that encourages inclusive participation and investment in the mining industry. By emphasising the removal of discrimination and promoting broader ownership structures, the chapter aims to create opportunities for marginalised groups, including mine host communities, to benefit from economic growth and development.⁸²⁵ Additionally, by fostering a conducive environment for investment and growth, the chapter seeks to enhance the well-being and livelihoods of these communities, ultimately safeguarding their socio-economic rights within the mining sector. Through its emphasis on creating a level playing field and encouraging active involvement in ownership and management, it forms the basis for safeguarding the

⁸²⁵ S 5.1 *A Minerals and Mining Policy for South Africa* (1998).

socio-economic rights of mine host communities by promoting equity, inclusivity, and sustainable growth within the mining sector.

Chapter 6 of the Policy focuses on governance within the minerals industry in South Africa, highlighting the importance of efficient and cost-effective resource management by the government.⁸²⁶ It emphasises the need for governance to address mineral, human, and environmental resources while maintaining transparency and equity through regulatory and developmental dimensions.⁸²⁷ The chapter emphasises the Department of Minerals and Energy's responsibility to be responsive to stakeholder needs and industry transformation, advocating for cooperation with all levels of government and promoting open and inclusive governance through tripartism and stakeholder consultation. It underscores the significance of efficient resource management by the government, with a focus on transparency, equity, and responsiveness to stakeholder needs within the minerals industry.

Chapter 6 of the Policy highlights the Department of Minerals and Energy's role in promoting cooperation with various government levels and stakeholders, emphasising the principles of tripartism and consultation for inclusive governance.⁸²⁸ Overall, Chapter 6 highlights the importance of regulatory and developmental governance dimensions to ensure a competitive and sustainable minerals industry in South Africa. The chapter focuses on the promotion and protection of the socio-economic rights of mine host communities in South Africa by advocating for efficient and cost-effective resource management that considers mineral, human, and environmental resources. By emphasising transparency, equity, and responsiveness to stakeholder needs, the chapter aims to ensure that governance within the minerals industry benefits all stakeholders, including mine host communities.

Chapter 6 is foundational to the socio-economic rights of mine host communities as it establishes principles of efficient resource management, transparency, and equity

⁸²⁶ S 6.1 *A Minerals and Mining Policy for South Africa* (1998).

⁸²⁷ S 6.1 *A Minerals and Mining Policy for South Africa* (1998).

⁸²⁸ S 6.1 *A Minerals and Mining Policy for South Africa* (1998).

within the minerals industry. By emphasising governance that considers mineral, human, and environmental resources, the chapter aims to protect the interests of all stakeholders, including mine host communities. Through promoting cooperation with government levels and stakeholders, and advocating for inclusive governance through consultation, Chapter 6 lays the foundation for ensuring that the socio-economic rights of mine host communities are prioritised and protected, contributing to their empowerment and well-being within the mining sector.

5.3.4.2 Department of Mineral Resources and Energy

The mining industry has been a foundation of South Africa's economic development, catapulting the nation into becoming the most industrialised country in Africa.⁸²⁹ Over the years, the Department of Mineral Resources (hereafter *DMR*) has been instrumental in regulating mining activities.⁸³⁰ However, in a pivotal move on May 29, 2019, South African President Cyril Ramaphosa announced the merger of the Department of Mineral Resources and the Department of Energy, giving rise to the Department of Mineral Resources and Energy (here after *DMRE*).⁸³¹

The *DMRE* is the custodian of South Africa's mineral and petroleum resources, and it has a duty to administer these resources for the benefit of the South African citizenry.⁸³² Its primary objectives encompass the promotion of the mining sector, ensuring that mining activities are conducted safely and sustainably, while also spearheading the development and implementation of energy policies⁸³³ crucial to the nation's future.

Empowered by Section 24 of the *1996 RSA Constitution*, the *DMRE* derives its regulatory framework from the 2002 *MPRDA*.⁸³⁴ This legislative framework enables equitable access to and the sustainable development of the country's mineral

⁸²⁹ Van Wyk *Globalisation and the Minerals Industry: A South African Case Study* 9.

⁸³⁰ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>.

⁸³¹ The Department of Mineral Resources and Energy *The DMRE Strategic Plan 2020-2025* 9.

⁸³² S3 of the *MPRDA* (2002).

⁸³³ That is the production and supply of electricity in the country as well as promoting the use of renewable energy sources.

⁸³⁴ Muswaka 2017 <http://www.saflii.org/za/journals/SPECJU/2017/7.html>. See para 5.3.3.2 above.

resources. Under the *MPRDA*, any entity seeking to exploit mineral resources must undergo a rigorous application process, with the Minister of Mineral Resources tasked with granting approvals to qualifying applicants.⁸³⁵ In its role as a stakeholder in South Africa's mining sector the *DMRE* plays an important role in regulation, policy development, licensing and permitting, monitoring and enforcement and stakeholder engagement.

In pursuit of its objectives, the *DMRE* endeavors to foster an environment conducive to increased mining activity, promote corporate governance within the industry, and maximise the value derived from South Africa's mineral wealth.⁸³⁶ This is achieved through the implementation of policies and strategies geared towards inclusiveness and beneficiation for mine host communities. By prioritising the interests of these communities and ensuring their participation in the benefits of resource extraction, the *DMRE* strives to create a sustainable and mutually beneficial relationship between the mining industry and society at large.⁸³⁷

5.3.4.3 The Minerals and Mining Development Board

The Minerals and Mining Development Board is established in terms of section 57 of the 2002 *MPRDA* to oversee and advise on various aspects of mineral resource development in South Africa. Its functions, as outlined in section 58, encompass advising the Minister on matters referred to it by the 2002 *MPRDA*, sustainable development of mineral resources, industry transformation, and dispute resolution. Additionally, the Board is tasked with promoting human resource development in consultation with the Mining Qualifications Authority and has the authority to report to the Minister on 2002 *MPRDA*-related matters and inquire into any issues relevant to its objectives.

⁸³⁵ S3(2) of the *MPRDA* (2002).

⁸³⁶ Ogunnowo *An Evaluation of Natural Resources Extraction and Host Communities Reaction in Nigeria and South Africa 2005-2015* 38.

⁸³⁷ Ogunnowo *An Evaluation of Natural Resources Extraction and Host Communities Reaction in Nigeria and South Africa 2005-2015* 38.

The composition of the Board, as detailed in Section 59, consists of no fewer than 14 and no more than 18 members, reflecting the gender and racial composition of the country. Members include a Chairperson, the Chief Inspector, representatives from relevant State departments, organised labour, organised business, non-governmental organisations, community-based organisations, and individuals with relevant expertise. The Board must elect a deputy chairperson from among its members during its inaugural meeting. These provisions establish a structured and inclusive governance mechanism to guide the sustainable development and management of South Africa's mineral resources.

5.3.4.4 Mining companies

In South Africa's mining sector, diamond mines have emerged as significant stakeholders, having substantial influence and bearing complex responsibilities.⁸³⁸ An examination of their contributions and the multifaceted dynamics at play reveals the pivotal role they play in shaping the country's economic, social, and environmental landscape. South Africa's diamond mines occupy a central position in the country's mining landscape and in the discussion of the socio-economic rights of mine host communities.⁸³⁹ Through corporate social responsibility *CSR*⁸⁴⁰ initiatives, companies invest in education, healthcare, and skills development programs, empowering communities and fostering inclusive growth, contributing to economic development, creating employment opportunities, and driving infrastructure development.⁸⁴¹ However, their role extends beyond economic considerations, encompassing a broader commitment to environmental stewardship, social responsibility, and stakeholder engagement. By embracing sustainable practices and fostering inclusive growth, diamond mining companies can chart a path toward a more prosperous and equitable future for South Africa and its mine host communities.

⁸³⁸ Letsoalo 2017 *Journal of Southern African Institute of Mining and Metallurgy* 1.

⁸³⁹ Chitimira and Sethunyane 2021 *Perspectives of Law and Public Administration* 42.

⁸⁴⁰ See para 4.3.5 above.

⁸⁴¹ Chitimira and Sethunyane 2021 *Perspectives of Law and Public Administration* 42.

South Africa's mining sector, propelled by the establishment of the *DMRE* and Minerals and Mining Development Board, stands at the forefront of the nation's economic development and resource management efforts. Empowered by legislative frameworks such as the 2002 *MPRDA*, these regulatory bodies strive to ensure the sustainable exploitation of mineral resources while promoting inclusive growth and beneficiation for mine host communities. However, their responsibilities extend beyond economic considerations, encompassing environmental stewardship, social responsibility, and stakeholder engagement. By embracing sustainable practices and fostering inclusive growth, these stakeholders pave the way for a more prosperous and equitable future for South Africa and its mine host communities.

5.3.4.5 The Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry of 2018 (hereafter Mining Charter)

The protection of socio-economic rights within the context of mining activities in South Africa is enshrined in various sections of the 2018 *Mining Charter*. These sections emphasise the importance of meaningful participation, economic empowerment, and collaboration with mine host communities to ensure their well-being and development.⁸⁴² One key aspect highlighted is the integration and meaningful economic participation of historically disadvantaged persons in the ownership and economy of mineral resources.⁸⁴³ Additionally, the Charter aims to expand opportunities for these individuals to benefit from the exploitation of the nation's mineral resources, thereby empowering them economically. Moreover, standards for living conditions and housing for mine employees are addressed to safeguard their socio-economic well-being.⁸⁴⁴ The document also focuses on the need for collaboration and consultation with affected communities in the implementation of community mine development projects and *SLPs*.⁸⁴⁵ By adhering to these provisions, mining companies can contribute to the economic empowerment of mine host communities, improve their living conditions, and

⁸⁴² S 1 (b)-(d) of the *Mining Charter* (2018).

⁸⁴³ S 2.1 of the *Mining Charter* (2018).

⁸⁴⁴ S 2.6 of the *Mining Charter* (2018).

⁸⁴⁵ S 2.1.4 of the *Mining Charter* (2018).

ensure active participation in decision-making processes affecting their socio-economic rights. Through these measures, the *Mining Charter* seeks to foster sustainable development and inclusive growth within the mining sector while prioritising the interests and well-being of mine host communities.⁸⁴⁶

The recent court ruling regarding the legal status of the 2018 *Mining Charter* provides a compelling rationale for the discussion of the Charter's provisions. The judgment by the High Court of South Africa, Gauteng Division, Pretoria, in the case of *Minerals Council South Africa v The Minister of Mineral Resources and Energy and Others*,⁸⁴⁷ has stirred significant debate within the mining sector. The High Court's ruling, declaring the 2018 *Mining Charter* as policy rather than law, has profound implications for the industry's regulatory landscape. In a nuanced interpretation of the 2002 *MPRDA*, the Court concluded that the Minister's authority under section 100(2) does not extend to making law, but rather empowers the development of policy frameworks. Consequently, certain aspects of the 2018 *Charter* were set aside as unconstitutional under the *Promotion of Administrative Justice Act* 3 of 2000 (hereafter *PAJA*), including provisions related to ownership requirements, mandated structures, beneficiation offsets, and enforcement mechanisms. While the judgment offers clarity on the legal status of the Charter, its potential impact on the industry's transformational objectives and regulatory compliance remains subject to ongoing deliberation and likely appeals.

5.3.4.6 South Africa and the *KPCS*⁸⁴⁸

In May 2000, a pivotal gathering took place in Kimberley, South Africa, where Southern African diamond-producing countries convened to address the grave issue of conflict diamonds.⁸⁴⁹ These diamonds, often mined under conditions of violence and used to finance rebel movements seeking to undermine legitimate governments, posed a significant threat to peace and stability in affected regions.

⁸⁴⁶ The Preamble of the *Mining Charter* (2018).

⁸⁴⁷ *Minerals Council South Africa v the Minister of Mineral Resources and Energy and Others* 2021 4 SA (GP).

⁸⁴⁸ See para 3.3.3.4 above.

⁸⁴⁹ Kimberley Process 2023 <https://kimberlyprocess.com/en/about>.

Recognising the urgent need for action, stakeholders from governments, the diamond industry, and civil society organisations⁸⁵⁰ engaged in intensive discussions to devise strategies to halt the trade in conflict diamonds and ensure that diamond sales were not fueling violence and conflict.⁸⁵¹

The momentum generated by the Kimberley meeting culminated in further discussions and collaborations among governments, industry representatives, and civil society organisations. By November of the same year, these deliberations resulted in the creation of the 2003 *KPCS*.⁸⁵² This groundbreaking initiative aimed to establish a robust framework for regulating the global diamond trade and preventing the proliferation of conflict diamonds in the legitimate market.⁸⁵³ With the adoption of the *KPCS*, participating countries committed to implementing stringent rules and procedures to ensure the ethical sourcing and trading of diamonds.⁸⁵⁴ The *KPCS* formally entered into force in 2003 when participating countries began implementing its rules and regulations.⁸⁵⁵ By establishing mechanisms for the certification, monitoring, and tracing of diamonds throughout the supply chain, the 2003 *KPCS* aimed to enhance transparency and accountability while combating illicit activities that threatened the integrity of the diamond industry.⁸⁵⁶

5.3.4.7 South Africa and the Open Government Partnership (hereafter OGP)⁸⁵⁷

The 2011 *Open Government Partnership* emerges as a beacon of hope in the pursuit of socio-economic rights for mine host communities. Established in 2011 through collaborative efforts between the United States, Brazil, and eight other nations, the 2011 *OGP* aims to hold governments accountable, foster inclusivity, and enhance

⁸⁵⁰ Such as Partnership Africa Canada (hereafter *PAC*).

⁸⁵¹ Lecomte *The Kimberley Process a New Actor on the Conflict Resolution Scene* 2.

⁸⁵² See para 3.3.2.3 above.

⁸⁵³ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 19.

⁸⁵⁴ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 19.

⁸⁵⁵ Kimberley Process 2023 <https://kimberlyprocess.com/en/about>.

⁸⁵⁶ Kimberley Process 2023 <https://kimberlyprocess.com/en/about>.

⁸⁵⁷ It should be noted that South Africa surprisingly is not a member of the well-known Extractive Industries Transparency Initiative (hereafter *EITI*). Matsela *Transparency regulation in the diamond mining sector in Lesotho: Lessons from South Africa* 3. See para 3.3.3.3 above.

responsiveness to citizens' needs.⁸⁵⁸ This section explores the transformative potential of the 2011 *OGP* in advancing socio-economic rights within mine host communities, focusing on its core principles, commitments, and collaborative mechanisms.

Participation in the 2011 *OGP* requires governments to endorse the Open Government Declaration (hereafter *OGD*), a solemn pledge to uphold the principles of openness and transparency.⁸⁵⁹ Unlike other international initiatives, the 2011 *OGP* establishes eligibility criteria that measure governments' performance across four fundamental areas of open government: fiscal transparency, access to information, public official asset disclosure, and citizen engagement.⁸⁶⁰ These criteria serve as a yardstick for evaluating governments' commitment to promoting socio-economic rights within mine host communities.

The 2011 *OGP* serves as a catalyst for change by providing a platform where political leaders create space for reformers to implement open government initiatives domestically and internationally.⁸⁶¹ Through collaboration with civil society organisations, government officials work hand in hand to implement open government reforms that prioritise the socio-economic rights of mine host communities. Central to this collaboration is the development of National Action Plans (hereafter *NAPs*), which outline specific goals and strategies for advancing transparency, accountability, and inclusivity.⁸⁶²

⁸⁵⁸ The *OGP* was formally launched on the sidelines of the United Nations General Assembly meeting where the heads of state from 8 founding countries that is Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom and United States endorsed the Open Government Declaration. There are over countries and a growing number of local governments, representing more than 2 billion people, along with thousands of civil society organisations who are members of the *OGP*.

⁸⁵⁹ Open Government Declaration 2023 <https://opengovpartnership.org/glossary/open-government-declaration/>.

⁸⁶⁰ Matsela *Transparency regulation in the diamond mining sector in Lesotho: Lessons from South Africa* 32. Open Government Partnership 2023 <https://www.opengovpartnership.org/process/joining-ogp/how-to-join-/>.

⁸⁶¹ OGP 2022 <https://www.opengovpartnership.org/wp-content/uploads/2022/03/OGP-National-Handbook-2022.pdf>.

⁸⁶² OGP 2022 <https://www.opengovpartnership.org/wp-content/uploads/2022/03/OGP-National-Handbook-2022.pdf>.

The Independent Reporting Mechanism (hereafter *IRM*) plays a crucial role in tracking the progress of *NAPs* and holding governments accountable for their commitments.⁸⁶³ This mechanism allows stakeholders, including mine host communities and civil society organisations, to monitor the 2011 *OGP* progress and ensure transparency and accountability in the implementation of open government reforms. Additionally, the 2011 *OGP* fosters open dialogue between governments and citizens, promoting a participatory and consultative process in governance.

South Africa's endorsement of the *OGP* in 2011 signifies its commitment to collaborating with civil society to strengthen transparency, public participation, and accountability, particularly in mine host communities.⁸⁶⁴ With the submission of its fifth *NAP*⁸⁶⁵ focusing on combating corruption and improving access to justice for vulnerable groups, South Africa aligns its constitutional principles with the vision of the 2011 *OGP*. The principles articulated in the 1996 *South African Constitution* resonate with the objectives of the 2011 *OGP*, emphasising professionalism, efficiency, responsiveness, transparency, and inclusivity in public administration.⁸⁶⁶

The 2011 *OGP* thereby emerges as a powerful tool for advancing socio-economic rights within mine host communities, empowering governments and civil society to work collaboratively towards common goals.⁸⁶⁷ Through its commitments, mechanisms, and collaborative platforms, the 2011 *OGP* fosters a culture of openness, transparency, and accountability, laying the foundation for inclusive and responsive governance that prioritises the socio-economic rights of all citizens, including those in mine host communities.

South Africa's diamond mining sector operates within a complex web of international, regional and subregional instruments, policies, governance

⁸⁶³ OGP 2022 <https://www.opengovpartnership.org/wp-content/uploads/2022/03/OGP-National-Handbook-2022.pdf>.

⁸⁶⁴ Department of Public Service and Administration 2022 https://www.gov.za/sites/default/files/gcis_document/202301/5th-national-plan-2023-26.pdf.

⁸⁶⁵ Known as the *OGP* 5th National Action Plan 2023-2026.

⁸⁶⁶ Matsela *Transparency regulation in the diamond mining sector in Lesotho: Lessons from South Africa* 73.

⁸⁶⁷ Matsela *Transparency regulation in the diamond mining sector in Lesotho: Lessons from South Africa* 73.

frameworks, and aimed at ensuring responsible and sustainable practices while advancing socio-economic rights for mine host communities. The country's participation in international agreements such as the 1966 *ICESCR*, the 1966 *ICCPR*, the 2003 *KPCS*, and the 2011 *OGP* underscores its dedication to upholding standards of accountability, transparency, and inclusivity in the mining sector. Nationally, the *Mining Charter* outlines provisions for meaningful participation, economic empowerment, and collaboration with mine host communities, although recent legal developments regarding its status raise questions about its efficacy and implementation. Additionally, the 2003 *KPCS* and 2011 *OGP* provide platforms for promoting ethical sourcing, transparency, and community participation in the diamond mining sector. By adhering to these frameworks and commitments, South Africa strives to create an environment conducive to sustainable development, inclusive growth, and the protection of socio-economic rights of mine host communities.

5.3.4.8 CSR⁸⁶⁸ in South Africa's Mining Sector

CSR⁸⁶⁹ plays a crucial role in the diamond mining sector in South Africa, given its profound social, economic, and environmental impacts. Historically, the mining industry, dominated by white-owned companies due to apartheid, has left enduring socio-economic disparities.⁸⁷⁰ CSR⁸⁷¹ initiatives now aim to redress these inequalities by promoting black economic empowerment, enhancing access to education and healthcare, and supporting local businesses.⁸⁷² This approach not only fosters inclusive economic growth but also bridges the gap between marginalised communities and broader societal benefits.⁸⁷³

⁸⁶⁸ See para 4.3.5 above.

⁸⁶⁹ See para 4.3.5. above.

⁸⁷⁰ Busacca *Corporate Social Responsibility in South Africa's Mining Industry: Redressing the Legacy of Apartheid* 21.

⁸⁷¹ See para 4.3.5. above.

⁸⁷² Busacca *Corporate Social Responsibility in South Africa's Mining Industry: Redressing the Legacy of Apartheid* 21.

⁸⁷³ Mueller-Hirth "Corporate Social Responsibility and Development in South Africa: Socio-Economic Contexts and Contemporary Issues" 51-66.

Environmental stewardship is another key focus of *CSR*⁸⁷⁴ in diamond mining. The industry's operations can significantly impact land, water, and biodiversity.⁸⁷⁵ To mitigate these effects, companies implement rigorous environmental management plans, rehabilitate mining sites, and adopt sustainable resource management practices. These efforts are critical in safeguarding the environmental health and sustainability of communities hosting mining activities.⁸⁷⁶

In South Africa *CSR*⁸⁷⁷ programmes also contribute substantially to improving the welfare of diamond mine host communities. Investments in infrastructure such as schools and healthcare facilities, along with initiatives for vocational training and employment, enhance local living standards.⁸⁷⁸ By creating resilient communities capable of self-sustainability beyond the mine's lifespan, these initiatives leave a lasting positive impact.

Ethical business practices are foundational to effective *CSR*⁸⁷⁹ implementation in diamond mining.⁸⁸⁰ Companies adhere to high ethical standards and international best practices to address scrutiny over issues like human rights and environmental degradation. Transparency, fair labour practices, and engagement with local communities build trust and maintain a social license to operate.⁸⁸¹ Compliance with international standards such as the *KPCS* ensures that diamond trade remains free from conflict, thereby contributing positively to global efforts against illicit practices.⁸⁸²

⁸⁷⁴ See para 4.3.5 above.

⁸⁷⁵ Shrivastava and Vidhi 2020 *Resources* 2.

⁸⁷⁶ Shrivastava and Vidhi 2020 *Resources* 2.

⁸⁷⁷ See para 4.3.5 above.

⁸⁷⁸ Bongwe *Benefits accruing to rural communities from the mining industry's corporate social responsibility projects in Moses Kotane municipality of the North-West province* 4.

⁸⁷⁹ See para 4.3.5 above.

⁸⁸⁰ Busacca *Corporate Social Responsibility in South Africa's Mining Industry: Redressing the Legacy of Apartheid* 14.

⁸⁸¹ Busacca *Corporate Social Responsibility in South Africa's Mining Industry: Redressing the Legacy of Apartheid* 14.

⁸⁸² Busacca *Corporate Social Responsibility in South Africa's Mining Industry: Redressing the Legacy of Apartheid* 14.

Strong stakeholder relationships are nurtured through effective *CSR*⁸⁸³ practices. Engagement with local communities, governments, and *NGOs* fosters a collaborative environment beneficial for all parties involved.⁸⁸⁴ This collaboration is crucial for gaining support for new projects and expansions, ensuring smooth operations, and addressing community concerns in a proactive manner.⁸⁸⁵

*CSR*⁸⁸⁶ in South Africa's diamond mining sector is indispensable for promoting sustainable development, enhancing community welfare, fostering ethical practices, strengthening stakeholder relationships, and driving economic empowerment. By addressing historical inequities and environmental challenges while promoting inclusive growth, *CSR*⁸⁸⁷ initiatives uphold the industry's ethical standing and contribute positively to the well-being of mine host communities.

5.3.4.9 Community participation⁸⁸⁸

In the context of mine host communities in South Africa, participation is crucial for ensuring that these communities can protect and promote their socio-economic rights effectively, thereby enhancing their well-being and resilience in the face of mining-related challenges. Upholding the socio-economic rights of mine host communities is critical for their stability and prosperity, and active community participation is foundational in achieving this. By involving communities in decision-making processes, their needs and rights are more likely to be effectively addressed, ensuring sustainable and equitable development.

Participatory development,⁸⁸⁹ a form of community participation, posits that development initiatives are more effective and sustainable when beneficiaries are actively involved in the decision-making process. This theory is particularly relevant to the socio-economic rights of mine host communities in South Africa.⁸⁹⁰

⁸⁸³ See para 4.3.5 above.

⁸⁸⁴ Shrivastava and Vidhi 2020 *Resources* 12.

⁸⁸⁵ Shrivastava and Vidhi 2020 *Resources* 12.

⁸⁸⁶ See para 4.3.5 above.

⁸⁸⁷ See para 4.3.5 above.

⁸⁸⁸ See para 2.3.4 above.

⁸⁸⁹ See para 2.3.4 above.

⁸⁹⁰ Emmett 2010 *Development Southern Africa* 501.

Empowering these communities to have a say in matters affecting their lives leads to better outcomes and a greater sense of ownership over development projects, such as those related to mining. In the South African context, local knowledge about environmental conditions, cultural practices, and economic needs can significantly enhance the relevance and effectiveness of mining-related interventions.⁸⁹¹ Moreover, participatory development promotes accountability and transparency, ensuring that mining initiatives meet the actual needs of these communities.⁸⁹² By involving mine host communities in decision-making processes, their socio-economic rights such as the rights to health, education, housing, and fair economic opportunities are more likely to be effectively addressed and protected.⁸⁹³ This participatory approach ensures that the benefits of mining are shared equitably, contributing to sustainable and inclusive development.⁸⁹⁴

The 2002 *MPRDA*⁸⁹⁵ emphasises the importance of *SLPs* for mining projects. These are designed to ensure that mining operations contribute positively to the socio-economic development of surrounding communities.⁸⁹⁶ These plans require mining companies to outline how they will provide local employment, training, and community development initiatives.⁸⁹⁷ By mandating these *SLPs*, the 2002 *MPRDA*⁸⁹⁸ ensures that mining companies actively engage with host communities to address their needs and priorities.⁸⁹⁹ This engagement fosters a participatory approach in which communities have a voice in the planning and implementation of development projects, thereby promoting a sense of ownership and accountability. The *SLPs* serve as tools for integrating community participation into the core operations of

⁸⁹¹ Githiria and Onifade 2020 *Journal of Environmental Studies and Sciences* 2.

⁸⁹² Rathobei *et al* 2024 *The Extractive Industries and Society* 2.

⁸⁹³ Egunyu and Danquah 2024 *The Extractive Industries and Society* 2.

⁸⁹⁴ Rathobei *et al* 2024 *The Extractive Industries and Society* 2.

⁸⁹⁵ See para 5.3.3.2 above.

⁸⁹⁶ Sibanye Stillwater 2022 <https://reports.sibanyestillwater.com/2022/download/ssw-IR22-performance-socioeconomic-development.pdf>.

⁸⁹⁷ For example, the Venetia Mine Social Labour Plan. De Beers Group 2018 <https://www.debeersgroup.com/~media/Files/D/De-Beers-Group/documents/reports/insights/venetia-mine-social-and-labour-plan-2018-2022.pdf>

⁸⁹⁸ See para 5.3.4.5 above.

⁸⁹⁹ De Beers Group 2018 <https://www.debeersgroup.com/~media/Files/D/De-Beers-Group/documents/reports/insights/venetia-mine-social-and-labour-plan-2018-2022.pdf>.

mining projects. This ensures that the benefits of mining activities are shared equitably with local populations.

The Broad-Based Black Economic Empowerment (hereafter *B-BBEE*)⁹⁰⁰ initiative further promotes community participation. It achieves this by encouraging mining companies to include historically-disadvantaged South Africans in the industry.⁹⁰¹ This can be achieved through various means, such as equity ownership, management participation, and the establishment of partnerships with local communities. By integrating *B-BBEE*⁹⁰² principles, mining companies are incentivised to form collaborative relationships with community members, enabling them to benefit directly from mining activities. These partnerships can lead to increased local employment, skills development, and economic opportunities. These foster a more inclusive and participatory approach to mining. Thus, *B-BBEE*⁹⁰³ not only aims to redress historical inequalities, but also enhances community involvement in the mining sector. This ensures that the industry contributes to broader socio-economic development and empowerment.

Another relevant document is the South African government's 1998 *White Paper on Minerals and Mining Policy*.⁹⁰⁴ The latter emphasises the importance of community involvement in promoting transparency and accountability within the mining sector. By actively engaging communities in decision-making processes, stakeholders can ensure that mining companies operate transparently and responsibly. This involvement empowers communities to monitor and assess the impact of mining activities on their socio-economic rights.⁹⁰⁵ They can scrutinise company practices, influence decision-making, and hold stakeholders accountable for their commitments under social and labour plans. This approach not only strengthens community resilience, but also fosters mutual trust and collaboration between mining companies, governments, and local communities. Ultimately, promoting

⁹⁰⁰ See para 5.3.4.5 above.

⁹⁰¹ Kilambo 2021 *South African Journal and Management Sciences* 3.

⁹⁰² See para 5.3.4.5 above.

⁹⁰³ See para 5.3.4.5 above.

⁹⁰⁴ See para 5.3.4.1 above.

⁹⁰⁵ S 4.1 v of the *Minerals and Mining Policy* (1998).

transparency through community participation enhances the effectiveness of regulatory frameworks. It also ensures that mining activities contribute positively to sustainable development and the protection of community interests.

In South African diamond mining, companies such as De Beers Group and Petra Diamonds undertake practices in securing *SLO* and *FPIC*⁹⁰⁶ principles. De Beers actively engages in community forums and partnerships across the Northern Cape Province. This entails addressing local concerns, offering employment opportunities, and supporting local businesses through procurement initiatives. Their efforts are geared towards cultivating sustained community support and approval for their mining operations. Similarly, Petra Diamonds focuses on sustainability and community development in the Cullinan area. This company focuses on investing in education, healthcare, and infrastructure projects that directly benefit neighboring communities. By involving local stakeholders in decision-making and ensuring transparency, Petra Diamonds aims to solidify a strong social license to operate.

Regarding *FPIC*,⁹⁰⁷ De Beers applies these principles at Venetia Mine, where the company consults with local communities, before initiating new projects or expansions. This involves providing comprehensive information, engaging in dialogue, and seeking consent from affected communities prior to proceeding with any activities. Namakwa Diamonds also adheres to *FPIC*⁹⁰⁸ guidelines in the Northern Cape region. The company actively consults with communities, to gather input and ensure their participation in decisions concerning land use and resource extraction. These practices underscore these companies' commitment to fostering positive relationships with communities, respecting indigenous rights, and promoting sustainable development practices. By integrating *SLO* and *FPIC*⁹⁰⁹ principles into their corporate strategies, these mining companies strive to minimise social and environmental impacts while maximising benefits for host communities. This contributes to long-term community wellbeing and industry sustainability.

⁹⁰⁶ See para 4.3.6 above.

⁹⁰⁷ See para 4.3.6 above.

⁹⁰⁸ See para 4.3.6 above.

⁹⁰⁹ See para 4.3.6 above.

In conclusion, by actively involving local residents in decision-making processes, mining companies adhere to ethical responsibilities. These companies also strengthen the legitimacy and sustainability of their operations. Through engagement in initiatives such as SLPs, communities can influence how mining benefits are distributed. The aim is to ensure equitable access to economic opportunities, infrastructure development, and essential services that directly enhance community wellbeing. Community participation in South African diamond mining fosters transparency and accountability. This compels stakeholders to address the impacts of mining on local environments and livelihoods. By advocating for their rights to health, education, housing, and fair economic opportunities, communities mitigate historical disparities and foster inclusive development. This participatory approach enriches governance frameworks. It also cultivates resilient and empowered communities capable of navigating the socio-economic changes.

Ultimately, embedding community participation as a fundamental principle in the South African diamond-mining sector aligns with regulatory requirements and ethical imperatives. This promotes sustainable development that benefits communities and mining stakeholders alike. By fostering mutual understanding and cooperation between all parties involved, community participation paves the way for enduring partnerships that promote equitable growth and uphold the socio-economic rights of mine-host communities for generations to come.

5.4 Enforcement of socio-economic rights

In many African countries, the protection of socio-economic rights often faces challenges. This is due to various factors, including the absence of these rights entrenched in local constitutions. However, South Africa stands out as a beacon of progressive legal frameworks, especially concerning its constitutional provisions that enable the judicial enforcement of socio-economic rights.⁹¹⁰ This makes South Africa a compelling example for countries such as Lesotho that need to learn ways of

⁹¹⁰ Dinokopila 2013 *Journal of African Law* 108.

safeguarding socio-economic rights. This is particularly relevant in the context of mine-host communities impacted by mineral extraction.

One notable feature of South Africa's legal landscape is the justiciability⁹¹¹ of socio-economic rights. This concept is defined by Scott and Macklem⁹¹² as the extent to which a matter is suitable for judicial determination. South Africa's robust 1996 Constitution, with a Bill of Rights that includes justiciable socio-economic rights, provides a strong foundation for protecting these rights, through judicial intervention.⁹¹³ Courts play a pivotal role in adjudicating challenges to state laws or policies aimed at advancing socio-economic rights. Courts ensure accountability and promote social justice.⁹¹⁴

*5.4.1 Government of The Republic of South Africa and Others v Grootboom (hereafter Grootboom case)*⁹¹⁵

Showcasing the judiciary's role in addressing the systemic injustices faced by vulnerable communities, the Grootboom case stands as a pivotal milestone. In this landmark case, the respondents, including their children, found themselves in dire circumstances. They had moved onto private property from an informal settlement, due to appalling living conditions. Following their eviction from the private land, they sought refuge on a sports field. They were unable to erect adequate shelters, due to the destruction of their building materials.

⁹¹¹ Macklem defines justiciability as a contingent and fluid notion dependent on various assumptions concerning the role the judiciary in a given place at a given time as well as on its changing character evolving capability but may be broadly defined as the extent to which a matter is suitable for judicial determination. Macklem 2015 *London Review of International Law* 10.

⁹¹² Scott and Macklem 1992 *The University of Pennsylvania Law Review* 17. Khoza *Socio-Economic Rights* 129.

⁹¹³ For the longest time only civil and political rights were the only rights that were rendered justiciable which meant that they could be legally enforced in the courts of law. This was stated in *S v Makwanyane* 1995 3 SA 391 (CC). This was a case where the constitutional court of South Africa held that a death penalty is unconstitutional and inconsistent with the commitment to human rights expressed in the South African constitution. However, under the new dispensation the new South African constitution changed this position by depicting that socio-economic rights can also be justiciable.

⁹¹⁴ Brand and Heyns *Socio-Economic Rights in South Africa* 18.

⁹¹⁵ *Government of the Republic of South Africa and Others V Grootboom* 2001 1 SA 4 (CC).

Motivated by the recognition of their social, economic, and cultural rights, the respondents turned to the courts. They sought an order compelling the government to provide them with adequate basic shelter or housing, until they could secure permanent accommodation. The judgment handed down by the Constitutional Court underscored the positive obligation imposed on the state by Section 26(2) of the 1996 *RSA Constitution*. The latter explicitly mandates the state to take reasonable legislative and other measures progressively to realise the right of access to adequate housing within available resources.

The Constitutional Court found the state to have violated this constitutional provision. The Constitutional Court issued a declaratory order requiring the government to devise, fund, implement, and supervise measures aimed at providing relief to those in desperate need. This ruling highlighted the judiciary's role in holding the government accountable for fulfilling its obligations toward socio-economically disadvantaged communities. This set a precedent for future cases involving socio-economic rights. This principle could be used to advocate for heightened government expenditure aimed at promoting and protecting the socio-economic rights of mine host communities.

5.4.2 Minister of Health and Others v Treatment Action Campaign and Others (hereafter Treatment Action Campaign case)⁹¹⁶

The Treatment Action Campaign case underscored the justiciability of the socio-economic right to health by addressing the critical issue of access to healthcare and the prevention of mother-to-child transmission of *HIV* (hereafter *MTCT*). At the heart of the case were the Treatment Action Campaign and several civil society organisations, who brought forward a compelling argument against the South African Minister of Health and provincial health Members of the Provincial Executive Councils for Health (hereafter *MECs*). This case affirmed the importance of legal

⁹¹⁶ *Minister of Health and Others v Treatment Action Campaign and Others No: 2 2002 5 SA 721 (CC)*. Mubangizi 2006 *African Journal of Legal Studies* 6.

recourse for members of communities whose rights are violated, further solidifying the judiciary's role as a guardian of socio-economic rights.

Central to the case was the government's failure to provide pregnant women with nevirapine, a drug known to significantly reduce the risk of *MTCT*. This failure underscored broader concerns about the state's obligation to safeguard the right to access healthcare, particularly for vulnerable populations such as *HIV*-positive pregnant women. In a landmark ruling, the Constitutional Court sided with the Treatment Action Campaign, declaring the government's policy a violation of the fundamental right to healthcare access. The Constitutional Court's decision compelled the government to take immediate action, ordering the implementation of a national programme to provide nevirapine to *HIV*-positive pregnant women across the country. The significance of the Treatment Action Campaign⁹¹⁷ case extends beyond its legal implication and serves as a powerful example of the potential for collective action to drive systemic reform and advance the realisation of socio-economic rights, particularly the right to health.

*5.4.3 Mazibuko and Others v City of Johannesburg and Others*⁹¹⁸

The *Lindiwe Mazibuko* case in the South African Constitutional Court focused on section 27 of the *1996 RSA Constitution*, which enshrines the right of access to sufficient water. This case arose from a challenge by residents of Phiri in Soweto against the City of Johannesburg's water policy, specifically its implementation of prepaid water meters and the limitation of free basic water to 6 kiloliters per household per month. The residents argued that the City's policy violated their constitutional right to sufficient water, as the 6-kiloliter allocation was inadequate for their basic needs. They also contended that the prepaid water meters, which cut off supply once the free allocation was exhausted, disproportionately affected poor households, forcing them to live without access to water if they could not afford to purchase additional credits.

⁹¹⁷ See para 5.4.2 above.

⁹¹⁸ *Mazibuko and Others v City of Johannesburg and Others* 2010 4 SA 1 (CC).

The Constitutional Court had to determine whether the City's policy was reasonable and aligned with the state's obligation under section 27(2) of the *1996 RSA Constitution*, which mandates that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right to sufficient water. In its judgment, the Court acknowledged the importance of the right to water and the state's duty to respect, protect, promote, and fulfil this right.⁹¹⁹ However, it ultimately ruled that the City's policy was reasonable given the context and constraints. The Court emphasised that the reasonableness standard does not require the state to provide immediate solutions but to progressively work towards improving access to water, taking into account available resources and competing needs.⁹²⁰

The *Mazibuko case*⁹²¹ is significant because it clarified the extent of the state's obligations under Section 27 of the *1996 RSA Constitution* and highlighted the complexities involved in balancing policy implementation with constitutional guarantees. The ruling underscored the need for policies that are pragmatic and equitable while striving to fulfil fundamental human rights, prompting ongoing dialogue about how best to meet the basic needs of all South Africans in a sustainable and just manner.

The *Mazibuko case*,⁹²² while primarily addressing urban water supply, has far-reaching implications for the socio-economic rights of mine host communities in South Africa. The Constitutional Court's emphasis on the right to sufficient water underscores the importance of basic needs as fundamental rights, setting a precedent that can be extended to these communities. This reinforces their entitlement to essential resources and services, such as clean water, adequate housing, and healthcare.

The ruling highlighted the state's duty to take reasonable measures to progressively realise socio-economic rights. For mine host communities, this translates to an

⁹¹⁹ *Mazibuko and Others v City of Johannesburg and Others* 2010 4 SA 1 (CC) para 38.

⁹²⁰ *Mazibuko and Others v City of Johannesburg and Others* 2010 4 SA 1 (CC) para 50.

⁹²¹ See para 5.4.3 above.

⁹²² See para 5.4.3 above.

obligation for both the government and mining companies to improve living conditions, infrastructure, and access to basic services over time, taking into account available resources. The Court's adoption of the reasonableness standard in evaluating government policies provides a framework for assessing whether mining policies and practices are meeting the constitutional rights of host communities. Policies must be pragmatic, justifiable, and aimed at progressively improving the quality of life for these communities.

The case further underlines the importance of involving affected communities in decision-making processes. For mine host communities, this means they should have a voice in how resources are managed and how development projects are implemented, ensuring their needs and concerns are addressed. The judgment also sets a precedent for scrutinising policies and holding authorities accountable for their impact on socio-economic rights. Host communities can leverage this to challenge inadequate or harmful mining practices and policies, seeking legal redress if their rights are compromised.

Finally, the *Mazibuko case*⁹²³ encourages a holistic approach to development, where basic services and socio-economic rights are integrated into policy planning and execution. Mining companies and the government must consider the broader impact of mining activities on host communities' livelihoods and work towards sustainable and inclusive development. This holistic approach is essential for ensuring that the benefits of mining extend beyond economic gains to include significant improvements in the quality of life for all affected communities.

The South African courts have consistently upheld the notion that the state has to provide access to socio-economic rights on a progressive basis. In cases where breaches of such rights occur, the courts are duty-bound to ensure that effective relief is granted, thus reinforcing the enforceability of socio-economic rights in the legal system. This legal framework not only affirms the existence of socio-economic

⁹²³ See para 5.4.3 above.

rights but also ensures their enforceability, empowering individuals to assert their rights and access justice in the pursuit of social and economic equality.

5.5 Challenges and lessons learned

In examining South Africa's framework for the promotion and protection of socio-economic rights of diamond mine host communities, a model deeply rooted in the South African constitutional, policy and legislative frameworks is revealed. South Africa's framework makes provision for community participation and social justice. It not only promotes active community involvement in decision-making processes but also addresses historical inequalities and the needs of previously marginalised groups.

The 1996 *RSA Constitution* enshrines socio-economic rights such as housing, healthcare, food, water, social security, and education, making them justiciable. This means individuals can seek judicial redress if these rights are violated, ensuring that the pursuit of social justice is a binding legal obligation. The constitutional provisions underscore social justice as a core value of South African society, mandating the state to actively promote and protect these rights.

The 1998 *NEMA*⁹²⁴ of South Africa presents both challenges and valuable lessons in the context of environmental governance in the mining sector. One of the primary challenges is the effective enforcement of the 1998 *NEMA*'s⁹²⁵ provisions, particularly in ensuring that mining activities comply with environmental standards and mitigate negative impacts on ecosystems. While the Act provides a robust framework for sustainable development, gaps in implementation and regulatory oversight often undermine its effectiveness. A key lesson learned is the importance of strengthening enforcement mechanisms and enhancing the capacity of regulatory bodies to monitor and manage environmental impacts. Additionally, integrating community participation in environmental decision-making processes can improve the Act's outcomes by ensuring that local voices are heard and respected.

⁹²⁴ See para 5.3.3.1 above.

⁹²⁵ See para 5.3.3.1 above.

The 1998 *NWA*⁹²⁶ of South Africa faces significant challenges in its application to the mining sector, particularly regarding the protection of water resources from pollution and over-extraction. One of the key challenges is balancing the competing demands for water between the mining industry and local communities, especially in water-scarce regions. Despite the 1998 *NWA*'s⁹²⁷ comprehensive framework for water resource management, the act's effectiveness is often hindered by inadequate enforcement and insufficient coordination among stakeholders. The lessons learned emphasise the need for more rigorous enforcement of water use licenses and better integration of water management practices within mining operations. Additionally, fostering collaboration between government agencies, mining companies, and communities is crucial for ensuring that water resources are sustainably managed and equitably shared.

The 1998 *White Paper*⁹²⁸ outlines the government's vision for the mining sector, emphasising the importance of community involvement. It reinforces the necessity for community participation in ensuring that mining activities are conducted responsibly and sustainably, highlighting the need for inclusive development strategies. South Africa's approach to social justice is comprehensive, addressing historical inequalities and the needs of marginalised groups through a robust legislative and policy framework.

Section 104 of the 2002 *MPRDA*⁹²⁹ provides for the granting of preferential rights to historically disadvantaged South Africans for mining rights applications. This legislative provision aims to correct historical injustices in the mining sector by ensuring that those who were previously excluded can participate in and benefit from the country's mineral wealth. The 2002 *MPRDA*⁹³⁰ is a cornerstone in promoting community participation in the mining sector. Section 10 of the 2002 *MPRDA*⁹³¹ mandates consultation with interested and affected parties when mining

⁹²⁶ See para 5.3.3.3 above.

⁹²⁷ See para 5.3.3.3 above.

⁹²⁸ See para 5.3.4.1 above.

⁹²⁹ See para 5.3.3.2 above.

⁹³⁰ See para 5.3.3.2 above.

⁹³¹ See para 5.3.3.2 above.

rights are sought. This ensures that community members have a say in activities that may affect their environment and livelihoods. Additionally, the 2002 *MPRDA*⁹³² and the 2004 *Regulations* requires *SLPs*⁹³³ which outline commitments to human resource development, local economic development projects, improvements in housing and living conditions, and strategies for managing the social and economic impacts of mine closures. These requirements ensure that community engagement is both systematic and meaningful, addressing immediate and long-term needs.

The 2018 *Mining Charter*⁹³⁴ sets out guidelines for transforming the mining industry to ensure operations benefit local communities. It includes provisions for community development, employment equity, and sustainable development. The Charter emphasises that mining benefits should be equitably distributed and that community development initiatives should be implemented to support local socio-economic growth.

On the other hand, the 2000 *MSysA*,⁹³⁵ particularly sections 27(1) and (2), emphasises community participation in municipal governance. This ensures that local government decisions reflect the needs and priorities of the community, promoting transparency and accountability. By mandating public involvement in municipal planning and budgeting processes, the Act ensures that the voices of community members are integral to local governance. This includes the voices of mine host communities, whose needs should be reflected in the *IDPs* concerned.

*B-BBEE*⁹³⁶ aims to increase the participation of black South Africans in the economy, addressing disparities created by apartheid. The policy encompasses measures such as ownership, management control, skills development, enterprise and supplier development, and socio-economic development. By setting targets and incentives for businesses to improve their *B-BBEE*⁹³⁷ status, the policy fosters inclusive

⁹³² See para 5.3.3.2 above.

⁹³³ See para 5.3.3.2 above.

⁹³⁴ See para 5.3.4.5 above.

⁹³⁵ See para 5.3.3.4 above.

⁹³⁶ See para 5.3.4.5 above.

⁹³⁷ See para 5.3.4.5 above.

economic growth and aims to close the economic gap between different racial groups.

Judicial precedents in South Africa have been instrumental in upholding and advancing socio-economic rights. Landmark cases such as *Government of the Republic of South Africa v. Grootboom* and *Minister of Health v. Treatment Action Campaign*⁹³⁸ have set significant precedents for the protection and promotion of socio-economic rights. These decisions reinforce the principle that social justice is a fundamental aspect of South African law and governance, holding the state accountable for fulfilling its constitutional obligations.

Lessons learned in this chapter are:

- 1 In examining South Africa's mining sector, several key lessons emerge. The importance of obtaining an *SLO* underscores the need for mining companies to secure community trust and approval, which is vital for long-term project success. The *CSR* initiatives should be structured to meaningfully benefit local communities, ensuring that these projects align with community needs and priorities. Effective community participation is essential, requiring transparent and inclusive processes that empower communities to have a say in decisions impacting their lives. The *OGP* principles emphasise the need for transparency, accountability, and citizen engagement, which can enhance governance in the mining sector. Lastly, adherence to the *KPCS* is critical for preventing the trade of conflict diamonds, promoting ethical practices within the industry. These elements collectively contribute to a more responsible and sustainable mining environment.
- 2 Embedding Social Justice in Legal Frameworks: South Africa demonstrates the importance of integrating social justice into core legal and policy frameworks. The justiciability of socio-economic rights ensures that social justice is enforceable by law.
- 3 Addressing Historical Inequalities: Specific measures like the 2002 *MPRDA*'s preferential rights and *B-BBEE* policies highlight the necessity of addressing historical injustices. By legally prioritising the inclusion of historically disadvantaged groups, South Africa aims to correct past imbalances.
- 4 Comprehensive Policy Vision: The 2018 White Paper on Minerals and Mining Policy exemplifies the need for a policy framework that integrates social justice, economic development, and environmental sustainability. This vision is crucial for achieving long-term, equitable growth.
- 5 Empowerment Through Economic Inclusion: Economic policies, particularly *B-BBEE*, emphasise inclusive growth by providing opportunities for marginalised groups to participate in and benefit from economic activities.

⁹³⁸ See para 5.4.2 above.

- 6 Judicial Oversight and Accountability: Judicial precedents in enforcing socio-economic rights highlight the importance of an independent judiciary in upholding social justice. Courts act as a check on government and private sector actions, ensuring accountability and compliance with constitutional mandates.
- 7 Sustainable and Inclusive Development: South Africa's approach ensures that development is sustainable and inclusive. Policies and legislation aim to broadly share economic benefits and ensure that development initiatives do not harm the environment or community well-being.

South Africa's framework for community participation and social justice therefore provides valuable lessons in integrating these principles into legal and policy frameworks, addressing historical inequalities, and promoting sustainable and inclusive development. This comprehensive approach ensures that development is both equitable and sustainable, offering a model for other nations aiming to advance social justice and community engagement.

South Africa's efforts to protect and promote the socio-economic rights of diamond mine-host communities, through a robust policy and legal and policy framework, face significant implementation challenges. Key factors contributing to these implementation challenges include capacity constraints within government and local authorities such as bureaucratic inefficiencies, limited staffing, and financial resources. Coordination gaps among stakeholders, including government agencies, mining companies, and local communities, further complicate efforts. This leads to inconsistent implementation practices. Monitoring and evaluation deficiencies, inadequate public participation, and political uncertainties also hinder the successful implementation of policies aimed at ensuring equitable development and community wellbeing.

These challenges perpetuate socio-economic disparities, environmental risks, and legal complexities within diamond mine-host communities. They undermine efforts to improve living conditions, manage environmental impacts, and attract sustainable investment. This impedes socio-economic progress and community empowerment. Addressing these challenges requires strengthening institutional capacity, enhancing coordination among stakeholders, improving monitoring frameworks, promoting meaningful public participation, and demonstrating sustained political commitment. By overcoming these hurdles, South Africa can better translate its

comprehensive policy frameworks into tangible benefits that promote equitable and sustainable development in its mining regions.

5.6 Conclusion: recommendations for Lesotho

Lesotho can draw valuable lessons from South Africa's experience in terms of both successes and challenges regarding the protection and promotion of socio-economic rights of mine-host communities. Lesotho can benefit from developing a robust legal framework that explicitly integrates social justice principles and ensures the justiciability of socio-economic rights. Drawing from South Africa's 1998 White Paper and the 2002 *MPRDA*,⁹³⁹ Lesotho can legislate preferential rights for local communities in diamond-mining areas. This would prioritise the inclusion of historically marginalised groups and ensure that economic benefits from mining activities are equitably shared.

Learning from South Africa's policy and legislative approach, Lesotho should institutionalise mechanisms for meaningful community participation in decision-making processes related to mining activities. This includes consultations during environmental impact assessments, the consideration and granting of prospecting and mining licenses, and the formulation of development plans. Strengthening local governance structures and ensuring that community voices are heard and respected and that their socio-economic needs addressed can mitigate potential social conflicts and enhance the legitimacy of mining operations.

Lesotho should anticipate and address challenges similar to those faced by South Africa in implementing mining-related policies and legislation. This includes building institutional capacity within government agencies responsible for overseeing mining activities and community development. Adequate staffing, technical expertise, and financial resources are essential to effectively enforce regulations, monitor compliance, and ensure that policies translate into tangible benefits for mine-host communities.

⁹³⁹ See para 5.3.3.2 above.

Lesotho can learn from South Africa's experiences of inadequate implementation and coordination failures. It is crucial to establish clear lines of accountability and improve coordination among government departments, mining companies, civil society organisations, and local communities. Strengthening intergovernmental cooperation and developing effective monitoring and evaluation mechanisms are essential in tracking progress, identifying challenges early, and adjusting policies as needed.

Emphasising environmental sustainability alongside socio-economic development is critical for Lesotho. Integrating principles from South Africa's 1998 *White Paper*⁹⁴⁰ can guide Lesotho in promoting responsible mining practices that minimise environmental impacts and safeguard community health. Encouraging sustainable economic activities beyond the mining sector can diversify local economies and reduce dependency on extractive industries.

Lesotho should prioritise public awareness campaigns and capacity-building initiatives aimed at empowering local communities to understand their rights, participate effectively in decision-making processes, and hold stakeholders accountable. Providing access to information and promoting transparency in mining operations are vital steps towards ensuring that communities benefit equitably from mining activities. Lesotho has an opportunity to develop a progressive framework for protecting and promoting the socio-economic rights of mine-host communities. This is achievable by leveraging South Africa's successes and learning from its challenges. By adopting inclusive policies, enhancing institutional capacity, and prioritising sustainable development practices, Lesotho can foster equitable growth and improve the wellbeing of its mining communities.

The next chapter examines Lesotho's existing constitutional, policy, and legislative framework concerning the protection and promotion of the socio-economic rights of mine-host communities. The comparative analysis involving Botswana and South Africa seeks to identify areas of alignment and divergence. The goal is to inform

⁹⁴⁰ See para 5.3.4.1 above.

the development of future policies and legislation that align with international, regional, and subregional conventions and standards aimed at protecting the socio-economic rights of mine-host communities in Lesotho.

CHAPTER 6 THE PROTECTION OF THE SOCIO-ECONOMIC INTERESTS OF MINE-HOST COMMUNITIES IN LESOTHO

6.1 Introduction

Chapter 5 analysed South Africa's frameworks for the protection of the socio-economic interests of mine-host communities, to draw insights for improving Lesotho's approaches. It provided an overview of South Africa's mining industry, its historical context, and the socio-economic impacts of diamond mining. The chapter examined South Africa's constitutional, policy, and legislative frameworks, focusing on international commitments, relevant constitutional provisions, and key legislative instruments. These laws collectively protect the socio-economic rights of mine-host communities in South Africa. The chapter also reviewed socio-economic enforcement through case law and assessed judicial precedents in promoting and protecting the rights of communities affected by mining. The chapter identified challenges and lessons from South Africa's framework, aiming for a comparative analysis with Lesotho's framework.

The findings indicate that Lesotho can enhance the socio-economic rights of mine-host communities by adopting strategies used in South Africa. These encompass developing a robust legal framework that integrates social justice principles, institutionalising community participation in decision-making, and building institutional capacity within government agencies. Emphasising environmental sustainability, improving implementation and coordination among stakeholders, and promoting public awareness and capacity-building initiatives are also crucial. These measures, drawn from South Africa's successes and challenges, can help Lesotho foster equitable growth, ensure that economic benefits from mining activities are shared fairly, and improve the wellbeing of mining communities.

Chapter 6 examines Lesotho's constitutional, policy, and legislative frameworks for the protection the socio-economic rights of mine-host communities. This provides a foundation for a comparative study with Botswana and South Africa, as well as the

developing a comprehensive matrix⁹⁴¹ to guide legislative improvements and strategies. The aim is to identify best practices and international standards. These would help to provide actionable recommendations for improving Lesotho's constitutional, policy, and legislative frameworks. This would ensure the protection of the socio-economic rights and interests of mine-host communities.

Similar to Botswana and South Africa, Lesotho is a party to various crucial human rights treaties, spanning international, regional, and sub-regional agreements. These are pertinent to mining activities, as discussed in Chapter 3 above. By ratifying these treaties, Lesotho is committed to upholding their principles. Regionally, Lesotho is a member of both the African Union (hereafter *AU*) and the Southern African Development Community (hereafter *SADC*). The country is therefor obliged to ensure that mining operations within its borders respect socio-economic interests according to the standards set at those levels.

The primary focus of this study is the examination of Lesotho's constitutional, policy, and legislative frameworks. The study also aims to explore how the socio-economic rights of mine-host communities are protected in Lesotho. This analysis seeks to offer insights and recommend constitutional, legislative, and policy measures to strengthen the safeguarding of these communities' socio-economic interests in Lesotho.

Part 1 initiates the discussion with an overview of Lesotho's mining history. Part 2 examines Lesotho's constitutional and legislative framework, initially focusing on relevant constitutional provisions and subsequently analysing legislative instruments such as the 2005 *Mines and Minerals Act*, the 2008 *Water Act*, and the 2008 *Environment Act* and the 2010 *Land Act*. These underpin the protection of the socio-economic rights of mine-host communities in Lesotho.

Part 3 delves into Lesotho's judicial enforcement by scrutinising case law on socio-economic rights and assessing the extent to which judicial precedent can be leveraged to promote and protect the socio-economic rights of communities affected

⁹⁴¹ See Annexure A.

by mining activities. Part 4 expands the discussion to include relevant actors and stakeholders (including government departments and mining companies) in Lesotho's mining sector and their role in advancing the socio-economic rights of mine-host communities. Part 5 discusses international mining governance initiatives and policies such as the *Kimberly Process Certification Scheme* (hereafter *KPCS*) and the 2009 *Africa Mining Vision* (hereafter *AMV*). It explores their role as the foundation of Lesotho's policy framework and their effectiveness in promoting and protecting the socio-economic rights of mine-host communities. Part 6 concludes the chapter with an overview of Lesotho's constitutional, policy, and legal framework as well as its efficacy in safeguarding the socio-economic rights of mine-host communities.

Lesotho, nestled in the south-eastern region of Southern Africa, emerges as a land of contrasts.⁹⁴² With its high-altitude terrain and mountainous landscapes dominating over 75% of its territory, this small, landlocked country faces unique ecological challenges.⁹⁴³ Its population of approximately 2.3 million,⁹⁴⁴ known as 'Basotho',⁹⁴⁵ relies predominantly on agricultural production for sustenance. The people navigate a delicate balance between the limited arable lowlands and the harsh conditions of the mountainous regions.⁹⁴⁶ However, amid this rugged beauty lies a harsh reality: Lesotho grapples with persistent poverty, despite significant strides in macro-economic performance.⁹⁴⁷

Diamond mining emerges as a beacon of hope in Lesotho's quest for economic prosperity, contributing over 10% to the country's *GDP* and garnering international attention with extraordinary finds.⁹⁴⁸ Letšeng diamonds, in particular, boasts some

⁹⁴² Juma 2011 *Pace International Law Review* 6.

⁹⁴³ Lesotho Mineral & Mining Sector Investment and Business Guide 164.

⁹⁴⁴ Worldometer 2024 <https://www.worldometers.info/world-population/lesotho-population>.

⁹⁴⁵ Juma 2011 *Pace International Law Review* 6. Ellenberger and Macgregor 1969 *History of the Basotho: Ancient and Modern* 21.

⁹⁴⁶ Hassan and Ojo *Lesotho Development in a Challenging Environment: A joint World Bank-African Development Bank Evaluation* ix. Food Aid, Food Production, and Food Markets 2006 <https://reliefweb.int/report/lesotho/food-aid-food-production-and-food-markets-lesotho-analytical-review>.

⁹⁴⁷ Kheleli 2022 *Lesotho Insights* 45.

⁹⁴⁸ Kheleli 2022 *Lesotho Insights* 45.

of the highest US dollar per carat rates in the world. This showcases Lesotho's potential as a player in the global diamond market.⁹⁴⁹ However, this newfound wealth engenders a complex web of challenges, especially for the mine-host communities directly impacted by mining activities.

Lesotho's economy, divided into primary, secondary, and tertiary sectors, hinges on the delicate balance between agriculture, mining, and other economic activities.⁹⁵⁰ The mining sector, in particular, holds potential for growth and resilience, defying the challenges plaguing the agricultural sector.⁹⁵¹ However, as mining activities expand, questions arise about the socio-economic implications for the nation's populace, particularly those residing in mining-affected communities.

The history of mining in Lesotho is characterised by initial skepticism and eventual triumph.⁹⁵² It began with the pioneering geological studies of individuals such as Henry Edward Richard Bright and Reverend Shaw Samuel Dornan, whose reports concluded that Lesotho held no significant mineral wealth.⁹⁵³ These early surveys, however, faced challenges, as the Basotho people were hesitant to reveal the true extent of their land's resources for fear of exploitation.⁹⁵⁴ Despite the discouraging reports, the pursuit of mineral exploration persisted, with subsequent surveys by persons such as Stockley yielding limited results but hinting at the potential for kimberlite discoveries.⁹⁵⁵

It was not until Colonel Jack Scott's exploration efforts in the 1950s that diamond prospecting gained traction in Lesotho. Despite initial setbacks, comprehensive geological surveys conducted post-1967 led to the identification of numerous kimberlite pipes and, eventually, the discovery of diamond-rich deposits across rural

⁹⁴⁹ In the beginning of the year 2021, Gem diamonds which operates at the Letšeng Diamond Mine announced the recovery of high quality 254 Carat and 370 Carat Type II white diamond. Mpaki *Lesotho Times* 2. The Reporter 2021 <https://www.thereporter.co.ls/2021/05/04/letseng-recovers-high-quality-254-carat-white-diamond/> 1. Kheleli 2022 *Lesotho Insights* 46.

⁹⁵⁰ Lesotho National Development Corporation 2021 <https://www.lndc.org.ls/content/how-structure-economy-lesotho> 1.

⁹⁵¹ Central Bank of Lesotho 2018 *Economic Outlook* 5.

⁹⁵² Thabane *Individual Diamond Digging in Lesotho 1955-1970* 35.

⁹⁵³ Bawden and Carroll 1968 *The Land Resources of Lesotho* 5.

⁹⁵⁴ Lock *The Geology of the Letšeng Kimberlites in Lesotho* 2.

⁹⁵⁵ Thabane *Individual Diamond Digging in Lesotho 1955-1970* 35.

Lesotho.⁹⁵⁶ However, early mining endeavours faced challenges and yielded limited success.

The turning point came in the year 2000 when diamond mines began to reopen, marking the resurgence of Lesotho's mining sector.⁹⁵⁷ Over the following years, diamond mining made significant contributions to the country's economy, with its GDP share rising from 0% in 2000 to 11.9% in 2018.⁹⁵⁸ This newfound economic potential positioned mining as a crucial driver of Lesotho's development aspirations, offering a pathway to address entrenched socio-economic challenges such as poverty, inequality, and unemployment.⁹⁵⁹

Initially, artisanal diamond mining by Basotho diggers in areas such as Letšeng-la-Terae, Kolo, Nqhechane, and Hololo showcased promise. However, by 1970, unsuccessful prospecting led to a halt in operations.⁹⁶⁰ It was not until the turn of the millennium that diamond mines began to make a substantial contribution to Lesotho's economy.⁹⁶¹ The resurgence and growth of mining in Lesotho, evolving

⁹⁵⁶ Maleleka *The Evolution of Mining in Lesotho* 5.

⁹⁵⁷ Central Bank of Lesotho 2018 *Economic Outlook* 7.

⁹⁵⁸ National Strategic Development Plan 2012/2013-2016/17 43.

⁹⁵⁹ National Strategic Development Plan 2012/2013-2016/17 43.

⁹⁶⁰ CBL 2012 *Economic Review* 6.

⁹⁶¹ Which increased from 0.2% in the year 2000 to 7.3% in the year 2009/10. This is a 7.1% increase, an indication that a noticeable role played is by the mining sector in the economy. In the year 2012, the diamond mining sector comprised 5 main mines that is Letšeng, Liqhobong, Kao, Kolo and Mothae. These mines operate as foreign direct investment (hereafter *FDI*) companies with the majority shareholding of up to 70 percent by foreign companies. Currently, there are 13 diamond mines in Lesotho, of which seven are still in the prospecting phase, (Malimabatšo Artizens Diamonds, Refela Holdings, Popa Diamonds, Matšoku, Bafali, Alluvial Quthing and Makhoareng Alluvial Diamonds). Two are in full production, namely Kao and Letšeng la Terae. Two are engaging in trial mining, (Kolo and Lemphane). The last two are in the construction phase (Liqhobong and Mothae). It should be noted that these statistics are as of September 2016. This proves that the mining industry in Lesotho is indeed growing. The mining sector in Lesotho contributes significantly towards tax revenues and export earnings. An estimated 3000 people are employed both directly and indirectly in the mining sector. This number is projected to grow with the expected establishment of other mines in the near future. The mining sector is recognised as one of the drivers of economic growth in Lesotho's *National Strategic Development Plan*. National Strategic Development Plan 2012/13- 2016/17 93. Staff Reporter *The Post* 6. CBL 2012 *Economic Review* 6. Newman 2012 <https://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-It-wz.pdf>. National Strategic Development Plan 2012/13- 2016/17 93. Phakoana *Informative* 6. *The Lesotho Review: An Overview of the Kingdom of Lesotho's Economy* 29.

from a dormant phase to boasting fully operational mines across the country, underscore the nation's selection as the focal point of this study.

Lesotho's relatively new legal framework presents opportunities for enhancement, particularly concerning the involvement of mine-host communities as crucial stakeholders in Lesotho's mining sector and ensuring that they benefit from mineral extraction in their surroundings. The recent revival and expansion within the diamond-mining industry in Lesotho prompts the crucial question of how the Basotho people benefit from their country's diamond wealth.⁹⁶²

Aligning with constitutional provisions that expressly classify all of Lesotho's natural resources, including diamonds, as 'national property', it is imperative to determine the beneficiaries of this national asset.⁹⁶³ This task is intricate and multifaceted, requiring a delicate balance. While the entire nation should benefit from mining activities, particular attention must be paid to the communities directly affected, the 'minehost communities'.⁹⁶⁴ These communities often experience direct disruptions to their lives, livelihoods, and property due to their proximity to the mines.⁹⁶⁵

Despite the role of diamond mining in Lesotho's economy, there exists a glaring gap in legislation specifically addressing the challenges faced by mine-host communities. The absence of laws tailored to the unique circumstances of these communities leaves them vulnerable to the adverse effects of mining activities without adequate protection or recourse. While broader legal frameworks touch upon environmental and socio-economic considerations, they fall short of providing the targeted protection and recourse needed by those directly impacted by mining activities.⁹⁶⁶

⁹⁶² *The Lesotho Review: An Overview of the Kingdom of Lesotho's Economy* 29.

⁹⁶³ Section 107 of *the Constitution* of Lesotho read with Section 3 (1) of the *Lesotho Mines and Minerals Act* which states that rights in minerals are vested in the Basotho Nation.

⁹⁶⁴ Allowing mine host communities to benefit from diamond mining would also help in addressing these various conflicts between mine host communities and the mining companies. As there will be the much-needed collaboration between these parties. Mpaki *Lesotho Times* 1.

⁹⁶⁵ For instance, they are the ones usually expected to relocate, or are deprived of their ancestral land and have their livelihoods affected. Mpaki *Lesotho Times* 1

⁹⁶⁶ Kali 2020 *European Journal of Behavioral Sciences* 27.

Consequently, mine host communities often find themselves navigating complex challenges related to land rights, environmental degradation, displacement, and socio-economic disruption without clear legal guidance or mechanisms for redress. This regulatory gap underscores the pressing need for legislative reforms that prioritise the rights and well-being of mine host communities, ensuring their meaningful participation in decision-making processes and equitable sharing of benefits derived from mineral extraction. Despite diamond mining contributing significantly to Lesotho's *GDP*, the absence of specific laws tailored to mine host communities exacerbates their vulnerability to the negative impacts of mining activities.⁹⁶⁷

The dearth of comprehensive information and analysis on Lesotho's legal, socio-economic, and governance frameworks underscores the necessity of selecting Lesotho as the subject of analysis in this thesis. Despite its significance in global diamond markets, there exists a notable gap in scholarly literature and empirical research regarding the specific challenges faced by mine host communities and the efficacy of existing policy and legal frameworks in addressing their needs.⁹⁶⁸ By focusing the attention on Lesotho, the aim is to contribute to the body of knowledge surrounding this understudied area, shedding light on the intricacies of diamond mining governance, socio-economic dynamics, and the protection of human rights in the context of mineral extraction. Through rigorous research and analysis, this study endeavours to bridge the information gap and provide insights that can inform evidence-based policy reforms and promote more equitable and sustainable development outcomes in Lesotho and beyond.

As Lesotho seeks to harness the benefits of its mineral wealth, it becomes imperative to ensure that the mining sector operates within a robust legal framework that safeguards the interests of all stakeholders, particularly mine host communities. This chapter undertakes a critical analysis of Lesotho's constitutional, policy and legislative framework governing diamond mining, aiming to ascertain the

⁹⁶⁷ Lesotho's Chamber of Mines 2022 <https://stormmountaindiamonds.com/downloads/Lesotho-Diamond-Mining-Industry-2022-Performance-Report.pdf>.

⁹⁶⁸ Rampa *Informative* 3.

extent to which the socio-economic interests of mine host communities are protected and promoted.

6.2 Balancing benefits and challenges in Lesotho's diamond mining

Diamond mining has the potential to become the foundation of Lesotho's economy, yet its impacts, both negative and positive, on the socio-economic rights of communities residing near mines remain largely unexplored. Mining operations in Lesotho can significantly disrupt the lives of local communities. One of the primary concerns is displacement, which uproots communities and disrupts traditional practices like farming and grazing. This displacement often leads to food insecurity and reduced income generation as families lose their primary means of livelihood.⁹⁶⁹

Environmental degradation is another critical issue.⁹⁷⁰ Mining activities frequently pollute water sources, degrade soil quality, and disrupt local ecosystems. Such environmental damage limits access to clean water and reduces agricultural productivity, exacerbating the economic challenges faced by these communities.⁹⁷¹ While diamond mines create job opportunities, these positions often require specific skills that local residents may not possess.⁹⁷² Consequently, the economic benefits of these jobs do not always compensate for the disruption to traditional livelihoods. Moreover, the influx of migrant workers can strain local social services and infrastructure, leading to competition for resources and potential social conflict.

⁹⁶⁹ In the district of Mokhotlong, Firestone which runs the *LMDC* mine identified 28 families in the adjacent Lihobong village for relocation. This meant that the mine host community had to leave behind their ancestral land, their arable land on which they rely on for agricultural purposes, their graveyards and houses which they build in order to make room for the establishment of the mine. Firestone Diamond Plc 2015 https://sec.report/nsm/Firestone-Diamonds-P-L-C/data-migration/LSE20151006070010_012528022.Mpaki *Lesotho Times* 15. Maqhelepo *Informative* 10.

⁹⁷⁰ Nell Community Perceptions of Sustainable Development: Implications for an Approach to Closure Mining 1. Murombo 2013 LEAD 38. Ackely Evaluating Environmental Risks in Mining: A Perceptual Study at The Vatukoula Gold Mine in Fiji 1

⁹⁷¹ A case in point is the concerns raised by the Maluti Community Development Forum (hereafter *MCDF*) in the district of Mokhotlong. Representing the community, the *MCDF* highlighted several injustices, even suggesting legal recourse against the neighbouring mine for the injustices and hardships experienced. The *MCDF* claimed that mining activities damaged wetlands crucial for providing clean water, leaving the local community to rely on raw or untreated water. Mpaki 2017 <http://lestimes.com/mining-community-mulls-legal-action/>.

⁹⁷² For example, the Letseng Diamond Mine seeks most of its employees outside the district of Mokhotlong where it resides.

Health problems are also a significant concern. Dust generated by mining operations can cause respiratory issues, and improper waste disposal can contaminate water sources, leading to waterborne illnesses. These health challenges further undermine the well-being of mine host communities.⁹⁷³ Despite these challenges, diamond mining has the potential to bring significant benefits to local communities if managed well. Mines can provide employment opportunities and generate income, which can help alleviate poverty in these areas. Additionally, mining companies often invest in local infrastructure,⁹⁷⁴ such as roads⁹⁷⁵ and schools,⁹⁷⁶ which can have lasting positive effects on community development.

Some mining companies also implement community development initiatives aimed at improving healthcare, education, and social services.⁹⁷⁷ These programs can significantly enhance the quality of life for local residents, providing long-term benefits that extend beyond the immediate economic gains from mining operations.⁹⁷⁸ To ensure a more positive impact of diamond mining on local communities, several measures need to be implemented. Stronger regulations are essential. The government should enforce stricter environmental protections, require community consultations, and ensure the equitable distribution of mining benefits.⁹⁷⁹

A focus on sustainable development is also crucial. Mining projects should be planned with a long-term perspective, taking into account the social and

⁹⁷³ One example is that of the people living around the Kolo mine in the district of Mafeteng in Lesotho, who have been shown to have problems with their eyesight due to the dust emanating from the mining activities in that area. Ntlafulang Consultants Reskol Diamond Mining (PTY) Limited- Project Brief (*Diamond Mining at Kolo*) 24. Macheve *The Impact of Coal Mining on the Living Conditions of Rural Communities in Mozambique: A Case Study of Cateme* 1.

⁹⁷⁴ The LMDC was involved in the sustainable water supply project for the Liqhobong and Pulane villages, where the lives of mine host communities in the above-mentioned areas was changed from using unprotected springs to having access to communal taps spread across both villages. *LMDC Lesotho Times* 11.

⁹⁷⁵ Hilson 2002 *Land Use Policy* 66. Muntingh *Community Perceptions of Mining: The Rural South African Experience* 31.

⁹⁷⁶ For instance, in Lesotho in the district of Butha-Buthe the Liqhobong Mining Development Company (Pty) Ltd (hereafter *LMDC*) donated two classrooms and offices to the Liqhobong Primary School in the Maphale village. *LMDC Lesotho Times* 11.

⁹⁷⁷ *LMDC Lesotho Times* 11.

⁹⁷⁸ Pegg 2006 *Journal of Cleaner Production* 376

⁹⁷⁹ *The Minerals and Mining Policy* (2015).

environmental well-being of host communities.⁹⁸⁰ This approach can help balance economic gains with the preservation of community livelihoods and the environment. Empowering local communities to participate in decision-making processes related to mining projects is vital. By involving residents in these decisions, it ensures that they benefit from the developments and that their rights are protected. Community empowerment can lead to more equitable and sustainable outcomes. While diamond mining in Lesotho presents both challenges and opportunities, careful management and robust regulations can mitigate the negative impacts and enhance the benefits for mine host communities. Achieving sustainable development through diamond mining requires a commitment to responsible management practices and a framework that combines resource curse theory, social justice theory, and community participation. Transparency in decision-making processes is paramount to ensure that local employment opportunities are maximised, environmental impacts are mitigated through stringent regulations and monitoring, and adequate resources are allocated to support social services. By prioritising these practices, diamond mining can evolve from a potential threat to socio-economic rights into a catalyst for community empowerment and equitable distribution of Lesotho's mineral wealth.

Resource curse theory⁹⁸¹ posits that countries rich in natural resources often experience slower economic growth due to mismanagement, corruption, and conflict. To avoid this, Lesotho must implement policies that promote responsible mining practices and equitable revenue distribution. Reinvesting mining profits into local communities can help mitigate the negative effects associated with the resource curse, fostering long-term sustainable development.

Social justice theory⁹⁸² emphasises the need to address inequalities and ensure that all community members, especially marginalised groups, benefit from diamond mining. This includes fair compensation for displaced communities, investment in local infrastructure, and provision of health and education services. By focusing on

⁹⁸⁰ Fraser 2018 *Resources Policy* 2.

⁹⁸¹ See para 2.3.3 above.

⁹⁸² See para 2.3.2 above.

social justice, Lesotho can work towards reducing disparities and improving overall well-being.

Community participation⁹⁸³ is crucial for sustainable development. Involving local communities in decision-making processes related to mining operations ensures their voices are heard and interests considered. This participatory approach fosters trust and collaboration between mining companies and communities, leading to more sustainable and accepted outcomes. Empowering local communities to actively engage in these processes enhances their ability to advocate for their rights and interests, contributing to more equitable and just mining practices.

By prioritising these responsible management practices, diamond mining in Lesotho can transition from being a potential threat to socio-economic rights to becoming a catalyst for community empowerment. Through transparency, local employment, environmental stewardship, and support for social services, the benefits of Lesotho's mineral wealth can be equitably distributed, fostering sustainable development and improved livelihoods for mine host communities. Integrating resource curse theory, social justice, and community participation ensures that the approach to diamond mining is comprehensive and sustainable, ultimately benefiting the entire nation.

6.3 Legislative framework of mining in Lesotho

6.3.1 International commitments and standards

Lesotho's commitment to upholding fundamental human rights and principles is underscored by its status as a signatory to various international and regional human rights instruments. These include the 1966 *International Covenant on Civil and Political Rights* (hereafter *ICCPR*), the 1966 *International Covenant on Economic, Social and Cultural Rights* (hereafter *ICESCR*) and the 1981 *African Charter on Human and Peoples' Rights* (hereafter *African Charter*),⁹⁸⁴ The 1966 *ICESCR* guarantees a broad spectrum of socio-economic rights, encompassing the right to

⁹⁸³ See para 2.3.4 above.

⁹⁸⁴ Lesotho acceded to the 1966 *ICCPR*, the 1966 *ICESCR* on 09-September 1992 and ratified the 1981 *African Charter* in 1992.

work,⁹⁸⁵ health,⁹⁸⁶ education,⁹⁸⁷ and an adequate standard of living.⁹⁸⁸ This dedication to international obligations necessitates a robust constitutional, policy and legislative framework in Lesotho to promote and protect the socio-economic rights of mine host communities. The human rights framework serves as a crucial mechanism for translating these obligations into actionable measures at the national level, ensuring equitable distribution of the benefits of diamond mining and safeguarding the rights of affected communities.

In addition to its international commitments, Lesotho aligns itself with the African Mining Vision (hereafter *AMV*), a policy framework adopted by the African Union in 2009. The 2009 *AMV* aims to foster sustainable mining development across Africa by emphasising responsible resource governance, value addition, and socio-economic development. By championing the 2009 *AMV*, Lesotho demonstrates its dedication to advancing the principles of sustainable mining within the continent. Moreover, Lesotho's membership in the Southern African Development Community (hereafter *SADC*) and ratification of the 1997 *SADC Mining Protocol*⁹⁸⁹ further exemplify its commitment to regional cooperation in fostering a conducive environment for responsible and sustainable mining activities.

The following analysis of Lesotho's constitutional, policy, and legislative framework, coupled with a comparative analysis of Botswana and South Africa, as well as the benchmarks set in Chapter 2, will lead to a comprehensive understanding of the strengths and weaknesses of Lesotho's approach to mining sector governance. By examining how Lesotho's frameworks measure up against those of its regional counterparts and international best practices, this analysis will identify areas for improvement and provide insights into potential reforms.

By drawing on the benchmarks established in Chapter 2, this analysis will enable policymakers and stakeholders to develop targeted interventions aimed at

⁹⁸⁵ A 6 of the *ICESCR* (1966).

⁹⁸⁶ A 12 of the *ICESCR* (1966).

⁹⁸⁷ A 13 of the *ICESCR* (1966).

⁹⁸⁸ A 11 of the *ICESCR* (1966).

⁹⁸⁹ See para 3.2.4.2 above.

enhancing the protection of socio-economic rights, promoting sustainable mining practices, and maximising the benefits of mineral resource exploitation for all stakeholders, particularly mine host communities. Ultimately, this comprehensive analysis will serve as a roadmap for strengthening Lesotho's mining sector governance and ensuring that it aligns with international standards and best practices, thereby contributing to the country's socio-economic development and long-term prosperity.

In order to enable the mining sector to thrive, it is very important to ensure that this sector operates within the boundaries of a very operational and effective legal framework, therefore this chapter will be a critical analysis of the current Lesotho policy, legislative and constitutional framework pertaining to the protection of socio-economic interests of mine host communities affected by diamond mining so as to obtain a comprehensive exposition of the current extent to which interests of mine host communities are promoted and protected. The regulatory framework to be examined in this study is the *Constitution of Lesotho* 1993, the *Mines and Minerals Act* 4 of 2005, the *Water Act* 15 of 2008, and the *Environment Act* 10 of 2008 and the *Land Act* 2010.

6.3.2 Constitutional provisions⁹⁹⁰

The 1993 Constitution of Lesotho, enacted after two years of deliberation, stands as the supreme law of the land, embodying the principles of a sovereign democratic kingdom.⁹⁹¹ Within its framework, three arms of government are established: the executive, the judiciary, and parliament. Chapter II of the 1993 Lesotho Constitution deals with the protection of fundamental human rights and freedom, which are according to section 22 justiciable and enforceable. However, Chapter II

⁹⁹⁰ According to section 2, the 1993 *Constitution* is the supreme law of the land and if any other law is inconsistent with it, that other law shall to the extent of the inconsistency be null and void.

⁹⁹¹ Maqakachane *Towards Constitutionalisation of Lesotho's Private Law Through Horizontal Application of the Bill of Rights Judicial Subsidiarity* 17.

does not contain any references to socio-economic rights, which are dealt with as non-justiciable Principles of State Policy in Chapter IV.

The Principles of State Policy outlined in Chapter III of the 1993 *Constitution of Lesotho* serve as fundamental guidelines shaping the nation's public policy.⁹⁹² While not directly enforceable by the courts, these principles hold significant weight in guiding the actions of government bodies and public authorities. Within the context of protecting and promoting the socio-economic rights of mine host communities, these principles underscore the government's commitment to ensuring equitable development and opportunities for all citizens.

By adhering to these principles, authorities are tasked with progressively realising socio-economic rights through legislative measures and other means. This implies that policies and initiatives aimed at safeguarding the well-being of mine host communities must align with the overarching principles of equality, justice, health protection, education provision, employment opportunity, and environmental conservation. As Lesotho seeks to harness the benefits of diamond mining while mitigating its potential adverse impacts, the application of these guiding principles becomes paramount in fostering inclusive growth, empowering communities, and ensuring sustainable development across the nation.

The constitutional mandate for equality and justice in Lesotho underscores the nation's commitment to creating a fair and inclusive society where every citizen, regardless of background or status, has equal access to opportunities.⁹⁹³ This commitment extends to mine host communities, who often face socio-economic challenges due to the impact of mining activities on their livelihoods and environment. By adopting policies aimed at promoting equality and justice, the government acknowledges the need to address the disparities faced by these communities.⁹⁹⁴ This entails taking appropriate measures to ensure that

⁹⁹² These include S 26 (equality and justice), S 27 (protection of health), S 28 (provision for education), S 29 (opportunity to work), S 34 (economic opportunities) and S 36 (protection of the environment).

⁹⁹³ S 26 of the *Constitution* (1993).

⁹⁹⁴ For example, through the establishment of the *Mining Policy* 2015.

disadvantaged groups within mine host communities have equal opportunities to participate fully in all aspects of public life.

Practically, this could mean implementing programmes that provide access to education, healthcare, employment, and other essential services to alleviate poverty and empower individuals within these communities. Furthermore, it implies the need for inclusive decision-making processes that involve the participation of mine host communities in matters concerning mineral extraction and their socio-economic development. Ultimately, by prioritising equality and justice, Lesotho can work towards safeguarding the socio-economic rights of mine host communities and promoting their overall well-being in the face of mining-related challenges.

The commitment outlined in Section 27 of the 1993 Lesotho *Constitution* to ensure the highest standard of physical and mental health for its citizens holds significant implications for the socio-economic rights of mine host communities. By adopting policies aimed at safeguarding public health,⁹⁹⁵ the government acknowledges the importance of addressing health-related challenges faced by these communities due to mining activities. These policies encompass various measures, including efforts to reduce stillbirth rates⁹⁹⁶ and infant mortality, promote healthy child development, and improve environmental and industrial hygiene.⁹⁹⁷ Additionally, they emphasise the prevention, treatment, and control of diseases, including those related to occupational hazards in mining.⁹⁹⁸

By creating conditions that guarantee access to medical services and attention in times of sickness, the government seeks to ensure that all citizens, including those in mine host communities, have equitable access to healthcare resources.⁹⁹⁹ Moreover, by prioritising improvements in public health, these policies aim to

⁹⁹⁵ S 27 (1) (e) of the *Constitution of Lesotho* (1993).

⁹⁹⁶ S 27 (1) (a) of the *Constitution of Lesotho* (1993).

⁹⁹⁷ S 27 (1) (b) of the *Constitution of Lesotho* (1993).

⁹⁹⁸ S 27 (1) (c) of the *Constitution of Lesotho* (1993).

⁹⁹⁹ S 27 (1) (d) of the *Constitution of Lesotho* (1993).

mitigate the adverse health effects often associated with mining, such as air and water pollution, thereby enhancing the overall well-being of mine host communities.

Section 28 of the 1993 Lesotho *Constitution* underscores the importance of education as a fundamental right and outlines key provisions aimed at ensuring equitable access to education for all citizens, including those in mine host communities. By committing to make education available to all, the government acknowledges the transformative power of education in fostering the full development of individuals and strengthening respect for human rights and fundamental freedoms. The provision of compulsory primary education ensures that every child, regardless of their background, has the opportunity to acquire foundational knowledge and skills.¹⁰⁰⁰ Essentially, Section 28 serves as a cornerstone for promoting the socio-economic rights of mine host communities in Lesotho by ensuring equitable access to quality education, empowering individuals, and fostering inclusive development in the context of mining activities.

Section 29 of the 1993 Lesotho *Constitution* underscores the importance of ensuring that every individual has the opportunity to secure employment that they freely choose or accept.¹⁰⁰¹ This provision holds significant implications for the socio-economic rights of mine host communities in Lesotho. By committing to achieve and maintain a high and stable level of employment,¹⁰⁰² the government recognises the pivotal role of employment in fostering economic empowerment and social well-being. The adoption of policies aimed at providing technical and vocational guidance and training programmes¹⁰⁰³ further enhances the capacity of individuals, including those in mine host communities, to access opportunities in various sectors, including the mining industry. Moreover, the pursuit of steady economic, social, and cultural development, coupled with full and productive employment,¹⁰⁰⁴ underscores the

¹⁰⁰⁰ S 28 (b) of the *Constitution of Lesotho* (1993).

¹⁰⁰¹ S 29 (1) of the *Constitution of Lesotho* (1993).

¹⁰⁰² S 29 (2) (a) of the *Constitution of Lesotho* (1993).

¹⁰⁰³ S 29 (2) (b) of the *Constitution of Lesotho* (1993).

¹⁰⁰⁴ S 29 (2) (c) of the *Constitution of Lesotho* (1993).

government's commitment to fostering inclusive growth and equitable opportunities for all citizens, regardless of their background.

Section 30 of the 1993 Lesotho *Constitution* emphasises the importance of ensuring just and favourable conditions of work for all individuals, including those in mine host communities. By adopting policies aimed at securing fair remuneration,¹⁰⁰⁵ the government seeks to guarantee that workers receive wages that provide a decent living for themselves and their families,¹⁰⁰⁶ irrespective of gender. This commitment to equal pay for equal work, without distinction, contributes to promoting gender equality and addressing socio-economic disparities within mine host communities. Additionally, the provision of safe and healthy working conditions¹⁰⁰⁷ is crucial for safeguarding the well-being of workers engaged in mining activities, thereby mitigating potential health and safety risks associated with the industry. Moreover, ensuring equal opportunities for men and women¹⁰⁰⁸ to be promoted in their employment fosters inclusivity and prevents discrimination based on gender, promoting socio-economic empowerment within mine host communities. The protection of women in employment during periods before and after childbirth¹⁰⁰⁹ reflects a commitment to supporting work-life balance and maternal health, contributing to the overall welfare of families within mine host communities. Lastly, the provision of rest, leisure, and reasonable working hours, along with adequate remuneration for public holidays,¹⁰¹⁰ acknowledges the importance of work-life balance and ensures that workers have time for personal and family activities, thereby promoting their socio-economic rights and overall quality of life.

Section 31 of the 1993 Lesotho *Constitution* underscores the importance of protecting workers' rights and interests, including those within mine host communities. By encouraging the formation of independent trade unions, the government aims to empower workers to advocate for fair labour practices and

¹⁰⁰⁵ S 30 (a) (i) of the *Constitution of Lesotho* (1993).

¹⁰⁰⁶ S 30 (a) (ii) of the *Constitution of Lesotho* (1993).

¹⁰⁰⁷ S 30 (b) of the *Constitution of Lesotho* (1993).

¹⁰⁰⁸ S 30 (c) of the *Constitution of Lesotho* (1993).

¹⁰⁰⁹ S 30 (d) of the *Constitution of Lesotho* (1993).

¹⁰¹⁰ S 30 (e) of the *Constitution of Lesotho* (1993).

better working conditions. Through these unions, workers can collectively negotiate with employers to address grievances, ensure fair wages, and improve workplace safety standards. This provision not only promotes socio-economic rights by safeguarding workers' interests but also contributes to fostering a conducive environment for economic empowerment within mine host communities. Additionally, by promoting sound labour relations, Lesotho seeks to create a harmonious working environment that supports productivity and sustainable socio-economic development.

Section 32 unequivocally mandates the protection of children and young persons from exploitation and harm. By prohibiting their engagement in hazardous labour and ensuring access to education and opportunities for personal growth, Lesotho seeks to foster an environment conducive to the healthy development of its youngest citizens within mine host communities.

Section 33 emphasises inclusivity and equal participation in socio-economic activities, particularly for disabled persons. Through policies aimed at providing training and employment opportunities, Lesotho acknowledges the importance of empowering disabled individuals and promoting diversity in the workforce. By encouraging employers to embrace inclusivity, the nation seeks to break down barriers to employment and create a more inclusive labour market within mine host communities.

Section 34 underscores Lesotho's commitment to fostering economic opportunities for all citizens, including those in mine host communities. Through policies promoting property ownership and economic empowerment, the nation aims to uplift these communities and enhance their socio-economic rights, thereby fostering inclusive growth and development.

Sections 35 and 36 further complement these efforts by emphasising the importance of cultural participation,¹⁰¹¹ scientific advancement,¹⁰¹² and environmental

¹⁰¹¹ S 35 (1) of the *Constitution of Lesotho* (1993).

¹⁰¹² S 35 (2) of the *Constitution of Lesotho* (1993).

protection.¹⁰¹³ By safeguarding cultural heritage, promoting intellectual development, and prioritising environmental sustainability, Lesotho ensures the holistic well-being of mine host communities, safeguarding their socio-economic rights for present and future generations. The legal framework surrounding land ownership, as articulated in Sections 107 and 108 of the 1993 Lesotho *Constitution of Lesotho*, serves as a basis for safeguarding the socio-economic rights of mine host communities. Section 107 establishes the collective ownership of all land in Lesotho by the Basotho Nation. It explicitly preserves pre-existing land allocations and rights, ensuring the continuity and security of land tenure for individuals and communities, including mine host communities.

Complementing Section 107, Section 108 vests the power to allocate land and grant interests or rights therein in the King, acting in trust for the Basotho Nation. This provision underscores the collective stewardship of land resources, with the monarch entrusted to manage allocations and grants for the benefit of all Basotho, including mine host communities. The King is empowered to modify or revoke allocations as necessary, ensuring the equitable distribution of land and its benefits.

However, the exercise of this authority must adhere to constitutional principles and other relevant laws. Transparency, fairness, and accountability are paramount in the allocation process, with due consideration given to the rights and interests of mine host communities. Moreover, mechanisms for consultation and participation should be established to facilitate meaningful engagement with affected communities. The lessons learned from the constitutional framework and guiding principles highlight the importance of adopting inclusive and sustainable policies to protect and promote the socio-economic rights of mine host communities in Lesotho. By aligning legislative measures and government actions with these principles, Lesotho can work towards fostering inclusive growth, empowering communities, and ensuring sustainable development across the nation.

¹⁰¹³ S 36 of the *Constitution of Lesotho* (1993).

It is important to note that while the 1993 *Lesotho Constitution* articulates these socio-economic rights and principles, they are not justiciable in the country.¹⁰¹⁴ Despite their significance in guiding public policy and governmental actions, these rights cannot be enforced through the courts. Instead, they serve as guiding principles that inform legislative measures and administrative decisions aimed at promoting the well-being of all citizens, including those in mine host communities. Therefore, while the 1993 Lesotho Constitution provides a framework for socio-economic development and inclusivity, the realisation of these rights ultimately depends on the commitment and actions of government bodies, public authorities, and civil society organisations.

6.3.3 National laws and regulations

6.3.3.1 The Mines and Minerals Act 4 of 2005

The 2005 *Mines and Minerals Act* represents a significant milestone in Lesotho's legal framework governing mineral extraction. By replacing the outdated the 1967 *Mining Right Act*,¹⁰¹⁵ this legislation modernises and strengthens the regulatory framework to better serve the interests of the Basotho Nation.

Central to the 2005 *Mines and Minerals Act* is section 3(1), which firmly establishes that all rights of ownership in minerals are vested in the Basotho Nation. This provision is not merely a legal formality but embodies a fundamental principle of national sovereignty and resource stewardship. It reaffirms the constitutional mandate outlined in Section 107, which asserts the collective ownership of land and its resources by the Basotho Nation. By explicitly stating that minerals found on any land in Lesotho belong to the nation, the 2005 *Mines and Minerals Act* reinforces the principle that mineral wealth should benefit the entire Basotho populace, particularly those in mine host communities.

¹⁰¹⁴ Similar to countries like Nigeria and India. Lipholo Towards the Justiciability of Socio-Economic Rights in the Legal System of Lesotho 1.

¹⁰¹⁵ S76 of the *Mines and Minerals Act* (2005).

Section 3(1) emphasises not only the ownership but also the obligation to ensure that mineral resources are utilised for the nation's benefit. This obligation extends beyond mere extraction to encompass responsible management and equitable distribution of mineral wealth. It underscores the government's duty to ensure that mining activities contribute to socio-economic development, poverty alleviation, and environmental sustainability, thereby fulfilling the broader objectives of national development.

Asserting ownership and responsibility, section 3(2) places a specific obligation on the Minister to oversee the efficient and timely investigation and exploitation of mineral resources in the public interest. This provision reflects the government's commitment to maximising the potential of mineral resources while safeguarding national interests. It underscores the importance of efficient resource utilisation, technological advancement, and strategic planning to optimise the socio-economic benefits derived from mining activities.

Section 4 of the 2005 *Mines and Minerals Act* significantly impacts the socio-economic rights of mine host communities by limiting their control over mineral resources, restricting their ability to benefit from mining activities, and perpetuating dependency on external actors for access to and utilisation of their resources. This underscores the need for comprehensive legal reforms that prioritise the rights and interests of mine host communities and ensure equitable participation and benefit-sharing in mineral extraction activities.

Section 7 of the 2005 *Mines and Minerals Act* grants significant powers to regulatory authorities, with potential implications for the socio-economic rights of mine host communities.¹⁰¹⁶ While aimed at ensuring compliance and environmental protection, the exercise of these powers must be balanced with respect for community rights, dignity, and well-being. Effective engagement, consultation, and transparent processes are essential to mitigate potential negative impacts and ensure that the

¹⁰¹⁶ S 7 (1) (a)- (f) of the *Mines and Minerals Act* (2005).

interests of mine host communities are adequately protected and promoted within the regulatory framework governing mining activities.

Section 11(1) of Lesotho's 2005 *Mines and Minerals Act* introduces provisions aimed at promoting the socio-economic rights of Basotho through the preference for local goods and services in mining operations. By mandating that holders of mineral rights give preference to Basotho in employment opportunities, the provision seeks to address unemployment and promote economic empowerment.

Section 12 of the 2005 *Mines and Minerals Act* establishes the Mining Board, which is responsible for overseeing and regulating mining operations in Lesotho. The board plays a crucial role in ensuring that mining activities adhere to environmental, health, and safety standards, thereby protecting the well-being of mine host communities and mitigating potential adverse effects.¹⁰¹⁷

Section 54 of the 2005 *Mines and Minerals Act* outlines various restrictions on the exercise of rights under a mineral concession, significantly impacting the socio-economic rights of mine host communities. These restrictions aim to balance the interests of mineral exploration and extraction with the protection of community interests, environmental conservation, and public safety.

Firstly, the prohibition on exercising mineral rights in specific areas, such as lands dedicated to burial,¹⁰¹⁸ containing ancient monuments,¹⁰¹⁹ or reserved for governmental or public purposes,¹⁰²⁰ safeguards cultural heritage and community spaces essential for the well-being of mine host communities. By respecting these restrictions, mining activities are prevented from encroaching upon sacred or historically significant sites, preserving the cultural identity and heritage of affected communities.

¹⁰¹⁷ S 17 of the *Mines and Minerals Act* (2005).

¹⁰¹⁸ S 54 (1) (a) of the *Mines and Minerals Act* (2005).

¹⁰¹⁹ S 54 (1) (b) of the *Mines and Minerals Act* (2005).

¹⁰²⁰ S 54 (1) (c) of the *Mines and Minerals Act* (2005).

The requirement for written consent from landowners or occupiers before conducting mining activities near inhabited areas, agricultural lands, or water sources ensures the protection of livelihoods, agricultural productivity, and environmental integrity within mine host communities.¹⁰²¹ This provision mitigates potential conflicts arising from land use clashes between mining operations and local agricultural activities, safeguarding the socio-economic rights of farmers and residents dependent on these lands for sustenance.

Additionally, section 55 reinforces the rights of landowners and lawful occupiers within prospecting areas, allowing for grazing and cultivation activities that do not unduly interfere with mining operations.¹⁰²² This provision acknowledges the importance of traditional livelihood practices and land rights of mine host communities, promoting coexistence between mining activities and local socio-economic activities. Furthermore, section 56 ensures prompt compensation for any disturbance or damage caused by mining operations to landowners, occupiers, or their properties. By providing recourse for affected individuals or communities, this provision safeguards their socio-economic interests, ensuring fair treatment and mitigating adverse impacts arising from mining-related activities.

In contrast to provisions in sections 54 to 56 which lay out instances of protection of socio-economic rights of mine host communities, section 57 introduces the possibility of compulsory land acquisition. This raises concerns regarding community displacement, loss of land rights, and disruption of livelihoods. While such acquisitions may be deemed necessary for mineral development, stringent adherence to legal procedures and equitable compensation mechanisms is essential to safeguarding the socio-economic rights of affected communities.

Section 58 of Lesotho's 2005 *Mines and Minerals Act* contains critical provisions aimed at mitigating the adverse environmental effects of mining activities and safeguarding the socio-economic rights of mine host communities. These provisions underscore the importance of responsible mining practices, environmental

¹⁰²¹ S 54 (1) (d) (i)-(iv) of the *Mines and Minerals Act* (2005).

¹⁰²² S 55 (1) of the *Mines and Minerals Act* (2005).

stewardship, and community well-being in the context of mineral resource exploitation. Firstly, the requirement for the holder of a mineral right to conduct operations in a manner that preserves the natural environment and minimises waste or damage to natural resources prioritises environmental conservation.¹⁰²³ By adhering to good mining industry practices, mining companies are compelled to adopt measures that reduce environmental degradation and mitigate the loss of biodiversity,¹⁰²⁴ essential for the sustainable livelihoods and well-being of mine host communities.

The obligation to prepare a comprehensive Environmental Impact Assessment (hereafter *EIA*)¹⁰²⁵ as part of the project feasibility study report ensures proactive assessment and mitigation of potential environmental risks associated with mining operations.¹⁰²⁶ This requirement promotes transparency, public participation, and informed decision-making, empowering mine host communities to advocate for their environmental and socio-economic interests.

The mandate for the holder of a mineral right to rehabilitate and reclaim mining areas in an acceptable manner underscores the importance of restoring land to its pre-mining condition.¹⁰²⁷ This provision mitigates the long-term socio-economic impacts of mining activities by facilitating the restoration of land productivity, supporting agricultural livelihoods, and preserving community resources for future generations. The directive to maintain and restore affected areas during and after mining operations, particularly in emergencies or extraordinary circumstances, prioritises the safety and well-being of mine host communities.¹⁰²⁸ By promptly addressing environmental emergencies and implementing remedial actions, mining companies contribute to minimising risks to human health, property, and natural resources, thus safeguarding the socio-economic rights of affected communities.¹⁰²⁹

¹⁰²³ S 58 (1) (a) of the *Mines and Minerals Act* (2005).

¹⁰²⁴ S 58 (1) (b) of the *Mines and Minerals Act* (2005).

¹⁰²⁵ S 19 -27 of the *Environment Act* (2008).

¹⁰²⁶ S 58 (3) of the *Mines and Minerals Act* (2005).

¹⁰²⁷ S 58 (4) of the *Mines and Minerals Act* (2005).

¹⁰²⁸ S 58 (6) of the *Mines and Minerals Act* (2005).

¹⁰²⁹ S 58 (7) of the *Mines and Minerals Act* (2005).

The requirement for mining concession holders to make ongoing financial provisions for compliance with environmental obligations ensures accountability and sustainability in mining operations.¹⁰³⁰ This provision facilitates long-term environmental management and community development initiatives, promoting resilience and socio-economic empowerment within mine host communities. The 2005 *Mines and Minerals Act* sets the legal framework for mineral extraction in Lesotho, guided by principles of national ownership, responsibility, and public interest. By aligning with constitutional mandates and international best practices, this legislation aims to ensure that mineral wealth contributes to the welfare of mine host communities.

6.3.3.2 The Land Act 8 of 2010

The 2010 *Land Act* of Lesotho was enacted to replace and update the 1979 *Land Act* 17. It serves as a comprehensive framework governing various aspects of land tenure, administration, and dispute resolution within the nation. Its primary objectives encompass the establishment of clear procedures for the grant and conversion of land titles, the enhancement of security in land ownership, and the facilitation of efficient land administration processes. Moreover, the 2010 *Land Act* addresses the vital matter of land expropriation for public purposes, the granting of servitudes, and the establishment of specialised land courts to adjudicate disputes effectively. Additionally, the Act emphasises systematic regularisation and adjudication procedures to streamline land management and promote equitable access to land resources.¹⁰³¹

Section 4 mirrors the constitutional provision¹⁰³² affirming that land in Lesotho is vested in the Basotho Nation and held in trust by the King. This foundational principle underscores the collective ownership of land and its significance to the national identity. However, section 5 of the 2010 *Land Act* introduces a crucial caveat by delineating instances where the right to land ownership may be

¹⁰³⁰ S 58 (8) of the *Mines and Minerals Act* (2005).

¹⁰³¹ Leduc Privatising "Land Rights in Pursuit of Poverty Reduction: Commentary on the 2010 Lesotho Land Reform Project" 6.

¹⁰³² S 107 of the *Constitution of Lesotho* (1993).

superseded by overriding interests. These interests encompass a spectrum of factors, including water rights and mineral deposits. The provisions on mineral rights outlined in Section 5(1)(b) of the 2010 *Land Act* are of paramount importance due to the significant economic value and strategic importance of mineral resources.¹⁰³³

These provisions acknowledge the existence of overriding interests related to mines, minerals, coal, mineral oil, or gas, which can profoundly impact land tenure and allocation. Notably, if a Mosotho citizen is found to possess minerals on a piece of land allotted to them, this mineral deposit takes precedence over the landowner's right of occupation and possession. These provisions recognise that the presence of minerals on a piece of land can override the rights of the landowner or leaseholder. In practical terms, if minerals are discovered on land allotted to an individual, the land may be deemed government property, subject to seizure and administration in accordance with the law.¹⁰³⁴ The provisions outlined in Sections 4 and 5 of the 2010 *Land Act* encapsulate the foundational principles and practical mechanisms that underpin land governance within the nation.

6.3.3.3 The Water Act 15 of 2008

The 2008 *Water Act* is aimed at addressing the comprehensive management, protection, conservation, development, and sustainable utilisation of water resources within the nation. This legislative framework serves as a fundamental instrument for regulating the allocation, usage, and preservation of water, reflecting the government's commitment to ensuring the equitable and responsible stewardship of this vital natural resource. Encompassing a broad spectrum of provisions, the 2008 *Water Act* endeavours to strike a delicate balance between promoting socio-economic development and safeguarding environmental

¹⁰³³ Mapeshoane *A Critical Analysis into the Land Tenure System in Lesotho and its Implications on Foreign Investment 2*.

¹⁰³⁴ The Kingdom of Lesotho Combined Second to Eight Periodic Report Under the *African Charter on Human and People's Right* and Initial Report Under the Protocol to the *African Charter on the Rights of Women in Africa* 58

sustainability, thereby laying the groundwork for the effective governance and management of water resources in Lesotho.¹⁰³⁵

Section 3 of the 2008 *Water Act* outlines the fundamental principles that guide the management, conservation, and protection of water resources in Lesotho. These principles are intended to inform the actions of the Minister, and water management institutions involved in the implementation of the 2008 *Water Act*. The key principles include the sustainable utilisation of water resources,¹⁰³⁶ ensuring intergenerational equity,¹⁰³⁷ adopting integrated water resources management practices,¹⁰³⁸ promoting equitable distribution of water and sanitation services,¹⁰³⁹ facilitating public participation,¹⁰⁴⁰ adhering to the precautionary¹⁰⁴¹ and polluter pays principles,¹⁰⁴² integrating environmental and social issues into water resources management (including considerations of *HIV/AIDS* and gender mainstreaming),¹⁰⁴³ and adopting a sector-wide approach to water resources management.¹⁰⁴⁴

In the context of mine operations, the "polluter pays" principle places the responsibility on mining companies to mitigate and remediate any pollution or degradation of water resources resulting from their activities. This means that if mining activities lead to contamination of water sources or ecosystems, the mining company is obligated to cover the costs of clean up and restoration. By holding mining companies financially accountable for their environmental impacts, this principle helps protect the water resources upon which mine host communities rely for their livelihoods and well-being.

The principle of "public participation" ensures that mine host communities have a voice in decisions affecting water management in their areas. This includes decisions

¹⁰³⁵ The Preamble of the *Water Act* (2008).

¹⁰³⁶ S 3 (a) of the *Water Act* (2008).

¹⁰³⁷ S 3 (b) of the *Water Act* (2008).

¹⁰³⁸ S 3 (c) of the *Water Act* (2008).

¹⁰³⁹ S 3 (d) of the *Water Act* (2008).

¹⁰⁴⁰ S 3 (e) of the *Water Act* (2008).

¹⁰⁴¹ S 3 (f) of the *Water Act* (2008).

¹⁰⁴² S 3 (g) of the *Water Act* (2008).

¹⁰⁴³ S 3 (h) of the *Water Act* (2008).

¹⁰⁴⁴ S 3 (i) of the *Water Act* (2008).

related to water allocation, pollution control measures, and the development of water infrastructure. By actively engaging with mine host communities in decision-making processes, authorities can incorporate local knowledge, concerns, and priorities into water management strategies, fostering greater transparency, trust, and accountability. This not only empowers mine host communities to advocate for their water-related rights and interests but also enhances the effectiveness and legitimacy of water governance initiatives in addressing the needs and concerns of all stakeholders.

By regulating water use in the mining sector, the 2008 *Water Act* seeks to balance the economic interests of mining companies with the rights and well-being of local communities.¹⁰⁴⁵ This is done by stipulating that water use in mining must comply with overarching principles and regulations. The 2008 *Water Act* helps safeguard the rights of mine host communities to access clean and safe water.¹⁰⁴⁶ It ensures that mining activities do not unduly deplete or contaminate water resources, which are essential for community livelihoods, agriculture, and domestic use.

The establishment of a hierarchy of water use, prioritising essential needs such as domestic use over industrial and mining activities, further protects the socio-economic rights of mine host communities.¹⁰⁴⁷ This ensures that local communities have access to water for their basic needs before it is allocated to mining operations, preventing potential conflicts over water scarcity. The 2008 *Water Act* of Lesotho plays a crucial role in promoting the socio-economic rights to water of mine host communities by regulating water use in the mining sector. It helps mitigate the potential negative impacts of mining activities on water resources and ensures that local communities are not disproportionately affected by the exploitation of these resources.

¹⁰⁴⁵ S 5 of the *Water Act* (2008).

¹⁰⁴⁶ S 5 (1) of the *Water Act* (2008).

¹⁰⁴⁷ S 6 (1) of the *Water Act* (2008)

6.3.3.4 The Environment Act 10 of 2008

The 2008 *Environment Act* of Lesotho provides a legislative framework that safeguards the environment and promotes the sustainable management of natural resources within the nation. Enacted to address the pressing need for environmental protection and conservation, this 2008 *Environment Act* guides policies and practices related to environmental management, resource utilisation, and conservation efforts.¹⁰⁴⁸ Within the context of mine host communities in Lesotho, the 2008 *Environment Act* plays a central role in addressing the environmental impacts of mining activities and ensuring the protection of the socio-economic rights of mine host communities. By providing a comprehensive framework for environmental governance and regulation, the 2008 *Environment Act* seeks to balance the imperatives of economic development with the imperative of environmental sustainability, thereby fostering a relationship between mining activities and the well-being of mine host communities.

Section 3 of the *Environment Act* 2008 in Lesotho delineates the fundamental principles that guide environmental management within the nation. These principles are essential for ensuring the protection and sustainable utilisation of natural resources, particularly in the context of mine host communities. It emphasises the fundamental right of every person living in Lesotho to a clean and healthy environment, highlighting the importance of environmental quality for the well-being and socio-economic rights of all citizens, including those residing in mine host communities. According to section 3 (1), the Director of the Department of Environment must ensure that the section 3 (2) principles of environmental management are observed.

Section 3(2)(a) underscores the inherent right of every individual residing in Lesotho, including mine host communities, to inhabit a clean and healthy environment. This principle serves as a cornerstone for safeguarding public health

¹⁰⁴⁸ The Preamble of the *Environment Act* (2008).

and promoting socio-economic rights, emphasising the critical importance of environmental quality for the well-being of all citizens.

Additionally, Section 3(2)(b) advocates for the pursuit of sustainable development through the sound management of the environment. This principle recognises the imperative of balancing economic growth with environmental conservation, particularly relevant for mine host communities where responsible resource management is essential to ensure long-term prosperity while preserving natural resources for future generations. Section 3(2)(c) emphasises the duty to utilise and conserve Lesotho's environmental and natural resources for the benefit of both present and future generations. This principle acknowledges the intergenerational equity aspect of environmental management, highlighting the need to sustainably harness resources without compromising the rights of future inhabitants.

Section 3(2)(g) promotes community participation in environmental decision-making processes, ensuring that mine host communities have a meaningful voice in shaping policies and plans that affect their environment and livelihoods. This principle fosters transparency, inclusivity, and empowerment, enabling mine host communities to contribute to the development of effective environmental management strategies. In line with Section 3(2)(h), advocates for waste minimisation and safe disposal practices to protect the environment and public health. This principle underscores the importance of implementing robust waste management strategies to mitigate pollution and health risks, safeguarding water sources, land, and air quality for mine host communities.

Section 3(2)(k) establishes the necessity of setting environmental protection standards and monitoring changes in environmental quality. This principle provides benchmarks for environmental performance, guiding regulatory efforts to mitigate environmental degradation and protect the rights of mine host communities to a clean and healthy environment. Section 3(2)(l) mandates prior environmental impact assessments for proposed projects or activities with potential adverse effects on the environment. This principle ensures that environmental considerations are integrated into decision-making processes, safeguarding mine host communities

from potential environmental risks associated with mining activities and promoting sustainable development practices.

Section 3(2)(n) enshrines the polluter pays principle, holding those responsible for environmental damage financially accountable for their actions. This principle ensures that the costs of environmental abuse or impairment are borne by the polluter, incentivising responsible environmental stewardship by mining companies and protecting mine host communities from the adverse impacts of environmental degradation.

Section 4(1)(a) constitutes an explicit provision for the justiciability of the socio-economic right to a clean and healthy environment, as enshrined in Section 36 of the 1993 *Lesotho Constitution*. This statutory recognition reinforces the constitutional guarantee of every individual's right to inhabit a scenic, clean, and healthy environment, thereby emphasising the legal foundation for safeguarding environmental quality as a fundamental aspect of socio-economic rights protection. By codifying this right and establishing corresponding duties and legal remedies, the 2008 *Environment Act* ensures that mine host communities can effectively assert their rights and seek redress in cases of environmental harm,¹⁰⁴⁹ thereby promoting environmental justice and enhancing the well-being of all citizens.

The section further imposes a duty on every person living in Lesotho to safeguard and enhance the environment, emphasising their responsibility to inform the Director of any activities or phenomena that may significantly impact the environment. This duty reflects the collective obligation to protect and preserve natural resources for present and future generations, recognising the interconnectedness between human activities and environmental well-being.¹⁰⁵⁰

In adjudicating matters related to the environment, Lesotho courts are guided by the principles of sustainable development outlined in Section 4(4) of the Act. These principles, including the polluter pays principle, precautionary principle, ecosystem

¹⁰⁴⁹ S 4(2) of the *Environment Act* (2008).

¹⁰⁵⁰ S 4(1) (b) of the *Environment Act* (2008).

integrity, public participation, and inter-generational equity, provide a robust framework for balancing economic development with environmental protection. By upholding these principles, the court ensures that environmental decisions are made in a manner that promotes the long-term sustainability of natural resources and safeguards the socio-economic rights of mine host communities.¹⁰⁵¹ Section 4 of the 2008 *Environment Act* overall serves as a critical tool for advancing environmental justice and promoting the well-being of mine host communities in Lesotho. By affirming the right to a clean and healthy environment and providing avenues for recourse in cases of environmental harm, this provision underscores the government's commitment to fostering sustainable development and protecting the rights of all citizens.

Section 19 mandates the need of environmental impact assessments (hereafter *EIAs*) to be conducted for projects specified in Part A of the First Schedule, including mining, mineral extraction, quarrying, and open-cast extraction activities. These activities encompass a wide range of operations such as the extraction of precious stones, minerals, metals, coal, stone, slate, aggregates, sand, gravel, clay, tunnelling, diamonds, limestone, dolomite, and base metals. The Minister is empowered to prescribe specific categories within these activities that require either a full *EIA* or a project brief, considering factors such as their nature, scope, scale, and location. Additionally, amendments to the First Schedule can be made through Gazette notices, ensuring that environmental assessments align with evolving circumstances and regulatory needs. This regulatory framework aims to ensure that mining and extraction projects in mine host communities undergo comprehensive environmental assessments, mitigating potential adverse impacts and promoting sustainable development while safeguarding the socio-economic rights of mine host communities.

The 2008 *Environment Act* of Lesotho also encompasses comprehensive standards and guidelines aimed at safeguarding various environmental aspects crucial for the protection and promotion of socio-economic rights, particularly within mine host

¹⁰⁵¹ S 4(4) of the *Environment Act* (2008).

communities. Notably, section 28 focuses on water quality standards, requiring the establishment of criteria for measurement, minimum standards for different water uses, and conditions for effluent discharge. Similarly, section 29 addresses air quality standards, prescribing criteria for measurement, emission standards, and measures to reduce air pollution. Section 30 pertains to waste management standards, outlining guidelines for waste classification, disposal, and hazardous waste handling. Additionally, section 31 addresses soil quality standards, including criteria for measurement, standards for soil management, and guidelines for soil conservation practices.

Section 32 addresses noise pollution standards, setting minimum standards for noise emissions, criteria for measurement, and guidelines for noise abatement. Section 33 focuses on ionisation and radiation standards, establishing criteria for measurement, inspection procedures, and control measures for radioactive materials. Moreover, section 34 addresses the control of noxious smells, prescribing procedures for measurement, minimum standards for pollution control, and guidelines for smell abatement. Additionally, Section 35 mandates the preparation of guidelines for managing environmental disasters, encompassing various scenarios such as oil spills, industrial accidents, and natural disasters.

Sections 32, 33, 34 to 35 outline specific measures, including setting standards, establishing procedures for measurement and control, issuing guidelines for handling hazardous substances, and conducting investigations into pollution sources. Furthermore, the 2008 *Environment Act* imposes penalties for non-compliance, ensuring accountability and enforcement of environmental regulations. These provisions are vital for ensuring the well-being of mine host communities by mitigating environmental risks associated with mining activities and promoting sustainable development practices.

Sections 37 to 51, establish stringent regulations to prevent environmental degradation and protect mine host communities' socio-economic rights. These sections prohibit the discharge of hazardous substances, chemicals, and oil into the environment without proper authorisation. Violations of these regulations incur

substantial penalties, including fines and imprisonment, along with the obligation to cover the costs of clean up and restoration. Additionally, the *2008 Environment Act* mandates the issuance of effluent discharge licenses for industrial activities, imposes strict standards for noise and water pollution, and regulates emissions from vehicles and machinery. Furthermore, the *2008 Environment Act* empowers environmental inspectors to enforce these regulations and seize or impound materials posing radiation hazards. Violations of these provisions result in significant penalties, reinforcing the *2008 Environment Act's* commitment to safeguarding the environment and the well-being of mine host communities in Lesotho.

In the context of promoting the socio-economic rights of mine host communities, these provisions play a crucial role in ensuring their well-being and livelihoods are not compromised by environmental degradation. By holding polluters accountable, facilitating clean-up efforts, and addressing emergencies swiftly, the *2008 Environment Act* 10 contributes to fostering sustainable development and safeguarding the interests of all stakeholders, including vulnerable communities impacted by mining activities.

6.3.3.5 Concluding remarks

In conclusion, it is clear that the legislative framework in Lesotho reflects a commitment to protecting and promoting the socio-economic rights of mine host communities. While the 1993 *Lesotho Constitution* establishes these rights as guiding principles, their non-justiciability (with the exception of the provisions contained in section 4 of the *2008 Environment Act*) underscores the importance of governmental commitment and action in translating them into tangible benefits for communities. The *2005 Mines and Minerals Act*, the *2008 Water Act*, the *2008 Environment Act* and the *2010 Land Act* serve as pillars for inclusive and sustainable development, ensuring that mineral extraction, land governance, water use, and environmental protection prioritise community wellbeing.

6.3.4 *Institutional framework and implementation strategies (actors, agencies and institutions)*

6.3.4.1 Department of Mines

The Department of Mines and Geology, initially established in 1969 under the Ministry of Finance, Commerce, and Industry, oversaw Lesotho's mining sector until 2012.¹⁰⁵² After a government reorganisation, it became the Ministry of Mining, comprising three main departments: Administration for policy direction, the Department of Mines for regulation, and the Department of Geological Survey for managing mineral resources information.¹⁰⁵³

The Department of Mines, operating under the Ministry of Mining in Lesotho, stands as a cornerstone stakeholder in the nation's mining sector. Led by the Commissioner of Mines, its mandate encompasses a spectrum of responsibilities aimed at regulating, monitoring, and fostering the growth of the industry. At its core, the department is entrusted with the vital task of overseeing and enforcing regulations governing mining activities, ensuring adherence to safety and environmental standards.¹⁰⁵⁴

Beyond regulatory oversight, the department plays a pivotal role in promoting investment in the mining sector, seeking to enhance its contribution to Lesotho's *GDP* by expanding operations and increasing the number of operating mines. Moreover, it is committed to fostering beneficiation and downstream activities, with a keen focus on increasing the participation of Basotho in the industry, thus driving economic empowerment and inclusivity.¹⁰⁵⁵

Within its operational framework, the department pursues specific objectives tailored to various aspects of its work. From regulating explosives usage to conducting health, safety, and environmental inspections, each objective is geared

¹⁰⁵² Kheleli 2022 *Lesotho Insights* 45.

¹⁰⁵³ Ministry of Mining 2024 http://www.mining.gov.ls/?page_id=51.

¹⁰⁵⁴ Ministry of Mining 2024 http://www.mining.gov.ls/?page_id=51.

¹⁰⁵⁵ Ministry of Mining 2024 http://www.mining.gov.ls/?page_id=51.

towards ensuring the responsible and sustainable operation of mines. Additionally, the department closely monitors production processes and revenue collection, safeguarding the interests of the state and facilitating transparent transactions within the industry.¹⁰⁵⁶

Of particular importance is the department's role in licensing and controlling the movement of diamonds, a valuable resource in Lesotho's mining landscape. Through meticulous vetting processes and the implementation of the *Kimberly Process Certification Scheme*,¹⁰⁵⁷ prevents illicit trading and ensures the integrity of diamond sales and transactions. Furthermore, the department administers security measures to combat theft and safeguard both economic interests and community well-being.¹⁰⁵⁸

In its engagement with mining leases, encompassing diamond mining companies, dolerite quarries, sandstone quarries, and clay quarries, the Department fosters a collaborative environment that promotes responsible mining practices and community development. By working in tandem with other stakeholders, including mining companies, government agencies, and mine host communities, the Department of Mines in Lesotho continues to drive progress and sustainable development in the nation's mining sector, ensuring a balance between economic growth and environmental stewardship.¹⁰⁵⁹

The Department of Mines in Lesotho plays a pivotal role in safeguarding the socio-economic rights of mine host communities through its multifaceted approach. By fostering community engagement, enforcing stringent regulations, and spearheading development initiatives, the department ensures that mine host community voices are heard and integrated into mining operations.¹⁰⁶⁰ Moreover, its focus on employment generation, environmental protection, and conflict resolution underscores its commitment to promoting sustainable development and inclusive

¹⁰⁵⁶ Ministry of Mining 2024 http://www.mining.gov.ls/?page_id=51.

¹⁰⁵⁷ See para 3.3.2.4 above.

¹⁰⁵⁸ Ministry of Mining 2024 http://www.mining.gov.ls/?page_id=51.

¹⁰⁵⁹ Ministry of Mining 2024 http://www.mining.gov.ls/?page_id=51.

¹⁰⁶⁰ Ministry of Mining 2024 http://www.mining.gov.ls/?page_id=51.

growth. As a critical stakeholder in the mining sector, the Department serves as a beacon of hope for mine host communities, striving to create a future where economic prosperity is balanced with social equity and environmental stewardship.¹⁰⁶¹

6.3.4.2 The Department of Environment

In Lesotho, the Department of Environment, established under section 9 of the 2008 *Environment Act*, formerly known as the National Environment Secretariat, operates within the Ministry of Tourism, Environment, and Culture.¹⁰⁶² Its mandate, aligned with section 36 of the 1993 *Lesotho Constitution*, prioritises the protection and enhancement of the natural and cultural environment for the benefit of present and future generations.¹⁰⁶³ As a lead agency for environmental management, the department promotes socio-economic and environmental sustainable development. Within the mining sector, it collaborates with stakeholders to ensure responsible practices that prioritise environmental protection and social well-being, empowering mine host communities and fostering inclusive development.¹⁰⁶⁴ Through regulatory oversight, policy advocacy, and community engagement, the Department of Environment plays a pivotal role in safeguarding the socio-economic rights of mine host communities in Lesotho.¹⁰⁶⁵

The Department actively engages with mining companies and mine host communities to promote dialogue, collaboration, and capacity-building initiatives aimed at enhancing environmental stewardship and community resilience. By facilitating partnerships and providing technical assistance, it empowers mine host communities to actively participate in decision-making processes related to mining operations, ensuring that their voices are heard and their concerns addressed.¹⁰⁶⁶

¹⁰⁶¹ Ministry of Mining 2024 http://www.mining.gov.ls/?page_id=51.

¹⁰⁶² S 9 of the *Environment Act* (2008).

¹⁰⁶³ Department of Environment 2024 <https://environment.gov.ls/about-us/>.

¹⁰⁶⁴ Department of Environment 2024 <https://environment.gov.ls/about-us/>.

¹⁰⁶⁵ Department of Environment 2024 <https://environment.gov.ls/about-us/>.

¹⁰⁶⁶ Department of Environment 2024 <https://environment.gov.ls/about-us/>.

In essence, the Department of Environment in Lesotho serves as a crucial ally in the promotion and protection of the socio-economic rights of mine host communities. By championing sustainable development principles and advocating for the integration of environmental and social considerations into mining practices, it contributes to the creation of a mining sector that not only drives economic growth but also fosters environmental integrity and social justice for all stakeholders involved.¹⁰⁶⁷

6.3.4.3 Mining Companies

In Lesotho's mining sector, mining companies serve as integral stakeholders, playing diverse and pivotal roles in advancing the socio-economic rights of mine host communities. Through a comprehensive array of initiatives and practices, these companies contribute to the well-being and prosperity of mine host communities. First and foremost, mining companies strengthen the economic development of mine host communities by creating employment opportunities,¹⁰⁶⁸ fostering entrepreneurship, and catalysing economic growth.¹⁰⁶⁹ By generating revenue for local businesses and providing stable incomes for residents, they play a crucial role in poverty alleviation and improving living standards.

In tandem with their economic contributions, mining companies demonstrate a strong commitment to corporate social responsibility (hereafter *CSR*)¹⁰⁷⁰, investing in initiatives aimed at addressing social needs and enhancing community infrastructure. From funding education¹⁰⁷¹ and skills development programmes to improving healthcare facilities and supporting local infrastructure projects,¹⁰⁷² these

¹⁰⁶⁷ Department of Environment 2024 <https://environment.gov.ls/about-us/>.

¹⁰⁶⁸ For instance, out of the workforce of 752, 95% are Basotho nationals, and of the 95% only 33% are from surrounding communities. Storm Diamond Mine *Sustainability Report* 12.

¹⁰⁶⁹ In 2022 it was reported that the diamond mines operating in Lesotho injected M5.1 billion into Lesotho's economy through procurement, employee earnings, taxes, and levies. Lesotho Chamber of Mines 2022 <https://stormmountaindiamonds.com/downloads/Lesotho-Diamond-Mining-Industry-2022-Performance-Report.pdf>.

¹⁰⁷⁰ See para 4.3.5 above.

¹⁰⁷¹ In 2022 Storm Diamond Mines (also known as the Kao Mine) awarded 13 scholarships to local students as well as those from the Kao village which is a mine host community. Storm Diamond Mine *Sustainability Report* 12.

¹⁰⁷² The Kao Mine also constructed and maintains 30km gravel road that connects Kao with the A1 main road at Tlaeng. Storm Diamond Mine *Sustainability Report* 15.

efforts empower mine host communities and promote overall socio-economic development.

Engagement with mine host communities is another cornerstone of mining companies' approach, characterised by transparent communication, consultation, and collaboration. By actively seeking input from community members, addressing concerns, and incorporating feedback into decision-making processes, companies foster trust, build positive relationships, and empower local stakeholders to shape the direction of mining activities.¹⁰⁷³

Lastly, mining companies invest in capacity building and empowerment initiatives, aiming to enhance the skills, knowledge, and capabilities of mine host communities. Through training and education opportunities, access to financial resources, and promotion of local employment and procurement practices, they enable communities to participate actively in economic activities and decision-making processes, thereby promoting social and economic empowerment.

Overall, mining companies in Lesotho play a pivotal role in promoting and protecting the socio-economic rights of mine host communities through their multifaceted contributions.¹⁰⁷⁴ By fulfilling their responsibilities in economic development, *CSR*, environmental management, stakeholder engagement, and capacity building, these companies contribute to sustainable development and the well-being of mine host communities in Lesotho.¹⁰⁷⁵

The mining sector in Lesotho is intricately woven with mining policies, governance frameworks, and the active participation of various stakeholders, each playing a critical role in safeguarding the socio-economic rights of mine host communities. The Department of Mines, with its regulatory oversight and commitment to responsible mining practices, ensures the industry operates ethically and sustainably while promoting economic empowerment and inclusivity among Basotho. Similarly, the Department of Environment champions environmental protection and social

¹⁰⁷³ Storm Diamond Mine *Sustainability Report* 14.

¹⁰⁷⁴ Shelile *Informative* 6.

¹⁰⁷⁵ Shelile *Informative* 6.

well-being, working collaboratively with mining companies and mine host communities to foster inclusive development and environmental stewardship. Mining companies themselves, through their economic contributions, corporate social responsibility initiatives, community engagement, and capacity-building efforts, are pivotal in advancing the prosperity and resilience of mine host communities. This collaborative effort between government departments, mining companies, and mine host communities underscores a commitment to sustainable development, social equity, and environmental integrity within Lesotho's mining sector. By upholding these principles and fostering meaningful partnerships, the mining industry in Lesotho can continue to drive economic growth while ensuring the well-being and empowerment of all stakeholders, thereby contributing to a future where prosperity is balanced with social justice and environmental sustainability.

6.3.4.4 The Minerals and Mining Policy of 2015 (hereafter the 2015 Minerals and Mining Policy)

The 2009 *African Mining Vision* (hereafter *AMV*) serves as a comprehensive framework for sustainable and inclusive development in the mining sector across the African continent. Emphasising the importance of aligning national mining policies with broader developmental goals, the 2009 *AMV* seeks to harness the potential of mineral resources to drive economic growth, promote social equity, and safeguard environmental integrity. In line with this vision, the African Union Commission (hereafter *AUC*) and the African Minerals Development Centre (hereafter *AMDC*), in collaboration with United Nations Development Programme (hereafter *UNDP*) Lesotho, embarked on a series of initiatives aimed at supporting member states in developing and implementing their Country Mining Visions (hereafter *CMVs*).¹⁰⁷⁶ Lesotho, recognising the significance of aligning its mining policies with the *AMV* and its own national development agenda, took proactive

¹⁰⁷⁶ United Nations Economic Commission for Africa 2016 <https://archive.uneca.org/stories/communicating-africa-mining-vision-roll-out-lesotho>.

steps to revise its *Minerals and Mining Policy*, ensuring it was in line with the *CMV* based on the 2009 *AMV* as discussed in Chapter 3 above.¹⁰⁷⁷

The background of Lesotho's 2015 *Minerals and Mining Policy* is rooted in the nation's endeavour to harness its mineral resources, particularly in diamond mining, as a catalyst for sustainable socio-economic development. The policy aims to optimise the benefits derived from the country's mineral endowment while addressing a myriad of challenges. These challenges include a lack of comprehensive knowledge regarding Lesotho's mineral resources, insufficient geological mapping, and mineral exploration efforts. Additionally, the existing mining legislation, such as the 2005 *Mining and Minerals Act*, lacks provisions for addressing socio-economic development goals and contemporary governance standards within the sector.

These critical policy gaps exist in areas such as value addition, domestic empowerment, *CSR* guidelines, and modern safety and occupational health standards. Moreover, there is a lack of strategic frameworks for developing industrial clusters and fostering economic diversification through infrastructure development, limiting the sector's integration with other economic spheres like agriculture, manufacturing, and tourism. The 2015 *Minerals and Mining Policy* of Lesotho aims to establish a robust regulatory framework that promotes responsible mining practices, fosters economic empowerment, ensures environmental sustainability, and maximises the socio-economic benefits derived from the country's mineral resources.

In the context of the 2015 *Mineral and Mining Policy*, the pursuit of environmental, social, and economic sustainability is paramount, recognising the inherent adverse impacts of mining activities. Acknowledging the disproportionate burden borne by vulnerable groups, such as women and children, the 2015 *Mineral and Mining Policy* underscores the importance of gender equality and equity to empower women in the mining sector. Additionally, the high prevalence of *HIV/AIDS* in mining areas

¹⁰⁷⁷ See para 3.2.3.2 above.

poses a significant threat to the nation's human resources, necessitating specific efforts to address and mitigate the spread of the epidemic.¹⁰⁷⁸

Mining activities are known to adversely affect the natural environment, biodiversity, and ecosystems, as well as pose threats to occupational health and safety. Moreover, they can expose mine host communities to adverse environmental and social consequences, impinging on other land uses, including agriculture, and violating human rights, particularly those of women and children. In response to these challenges, the policy articulates a clear statement of intent by the government to minimise or eliminate the adverse social, health, and environmental impacts of mining development.¹⁰⁷⁹

The overarching objective is to integrate sound environmental, cultural, social, and health protection practices and values into mineral resources development and management through participatory processes that are inclusive, transparent, and accountable. To achieve this objective, the policy delineates strategies across four key areas with the first being environmental protection. This includes ensuring adherence to the highest standards of environmental protection, drawing up comprehensive regulations, establishing an empowered Environmental Unit/Agency, providing for mine closure obligations and procedures, and making Environmental and Social Impact Assessments (hereafter *ESIAs*) and Environmental Management Programmes (hereafter *EMPs*) mandatory for mine licensing procedures.¹⁰⁸⁰

The second key area is mine health and safety, which entails obligatory standards and compliance procedures set up to uphold the highest standards of mine health and safety. This involves strengthening monitoring, supervising, and enforcing compliance with set standards, as well as ensuring effective workplace prevention, care, and support programmes to address the *HIV/AIDS* epidemic and other communicable diseases within mining communities.¹⁰⁸¹

¹⁰⁷⁸ S 1.3 of the *Mineral and Mining Policy* (2015).

¹⁰⁷⁹ S 1.3 of the *Mineral and Mining Policy* (2015).

¹⁰⁸⁰ S 4.8 of the *Mineral and Mining Policy* (2015).

¹⁰⁸¹ S 1.3 of the *Mineral and Mining Policy* (2015).

The third key area relates to community participation and involvement in mining. Here strategies should focus on empowering mine host communities through skills and knowledge development, ensuring inclusive consultation and participation of mine host communities in decision-making processes, and requiring mining companies to work in strategic partnership with host communities during *CSR* initiatives and other community development projects.¹⁰⁸²

Human rights are the last key area of focus where efforts are directed towards promoting and facilitating women's participation in mining, curbing the incidence of child labor, domesticating and enforcing *International Labour Organisation* conventions on decent working conditions, and developing a framework for compensating and resettling landowners and communities affected by mining activities. Lesotho through provisions in the 2015 *Minerals and Mining Policy* aims to protect the socio-economic rights of mine host communities by promoting sustainable mining practices that prioritise environmental stewardship.

6.3.4.5 Lesotho and the KPCS¹⁰⁸³

Lesotho's membership in *KPCS* is instrumental in safeguarding the socio-economic rights of mine host communities in the country. By joining the *KPCS* in 2003,¹⁰⁸⁴ Lesotho committed to preventing rough diamonds from financing armed conflict, thereby contributing to stability and security internationally within the diamond industry.¹⁰⁸⁵ Through its participation in the *KPCS*,¹⁰⁸⁶ Lesotho has implemented stringent measures to comply with the Scheme's requirements. These measures include establishing a national internal control system to regulate the import, export, and transit of rough diamonds, as well as issuing Kimberley Process certificates to accompany all shipments of rough diamonds.¹⁰⁸⁷ Additionally, Lesotho actively

¹⁰⁸² S 2.8 of the *Minerals and Mining Policy* (2015).

¹⁰⁸³ See para 3.3.2.4 above.

¹⁰⁸⁴ KPCS 2024 <https://www.kimberleyprocess.com/en/kpcs-core-document>.

¹⁰⁸⁵ Lekomte *The Kimberley Process, A New Actor on the Conflict Resolution Scene?* 14.

¹⁰⁸⁶ See para 3.3.2.4 above.

¹⁰⁸⁷ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 50.

participates in the *KPCS*¹⁰⁸⁸ review process, undergoing assessments to ensure compliance with the Scheme's standards.

The adherence to *KPCS*¹⁰⁸⁹ regulations ensures that diamonds originating from Lesotho are conflict-free, providing assurance to consumers and stakeholders. This contributes to the sustainability of the diamond industry, which in turn has important economic implications for Lesotho's development.¹⁰⁹⁰ The revenue generated from the diamond sector supports various socio-economic initiatives, including infrastructure development, healthcare, education, and poverty alleviation programs, ultimately benefiting mine host communities. Furthermore, by upholding ethical standards in diamond mining, Lesotho enhances its reputation as a responsible player in the global diamond market. This can attract investment and partnerships that promote sustainable development and empower mine host communities through job creation, skills development, and community development initiatives.

In essence, Lesotho's membership in the *KPCS*¹⁰⁹¹ not only ensures the integrity of its diamond industry but also contributes to the protection and promotion of the socio-economic rights of mine host communities. By adhering to international standards and fostering a conflict-free diamond trade, Lesotho strengthens its commitment to sustainable development and inclusive growth for all stakeholders involved in the mining sector.

Lesotho's diamond mining industry is deeply influenced by its policies, governance frameworks, and international commitments. As indicated above the adoption of the 2015 *Minerals and Mining Policy* aligns with the 2009 *AMV*, emphasising sustainable development and socio-economic empowerment. Through strategic initiatives like environmental protection and community participation, Lesotho aims to mitigate mining's adverse impacts while maximising benefits for host communities.

¹⁰⁸⁸ See para 3.3.2.4 above.

¹⁰⁸⁹ See para 3.3.2.4 above.

¹⁰⁹⁰ Matsela *Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa* 50.

¹⁰⁹¹ See para 3.3.2.4 above.

Additionally, as a member of the *KPCS*, Lesotho ensures ethical diamond mining, contributing to community well-being. Lesotho is dedicated to fostering a mining industry that balances economic prosperity with environmental stewardship and social equity.

6.3.5 Corporate social responsibility in the mining sector

*CSR*¹⁰⁹² in Lesotho's diamond mining sector plays a pivotal role in protecting and promoting the socio-economic rights of mine host communities. This section examines *CSR*¹⁰⁹³ initiatives undertaken by mining companies, such as the Liqhobong Mining Development Company (hereafter *LMDC*) and Letšeng Diamonds, highlighting their impact on mine host communities and how they contribute to sustainable development and improved quality of life. One significant aspect of *CSR*¹⁰⁹⁴ in Lesotho's diamond mining sector is the development of essential infrastructure. In Butha-Buthe, the *LMDC* has made substantial contributions to educational facilities by donating two classrooms and offices to the Liqhobong Primary School in the Maphale village.¹⁰⁹⁵ Additionally, *LMDC* constructed a pre-school for the Liqhobong community, further supporting the educational needs of local children. Such initiatives not only enhance educational opportunities but also contribute to the long-term development of the community.¹⁰⁹⁶

The *LMDC* has been involved in sustainable water supply projects for the Liqhobong and Pulane villages. Prior to this intervention, communities relied on unprotected springs for their water needs.¹⁰⁹⁷ The introduction of communal taps across both villages has significantly improved access to clean and safe water, transforming the lives of local residents.¹⁰⁹⁸ This development is critical for maintaining public health and ensuring that basic human rights to clean water and sanitation are met.

¹⁰⁹² See para 4.3.5 above.

¹⁰⁹³ See para 4.3.5 above.

¹⁰⁹⁴ See para 4.3.5 above.

¹⁰⁹⁵ *LMDC Lesotho Times* 11.

¹⁰⁹⁶ *LMDC Lesotho Times* 11.

¹⁰⁹⁷ *LMDC Lesotho Times* 11.

¹⁰⁹⁸ *LMDC Lesotho Times* 11.

Letšeng Diamonds has demonstrated a strong commitment to education through its annual scholarship programme.¹⁰⁹⁹ This initiative offers full scholarships to Basotho students pursuing tertiary qualifications, including Honours and master's degrees, in fields relevant to Lesotho's extractive industry. By investing in the education of local students, Letšeng Diamonds not only fosters individual academic growth, but also contributes to the development of a skilled workforce that can support and sustain the country's mining sector.¹¹⁰⁰

*CSR*¹¹⁰¹ efforts in Lesotho's diamond mining sector also extend to healthcare and utilities. Mining companies contribute to the construction and maintenance of clinics and hospitals. They ensure that mine-host communities have access to essential medical services.¹¹⁰² Additionally, investments in electricity and sanitation infrastructure improve the overall quality of life and support economic development in these regions.¹¹⁰³ The presumption underlying these *CSR*¹¹⁰⁴ initiatives is that mineral extraction, when coupled with responsible and inclusive management practices, leads to infrastructure improvements. These improvements, in turn, expand economic opportunities and contribute to poverty reduction. By providing educational facilities, clean water, healthcare, and utility infrastructure, mining companies create a foundation for sustainable development that benefits the entire community.

*CSR*¹¹⁰⁵ in Lesotho's diamond-mining sector is foundational to protecting and promoting the socio-economic rights of mine-host communities. By addressing critical needs such as education, clean water, healthcare, and infrastructure, *CSR*¹¹⁰⁶ initiatives help safeguard basic human rights and enhance the overall wellbeing of local populations. These efforts ensure that the benefits of diamond mining extend

¹⁰⁹⁹ LENA 2024 <https://www.lena.gov.ls/letseng-diamonds-awards-scholarships-to-young-scholars/>.

¹¹⁰⁰ LENA 2024 <https://www.lena.gov.ls/letseng-diamonds-awards-scholarships-to-young-scholars/>.

¹¹⁰¹ See para 4.3.5 above.

¹¹⁰² LMDC *Lesotho Times* 11.

¹¹⁰³ LMDC *Lesotho Times* 11.

¹¹⁰⁴ See para 4.3.5 above.

¹¹⁰⁵ See para 4.3.5 above.

¹¹⁰⁶ See para 4.3.5 above.

beyond economic gains, fostering a more equitable and inclusive development model.

Mining companies must continue to prioritise transparency in decision-making processes, involve mine-host communities in planning and implementation, and ensure that environmental impacts are mitigated through stringent regulations and monitoring. By doing so, *CSR*¹¹⁰⁷ practices can transform diamond mining from a potential threat to socio-economic rights to a powerful tool for community empowerment and equitable distribution of Lesotho's mineral wealth.

*6.3.6 Community participation*¹¹⁰⁸

Community participation is foundational to the socio-economic rights of mine-host communities in Lesotho. This is because it empowers these communities, protects their livelihoods, and ensures sustainable development. This participation is embodied in the principles of *FPIC*¹¹⁰⁹ and *SLO*,¹¹¹⁰ which are crucial in fostering trust and collaboration between mining companies and mine-host communities. When communities are actively involved in the decision-making processes related to mining projects, they gain a sense of ownership and control over their environment and resources. This empowerment enables them to advocate for their rights, negotiate better terms, and ensure that their interests are considered. This leads to improved socio-economic outcomes. *FPIC*¹¹¹¹ ensures that communities are fully-informed about mining projects and have the opportunity to consent or withhold consent without coercion, thereby reinforcing their rights and autonomy. In Lesotho, community participation can ensure that local knowledge and priorities are integrated into environmental management plans, leading to more effective and sustainable practices.

¹¹⁰⁷ See para 4.3.5 above.

¹¹⁰⁸ See para 2.3.4 above.

¹¹⁰⁹ See para 2.3.4 above.

¹¹¹⁰ See para 2.3.4 above.

¹¹¹¹ See para 2.3.4 above.

This helps safeguard natural resources, which are often vital for the community's economy and wellbeing. Inclusive decision-making processes help address power imbalances and ensure that marginalised groups within communities, such as women, youth, and indigenous peoples, have a voice. This fosters social equity, enabling all community members to benefit from mining projects and associated developments, thus enhancing overall social cohesion and stability. Active participation also allows communities to advocate for local employment, training programmes, and the development of infrastructure and services that benefit them directly. This can lead to improved economic opportunities, such as job creation, entrepreneurship, and the development of local businesses that support the mining industry.

Engaging communities in the planning and implementation of mining projects helps prevent conflicts by addressing grievances and building consensus early on. This proactive approach reduces the risk of disputes escalating into more serious conflicts, promoting a more stable and peaceful environment. The concept of *SLO*¹¹¹² is critical here, as it represents the ongoing acceptance and approval of mining projects by the mine-host community and other stakeholders.¹¹¹³ Achieving *SLO*¹¹¹⁴ requires continuous dialogue, mutual respect, and trust-building efforts. These ensure that mining activities are conducted in a manner that is socially-acceptable and beneficial to all parties involved.

Lesotho's commitment to community participation is enshrined in its policy and legal frameworks. Section 3(2)(g) of the *Environment Act* 2008 promotes community

¹¹¹² See para 2.3.4 above.

¹¹¹³ A notable instance occurred at the Kao mine in February 2018, when community members protested against the mine's unfulfilled commitments regarding compensation and relocation. The protest tragically resulted in the fatal shooting of a protester by authorities and severe injuries to two others. This incident underscores the critical importance of obtaining and maintaining a *SLO* in Lesotho's diamond mining industry. *SLO* represents the ongoing acceptance and approval of mining projects by local communities and stakeholders. Without it, mining operations are prone to social unrest, mistrust, and conflict. Ensuring *SLO* requires mining companies to engage in transparent, inclusive, and accountable practices, addressing community concerns, and fulfilling promises. This approach not only fosters harmonious relations but also promotes sustainable and equitable development, benefiting both the mining industry and the host communities. Motsoeli *Lesotho Times* 6. Masoabi *Public Eye* 10.

¹¹¹⁴ See para 2.3.4 above.

participation in environmental decision-making processes. It ensures that mine-host communities have a meaningful voice in shaping policies and plans that affect their environment and livelihoods. This principle fosters transparency, inclusivity, and empowerment, enabling mine-host communities to contribute to the development of effective environmental management strategies. This participatory approach ensures that the communities directly affected by mining activities are involved in the decision-making processes that impact their environment and quality of life.

Additionally, Section 3(2)(h) of the *Environment Act* advocates for waste minimisation and safe disposal practices to protect the environment and public health. This principle underscores the importance of implementing robust waste management strategies to mitigate pollution and health risks. This helps safeguard water sources, land, and air quality for mine-host communities. The integration of community input in these strategies ensures that waste management practices are not only effective, but also culturally and socially acceptable.

The *2015 Minerals and Mining Policy* further highlights the importance of community participation by focusing on empowering mine-host communities through skills and knowledge development. Strategies should ensure inclusive consultation and the participation of mine-host communities in decision-making processes. Moreover, it requires mining companies to work in strategic partnership with mine-host communities during *CSR*¹¹¹⁵ initiatives and other community development projects. This collaboration is crucial for aligning the interests of mining companies with the needs and aspirations of mine-host communities.¹¹¹⁶

Community participation¹¹¹⁷ in Lesotho's diamond-mining sector presents a complex landscape. While the diamond industry is a major source of revenue for the country, generating significant government taxes and employing a substantial portion of the workforce, the benefits are not evenly distributed among all stakeholders. A 2022 industry report highlights that 98% of employees at the four operating mines are

¹¹¹⁵ See para 4.3.5 above.

¹¹¹⁶ *Bice Responsible Mining* 21.

¹¹¹⁷ See para 2.3.4 above.

Lesotho nationals, demonstrating a significant level of local employment in the sector.

However, several challenges and concerns need to be addressed. The major diamond mines in Lesotho are predominantly operated by foreign companies, with the Lesotho government holding only a minority stake.¹¹¹⁸ This means that a substantial share of the profits generated from diamond-mining operations flows out of the country, limiting the economic benefits that could be retained locally. Although the diamond mines provide employment opportunities, these positions are often restricted to low-skilled jobs. Reliance on skilled labour from outside the community in Lesotho's mining industry limits local economic benefits and hinders community participation. It creates a skills development gap among residents, restricts their access to higher-paying jobs within the industry, and weakens community integration. This practice can also strain social cohesion by dividing local and non-local workers. To improve community participation, mining companies should invest in local skills development, prioritise hiring from within the community, and foster inclusive practices that enhance local economic opportunities and social integration.

Mining companies are generally expected to undertake *CSR*¹¹¹⁹ initiatives to support the communities around their operations. However, in Lesotho, there is no comprehensive legal framework to guide and regulate these efforts.¹¹²⁰ As a result, the effectiveness and scope of *CSR*¹¹²¹ programmes can vary significantly between different companies and projects. This inconsistency can lead to gaps in addressing the needs and concerns of mine-host communities effectively. By implementing *CSR*¹¹²² strategies that prioritise community engagement, capacity building, sustainable development, and accountability, companies can enhance community

¹¹¹⁸ For instance, in Lesotho the government owns not more than 30% of the shares in the mining companies. A practical example can be made by the ownership of Letseng Diamonds which the government of Lesotho owns just 30% and Gem Diamonds owns 70%.

¹¹¹⁹ See para 4.3.5 above.

¹¹²⁰ Syn 2014 *Social Epistemology: A Journal of Knowledge, Culture and Policy* 318.

¹¹²¹ See para 4.3.5 above.

¹¹²² See para 4.3.5 above.

participation.¹¹²³ This approach not only strengthens relationships with local stakeholders, but also contributes to positive social outcomes and shared prosperity in the communities where they operate.

Communities living near the mines have raised concerns about environmental damage caused by mining activities. Issues such as water pollution, land degradation, and air quality deterioration are common complaints.¹¹²⁴ Additionally, there is a perceived lack of investment in local infrastructure and development projects that could improve the living standards of people residing in mining areas. These concerns highlight a disconnect between the economic benefits of mining and the wellbeing of nearby communities.

6.4 Enforcement of socio-economic rights

6.4.1 Khathang Tema Baitsooli v Maseru City Council

In the context of the judicial enforcement of socio-economic rights in Lesotho, it is essential to recognise the constitutional framework regarding these rights. In Lesotho's 1993 *Constitution*, socio-economic rights are referred to as directive principles of state policy (hereafter *DPSPs*),¹¹²⁵ explicitly stating in Section 25 that they are not enforceable by any court of law. These principles serve as guiding principles for public authorities and agencies to progressively realise through legislation or other means.¹¹²⁶

¹¹²³ Syn 2014 *Social Epistemology: A Journal of Knowledge, Culture and Policy* 320.

¹¹²⁴ Mine host communities surrounding the Lihobong diamond mine situated in the district of Butha-Buthe who have been affected by the mining operations which have polluted their once copious wetlands, decreased their grazing fields, and destroyed their water sources. Matheka *Public Eye* 22. Mokhehi *Lesotho Times* 8.

¹¹²⁵ Knuth and Vidar explain that directive principles of state policy are, "statements of principle and they often represent the values to which a society aspires although at the time of drafting they may not reflect a broad societal reality." Knuth and Vidar *Constitutional and Legal Protection of the Right to Food around the World* 10.

¹¹²⁶ Chenwi gives a clear explanation on what the concept of progressive realisation is. She states that, "progressive realisation implies a recognition that the full realisation of socio-economic rights will generally not be able to be achieved over a short period of time. However, a state is required to move as expeditiously and effectively as possible towards meeting this goal. Progressive realisation further implies that deliberate retrogressive measures are not allowed, as this would amount to a violation of a state's obligation to progressively realise socio-economic

A significant case illustrating this stance is *Khathang Tema Baitsokoli v Maseru City Council*.¹¹²⁷ Street vendors contested their removal by the Maseru City Council, arguing that it violated their right to livelihood, hence their right to life. The High Court, acting as the Constitutional Court, ruled that the right to life does not encompass a socio-economic right to livelihood. It emphasised that the Constitution intentionally separates justiciable and non-justiciable guarantees. It places socio-economic rights under *DPSPs*, which cannot be altered by the judiciary. This ruling underscores the non-justiciability of socio-economic rights in Lesotho, firmly categorising them under *DPSPs*. Consequently, even the courts lack the authority to intervene and change this classification. This legal landscape poses challenges for mine-host communities seeking judicial recourse for violations of their socio-economic rights, as they cannot directly enforce these rights through the courts.

The judicial enforcement of socio-economic rights in Lesotho is constrained by their classification as *DPSPs*, rendering them non-justiciable. This underscores the importance of alternative mechanisms, such as legislative action and government policies, to progressively realise these rights and promote the wellbeing of mine-host communities.

6.4.2 *Lesotho Medical Association v Minister of Health*¹¹²⁸

The ruling in *Lesotho Medical Association v Minister of Health* represents a significant departure from the precedent set by *Khathang Tema Baitsokoli*. It showcases a more liberal interpretation of socio-economic rights enforcement in Lesotho's legal landscape. In this case, the Lesotho Medical Association, represented by its president and a medical doctor, brought a constitutional application against the Minister of Health and the Minister of Finance. They alleged that the government's failure to provide doctors with personal protective equipment (hereafter *PPE*) during the *COVID-19* pandemic violated Section 5 of the Constitution, which guarantees the right to life. Additionally, they challenged the

rights." Chenwi 2010 <http://spii.org.za/wp-content/uploads/2018/05/Chenwi-2010-Monitoring-progressive-realisation-of-SER.pdf> iii.

¹¹²⁷ *Khathang Tema Baitsokoli v Maseru City Council and Others* CAR No: 4 2005 195.

¹¹²⁸ *Lesotho Medical Association v Minister of Health* CC NO:19 2019.

suspension of "call allowances" for medical professionals. They argued that it contravened Section 4(1)(m) of the Constitution, which protects the right to fair labour practices.

The High Court delivered a significant ruling regarding the provision of *PPE* to medical professionals and the suspension of "call allowances". The court declared the failure to provide doctors with *PPE* was unconstitutional, citing a violation of Section 5 of the Constitution, which guarantees the right to life. Consequently, the government was ordered to comply with its constitutional obligations by supplying medical professionals with *PPE* within a reasonable timeframe.

Additionally, the court found the decision to suspend "call allowances" unconstitutional, as it contravened Section 4(1)(m) of the Constitution, which safeguards the right to fair labour practices. As a result, the government was instructed to reinstate these allowances. This ruling exemplifies the judiciary's role in enforcing socio-economic rights and holding government entities accountable for upholding constitutional obligations. It underscores the importance of ensuring adequate protection and support for healthcare workers, especially during public health crises. Moreover, it highlights the significance of fair labour practices in safeguarding the rights and wellbeing of workers, including those in essential sectors such as healthcare.

Despite the recent groundbreaking ruling in the Lesotho Medical Association case, affirming the enforceability of socio-economic rights, it is imperative to recognise the enduring influence of the precedent set by the Court of Appeals in the *Khathang Tema Baitsooli* case within the landscape of the judicial enforcement of socio-economic rights in Lesotho. The *Khathang Tema Baitsooli* case established a firm distinction between justiciable and non-justiciable rights, placing socio-economic rights under the category of *DPSPs*, which are not subject to enforcement by the courts. While the Lesotho Medical Association case marks a departure from this precedent, by acknowledging socio-economic rights as justiciable, the *Khathang Tema Baitsooli* decision remains pertinent. This is because it underscores the constitutional framework guiding the judicial interpretation of these rights in

Lesotho.¹¹²⁹ Therefore, although recent developments suggest a more liberal interpretation of socio-economic rights, the enduring legacy of the *Khathang Tema Baitsokoli* precedent continues to shape the judiciary's approach to enforcing these fundamental rights.

6.5 Challenges and lessons learnt

Lesotho's framework for protecting and promoting the socio-economic rights of diamond mine-host communities faces several significant challenges. These reveal the limitations of its current constitutional, policy, and legal frameworks. One major challenge is the necessity for the effective domestication of international human rights frameworks. While Lesotho has made efforts, such as the 2008 *Environment Act* which aligns with Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (hereafter *ICESCR*), the broader integration of international norms remains incomplete. The 2008 *Environment Act*, particularly Section 4(1)(a), explicitly recognises the justiciability of the right to a healthy environment. This reinforces the constitutional guarantee provided in Section 36 of the 1993 *Lesotho Constitution*. This legal recognition underscores the importance of safeguarding environmental quality as a fundamental aspect of socio-economic rights protection. However, more comprehensive domestication is necessary to ensure consistent and effective application across all areas. Another critical challenge is the lack of a mandatory framework for *CSR*¹¹³⁰ initiatives. Unlike South Africa, which has robust policies compelling mining companies to contribute to local development, Lesotho lacks such regulatory obligations. As a result, mining companies often fall short in investing adequately in the socio-economic development of host communities. This results in missed opportunities for community enhancement and poverty alleviation.

Mine-host communities in Lesotho typically have no equity in mining companies, and the government holds only a minor share. This limited ownership reduces the financial benefits that accrue to mine-host communities and the national economy, from mining activities. It also diminishes the influence that communities and the

¹¹²⁹ 'Nyane 2022 *African Human Rights Law Journal* 287.

¹¹³⁰ See para 4.3.5 above.

government can exert over mining operations and their socio-economic impacts. The reliance on imported skilled labour further exacerbates the situation. Diamond-mining companies often depend on labour sourced from outside the country, or from other regions within Lesotho. This deprives mine-host communities of employment opportunities and the associated economic benefits. This practice hampers the development of local skills and expertise in the mining sector, leaving host communities economically disadvantaged.

Weak institutional capacity significantly impairs the implementation of mining and socio-economic policies. Lesotho's bureaucratic inefficiencies, limited staffing, and insufficient financial resources undermine the effective enforcement of laws and regulations designed to protect the rights of mine-host communities. Strengthening institutional capacity is crucial in improving governance and policy enforcement. Despite these challenges, several lessons have been learnt that could guide future improvements. The statutory recognition of socio-economic rights, as demonstrated by the 2008 *Environment Act*, highlights the necessity to embed such rights in the legal framework. This ensures that individuals and communities can effectively assert their rights and seek redress in cases of violations.

The establishment of a mandatory framework for *CSR* initiatives is essential. Such a framework would compel mining companies to contribute to the socio-economic development of host communities. This would ensure that the benefits of mining activities are more equitably distributed. Increasing community equity in mining companies can provide greater financial benefits and foster a sense of ownership and involvement among local populations. This can lead to more sustainable and inclusive development outcomes.

Investing in the development of local skills and expertise is also critical. Encouraging mining companies to hire and train local workers can enhance employment opportunities and contribute to the economic empowerment of host communities. Addressing institutional weaknesses requires better staffing, training, and financial resources. These would help to improve governance and policy enforcement. Strengthening the capacity of government agencies and local authorities is vital for

the effective implementation of socio-economic policies. Finally, the codification of environmental rights and the establishment of legal remedies, as seen in the 2008 *Environment Act*, are critical in promoting environmental justice. Ensuring that mine-host communities can assert their right to a healthy environment is a fundamental aspect of protecting their socio-economic rights.

6.6 Conclusion

Drawing from the experiences of the international, regional, and sub-regional frameworks, other standards, as well as Botswana and South Africa, Lesotho can significantly enhance the socio-economic rights of mine-host communities through a strategic approach focused on institutional strengthening, state participation in the mining sector, and community engagement. These measures are crucial in ensuring sustainable development and equitable benefit distribution. This would help to protect and promote the rights of the communities affected by mining activities.

In line with international standards and comparative insights from South Africa, it is imperative that Lesotho strengthen its legal and policy framework concerning the *SLO*,¹¹³¹ *FPIC*,¹¹³² community participation, *CSR*,¹¹³³ and adherence to *OGP*¹¹³⁴ principles. Securing an *SLO*¹¹³⁵ requires embedding *FPIC*¹¹³⁶ as a legal obligation. This ensures that mining companies obtain genuine consent from mine-host communities before commencing operations. This would necessitate reforms that institutionalise *FPIC*¹¹³⁷ in Lesotho's legal framework, thereby aligning it with international human rights standards.

Furthermore, establishing formal mechanisms for community participation in decision-making processes, similar to South Africa's approach, would ensure that

¹¹³¹ See para 4.3.6 above.

¹¹³² See para 4.3.6 above.

¹¹³³ See para 2.3.4 above.

¹¹³⁴ See para 3.3.3.3 above.

¹¹³⁵ See para 4.3.6 above.

¹¹³⁶ See para 4.3.6 above.

¹¹³⁷ See para 4.3.6 above.

the voices of affected mine-host communities are heard and respected. Lesotho should also consider enacting mandatory *CSR*¹¹³⁸ obligations. These would compel mining companies to contribute to the social and economic development of host communities in a structured and transparent manner. Finally, adopting *OGP*¹¹³⁹ principles would enhance governance by ensuring transparency, accountability, and public participation in the management of the mining sector. This is crucial for building trust and preventing conflicts.

Lesotho should establish institutions similar to Botswana's Land Boards, to decentralise land administration effectively. Regional and Local Land Boards can manage land allocations, resolve disputes, and oversee land use planning. Including representatives from mine-host communities ensures that decisions reflect their needs and priorities. Transparent procedures for land allocation, registration, and titling are essential to reduce corruption and increase public trust. A centralised land registry system can streamline land registration and protect land rights.

The creation of independent Land Tribunals to handle land disputes efficiently and fairly is another critical step. These tribunals should be accessible to all citizens, with streamlined processes to resolve conflicts quickly. A robust legal framework supporting these tribunals, including clear laws on land rights, inheritance, and compensation for land acquisitions, would further strengthen this initiative. Capacity-building and ongoing training for members of land boards and tribunals on land management, legal frameworks, and conflict resolution are fundamental. Exchange programmes with Botswana can provide valuable insights and best practices. Public awareness campaigns are also necessary to inform citizens about their land rights and the roles of land boards and tribunals. This would ensure a well-informed populace capable of engaging with these institutions effectively.

Lesotho can enhance the socio-economic rights of mine-host communities through increased state participation in the mining sector, following Botswana's Debswana model. The state should negotiate substantial equity stakes in major mining

¹¹³⁸ See para 2.3.4 above.

¹¹³⁹ See para 3.3.3.3 above.

companies operating within its borders. This can be done through joint ventures or direct investments, ensuring that the state benefits from the profits generated by these enterprises. Establishing strong governance structures for state-owned stakes in mining companies, including clear accountability mechanisms, is vital to ensure transparency and prevent corruption. Creating a sovereign wealth fund to manage mining revenues can ensure that the wealth generated is invested in other sectors of the economy for long-term sustainability. Additionally, allocating a portion of mining revenues to community development funds can finance local infrastructure, education, and healthcare projects, which would directly benefit mine-host communities.

Effective community engagement is crucial for safeguarding socio-economic rights. Institutionalising regular consultations with mine-host communities through town hall meetings, public hearings, and advisory committees can ensure that community concerns and needs are addressed. Establishing mechanisms for ongoing feedback from communities allows continuous improvement in addressing their issues. Benefit-sharing mechanisms, such as requiring mining companies to enter into community-development agreements, can outline specific benefits. These encompass infrastructure projects, social services, and economic opportunities for host communities. Ensuring that a portion of mining revenues is directly invested in community-development projects can significantly improve living standards.

Local content and employment policies are essential for the protection of community rights. Developing policies that encourage mining companies to source goods and services locally can foster the growth of local businesses and industries. Mandating the employment of local workers and the provision of training programmes can enhance the skills of the local workforce, ensuring that the community benefits from job creation and skills development.

Emphasising environmental sustainability alongside socio-economic development is critical for Lesotho. Integrating principles from South Africa's 1998 *Minerals and Mining Policy* can guide Lesotho in promoting responsible mining practices that minimise environmental impacts and safeguard community health. Encouraging

sustainable economic activities beyond the mining sector can diversify local economies and reduce dependency on extractive industries.

Lesotho can benefit from developing a robust legal framework that explicitly integrates social justice principles and ensures the justiciability of socio-economic rights. Drawing from South Africa's 2002 *MPRDA* and related policies, Lesotho can legislate preferential rights for mine-host communities in diamond-mining areas. This would prioritise the inclusion of historically-marginalised groups and ensure that economic benefits from mining activities are equitably shared.

Lesotho should anticipate and address challenges similar to those faced by South Africa in implementing mining-related policies. This includes building institutional capacity within government agencies responsible for overseeing mining activities and community development. Adequate staffing, technical expertise, and financial resources are essential to effectively enforce regulations, monitor compliance, and ensure that policies translate into tangible benefits for mine-host communities.

Learning from South Africa's experiences of inadequate implementation and coordination failures, it is crucial to establish clear lines of accountability and improve coordination among government departments, mining companies, civil society organisations, and mine-host communities. Strengthening intergovernmental cooperation and developing effective monitoring and evaluation mechanisms are essential to tracking progress, identifying challenges early, and adjusting policies as needed.

Lesotho can also draw valuable lessons from South Africa's implementation of Social and Labour Plans (hereafter *SLPs*). The *SLPs* are mandated by the 2002 *MPRDA* and are critical in ensuring that mining companies contribute to local socio-economic development. *SLPs* include commitments to human resource development, local economic development projects, as well as improvements in housing and living conditions. They also outline strategies for managing the social and economic impacts of mine closures. By adopting similar requirements, Lesotho can ensure systematic and meaningful community engagement. This would address both the immediate and long-term needs of mine-host communities. This would also help

mitigate the social impacts of mining activities and ensure that mining operations contribute positively to the development of mine-host communities.

By adopting inclusive policies, enhancing institutional capacity, and prioritising sustainable development practices, Lesotho can foster equitable growth and improve the wellbeing of its mining communities. Drawing on the successful experiences of Botswana and South Africa, Lesotho can develop a progressive framework for the protection and promotion of the socio-economic rights of mine-host communities.

The next chapter highlights the findings and lessons learnt from the comparative analysis. It concludes with concrete recommendations for the incorporation of measures into Lesotho's constitutional, policy, and legal frameworks. This is to strengthen the protection and enhance the promotion of the socio-economic rights and interests of mine-host communities affected by diamond mining. Using the matrix¹¹⁴⁰ as a basis, this chapter evaluates Lesotho's current framework against the best practices identified in the study. The chapter provides a detailed assessment that distils valuable lessons for the advancement of the socio-economic rights of mine-host communities in Lesotho.

¹¹⁴⁰ See Annexure A.

CHAPTER 7 GENERAL BACKGROUND, SUMMARY OF THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

7.1 Introduction

The title of this study is "*The Lesotho Legal Framework and the protection of the socio-economic interests of host communities affected by diamond mining.*" The primary objective of this study was to determine the extent to which Lesotho's current constitutional, policy, and legislative framework regarding the protection of the socio-economic interests of host communities impacted by diamond mining aligns with applicable international, regional, and sub-regional legally-binding and persuasive instruments.

The main research question that this study attempted to answer was: To what extent does Lesotho's current constitutional, policy, and legislative framework related to the protection of the socio-economic interests of host communities affected by diamond mining aligns with applicable international, regional (*AU*) and sub-regional (*SADC*) binding and persuasive instruments, especially with a comparative overview of Botswana and South Africa?

The following secondary objectives were set:

- To theoretically examine socio-economic rights and their relevance for mine-host communities, and to describe the opportunities and challenges confronted by mine-host communities, generally. Specific focus was on Lesotho, especially its communities impacted by diamond mining. This was to understand the role of mines in relation to mine-host communities.
- To critically analyse existing international, regional, and sub-regional legally-binding and persuasive instruments regarding the protection of the socio-economic interests of mine-host communities. The aim was to create a reference framework or benchmark against which the current Lesotho constitutional, policy, and legislative framework concerning the protection of

the socio-economic interests of host communities affected by diamond mining may be evaluated.

- To discuss Botswana's constitutional, policy, and legislative framework concerning the protection of the socio-economic interests of host communities affected by diamond mining. This was to gain insights that could help refine the current constitutional, policy, and legislative framework pertaining to the protection of the socio-economic interests of host communities affected by diamond mining in Lesotho.
- To indicate how South Africa, as a member of both the *AU* and the *SADC*, has integrated mechanisms to ensure the protection of the socio-economic interests of mine-host communities. This was to distil lessons that could enhance the existing constitutional, policy, and legislative framework for the protection of the socio-economic interests of host communities affected by diamond mining in Lesotho.
- To critically analyse the existing Lesotho constitutional, policy, and legislative framework for the protection of the socio-economic interests of host communities impacted by diamond mining. This was to gain a better insight into the degree to which the interests of mine-host communities are upheld and promoted.
- To draw on the conceptual foundations of the protection of the socio-economic rights of mine-host communities, as articulated in international and regional instruments, to offer recommendations. These be geared towards improving Lesotho's approach to the protection of mine-host communities' socio-economic rights and interests.

7.1.1 Overview of the structure

To address the main research question adequately, the study was structured into seven chapters. The first chapter provided a general background and stated the research problem. This chapter also posed the research question, outlined the

objectives of the study, and formulated the hypotheses. The relevance of the study for the research unit was highlighted. Chapter 2 focused on the description of socio-economic rights and interests, highlighting their relevance for mine-host communities in general, but with a specific focus on Lesotho. The description foregrounded the socio-economic opportunities presented and the challenges that mine-host communities face. This was followed by a theoretical discussion on the role of mines towards mine-host communities. Chapter 2 also discussed the three theories underpinning the study: social justice, the resource curse, and community participation. Despite their diverse viewpoints, these theories collectively addressed the complex dynamics of socio-economic rights and development amid resource abundance. Chapter 3 provides a critical analysis of the existing international, regional, and sub-regional legally-binding and persuasive instruments pertaining to the protection of the socio-economic rights and interests of mine-host communities. The aim was to create a framework or benchmark against which the current Lesotho constitutional, policy, and legislative framework regarding the protection of the socio-economic rights and interests of mine-host communities affected by the mining of diamonds could be evaluated and improved.

In Chapter 4, the study explored Botswana's approach to the protection of the socio-economic rights and interests of mine-host communities affected by diamond mining. The benefits for mine-host communities and the entire Botswana nation were outlined, to influence the current constitutional, policy, and legislative framework for the protection of the socio-economic rights and interests of mine-host communities in Lesotho. Chapter 5 analysed the South African framework and its measures for the protection of the socio-economic rights and interests of its mine-host communities. This was with a view to provide a potential blueprint for Lesotho to derive lessons from South Africa. In Chapter 6, the focus was on the critical analysis of the current Lesotho constitutional, policy, and legal framework pertaining to the protection of the socio-economic rights and interests of mine-host communities affected by diamond mining. The aim was a comprehensive exposition of the current extent to which mine-host communities affected by the mining of diamonds are promoted and protected. Chapter 7 summarises the findings and

lessons learnt. In the conclusion, it makes concrete recommendations to be considered for incorporation into the constitutional, policy, and legal framework of Lesotho. These recommendations are aimed at strengthening the protection and enhancing the promotion of the socio-economic rights and interests of mine-host communities affected by diamond mining in Lesotho.

The outline of Chapter 7 is as follows. Part 1 provides a summary of the key findings. Part 2 focuses on the comparative analysis. Part 3 discusses the implications of the research findings. Part 4 highlights the limitations of the study. Part 5 outlines the recommendations. Part 6 concludes the study with final thoughts.

7.2 Summary of the key findings

7.2.1 Introduction and explanation of the matrix¹¹⁴¹

The comparative matrix¹¹⁴² titled "Benchmark to Evaluate Individual Countries' Frameworks [as Applied to Mineral (Diamond) Extraction in Botswana, South Africa, and Lesotho]" is presented as Appendix A. This matrix,¹¹⁴³ meticulously crafted by the co-supervisor, Professor Nic Olivier, serves as a pivotal tool for the analysis undertaken in this study. It organises complex information clearly and concisely, allowing for easy comparison across different criteria. It also highlights similarities and differences in mining policies and socio-economic protections among the countries. By covering key aspects such as constitutional protections, legislative frameworks, environmental protections, community benefits programmes, and judicial oversight, the matrix¹¹⁴⁴ provides a comprehensive view of each country's legal and policy landscape. Additionally, the matrix¹¹⁴⁵ supports the synthesis of findings. This enables a systematic comparison that highlights each country's strengths and weaknesses. This structured approach is crucial in formulating well-

¹¹⁴¹ See Annexure A.

¹¹⁴² See Annexure A.

¹¹⁴³ See Annexure A.

¹¹⁴⁴ See Annexure A.

¹¹⁴⁵ See Annexure A.

founded recommendations for improving Lesotho's mining policy and legislative framework.

The matrix's¹¹⁴⁶ detailed data underpinned the recommendations, ensuring that they are evidence-based and targeted at addressing the identified gaps. Lastly, the matrix¹¹⁴⁷ benchmarked Lesotho's policies against recognised standards and best practices in Botswana and South Africa. This benchmarking is vital in identifying areas where Lesotho can align with international and regional norms. The identified areas guided the development of recommendations to enhance its legal and policy framework in the mining sector. The detailed matrix of the comparative analysis is provided in Appendix A. It offers a comprehensive overview of the findings and recommendations discussed in this chapter.

7.2.2 Theoretical framework

The examination of socio-economic rights in the context of diamond mine-host communities has revealed the opportunities and intricate challenges faced by these communities. Through the lenses of the social justice theory, the resource curse theory, and the community participation theory, the study provided a comprehensive understanding of the multifaceted issues impacting these communities. It also suggested pathways for achieving equitable and sustainable development.

Diamond mine-host communities encounter significant challenges. These encompass displacement, environmental degradation, and health risks. These directly affect their access to basic needs and overall wellbeing. Embracing a human rights framework emphasises universal entitlement to dignity and equality. This guides the efforts to protect and promote socio-economic rights. Robust regulatory frameworks, community empowerment, and fostering corporate responsibility are necessary to address these challenges, while maximising opportunities for inclusive and sustainable development.

¹¹⁴⁶ See Annexure A.

¹¹⁴⁷ See Annexure A.

The investigation of the social justice theory,¹¹⁴⁸ drawing from the perspectives of John Rawls and Nancy Fraser, highlights the importance of socio-economic rights in achieving a fair and impartial society. Rawls emphasises the preservation of liberties and the principle of benefiting the least advantaged. He advocates for a just distribution of resources, regardless of social status. This implies that the benefits derived from diamond mining should be equitably distributed among community members, ensuring fair opportunities for both skilled and unskilled workers.

Fraser underscores participatory parity, insisting on removing substantial inequalities and cultural denigrations. This is to ensure equal participation and respect for all. This approach mandates that all members of diamond mine-host communities have a voice in decision-making processes related to resource distribution and community development. The convergence of Rawls' and Fraser's theories underscores the necessity of redistributing resources to alleviate poverty and address inequalities. This would enable marginalised communities to access essential services and rights, for a dignified life.

The resource curse theory¹¹⁴⁹ reveals the multidimensional challenges faced by diamond mine-host communities. These challenges include conflicts over control and benefit-sharing, corruption, governance deficiencies, and environmental degradation. However, it also highlights opportunities that help to address these challenges through community empowerment, transparency, and accountability measures. Responsible mining practices and social investments in infrastructure and education can mitigate conflicts, promote sustainable development, and harness the potential benefits of mineral wealth.

The community participation theory¹¹⁵⁰ emphasises the importance of actively involving mine-host communities in decision-making processes, planning, and implementation of initiatives related to mineral extraction. By embracing community participation, stakeholders can tap into the knowledge, perspectives, and resources

¹¹⁴⁸ See Appendix A under identified theoretical underpinnings 2 (a).

¹¹⁴⁹ See Appendix A under identified theoretical underpinnings 2 (b).

¹¹⁵⁰ See Appendix A under identified theoretical underpinnings 2 (c).

of mine-host communities. This shapes initiatives that are responsive to their needs and aspirations. This approach fosters democracy, social justice, and sustainable development by empowering communities to influence the direction, and the outcomes of mining activities. Mechanisms such as community consultations, community representatives, community-based monitoring, and benefit-sharing agreements enable mine-host communities to actively engage in decision-making processes and hold stakeholders accountable.

By integrating principles from the social justice theory, the resource curse theory, and the community participation theory, stakeholders can develop policies. These would ensure that mining activities contribute to the equitable distribution of wealth, mitigate the negative impacts associated with the resource curse, and foster the meaningful engagement of mine-host communities in decision-making processes. This holistic approach emphasises not only the economic benefits, but also social and environmental considerations. Ultimately, it strives to achieve sustainable development and improved the wellbeing of all stakeholders.

The Sustainable Development Goals (hereafter *SDGs*)¹¹⁵¹ provide a comprehensive framework to address the challenges faced by mine-host communities. *SDGs* 1 (No Poverty), 3 (Good Health and Well-being), 4 (Quality Education), 8 (Decent Work and Economic Growth), and 12 (Responsible Consumption and Production) are particularly relevant. These goals collectively address poverty eradication, health and wellbeing, education, economic growth, and environmental sustainability. Integrating these *SDGs* into Lesotho's constitutional, policy, and legal framework is essential in protecting and promoting the socio-economic rights of mineihost communities. This ensuresw that the benefits of mining are equitably shared and that the wellbeing of mine-host communities is prioritised.

The foundation for socio-economic rights in mine-host communities lies in a combination of legal frameworks, corporate responsibility, and active community participation. Ensuring these rights requires a collaborative effort between

¹¹⁵¹ See Appendix A under international instruments non-binding 3.

governments, mining companies, and communities. This would promote sustainable and equitable development. This study underscores the importance of aligning national policies with international, regional, and sub-regional instruments. This helps to establish best practice standards for the protection of socio-economic rights. By integrating the insights from the theoretical frameworks and aligning them with the *SDGs*, stakeholders can foster sustainable development and social justice in diamond mine-host communities.

7.2.3 International, regional and, subregional framework

The analysis of international, *AU*, and *SADC* instruments reveals crucial insights into the protection of socio-economic rights of mine-host communities in Lesotho. These findings are framed within the broader context of human rights, resource management, and community empowerment. The 1948 *Universal Declaration of Human Rights*¹¹⁵² (hereafter *UDHR*) and the 1966 *International Covenant on Economic, Social, and Cultural Rights* (hereafter *ICESCR*)¹¹⁵³ form the bedrock of a comprehensive human rights framework. They mandate the protection and promotion of socio-economic rights such as work, health, education, and an adequate standard of living. These instruments emphasise the creation of legal frameworks, the allocation of resources, and the progressive improvement of living conditions. These are essential in upholding the welfare, dignity, and fundamental rights of mine-host communities within the context of mining operations.

The 1981 *African Charter on Human and Peoples' Rights*¹¹⁵⁴ and the 2009 *Africa Mining Vision* (hereafter *AMV*)¹¹⁵⁵ advocate robustly for the socio-economic rights of mine-host communities. The 1981 *African Charter* mandates member states to ensure that communities benefit from mineral resource exploitation, while safeguarding their rights to a clean environment, education, work, and property ownership. Article 21 specifically underscores the right of communities to freely dispose of their wealth and natural resources. The 2009 *AMV* promotes

¹¹⁵² See Appendix A under international instruments non-binding 1.

¹¹⁵³ See Appendix A under international instruments binding 1.

¹¹⁵⁴ See Appendix A under African instruments binding 1.

¹¹⁵⁵ See Appendix A under African instruments non-binding 1.

transparency, equitable revenue distribution, and inclusive governance, focusing on local ownership and community empowerment. These frameworks highlight the necessity for African countries to prioritise the socio-economic wellbeing of mine-host communities.

The 1997 *SADC Protocol on Mining*¹¹⁵⁶ aims to drive economic growth, alleviate poverty, and enhance the quality of life for citizens. This is achievable by harmonising policies, encouraging private sector participation, and ensuring transparency and accountability. It prioritises community participation and environmental protection. This is to maximise socio-economic benefits, while mitigating adverse impacts. Regional cooperation and integration are essential in addressing shared challenges and maximising development opportunities within the mining sector.

The effective implementation and enforcement of these instruments require the collaboration of various stakeholders. These include governments, civil society organisations, and mining companies. Governments must ratify and enforce these instruments. Civil society organisations must advocate for accountability and promote community rights. Mining companies need to comply with standards and engage in corporate social responsibility (hereafter *CSR*) and sustainable development initiatives. Governance initiatives such as Publish What You Pay (hereafter *PWYP*)¹¹⁵⁷, the Extractive Industries Transparency Initiative (hereafter *EITI*),¹¹⁵⁸ the Open Government Partnership (hereafter *OGP*),¹¹⁵⁹ and the Kimberley Process Certification Scheme (hereafter *KPCS*)¹¹⁶⁰ enhance transparency and accountability. Lesotho's potential membership in these initiatives underscores the importance of transparency and ethical practices in maximising the benefits of mineral extraction for all stakeholders, especially mine-host communities.

¹¹⁵⁶ See Appendix A under *SADC* instruments binding 2.

¹¹⁵⁷ See Appendix A under Voluntary guidelines 3.

¹¹⁵⁸ See Appendix A under Voluntary guidelines 2.

¹¹⁵⁹ See Appendix A under Voluntary guidelines 4.

¹¹⁶⁰ See Appendix A under Voluntary guidelines 1.

7.2.4 Botswana's framework¹¹⁶¹

Botswana's experience underscores the importance of collaborative regulation involving government entities, mine-host communities, and mining companies. Effective collaboration ensures compliance with regulations and protects community rights. This cooperative approach fosters a well-regulated mining environment that prioritises the welfare of affected communities and upholds ethical standards. By emphasising sustainability, Botswana ensures that the long-term socio-economic benefits of mineral extraction are realised. This approach maximises economic gains from mining and ensures that these benefits are shared equitably. This enhances community welfare and promotes inclusive development.

Community engagement is critical to the success of Botswana's mining sector. Actively involving mine-host communities in decision-making processes through principles such as the Social License to Operate (hereafter *SLO*), Corporate Social Responsibility (hereafter *CSR*),¹¹⁶² and Free, Prior, and Informed Consent (hereafter *FPIC*) fosters trust and cooperation. This engagement ensures that local voices and concerns are heard and addressed, leading to more harmonious and mutually beneficial mining operations.

Efficient conflict-resolution mechanisms, such as the Land Tribunal, are vital in maintaining stability and protecting community interests. The Tribunal's role in adjudicating land disputes and ensuring fair compensation helps prevent project delays and promotes a stable mining environment. This attracts investment and benefits all stakeholders. Transparency is key to Botswana's mining governance. Adherence to frameworks such as the *KPCS* promotes transparency and accountability in the diamond-mining sector. This transparency attracts responsible investment, ensures ethical practices, and protects communities from exploitation and environmental harm. Botswana's mining activities contribute positively to community development. This is achieved through investments in infrastructure,

¹¹⁶¹ See Appendix A under Country level elements (Botswana).

¹¹⁶² See Appendix A under Voluntary guidelines 1.

education, and healthcare funded by mineral revenues. These investments improve living standards and provide tangible benefits to local communities.

Local employment and skills development initiatives empower community members. This is done by boosting their economic status and providing sustainable livelihoods. This empowerment enhances individual welfare and strengthens the economic fabric of communities. Responsible-mining practices safeguard natural resources, ensuring the environment is preserved. This protection maintains ecological balance and supports the long-term sustainability of mining activities. Equitable benefit-distribution mechanisms, such as revenue-sharing and local procurement requirements, ensure that communities directly benefit from mining. This fosters economic equity and social cohesion.

The coordinated efforts of Botswana's mining governance framework – including the Department of Mines, Land Boards, the Land Tribunal, and mining companies – supported by progressive policies and international frameworks, demonstrate a commitment to balancing economic development with the protection of socio-economic rights. However, a significant limitation of Botswana's model is the lack of clear constitutional protection and explicit mention of socio-economic rights. Unlike jurisdictions where these rights are enshrined in the constitution, Botswana's Constitution does not provide explicit recognition or protection. This omission creates ambiguity and uncertainty regarding the legal status and enforceability of socio-economic rights. This renders them vulnerable to infringement and undermines the ability of mine-host communities to assert and defend their rights effectively. Addressing this gap requires constitutional reforms to recognise and safeguard socio-economic rights. This would provide a robust legal foundation for the protection of mine-host communities' rights and wellbeing. Such reforms would enhance the ability of communities to assert their rights and ensure that the benefits of mining are shared equitably and sustainably.

7.2.5 South Africa's framework¹¹⁶³

In examining South Africa's framework for the promotion and protection of the socio-economic rights of diamond mine-host communities, a model based on a policy and legislative framework has been developed. South Africa's approach makes provision for community participation and social justice, promoting active community involvement in decision-making processes and addressing historical inequalities and the needs of previously-marginalised groups.

The 1996 *RSA Constitution* enshrines socio-economic rights such as housing, healthcare, food, water, social security, and education, making them justiciable. This means individuals can seek judicial redress if these rights are violated, ensuring that the pursuit of social justice is a binding legal obligation. The constitutional provisions underscore social justice as a core value of South African society, mandating the state to actively promote and protect these rights. Additionally, Section 104 of the 2002 *MPRDA* provides for the granting of preferential rights to historically disadvantaged South Africans (hereafter *HDSAs*) for mining rights applications. This aims to correct historical injustices by ensuring that those previously excluded can participate in and benefit from the country's mineral wealth.

The 1998 *White Paper on Minerals and Mining Policy* is a comprehensive policy vision. It exemplifies the need for a policy framework that integrates social justice, economic development, and environmental sustainability – which are crucial for the achievement of long-term, equitable growth. It further reinforces the importance of community involvement in the mining sector, highlighting the need for inclusive development strategies.

Central to this framework is the 2002 *Mineral and Petroleum Resources Development Act* (hereafter *MPRDA*). Section 10 of the *MPRDA* mandates consultation with interested and affected parties, when mining rights are sought. This ensures that community members can voice their concerns about activities that affect their environment and livelihoods. Additionally, the *MPRDA* and its 2004

¹¹⁶³ See Appendix A under Country level elements (South Africa).

regulations require Social and Labour Plans (hereafter *SLPs*) which outline commitments to human resource development, local economic development projects, housing improvements, and strategies for managing the social and economic impacts of mine closures. This systematic and meaningful engagement addresses both the immediate and long-term needs of the communities.

Complementing this is the 2000 *Municipal Systems Act* (hereafter *MSysA*), particularly its sections 27(i) and (ii) which emphasise community participation in municipal governance. By mandating public involvement in municipal planning and budgeting processes, the *MSysA* ensures that local government decisions reflect community needs and priorities, promoting transparency and accountability. Similarly, the *2018 Mining Charter* establishes guidelines for transforming the mining industry. This is to ensure that the operations benefit mine-host communities. The *2018 Mining Charter* includes provisions for community development, employment equity, and sustainable development. It emphasises that mining benefits should be equitably distributed and that community development initiatives should support local socio-economic growth.

Broad-Based Black Economic Empowerment (hereafter *B-BBEE*) policies aim to increase the participation of black South Africans in the economy, to address the disparities created by apartheid. This policy encompasses measures such as ownership, management control, skills development, enterprise and supplier development, as well as socio-economic development. These foster inclusive economic growth and aim to close the economic gap between different racial groups. *B-BBEE* emphasise inclusive growth by providing opportunities for the previously-marginalised groups to participate in and benefit from economic activities.

Judicial precedents in South Africa have been instrumental in upholding and advancing socio-economic rights. Landmark cases such as *Government of the Republic of South Africa v. Grootboom* and *Minister of Health v. Treatment Action Campaign* have set significant precedents for the protection and promotion of socio-economic rights. They have reinforced the principle that social justice is a

fundamental aspect of South African law and governance, holding the state accountable for fulfilling its constitutional obligations.

Judicial precedents in enforcing socio-economic rights highlight the importance of an independent judiciary in upholding social justice. Courts act as a check on government and private sector actions, ensuring accountability and compliance with constitutional mandates. South Africa's approach ensures that development is sustainable and inclusive. Policies and legislation aim to broadly share economic benefits and ensure that development initiatives do not harm the environment or community wellbeing.

By embedding social justice in legal frameworks, South Africa demonstrates the importance of integrating social justice into core legal and policy frameworks. The justiciability of socio-economic rights ensures that social justice is enforceable by law. South Africa addresses historical inequalities through specific measures such as the 2002 *MPRDA*'s preferential rights and *B-BBEE* policies, which highlight the necessity to address historical injustices. By legally prioritising the inclusion of historically-disadvantaged groups, South Africa aims to correct past imbalances.

Despite its comprehensive approach, South Africa faces significant implementation challenges. Capacity constraints within government – including bureaucratic inefficiencies, limited staffing, and financial resources – hinder effective implementation. Coordination gaps among stakeholders, including government agencies, mining companies, and mine-host communities, lead to inconsistent practices. Monitoring and evaluation deficiencies, inadequate public participation, and political uncertainties further complicate the efforts to ensure equitable development and community wellbeing.

These challenges perpetuate socio-economic disparities, environmental risks, and legal complexities within diamond mine-host communities. This undermines efforts to improve living conditions and manage environmental impacts. Addressing these challenges requires the strengthening of institutional capacity, the enhancement of coordination among stakeholders, the improvement of monitoring frameworks, the promotion of meaningful public participation, and the demonstration of sustained

political commitment. By overcoming these hurdles, South Africa can better translate its comprehensive policy and legal frameworks into tangible benefits that promote equitable and sustainable development in its mining regions.

*7.2.6 Lesotho's framework*¹¹⁶⁴

The examination of Lesotho's current constitutional, policy, and legislative framework reveals several critical challenges and areas for improvement in protecting and promoting the socio-economic rights of diamond mine-host communities. These findings highlight the limitations and gaps within the existing systems and underscore the necessity for comprehensive reforms.

A significant issue is that, while the 1993 Constitution of Lesotho, ostensibly provides for socio-economic rights under the principles of state policy,¹¹⁶⁵ these provisions are inherently limited by their non-enforceable and non-justiciable nature. This is consistently reaffirmed in judicial precedent. As such, these principles, while present, serve merely as guidelines without any binding legal force. This limitation highlights a fundamental gap within the constitutional framework and underscores the imperative for comprehensive reforms. These would ensure that socio-economic rights are effectively protected and promoted within Lesotho's legal system.

One of the primary challenges identified is the imperative for the effective domestication of international human rights frameworks. While Lesotho has made some progress, through the 2008 *Environment Act* which aligns with Article 12 of the 1966 *ICESCR*, the broader integration of international norms into national law remains incomplete. The 2008 *Environment Act* explicitly recognises the justiciability of the right to a healthy environment, reinforcing constitutional guarantees. However, there is a need for more comprehensive domestication to ensure consistent and effective application across all areas. This would safeguard environmental quality and broader socio-economic rights.

¹¹⁶⁴ See Appendix A under Country level elements (Lesotho).

¹¹⁶⁵ See para 6.3.2 above.

Another significant challenge is the absence of a mandatory framework for *CSR* initiatives. Unlike South Africa, which has policies and legislation compelling mining companies to contribute to local development through *SLPs*, Lesotho lacks similar regulatory obligations. Consequently, mining companies often do not invest adequately in the socio-economic development of mine-host communities. This engenders missed opportunities for community enhancement and poverty alleviation.

Mine-host communities in Lesotho generally have no equity in mining companies, and the government holds only minor shares. This limited ownership diminishes the financial benefits accruing to mine-host communities and the national economy. Additionally, it reduces the influence that communities and the government can exert over mining operations and their socio-economic impacts. This leads to less favourable outcomes for affected communities.

The reliance on imported skilled labour further exacerbates socio-economic challenges. Diamond-mining companies frequently depend on labour sourced from outside the country or from other regions within Lesotho. This deprives mine-host communities of employment opportunities and associated economic benefits. This practice hinders the development of local skills and expertise in the mining sector, leaving mine-host communities economically disadvantaged.

Weak institutional capacity significantly impairs the implementation of mining and socio-economic policies. Lesotho's bureaucratic inefficiencies, limited staffing, and insufficient financial resources undermine the effective enforcement of laws and regulations designed to protect the rights of mine-host communities. Strengthening institutional capacity is crucial in improving governance and policy enforcement.

7.3 Comparative analysis of Botswana's, South Africa's, and Lesotho's frameworks

7.3.1 Best Practices

1 Collaborative Regulation

Botswana's model of involving multiple stakeholders ensures comprehensive oversight and compliance with regulations.

South Africa's legislative frameworks, such as the 2002 *MPRDA* and the 2018 *Mining Charter*, promote community engagement and equitable development.

2 Community Engagement

Botswana's approach to principles of *SLO* and *FPIC* and South Africa's community consultation requirements under the 2002 *MPRDA* foster active local involvement in decision-making processes.

Efficient conflict resolution mechanisms, such as Botswana's Land Tribunal, help maintain stability and protect community interests.

3 Transparency and Accountability

Botswana's adherence to frameworks such as the *KPCS* ensures transparency and attracts responsible investment. This adherence also promotes ethical practices and protects communities from exploitation and environmental harm.

4 Enforceable constitutional provisions

Adopting enforceable constitutional provisions for socio-economic rights in Lesotho, modeled on South Africa's framework, would significantly empower marginalised communities. It would ensure that they are able to claim their rights through judicial mechanisms.

7.3.2 Shortcomings

1 Lack of Constitutional Protection

Botswana's model lacks an explicit constitutional recognition of socio-economic rights. This creates legal ambiguity and vulnerability to infringement.

2 Implementation Challenges

South Africa's comprehensive policies face significant implementation hurdles. This is due to capacity constraints, coordination gaps, and monitoring deficiencies.

3 Insufficient Local Benefits

Lesotho's framework lacks mandatory *CSR* initiatives, relies on external labour, and has weak institutional capacity. This results in limited socio-economic benefits for mine-host communities.

4 Unenforceable Constitutional Provisions

The lack of enforceable constitutional provisions for socio-economic rights in Lesotho represents a significant shortcoming in the country's legal framework. This is because it leaves marginalised communities without the legal means to claim essential rights. It undermines the accountability of the government and private actors. Moreover, it hinders the alignment with international best practices that have proven effective in advancing social justice, as seen in countries such as South Africa.

7.3.3 Strengths and Weaknesses of Lesotho's Framework in Light of Comparative Analysis

1 Strengths

Lesotho's 2008 *Environment Act* and intent to align with international standards demonstrate a commitment to sustainable practices.

The potential for the domestication of international human rights frameworks provides a foundation for future improvements in protecting socio-economic rights in general.

2 Weaknesses

There is no enforcement of socio-economic rights. This is because they are only recognised as principles of state policies.

The absence of mandatory *CSR* requirements and limited equity participation result in inadequate socio-economic benefits for mine-host communities.

Reliance on external labour prevents local skill development and economic growth. This deprives mine-host communities of employment opportunities.

Weak institutional capacity impairs effective policy enforcement and governance. This undermines efforts to protect the rights of mine-host communities.

7.3.4 Recommendations based on best practices

- 1 Mandatory CSR Framework: Develop and implement a mandatory CSR policy requiring mining companies to invest in local development, similar to South Africa's SLPs. This is to ensure consistent and adequate contributions to community enhancement.
- 2 Increase Equity Participation: Mandate minimum equity stakes for mine-host communities and the government in mining companies. This is to ensure that financial benefits are reinvested locally and that communities have greater influence over mining operations.
- 3 Local Labour Utilisation: Prioritise local employment in mining operations. This can be done through training and skills development programmes for community members. It would ensure that they are qualified for various roles within the mining industry.
- 4 Strengthen Institutional Capacity: Invest in capacity-building programmes for government agencies, and increase resources and training. This is to improve governance, policy enforcement, and effective oversight of mining activities.
- 5 Enhance Community Engagement: Implement principles such as *SLO* and ensure active community participation in decision-making processes. This is to foster trust and cooperation between mining companies and mine-host communities.
- 6 Constitutional Reforms: Consider constitutional reforms, to explicitly recognise and protect socio-economic rights, and provide a robust legal foundation for community rights and wellbeing. These reforms would enhance the ability of communities to assert their rights and ensure that the benefits of mining are shared equitably and sustainably.
- 7 Preferential Rights as Enshrined in South Africa's 2018 Mining Charter: Adopt policies similar to South Africa's 2018 Mining Charter. This is to grant preferential rights to historically-disadvantaged individuals for mining opportunities. Ensure that these rights are actively implemented, to correct historical injustices and promote inclusive economic growth.

- 8 It is recommended that Lesotho adopt enforceable constitutional provisions for socio-economic rights. This is to protect vulnerable communities and hold the government accountable. However, this must be approached with caution due to the significant financial resources required, which the country may currently lack. This raises concerns about the practical feasibility of implementation.

By adopting these recommendations and learning from the best practices of Botswana and South Africa, Lesotho can enhance its framework. This would help to better protect and promote the socio-economic rights of mine-host communities, fostering sustainable and equitable development. These reforms would ensure that the benefits of mining are shared more broadly, contributing to the overall development and wellbeing of the country.

7.4 Implications of the findings

7.4.1 Practical Implications

The key findings of this research highlight several critical areas affecting the socio-economic rights of mine-host communities in Lesotho. These findings have practical implications that need to be addressed, to improve the living conditions and overall wellbeing of these communities.

The possibility of the domestication of international human rights frameworks, as exemplified by the 2008 *Environment Act*, implies that Lesotho can integrate global standards into its national legislation.

Lesotho's Constitution needs to be amended to provide for justiciable and enforcement socio-economic rights. This could enhance the protection of the socio-economic rights of mine-host communities.

The lack of a mandatory *CSR* framework means that mining companies are not legally obliged to invest in the socio-economic development of mine-host communities. This results in inconsistent and often inadequate support. Establishing a mandatory *CSR* framework could ensure that mining companies contribute systematically to local development. They could provide essential services and infrastructure such as schools, healthcare facilities, and clean water.

The fact that mine-host communities own no equity and the government owns limited equity in mining companies (between 25-30%) has significant economic implications. Limited ownership restricts the financial benefits that accrue to these communities, exacerbating poverty and inequality. Increasing equity stakes for communities and the government could lead to greater financial returns. These could be reinvested in local development projects. This would enhance the overall economic wellbeing of mine-host communities.

The reliance on labour from outside the country, excluding and not training mine-host communities undermines local employment opportunities and economic development. This practice exacerbates unemployment and poverty within host communities. Developing targeted training and skills development programmes to enhance the employability of local residents can address this issue. This would ensure that the economic benefits of mining are more widely shared.

Weak institutional capacity hampers effective governance and the oversight of mining activities. This leads to an inadequate protection of community rights and interests. Strengthening institutional capacity through targeted reforms, training, and resource allocation is crucial. This would improve the implementation and enforcement of policies, ensuring that mining activities are conducted in a manner that respects and promotes the socio-economic rights of mine-host communities.

Empowering mine-host communities to participate in decision-making processes is crucial in ensuring that their needs and interests are addressed. Practical measures such as establishing community liaison offices, facilitating regular consultations, and ensuring transparency in mining operations can enhance community empowerment. This would lead to more equitable and inclusive development outcomes, with communities having a greater say in how mining impacts their lives.

Addressing these practical implications requires a multifaceted approach. This would entail alignment with international, regional and subregional instruments and other standards, policy and legislative reforms, community engagement, and institutional strengthening. By implementing these measures, Lesotho can better protect and

promote the socio-economic rights of mine-host communities, leading to more sustainable and inclusive development.

7.4.2 Theoretical Implications

The findings highlight the need for policies that ensure a fairer distribution of mining revenues. Introducing mandatory *CSR*, *SLO* and *FPIC* frameworks by increasing equity stakes for mine-host communities can help redistribute wealth and thus promote social justice. This supports the theoretical argument that social justice requires not just the legal recognition of rights, but also practical measures to ensure equitable access to resources and opportunities.

The concept of the resource curse suggests that countries rich in natural resources often experience less economic growth and poorer development outcomes. This is due to factors such as corruption, weak institutions, and social conflict. The findings from this research resonate with this theory, particularly the weak institutional capacity and the reliance on external labour. These prevent local communities from benefiting from mining activities.

The findings contribute to the resource curse literature by providing evidence from Lesotho. They underscore the importance of building strong institutions and implementing policies that mitigate the adverse effects of resource extraction. Strengthening institutional capacity, improving governance, and ensuring community participation can help transform resource wealth into sustainable development, and thus counter the resource curse.

The community participation theory emphasises the importance of involving mine-host communities in decision-making processes. This is to ensure that development initiatives align with their needs and interests. The findings indicate that mine-host communities in Lesotho have minimal participation in mining activities and decision-making, which undermines their socio-economic rights and development prospects.

These findings reinforce the theoretical arguments for community participation by demonstrating the negative consequences of excluding mine-host communities from

decisions that affect their lives. Enhancing community engagement, through *FPIC*,¹¹⁶⁶ regular consultations, transparent decision-making processes, and equitable representation can ensure that mining activities contribute positively to local development. This supports the notion that effective community participation leads to more sustainable and inclusive outcomes.

The findings of this research provide valuable insights into the theoretical frameworks of social justice, resource curse, and community participation. They emphasise the need for equitable resource distribution, strong institutional frameworks, and active community involvement in the endeavour to protect and promote the socio-economic rights of mine-host communities. By addressing these theoretical implications, policymakers and stakeholders can develop more effective strategies to harness the benefits of natural resources for sustainable and inclusive development in Lesotho.

7.4.3 Policy Implications

The findings of this research underscore the need for comprehensive policy adjustments. This is to better protect and promote the socio-economic rights of mine-host communities in Lesotho. The following recommendations suggest key areas for policy reforms.

1 Domestication of International Human Rights Frameworks:

The 2008 *Environment Act* demonstrates the potential for domesticating international human rights frameworks. However, broader application is needed.

Policy Suggestion: Develop policies that integrate international human rights standards into national legislation across various sectors. This could involve a review of existing laws, to ensure alignment with international conventions and the adoption of new regulations that protect the socio-economic rights of communities affected by mining activities.

¹¹⁶⁶ See Appendix A under Voluntary guidelines 7.

2 Alignment with International Standards

Lesotho's intent to align its 2018 *Minerals and Mining Policy* with international best practices, such as the Africa Mining Vision, should be fully realised.

Policy Suggestion: Ensure that the 2018 *Minerals and Mining Policy* and other related policies are not only aligned with international standards but also effectively implemented. This may involve regular reviews and updates to the legislation, stakeholder consultations, and collaboration with international organisations. This is to incorporate best practices and ensure sustainable and equitable mining practices.

3 Enhancing Community Participation:

The findings indicate a lack of meaningful community participation in decision-making processes related to mining activities.

Policy Suggestion: Introduce policies that mandate the inclusion of community representatives in decision-making bodies related to mining. This could involve establishing community liaison offices, holding regular public consultations, and ensuring transparency in all aspects of mining operations. By empowering communities to participate actively, policies can be better tailored to address their needs and priorities.

4 Establishment of a mandatory *CSR* framework:

The absence of a mandatory *CSR* framework results in inconsistent and often insufficient contributions by mining companies to the socio-economic development of mine host communities.

Policy Suggestion: Implement a mandatory *CSR* policy that requires mining companies to invest a certain percentage of their profits into local development projects. This policy should include guidelines for community engagement, project selection, and transparent reporting. This is to ensure that *CSR* activities align with the actual needs of mine-host communities.

5 Enhancement of equity participation:

Limited equity ownership by mine-host communities and the government restricts the financial benefits derived from mining activities.

Policy Suggestion: Develop policies that increase equity stakes for mine-host communities and the government in mining companies. This could involve legislative reforms that mandate a minimum percentage of community ownership. It could also entail the creation of community trusts that hold shares in mining operations. Such measures would ensure that a greater portion of mining revenues is reinvested into local development.

6 Local labour utilisation:

The reliance on external labour undermines local employment opportunities and economic growth within mine-host communities.

Policy Suggestion: Introduce policies that prioritise the employment of local labour in mining operations. This could include requirements for mining companies to provide training and skills development programmes for local residents. This would ensure that they are qualified for various roles within the mining industry. Additionally, incentives could be offered to companies that achieve high levels of local employment.

7 Strengthening Institutional Capacity:

Weak institutional capacity hampers effective governance and oversight of mining activities. This leads to inadequate protection of community rights.

Policy Suggestion: Implement capacity-building programmes for government agencies responsible for overseeing mining activities. This could include training staff, increasing financial and technical resources, and developing robust monitoring and evaluation systems. Strengthened institutions would be better equipped to enforce policies and regulations, ensure compliance, and protect the rights of mine-host communities.

8 Creating Centralised Information Repositories

The lack of organised information repositories hampers research and policy-making efforts.

Policy Suggestion: Establish centralised electronic databases and information repositories that compile and maintain up-to-date data on policy and legal frameworks, mining activities and socio-economic indicators, as well as legal frameworks. Such repositories should be available to and accessible by the general public at no cost – on a 24-7-365 basis. This would facilitate research, enhance transparency and accountability, and support evidence-based policymaking.

By addressing these policy implications, Lesotho would be in a position to create a more equitable and sustainable mining sector that better protects and promotes the socio-economic rights of mine-host communities. These reforms would ensure that the benefits of mining are first shared with mine-host communities and then with all Basotho. This would contribute to the overall development and wellbeing of the country.

7.5 Limitations of the study

The desktop review approach provided valuable insights into Lesotho's constitutional, policy, and legal framework as well as its implications for the protection of the socio-economic interests of mine-host communities affected by diamond mining. However, limitations inherent to this research approach were identified and need to be addressed in subsequent studies. These limitations include:

- 1 Lack of Primary Data: The absence of interviews with key stakeholders, such as community members, mining companies, government officials, and legal experts, limited the depth of understanding associated with their perspectives. Primary data could have provided firsthand experiences and nuanced insights that are essential for a comprehensive analysis.
- 2 Limited Contextual Understanding: Without direct engagement with individuals, government officials, and entities involved in diamond-mining activities in Lesotho, there may be gaps in understanding the practical implementation of the policy and legal framework and its impact on mine-host communities. The absence of on-the-ground observations and interactions may have restricted the study's ability to capture the complexities of existing socio-economic dynamics.

- 3 Potential Bias in Secondary Sources: Relying solely on desktop review exposes the study to the risk of bias in the selected sources. The interpretation of secondary data may be influenced by the perspectives and agendas of the relevant authors. This could impact negatively on the objectivity of the analysis.
- 4 Dearth of information on Lesotho: One significant limitation encountered in this study is the dearth of comprehensive and organised information regarding Lesotho. The absence of a centralised, well-maintained information repository posed substantial challenges in gathering relevant data. This hampered the endeavour to conduct a thorough analysis of Lesotho's current constitutional, policy, and legislative frameworks. This lack of accessible and systematically compiled information constrained the depth and breadth of the research. This potentially hindered the overall comprehensiveness and accuracy of the findings. Consequently, some aspects of the way these frameworks protect and promote the socio-economic rights of mine-host communities may not have been fully explored or accurately represented in this study.

7.6 Recommendations for future research

In advancing the academic discourse and the practical implications of the imperative to protect and promote the socio-economic rights of mine-host communities in Lesotho, several areas warrant further investigation.

Future research should concentrate on the *de facto* role of diamond-mining companies in supporting the socio-economic development of mine-host communities in Lesotho. An in-depth examination of *CSR* practices is essential to understanding how these initiatives align with both legal requirements and the actual needs of the affected communities. Empirical studies should evaluate the effectiveness of activities related to *CSR* in improving the living conditions and economic prospects of these communities. This would provide a nuanced understanding of the interplay between corporate actions and community welfare.

Research should also focus on the congruence between *CSR* initiatives and the socio-economic rights enshrined in Lesotho's policy and legislative framework. This involves assessing whether current *CSR* activities by mining companies meet the legal standards and substantially address the specific needs and priorities of the affected populations. Such an analysis would offer critical insights into the gaps and potential areas for policy enhancement. This would help to ensure a more robust protection and promotion of socio-economic rights. In addition, further empirical

research should focus on determining the level of adherence to other generally-accepted standards such as *CSR*, *SLO*, and *FPIC*.

Comprehensive studies are needed, to explore the roles of various stakeholders. These include government agencies, mining companies, non-governmental organisations, and community representatives. The focus should be their involvement in shaping the socio-economic landscape in diamond-mining areas. Investigating the interactions and dynamics among these stakeholders would help identify best practices and strategies for effective collaboration. This would enhance the overall protection of socio-economic rights.

In addressing the current dearth of information, future research should focus on developing centralised electronic databases and organised information repositories. These should be available to and accessible by the general public at no cost – on a 24-7-365 basis. This would facilitate easier access to accurate and up-to-date data. In turn, this would improve the quality and scope of research on Lesotho's socio-economic, policy, legislative, and implementation frameworks. Such repositories should include detailed records of policy initiatives, legal instruments, *CSR* activities, other activities related to the generally-accepted standards. These include *SLO* and *FPIC*, as well as institutional frameworks, implementation records, and socio-economic indicators.

An empirical study on whether the implementation of relevant *SDG* indicators has or has not had a positive impact on the improvement of the socio-economic status of select mine-host communities can provide important perspectives. These would be useful for future activities that would have a positive impact on the sustainable development of mine-host communities.

7.7 Final thoughts

This section reflecting on the overall contribution of this research to the field of socio-economic rights. It provides a critical examination of Lesotho's current constitutional, policy, and legislative framework regarding diamond mine-host communities. By analysing the gaps and shortcomings in existing frameworks –

particularly in terms of corporate social responsibility, equity participation, and institutional capacity – this study offers valuable insights into how policy and legal reforms can better protect and promote the socio-economic rights of vulnerable mine-host communities.

Importantly, the comparative analysis with Botswana and South Africa underscores best practices and innovative approaches that Lesotho could adopt to enhance its mining governance. The findings highlight the need for robust legal protections, effective enforcement mechanisms, and meaningful community-engagement strategies. These recommendations aim to ensure that mining activities contribute positively to local development, environmental sustainability, and broader socio-economic equity.

In conclusion, this research advocates for comprehensive reforms that not only align Lesotho's mining policies with international standards, such as the 2009 *Africa Mining Vision*, but also prioritise the empowerment and wellbeing of mine host communities. By strengthening regulatory frameworks, promoting equitable participation, and fostering sustainable development practices, Lesotho can transform its mining sector into a catalyst for inclusive growth and social justice. This study asserts that addressing these issues is not only a legal and ethical imperative, but also a crucial step towards building a more equitable and prosperous future for all mining stakeholders in Lesotho as well as for all Basotho.

BIBLIOGRAPHY

Books

Alence and Mattes 2016 *Mineral Governance Barometer*

Alence R and Mattes R *Mineral Governance Barometer* (OSISA 2016)

Ahmed and Bulmer *Social and Economic Rights*

Ahmed D and Bulmer E *Social and Economic Rights* (IDEA Publications 2014)

Auty *Sustaining Development in Mineral Economies: The Resource Curse Thesis*

Auty R *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (Routledge London 1993)

Bavinck *et al Conflicts over Natural Resources in the Global South- Conceptual Approaches*

Bavinck M *et al Conflicts over Natural Resources in the Global South- Conceptual Approaches* (CRC Press 2014)

Beyerlin and Marauhn *International Environmental Law*

Beyerlin U and Marauhn T *International Environmental Law* (Hart Publishing unknown date)

Bice *Responsible Mining*

Bice S *Responsible Mining* (Routledge London 2016)

Brand and Heyns *Socio-Economic Rights in South Africa*

Brand C and Heyns D *Socio-Economic Rights in South Africa* (University of Pretoria 2005)

Bryceson *et al Mining and Social Transformation in Africa: Mineralizing and Democratizing Trends in Artisanal Production*

Bryceson DF *et al Mining and Social Transformation in Africa: Mineralizing and Democratizing Trends in Artisanal Production* (Routledge London 2014)

Chuhan-Pole *et al Mining in Africa*

Chuhan-Pole P *et al Mining in Africa* (International Bank for Reconstruction and Development / The World Bank 2017)

Cotula 2010 *Investment Contracts and Sustainable Development*

Cotula L *Investment Contracts and Sustainable Development* (International Institute for Environment and Development London 2010)

Eggert *Mining and the Environment: International Perspectives on Public Policy*

Eggert R *Mining and the Environment: International Perspectives on Public Policy* (Routledge London 1994)

Eide *et al Economic Social and Cultural Rights*

Eide A *et al Economic Social and Cultural Rights* (MartinusNijhoff London 2001)

Forsythe *Human Rights and World Politics*

Forsythe DP *Human Rights and World Politics* (University of Nebraska Press 1989)

Ghai and Cottrell *The Millennium Declaration, Rights and Constitution*

Ghai Y and Cottrell J *The Millennium Declaration, Rights and Constitution* (Oxford University press 2012)

Gloppen *Public Interest Litigation Social Rights and Social Policy*

GloppenS *Public Interest Litigation Social Rights and Social Policy*(Inclusive states 2008)

Hassan and Ojo *Lesotho Development in a Challenging Environment: A joint World Bank-African Development Bank Evaluation*

Hassan FMA and Ojo O *Lesotho Development in a Challenging Environment: A joint World Bank-African Development Bank Evaluation* (World Bank Publications 2002)

Jones and Stokke *Democratising Development*

Jones P and Stokke K *Democratising Development* (Brill Academic Netherlands 2005)

Khoza *Social-Economic Rights in South Africa*

Khoza S *Social-Economic Rights in South Africa* (Juta, Cape Town 2017)

Lampridi and Melliou *The Birth and Evolution of Sustainable Development*

Lampridi M and Melliou C *The Birth and Evolution of Sustainable Development* (International Hellenic University 2015)

Nixon *Lesotho Kimberlites*

Nixon PH *Lesotho Kimberlites* (Lesotho National Development Corporation 1973)

Olowu *International Law: A Textbook for the South Pacific*

Olowu D *International Law: A Textbook for the South Pacific* (CD Publishing 2010)

Rawls *A Theory of Justice*

Rawls J *A Theory of Justice* (Harvard University Press 1999)

Ssenyonjo *Economic Social and Cultural Rights in International Law*

Ssenyonjo M *Economic Social and Cultural Rights in International Law* (Routledge London 2011)

Weissbrodt and de la Vega *International Human Rights Law*

Weissbrodt DS and De la Vega C *International Human Rights Law* (University of Pennsylvania Press 2010)

Journal Articles

Aaronson 2011 *Public Administration and Development*

Aaronson SA "Limited partnership: Business, government, civil society, and the public in the Extractive Industries Transparency Initiative (EITI)" 2011 *Public Administration and Development* 50-63

Akinseye and Cawood 2021 *Journal of Southern African Institute of Mining Metallurgy*

Akinseye PO and Cawood FT "The South African mining royalty regime: Considerations for modifying the system to balance its competing objectives" 2021 *Journal of Southern African Institute of Mining Metallurgy* 633-642

Alao 2007 *Natural Resources and Conflict in Africa: The Tragedy of Endowment*

Alao A *Natural Resources and Conflict in Africa: The Tragedy of Endowment* (Boydell & Brewer 2007)

Anthony 2010 *University of Technology*

Anthony D *Indivisibility of Human Rights* (LLB-Dissertation University of Technology)

Arbour 2007 *International Law and Politics*

Arbour L "Economic and Social Justice for Societies in Transition" 2007 *International Law and Politics* 1-28

Arndt *et al* 2017 *Geochemical perspectives*

Arndt NT *et al* "Section 1. Metals and Minerals, Now and in The Future" 2017 *Geochemical perspectives* 3-17

Ackley 2008 *University of Vermont*

Ackley M Evaluating Environmental Risks in Mining: A Perceptual Study
(Masters-Dissertation University of Vermont)

Avocats Sans Frontieres 2014 *Human Rights Implications of Extractive Industry Activities in Uganda*

Avocats Sans Frontieres "A Study of the Mineral Sector in Karamoja and the Oil Refinery in Bunyoro" 2014 Human Rights Implications of Extractive Industry Activities in Uganda

Bain and Company 2011 Diamond Industry Report

Bain and Company "The Global Diamond Industry Lifting the Veil of Mystery" 2011 Diamond Industry Report 1-100

Bahmann and Campo 2015 *Western Undergraduate Economic Review*

Bahmann S and Campo M "Does Canada Have the Dutch Disease?" 2015 *Western Undergraduate Economic Review* 35-61

Bansard and Schroder 2021 *International Institute for Sustainable Development*

Bansard J and Schroder S "The Sustainable Use of Natural Resources" 2021 *International Institute for Sustainable Development* 1-10

Barral 2012 *The European Journal of International Law*

Barral V "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm" 2012 *The European Journal of International Law* 377-400

Bawden and Carroll 1968 *The Land Resources of Lesotho*

Bawden MG and Carroll DM "Land Resources Division, Directorate of Overseas Surveys, Tolworth, Surrey, England" 1968 *The Land Resources of Lesotho* 1-97

Bedi 2015 *GeoForum*

Bedi HP "Right to food, right to mine? Competing human rights claims in Bangladesh"2015 *GeoForum* 248-257

Besada and O "Bright 2018 *Governance Review*

Besada H and O "Bright B "Policy Impacts on Africa's Extractive Sector: Botswana, Diamond Dependence, and Diversification in the Post-Diamond Period" 2018 *Governance Review*86-105

Boffo and Patalano 2020 *OECD Paris*

Boffo R and Patalano R "ESG Investing: Practices, Progress and Challenges"2020 *OECD Paris*

Botlhale 2010 *Africa Review*

Botlhale E "Botswana: Turning Resources into Equitable Results for People" 2010 *Africa Review* 1-56

Botswana Geoscience Institute 2018 *Botswana Geoscience Institute, WAVES*

Botswana Geoscience Institute "Economic Accounting of Mineral Resources in Botswana, 2015/2016 - Technical Report" 2018 *Botswana Geoscience Institute, WAVES* 1-34

British High Commissioner 1884 *The General Law Proclamation*

British High Commissioner 1884 The General Law Proclamation

Burton 2014 *Emory International Law Review*

Burton EG "Reverse the Curse: Creating a Framework to Mitigate the Resource Curse and Promote Human Rights in Mineral Extraction Industries in Africa" 2014 *Emory International Law Review* 425

Busacca 2013 Claremont mckenna college

Busacca M Corporate Social Responsibility in South Africa's Mining Industry: Redressing the Legacy of Apartheid (LLM-Dissertation Claremont mckenna college)

Busia and Akong 2017 *Journal of Sustainable Development Law and Policy*

Busia K and Akong C "The African Mining Vision: Perspectives on Mineral Resource Development in Africa" 2017 *Journal of Sustainable Development Law and Policy* 145-180

Campbell 2000 *Resources Policy*

Campbell DJ "Land use conflict in Kajiado District, Kenya" 2000 *Resources Policy* 337-479

Carvalho 2017 *Food and Energy Security*

Carvalho FP "Mining industry and sustainable development: time for change" 2017 *Food and Energy Security* 61-77

Centre for Applied Legal Studies and Open Society Initiative for Southern Africa 2019

Centre for Applied Legal Studies and Open Society Initiative for Southern Africa "Best Practice Guidelines for Mining in the SADC Region" 1-40

Central Bank of Lesotho 2012 *Economic Review*

Central Bank of Lesotho "Quarterly review" 2012 *Economic Review* 1-57

Central Bank of Lesotho *National Strategic Development Plan 2012/13- 2016/17*

Central Bank of Lesotho "Growth and Development Strategic Framework" *National Strategic Development Plan 2012/13- 2016/17* 1-186

Chikova and Chilunjika 2021 *International Journal of Law and Public Policy*

Chikova R and Chilunjika A "Public Participation and the Governance of Mineral Resources in Zimbabwe" 2021 *International Journal of Law and Public Policy* 11-18

Chekere and Nmehielle 2013 *African Journal of Legal Studies*

Chekere YT and Nmehielle VO "The International Law Principle of Permanent Sovereignty over Natural Resources as an Instrument for Development: The Case of Zimbabwean Diamonds" 2013 *African Journal of Legal Studies* 69-101

Collier and Hoeffler 2001 *Oxford Economic Papers*

Collier P and Hoeffler A "Greed and Grievance in Civil war" 2001 *Oxford Economic Papers* 595

Compaoré 2013 *The South African Initiative of International Affairs*

Compaoré N "Towards Understanding South Africa's Differing Attitudes to the EITI and the OGP" 2013 *The South African Initiative of International Affairs* 1-15

Corden and Neary 1982 *Economic Journal*

Corden WM and Neary P "Booming Sector and De-Industrialisation in a Small Open Economy" 1982 *Economic Journal* 92

Crain 2010 University of Denver

Crain A The Resource Curse: The Cases of Botswana and Zambia (Degree-Dissertation University of Denver)

Cuartero-Enteria 2018 *International Journal of World Policy and Development Studies*

Cuartero-Enteria O "The Socio-Economic Impact of Mining Companies to Their Host Communities in Northern Part of Surigao Del Sur Province" 2018 *International Journal of World Policy and Development Studies* 103-111

Chawani 2014 *University of Pretoria*

Chawani C Towards the Adoption of the Extractive Industries Transparency Code and Implications for Transparency in Malawi's Mining Sector (LLM-Dissertation University of Pretoria)

Corrigan 2014 *Resources Policy*

Corrigan CC "Breaking the resource curse: Transparency in the natural resource sector and the extractive industries transparency initiative" 2014 *Resources Policy* 17-30

Darkoh 2001 *Eastern Africa Social Science Research Review*

Darkoh MBK "Socio-Economic and Environmental Impacts of Mining in Botswana: A Case Study of the Selebi-Phikwe Copper Nickel Mine" 2001 *Eastern Africa Social Science Research Review* 1-42

Dashwood 2007 *Multinational Business Review*

Dashwood HS "Towards Sustainable Mining: The Corporate Role in the Construction of Global Standards" 2007 *Multinational Business Review*

Davenport Colonial 2009 *University of Cape Town*

Davenport J Colonial Mining Policy of the Cape of Good Hope: An Examination of the Evolution of Mining Legislation in the Cape Colony 1853-1910 (Masters-Dissertation University of Cape Town)

Davis and Tilton 2005 *Natural Resources Forum*

Davis GA and Tilton JE "The resource curse" 2005 *Natural Resources Forum* 233-242

De Baets 2009 *History and Theory*

De BaetsA "the impact of the *universal declaration of human rights* on the study of history" 2009 *History and Theory* 20-43

Department of *Mineral Resources and Energy* 2023

Department of Mineral Resources and Energy "Annual Performance Plan for 2022–2023" 2023 1-152

Demissie 2014 *University of Southern Mississippi*

Demissie MZ The Natural Resource Curse in the Sub-Saharan Africa Transparency and International Initiatives (Doctor of Philosophy-Dissertation University of Southern Mississippi)

De Schutter 2009 *United Nations*

De Schutter O Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights Including the Right to Development 2009 *United Nations* 1-20

De Soysa 2002 *Global Environmental Policies*

De Soysa I "Ecoviolence: Shrinking Pie, or Honey Pot?" 2002 *Global Environmental Policies* 1-34

Dikobe 2014 *North-West University*

Dikobe NO Natural resources foreign direct investment and conflict in South Africa: a case study of the Marikana tragedy (MA Degree-Dissertation North-West University)

Dinokopila 2013 *Journal of African Law*

Dinokopila B "The Justiciability of Socio-Economic Rights in Botswana" 2013 *Journal of African Law* 108-125

Donnelly 2007 *Human Rights Quarterly*

Donnelly J "The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight" 2007 *Human Rights Quarterly* 908-942

Dubinski 2013 *Journal of Sustainable Mining*

Dubinski J "Sustainable Development of Mining Mineral Resources" 2013
Journal of Sustainable Mining 1-6

Du Plessis 2008 *Potchefstroom Electronic Law Journal*

Du Plessis AA "Public Participation, Good Environmental Governance and Fulfillment of Environmental Rights" 2008 *Potchefstroom Electronic Law Journal* 1-29

Du Plessis 2011 *Southern Africa Journal of Human Rights (SAJHR)*

Du Plessis AA "South Africa's Environmental Right Generously Interpreted: A Focus on the Role of Poverty" 2011 *Southern Africa Journal of Human Rights (SAJHR)*

Du Plessis 2017 *Potchefstroom Electronic Review*

Du Plessis E "The Search for Environmental Justice" 2017 *Potchefstroom Electronic Review*

Elmassah and Hassanein 2022 *Economic and Business Aspects of Sustainability*

Elmassah S and Hassanein E "Can the Resource Curse for Well-Being Be Morphed into a Blessing? Investigating the Moderating Role of Environmental Quality, Governance, and Human Capital" 2022 *Economic and Business Aspects of Sustainability* 1-21

Ekhatior 2015 *Commonwealth Law Bulletin*

Ekhatior ES "The impact of the African Charter on Human and Peoples' Rights on domestic law: a case study of Nigeria" 2015 *Commonwealth Law Bulletin* 253-270

Engelbrecht 2011 *North-West University*

Engelbrecht JZ An Analysis of the Sustainable Mining of Selected Minerals and Metals in South Africa (LLM-Dissertation North-West University)

Elbra 2013 *Resources Policy*

Elbra AD "The Forgotten Resource Curse: South Africa's Poor Experience with Mineral Extraction" 2013 *Resources Policy* 549-557

Fleming *et al* 2015 *Australian Journal of Agricultural and Resource Economics*

Fleming D *et al* Understanding the resource curse (or blessing) across national and regional scales: Theory, empirical challenges and an application" 2015 *The Australian Journal of Agricultural and Resource Economics* 624

FUO 2014 *North-West University*

FUO ON Local Government's Role in the Pursuit of Transformative Constitutional Mandate of Social Justice in South-Africa (LLD-Dissertation North-West University)

Fuggle and Rabbie 1993 *International Mission on Environmental Policy*

Fuggle RF and Rabbie MA "Building A New South Africa Environment Reconstruction and Development" 1993 *International Mission on Environmental Policy* 108

Gewirth 1981 *Journal of Human Rights*

Gewirth A "Why are there Human rights" 1981 *Journal of Human Rights* 100-120

Gilbert 2013 *Netherlands Quarterly of Human Rights*

Gilbert J "The right to freely dispose of natural resources: Utopia or Forgotten Right?" 2013 *Netherlands Quarterly of Human Rights* 1-28

Githii 2008 *Central European University*

Githii J The Case for Justiciability of Socio-Economic Rights in Kenya: Drawing from Experience in South Africa, India and United States (LLM-Dissertation Central European University)

Grasmick 2015 *Loyola University Chicago International Law Review*

Grasmick B "Recognizing "Access to Information" as a Basic Human Right: A Necessary Step in Enforcing Human Rights Provisions Within Free Trade Agreements" 2015 *Loyola University Chicago International Law Review* 215-230

Grynberget *et al* 2014 *Botswana institute for development policy analysis*

Grynberget R *et al* "Synthetic Gem Quality Diamonds and their Potential Impact on the Botswana Economy" 2014 *Botswana institute for development policy analysis* 1-44

Halonen 2014 *University of Agder*

Halonen A Avoiding the Curse by Transparency and Ethics (Masters-Dissertation University of Agder)

Harguth 2012 *Central European University*

Harguth B Extracting Ghana's Potential: Dodging the Resource Curse and Promoting Development (Masters-Dissertation Central European University)

Hillbom 2008 *Journal of Modern African Studies*

Hillbom E "Diamonds or Development? A Structural Assessment of Botswana's Forty Years of Success" 2008 *Journal of Modern African Studies* 191-214

Hillbom and Bolt 2018 *Cambridge University Press*

Hillbom E and Bolt J "A Modern Economic History: An African Diamond in the Rough" 2018 *Cambridge University Press* 1-235

Hilson 2002 *The Journal of Environment & Development*

Hilson G "Small-Scale Mining in Africa: Tackling Pressing Environmental Problems with Improved Strategy" 2002 *The Journal of Environment & Development* 149-174

Hilson 2020 *Canadian Journal for Development Studies*

Hilson G "The Africa Mining Vision: a manifesto for more inclusive extractive industry-led development?" 2020 *Canadian Journal for Development Studies* 417-43

Hodge 2012 *Economic Research Southern Africa*

Hodge D "The exchange rate, Dutch disease and manufacturing in South Africa: What do the data say" 2012 *Economic Research Southern Africa* 1-25

Institute for Human Rights and Business 2011 *ResearchGate*

Institute for Human Rights and Business "The Right to Food and Water: Dependencies and Dilemmas" *ResearchGate* 1-30

Jenkins and Yakovleva 2006 *Journal of Cleaner Production*

Jenkins H and Yakovleva N "Corporate social responsibility in the mining industry: Exploring trends in social and environmental disclosure" 2006 *Journal of Cleaner Production* 271-284

Juma 2011 *Pace International Law Review*

Juma L "The Laws of Lerotholi: Role and Status of Codified Rules of Custom in the Kingdom of Lesotho" 2011 *Pace International Law Review* 1-23

Kasonde 2014 *University of Cape Town*

Kasonde L The need for justiciable Socio-Economic rights in the Bill of Rights in the Zambian Constitution (LLM-Dissertation University of Cape Town)

Kambeu 2017 *Journal of Finance and Banking Studies*

Kambeu E "Significance of a change in dividend payment frequency," 2017 *Journal of Finance and Banking Studies* 134-140

Kamunda *et al* 2016 *International Journal of Environmental Research and Public Health*

Kamunda C *et al* "Health Risk Assessment of Heavy Metals in Soils from Witwatersrand Gold Mining Basin, South Africa" 2016 *International Journal of Environmental Research and Public Health*1-11

Kaznacheev 2013 *Russian Presidential Academy of National Economy and Public Administration*

Kaznacheev P "Resource Rents and Economic Growth" 2013 *Russian Presidential Academy of National Economy and Public Administration*1-93

Kinney 2001 *Indiana Law Review*

Kinney ED "The International Human Right to Health: What Does This Mean for Our Nation and World?" 2001 *Indiana Law Review* 1-14

Kitula 2005 *Resources Policy*

Kitula AGN "The environmental and socio-economic impacts of mining on local livelihoods in Tanzania: A case study of Geita District"2005 *Resources Policy* 405-414

Knuth and Vidar 2011 *Right to Food Study*

Knuth L and Vidar M "Constitutional and Legal Protection of the Right to Food around the World"2011 *Right to Food Study* 10

Koitsiwe 2018 Akita University

Koitsiwe K The Impact of Mining Sector on Economic Development in Botswana (Doctoral Dissertation Akita University)

Kojo 2010 *Policy Research*

Kojo NC " Diamonds Are Not ForeverBotswana Medium-term Fiscal Sustainability" 2010 *Policy Research* 1-40

Lapa 2011 University of oslo

Lapa A Strengthening Compliance with Economic and Social Rights: A Theoretical and Practical Approach (LLM-Dissertation University of oslo)

Le Billion 2011 *Chr. Michelsen Institute*

Le Billion P "Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives" 2011 *Chr. Michelsen Institute*1-41

Lecomte 2015 *Lund University*

Lecomte V The Kimberley Process a New Actor on the Conflict Resolution Scene (Bachelor-Dissertation Lund University)

Lee and Abbot 2003 *The Modern Law Review*

Lee M and Abbot C "The Usual Suspects? Public Participation Under the Aarhus Convention"2003 *The Modern Law Review*80-108

Legal Resource Centre 2016

Legal Resource Centre (LRC) 2016 A Practical Guide for Mining Affected Communities

Lei, Cui and Pan 2013 *Resources Policy*

Lei Y, Cui N and Pan D"Economic and social effects analysis of mineral development in China and policy implications"2013 *Resources Policy*448-457

Letšeng Diamonds 2016

Letšeng Diamonds 2016

<https://www.letsengdiamonds.co.ls/home/2017%20SCHOLARSHIP%20ADVERT.pdf>

Liebenberg 2010 *European Journal of International Law*

Liebenberg S "Socio-Economic Rights. Adjudication under a Transformative Constitution" 2010 *European Journal of International Law* 739–744

Limi 2006 *IMF Working Paper*

Limi A "Did Botswana Escape from the Resource Curse?" 2006 *IMF Working Paper* 1-38

Lock 2017 *University of Sheffield*

Lock NP *The Geology of the Letseng Kimberlites in Lesotho (Doctorate-Dissertation University of Sheffield)*

Lwabukuna 2015 *Africa Insight*

Lwabukuna O "Natural Resources for Socio- Economic Development in Africa" 2015 *Africa Insight* 47

Lyn 2019 *Lesotho Review*

Lyn G "An Overview of the Kingdom of Lesotho's Economy" 2019 *Lesotho Review* 1-120

Macheve 2014 *University of Cape Town*

Macheve A The impact of coal mining on the living conditions of rural communities in Mozambique (LLM-Dissertation University of Cape Town)

Macklem 2015 *London Review of International Law*

Macklem P "Human rights in international law: three generations or one?" 2015 *London Review of International Law* 61-92

Maconachie and Binns 2007 *Resources Policy*

Maconachie R and Binns T "Beyond the resource curse? Diamond mining, development, and post-conflict reconstruction in Sierra Leone" 2007 *Resources Policy* 104-115

Manamela 2019 *North-West University*

Manamela DMS The impact of mining on indigenous African communities in Limpopo (Doctorate-Dissertation North-West University)

Mancini and Sala 2018 *Resources Policy*

Mancini L and Sala S "Environmental Impact of Lefa Gold Mining on Its Local Population, Republic of Guinea" 2018 *Resources Policy* 98-111

Mahiya 2016 North-West University

Mahiya FA The Role of South-Africa's Environmental Rights in Transformative Constitutionalism (LLM-Dissertation North-West University)

Mahopo Sowetan

Mahopo Z Sowetan (Unknown date)

Mailey 2015 *The Africa centre for strategic studies*

Mailey JR "The Anatomy of the Resource Curse: Predatory Investment in Africa's Extractive Industries" 2015 *The Africa centre for strategic studies* 1-146

Makhetha 2017 *University of Pretoria*

Makhetha EL Small-Scale Artisanal Diamond Mining and Rural Livelihood Diversification in Lesotho (LLM-Dissertation University of Pretoria)

Maleleka 2007 *Resource Insight*

Maleleka D "The evolution of the diamond mining in Lesotho" 2007 *Resource Insight* 1-18

Mapeshoane 2020 *North-West University*

Mapeshoane MJ A Critical Analysis into the Land Tenure System in Lesotho and its Implications on Foreign Investment (LLM-Dissertation *North-West University*)

Maqakachane 2016 *University of the Free State*

Maqakachane TS Towards Constitutionalisation of Lesotho's Private Law through Horizontal Application of the Bill of Rights and Judicial Subsidiarity (LLM-Dissertation University of the Free State)

Maqhelebo unknown date *Informative*

Maqhelebo S Informative (unknown date)

Marobela 2011 *Research Gate*

Marobela RC "Contagious bovine pleuropneumonia in Botswana: Experience with control, eradication, prevention, and surveillance" 2011 *Research Gate*1-12

Marks 2014 Harvard Liabrary

Marks S "Human Rights: A Brief Introduction" 2014 Harvard Library1-25

Masoabi, Matheka *Public Eye*

Masoabi M, Matheka R *Public Eye (unknown date)*

Maswanganyi 2018 *University of Witwatersrand*

Maswanganyi TC Social Justice Corporate Social Responsibility and the South African Mining Industry (Master of Arts-Dissertation University of Witwatersrand)

Mathabatha 2011 *University of Limpopo*

Mathabatha M The Impact of Mining Companies on Community Development in the Dilokong and Ga Pila Villages in the Sekhukhune and Waterberg Districts of Limpopo Province (LLM-Dissertation University of Limpopo)

Matsela 2019 *North-West University*

Matsela TM Transparency Regulation in the Diamond Mining Sector in Lesotho: Lessons from South Africa (LLM-Dissertation North-West University)

Matshediso 2005 *Resources Policy*

Matshediso IB "A review of mineral development and investment policies of Botswana"2005 *Resources Policy*203-207

Mechlem 2004 *European Law Journal*

Mechlem K "Food security and the right to food in the discourse of the United Nations" 2004 *European Law Journal* 631-648

Mensah 2019 *Cogent Social Sciences*

Mensah J "Sustainable development: Meaning, history, principles, pillars, and implications for human action: Literature review" 2019 *Cogent Social Sciences* 1-21

Mikesell 1997 *Resources Policy*

Mikesell R "Explaining the resource curse, with special reference to mineral-exporting countries" 1997 *Resources Policy* 191-199

Mlambo 2022 *Cogent Social Sciences*

Mlambo C "Politics and the natural resource curse: Evidence from selected African states" 2022 *Cogent Social Sciences* 1-17

Mohomed 2006 UNISA

Mohomed F Environmental Rights Afforded to Residents Affected By Mining Activities: A Case Study In Hondeklip Bay (LLM-Dissertation UNISA)

Mononen *et al* 2022 *Resources Policy*

Mononen T *et al* "Social and Environmental Impacts of Mining Activities" 2022 *Resources Policy* 1-11

Motsoeli *Lesotho Times*

Motsoeli N *Lesotho Times (unknown date)*

Moyo 2011 *Malawi Law Journal*

Moyo A "Sub-regional and constitutional protection of socio-economic rights: SADC, Botswana, Lesotho, Malawi, Namibia and Zimbabwe" 2011 *Malawi Law Journal* 87

Mpaki unknown date *Lesotho Times*

Mpaki B *Lesotho Times* (unknown date) <http://lestimes.com/mining-community-mulls-legal-action/>

Mugadza 2018 North-West University

Mugadza WT Combating Corruption in Public Procurement in Developing Countries: A Legal Analysis (LLD-Dissertation North-West University)

Mukhopadhyay 2020 *Research Gate*

Mukhopadhyay P "Language Analysis in Library OPAC: Designing an Open-Source Software based Framework for Bibliographic Records in Mainstream and Tribal Languages" 2020 *Research Gate 1-9*

Murombo 2013 *Law, Environment and Development Journal*

Murombo T "Regulating Mining in South Africa and Zimbabwe: Communities, the Environment and Perpetual Exploitation" 2013 *Law, Environment and Development Journal* 31-54

Muntingh 2011 *North-West University*

Muntingh JA Community Perceptions of Mining: The Rural South African Experience (LLM-Dissertation North-West University)

Mutlokwa 2015 North-West University

Mutlokwa H Zimbabwe's Approach to Community Participation And Indigenisation In Extractive Activities: Problems and Prospects (LLM-Dissertation North-West University)

Muswaka 2017 Southern Africa Legal Information Institute

Muswaka L "An Analysis of the Legislative Framework concerning Sustainable Mining in South Africa" 2017 Southern Africa Legal Information Institute

Mzumara 2012 *International Journal of Management Sciences and Business Research*

Mzumara M "Botswana a Mono-Diamond Economy or Not?" 2012 *International Journal of Management Sciences and Business Research*1-26

Natural Resource Governance institute 2015

Natural Resource Governance institute on Transparency Mechanisms and Movements (2015) available at https://www.resourcegovernance.org/sites/default/files/nrgi_Transparency-Mechanisms.pdf accessed 6 February 2023

Ndlazi 2021 Law Democracy and Development

Ndlazi S "Alone in the Dark": How the Current Mining and Minerals Legal Regime Continues to fail Artisanal and Small-scale Miners in South Africa2021 Law Democracy and Development 221-255

Nell 2015 *North-West University*

Nell TM Community Perceptions of Sustainable development: implications for an approach to closure mining (LLM-dissertation North-West University)

Nealer 2005 *Journal of Public Administration*

Nealer EJ "Municipal Management: Serving the People" 2005 *Journal of Public Administration*469-483

Ngang University of Pretoria 2013

Ngang CC "Socio-Economic Rights Litigation: A Potential Strategy in the Struggle for Social Justice in South Africa" (LLM-Dissertation University of Pretoria)

Ngobese 2015 University of Kwazulu-Natal

Ngobese SS Examining the Socio-Economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities (Master of Commerce-Dissertation University of Kwazulu-Natal)

Nkongolo 2014 *African Journal of Democracy and Governance*

Nkongolo JK "Improving mineral governance through a fundamental rights approach to community participation : the African Charter of Human and People's Rights as the legal basis" 2014 *African Journal of Democracy and Governance* 81-99

Ochieng, Seanego and Nkwonta 2010 *Academic Journals*

Ochieng GM, Seanego ES and Nkwonta O "Impacts of mining on water resources in South Africa: A review" 2010 *Academic Journals* 3351-3357

Ojaghlou 2019 *International Business Research*

Ojaghlou M "Tourism-Led Growth and Risk of the Dutch Disease: Dutch Disease in Turkey" 2019 *International Business Research* 1-18

Okeke 2010 *Journal of International Law and Jurisprudence*

Okeke GN "Corruption in Nigeria: A call for an aggressive legal solution" 2010 *Journal of International Law and Jurisprudence* 107-115

Okyere *et al* 2021 *Journal of Degraded and Mining Lands Management*

Okyere M *et al* "Large scale mining in Ghana: a review of the implications on the host communities" 2021 *Journal of Degraded and Mining Lands Management* 1-7

Onyango 1995 *California Western International Law Journal*

Onyango O "Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa" 1995 *California Western International Law Journal*

Parlee 2015 *Resources Policy*

Parlee BL "Avoiding the Resource Curse: Indigenous Communities and Canada's Oil Sands" 2015 *Resources Policy* 425-436

Pegg 2006 *Resources Policy*

Pegg M "Mining and poverty reduction: Transforming rhetoric into reality" 2006 *Resources Policy* 376-387

Peraira and Martins 2021 *Journal of Management and Sustainability*

Peraira TH and Martins HC "People, Planet, and Profit: A Bibliometric Analysis of Triple Bottom Line Theory" 2021 *Journal of Management and Sustainability*

Pedro Date Unknown Economic Commission for Africa

Pedro AMA "Mainstreaming Mineral Wealth in Growth and Poverty Reduction Strategies" Date Unknown Economic Commission for Africa

Pieterse 2004 *South African Journal on Human Rights*

Pieterse M "Coming to terms with judicial enforcement of socio-economic rights" 2004 *South African Journal on Human Rights* 383-417

Pocuca, Mladenov and Mirkovic 2018 *Economics of Agriculture*

Pocuca MB, Mladenov M and Mirkovic P "The analysis of the aarhus convention in the context of good environmental governance" 2018 *Economics of Agriculture* 1615-1625

Poulter 2015 National University of Lesotho

Poulter S Dual Marriages in Lesotho (Bachelor-Dissertation National University of Lesotho

Otaha 2012 *African Research Review*

Otaha JL "Dutch Disease and Nigeria Oil Economy" 2012 *African Research Review* 90

Ramaema 2015 North-West University

Ramaema RM The Potential Impact of Sustainable Use of Biodiversity Resources on Permanent Sovereignty in SADC (LLM-Dissertation North-West University)

Ramadi 2013 *Journal of African Law*

Ramadi BD "The Justiciability of Socio-Economic Rights in Botswana" 2013 *Journal of African Law* 108-125

Ramatji 2013 University of Limpopo

Ramatji KN A Legal Analysis of the Mineral and Petroleum Resources Development Act 82 of 2002 and its impact in Mining Operations in the Limpopo Province (LLM-Dissertation University of Limpopo)

Resosudarmo *et al* 2009 *ResearchGate*

Resosudarmo B *et al* "Socio-economic Conflicts in Indonesia's Mining Industry" 2009 *ResearchGate* 1-22

Rustard *et al* 2017 *Resources Policy*

Rustard SA *et al* "Has the Extractive Industries Transparency Initiative been a success? Identifying and evaluating EITI goals" 2017 *Resources Policy* 151-162

Sachs and Warner 1999 *Journal of Development Economics*

Sachs JD and Warner AM "The Big Push, Natural Resource Booms and Growth" 1999 *Journal of Development Economics* 43-76

Saurombe 2012 *Potchefstroom Electronic Law Journal*

Saurombe A "The role of SADC institutions in implementing SADC treaty provisions dealing with regional integration" 2012 *Potchefstroom Electronic Law Journal* 454-569

Schiavi and Solomon 2007 *Greener Management International*

Schiavi P and Solomon F "Voluntary Initiatives in the Mining Industry: Do They Work?" 2007 *Greener Management International*

Seatzu 2009 *Anuario Espanol De Derecho Internacional*

Seatzu F "Notas On Some General Theoretical and Practical Questions Arising from the Application of the European Convention on Human Rights in Asylum Cases" 2009 *Anuario Espanol De Derecho Internacional* 579

Sener 2021 *International Journal of Political Studies*

Sener MB "Evaluation of nato intervention in kosovo by criteria of responsibility to protect" 2021 *International Journal of Political Studies* 38-59

Shakung 2014 *North-West University*

Shakung MW Protection of the Procedural Rights of Indigenous People Affected by Mining in South Africa (LLM-Dissertation North-West University)

Sharaky 2011 *Institute of African Research and Studies*

Sharaky AM "Mineral Resources and Exploration in Africa" *Institute of African Research and Studies* 1-23

Sovacool *et al* 2016 *Resources Policy*

Sovacool BK *et al* "Energy Governance, Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative" 2016 *Resources Policy* 179-192

Stevens, Lahn and Kooroshy 2015 *Chatham House*

Stevens P, Lahn G and Kooroshy J "The Resource Curse Revisited" 2015 *Chatham House* 1-50

Switzer 2001 *Mining, Minerals and Sustainable Development*

Switzer J "Armed Conflict and Natural Resources: The Case of the Minerals Sector" 2001 *Mining, Minerals and Sustainable Development* 1-26

Taylor 2013 *Google scholar*

Taylor V "Social Justice: Reframing the "social" in Critical Discourses in Africa"
2013 *Google Scholar* 12-25

Tembo 2018 North-West University

Tembo M Developing a Corporate Social Responsibility Framework for the
Diamond Mining Industry in Zimbabwe: The Case of Mbada Diamond
Company (Doctor Philosophy North-West University)

Thabane 1995 *University of Trondheim*

Thabane M Individual Diamond Digging in Lesotho 1955-1970 29 (Masters-
Dissertation University of Trondheim)

The Mining Minerals and Sustainable Development Project

The Mining Minerals and Sustainable Development Project "The need for and
availability of minerals" date unknown 4 (1-12)

The World Bank 2009 *Skills Implications of Botswana's Diamond Beneficiation
Strategy*

The World Bank 2009 *Skills Implications of Botswana's Diamond Beneficiation
Strategy*

Theelen 2012 *University of Otago*

Theelen A Public Participation in Environmental Management: The
Christchurch Rebuild A Case Study (LLB-Dissertation University of Otago)

Ward 2011 *Northwestern Journal of International Human Rights*

Ward T "The Right to Free, Prior, and Informed Consent: Indigenous Peoples'
Participation Rights within International Law" 2011 *Northwestern Journal of
International Human Rights* 54-70

Weibel 2016 *Universities of Geneva and Basel*

Weibel F The Justiciability of Economic Social and Cultural Rights in Switzerland (LLM-Dissertation Universities of Geneva and Basel)

Wilson 2019 *Resources Policy*

Wilson CJ "The effects of urbanization on bee communities depends on floral resource availability and bee functional traits" 2019 *Resources* 1-23

Wilcox 2015 Saint Mary's University

Wilcox CJ Mining Regulation and Development in Botswana (Degree of Master of Arts Saint Mary's University)

Winston 2007 *Journal of Human Rights*

Winston ME "Human rights in the news: Balancing new media participation with the authority of journalists and human rights professionals" 2007 *Journal of Human Rights* 280-313

World Bank Group 2016 *Botswana Mining Investment and Governance Review*

World Bank Group "Botswana Mining Investment and Governance Review" 2016 *Botswana Mining Investment and Governance Review* 1-84

Yates and Horvath 2013 *The national Bureau of Asian Research*

Yates F and Horvath L "Social License To Operate: How To Get It, And How To Keep It" 2013 *The national Bureau of Asian Research* 1-23

Yee 1998 *International and Comparative Law Quarterly*

Yee S "The interpretation of Treaties in force in article 35(2) of the ICJ" 1998 *International and Comparative Law Quarterly* 884-904

Yelpaala and Ali 2005 *Resources Policy*

Yelpaala K and Ali SH "Multiple scales of diamond mining in Akwatia, Ghana: addressing environmental and human development impact" 2005 *Resources Policy* 155

Vietti 2019 *Journal of the Southern African Institute of Mining and Metallurgy*

Vietti AJ "A strategy for improving water recovery in kimberlitic diamond mines" 2019 *Journal of the Southern African Institute of Mining and Metallurgy*

Van Wyk 2012 *Research gate*

Van Wyk D "Globalisation and the minerals industry: A South African case study 2012" *Research gate*⁹

Viljoen 2016 *North-West University*

Viljoen G Water as Public Property A Parallel Evaluation of South African and German Law (LLD-Dissertation North-West University)

Vincent *Human Rights and International Relations*

Vincent RJ Human Rights and International Relations (Cambridge University press 1987)

Vlassenroot and VanBockstael 2008 *Research Gate*

Vlassenroot K and Van Bockstael S "Artisanal diamond mining" 2008 *Research Gate* 1-304

Vogel 2008 *Annual Review of Political Science*

Vogel D "Private Global Business Regulation" 2008 *Annual Review of Political Science* 261-282

Xu, Xu, Chen, Che 2016 *Resources Policy*

Xu X, Xu X, Chen Q, Che Y "The research on generalized regional "resource curse" in China's new normal stage" 2016 *Resources Policy* 12-19

Case law

Alexkor Limited and Others v Richtersveld Community and Others 2003 BCLR 1301 (CC)

Bengwenyama-Ye-Maswati Tribal Council and Others v Genorah Resources (Pty) Ltd and Others 2015 (1) SA 197

Brummer v Minister for Social Development 2009 (6) SA 323 (CC)

Fuel Retailers Association of Southern Africa v Director General Environmental Management, Department of Agriculture Conservation and Environment

Gabcakovo-Nagymaros (Hungary v Slovakia)1997 ICJ

Government of the Republic of South Africa V Grootboom 2001 (1) SA 46 (CC)

Khathang Tema Baitsooli v Maseru City Council and Others CAR No: 4 2005

Maccsand (Pty) Ltd v City of Cape Town and Others 2012 (4) SA 181 (CC)

MatsipaneMosetlhanyane& Others v The Attorney-General of Botswana, Court of Appeal, CALB-074-10 (unreported)

Minerals Council of South Africa v Minister of Mineral Resources and Energy 2022 1 SA 535 (GP)

Minister of Finance v Van Heerden 2004 6 SA 121 (CC)

Minister of Health and Others v Treatment Action Campaign and Others No: 2 2002 5 SA 721 (CC)

Mpumalanga Province and Others2007 (6) SA 4 (CC)

S v Makwanyane 1995 3 SA 391 (CC)

Sesana& Others v The Attorney-General 2002 1 BLR 452 (HC)

Social and Economic Rights Action Centre and another v Nigeria2001 (AHLR) 60

Legislation

Common Law

Constitution of Lesotho, 1993

Diamonds Amendment Act 29 of 2005

Diamond Cutting Act 25 of 1979

Diamonds Export Levy Act 15 of 2007

Diamonds Second Amendment Act 30 of 2005

Export and Import of Rough Diamonds Regulation of 2004

Income Tax Act 21 of 1995

Land Act 17 of 1979

Land Act 8 of 2010

Lesotho Mines and Minerals Act 4 of 2005

Minerals and Mining Bill 2017

Minerals and Mining Policy of 2015

Mines and Minerals Act 17 of 1999

Mines and Minerals Act 50 of 1967

Mineral and Petroleum Resources Development Act 28 of 2002

National Environmental Management Act 107 OF 1998

National Water Act 36 of 1998

Precious Metal's Act 37 of 2005

Restitution of Land Right Act 22 of 1994

Precious and Semi-Precious Stones Protection Act 3 of 1969

South Africa's Diamond Act 56 of 1986

The Constitution of Botswana, 1966

The Mineral and Petroleum Resources Development Act 28 of 2002

The Republic of South Africa Constitution, 1996

International Instruments

African Charter on Human and Peoples' Rights (1981)

Convention on the Elimination of all Forms of Racial Discrimination (1965)

Convention on the Elimination of all Forms of Discrimination against Women (1979)

Convention on the Rights of a Child (1984)

Convention on the Rights of Persons with Disabilities (2006)

Convention on the Elimination of all Forms of Discrimination against Women (1979)

International Covenant on Economic, Social and Cultural Rights(1966)

International Finance Corporation Sustainable and Responsible Mining in Africa (2014)

International Monetary Fund (2022)

General Assembly Resolution 44/25 (1990)

General Assembly Resolution 34/180 (1979)

General Assembly Resolution 2106 (XX) (1965)

General Assembly Resolution 61/106 (2006)

The Minerals and Mining Policy (2015)

Organisation for Economic Cooperation and Development (2011)

Southern African Development Community (SADC) Harmonisation of Mining Policies, Standards, Legislative and Regulatory Framework in Southern Africa (2004)

Southern African Development Community (SADC) Protocol on Mining (1997)

Southern African Development Community (SADC) Protocol on Gender (2008)

The Convention on the rights of a child (1989)

UNICEF Children's Rights (1989)

Universal Declaration on Human Rights (1948)

United Nations Conference on Trade and Development (2015)

United Nations Economic and Social Council, Economic Commission for Africa: Africa Review Report on Mining (2009)

United Nations European Commission for Latin America and the Caribbean Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean (1948)

United Nations Department of Economic and Social Affairs the International Forum for Social Development (2004)

United Nations General Assembly Resolution A/RES/55/56 (2003)

United Nations General Assembly Resolution 64/292 (2010)

United Nations High Commissioner for Human Rights (2015)

United Nations Human Rights Treaty Bodies (2022)

United Nations Resolution 55/56(2000)

United Nations Human Rights Office of the High Commissioner Land and Human Rights Standards and Applications (2021)

United Nations Report of the United Nations Summit for Social Development (1995)

United Nations Development Programme Extracting Good Practices: A Guide for Governments and Partners Integrate Environment and Human Rights into the Governance of the Mining Sector (2018)

The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World (2016)

Internet sources

African Natural Resources Center African Development Bank 2016
https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/anrc/Botswana_s_mineral_revenues_expenditure_and_saving_policy.pdf

African Natural Resources Center African Development Bank 2016
African Natural Resources Center
https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/anrc/Botswana_s_mineral_revenues_expenditure_and_saving_policy.pdf accessed 19 April 2022

Anon 2017 https://www.hesperian.org/pdf-en_cgeh_2012_21

Anon H 2017 Knowledge for Action. Action for Health
https://www.hesperian.org/pdf-en_cgeh_2012_21 accessed 18 January 2023

Bacon and Tord Experiences with Oil Funds: Institutional and Financial Aspects 2006
https://www.researchgate.net/publication/351749088_Experiences_with_oil_funds_Institutional_and_Financial_Aspects

Bacon T and Tord C Experiences with Oil Funds: Institutional and Financial Aspects 2006
https://www.researchgate.net/publication/351749088_Experiences_with_oil_funds_Institutional_and_Financial_Aspects accessed 21 March 2023

Debswana 2016

https://www.debswana.com/Media/Reports/Debswana%20RTS_2016_Interactive.pdf.

Debswana 2016 diamonds for development
https://www.debswana.com/Media/Reports/Debswana%20RTS_2016_Interactive.pdf. Accessed 02 April 2022

Department of Environmental Affairs Unknown Date
<https://www.dffe.gov.za/sites/default/files/docs/publications/EIAbooklet.pdf>

Department of Environmental Affairs Unknown Date 20 Years of Environment Impact Assessment in South Africa
<https://www.dffe.gov.za/sites/default/files/docs/publications/EIABooklet.pdf>
accessed 19 April 2022

Di John 2010 <https://www.realinstitutoelcano.org/en/analyses/the-resource-curse-theory-and-evidence-ari/>

Di John J 2010 Real Instituto Elcano The 'Resource Curse': Theory and Evidence (ARI) <https://www.realinstitutoelcano.org/en/analyses/the-resource-curse-theory-and-evidence-ari/> accessed 17 April 2023

DTC Botswana 2023 <https://www.dtcbotswana.com/>

DTC Botswana 2023 DTC Botswana pride and prosperity through diamonds
<https://www.dtcbotswana.com/> accessed 17 April 2023

European bank for reconstruction and development 2022
<https://www.ebrd.com/documents/natural-resources/mining-strategy-report-on-the-invitation-to-the-public-to-comment.pdf>

European bank for reconstruction and development Extractive Mining Industries Strategy 2018-2022 <https://www.ebrd.com/documents/natural-resources/mining-strategy-report-on-the-invitation-to-the-public-to-comment.pdf> accessed 11 February 2023

Forbes Africa 2023 https://cms.forbesafrica.com/wp-content/uploads/2023/01/BOTSWANA_FA_2023_44pages-vok_FORBES_online2-1.pdf

Forbes Africa 2023 Botswana https://cms.forbesafrica.com/wp-content/uploads/2023/01/BOTSWANA_FA_2023_44pages-vok_FORBES_online2-1.pdf accessed 05 March 2023

ICMM The role of mining in national economies 2022 <https://www.icmm.com/en-gb/research/social-performance/2022>

ICMM The role of mining in national economies 2022 Role of Mining in National Economies: Mining Contribution Index (6th Edition)<https://www.icmm.com/en-gb/research/social-performance/2022> accessed 17 February 2023

Jeffrey 2023 <https://www.dailymaverick.co.za/opinionista/2023-05-08-new-world-economy-money-makes-the-world-go-round-so-heres-a-win-win-proposition/>

Jeffrey DS 2023 New World Economy: Money makes the world go round, so here's a win-win proposition <https://www.dailymaverick.co.za/opinionista/2023-05-08-new-world-economy-money-makes-the-world-go-round-so-heres-a-win-win-proposition/> accessed 11 June 2023

Kimberly Process 2022 <https://www.kimberleyprocess.com/en/2022-plenary-closing-remarks-wdc-president-edward-asscher>

Kimberly Process 2022 2022 Plenary - Closing Remarks WDC President, Edward Assch <https://www.kimberleyprocess.com/en/2022-plenary-closing-remarks-wdc-president-edward-asscher> accessed 02 January 2023

KPMG 2020 <https://kpmg.com/za/en/home/insights/2020/03/2020-mining-risk-survey-report.html>

KPMG Mining in Africa 2020 2020 Global Mining Survey Report <https://kpmg.com/za/en/home/insights/2020/03/2020-mining-risk-survey-report.html> accessed 10 February 2022

Kurecic and Seba Date Unknown

https://bib.irb.hr/datoteka/820620.The_Resource_Curse_in_Sub_Saharan_Africa.pdf

Kurecic P and Seba M Date Unknown The resource curse in sub-saharan africa: a reality corroborated by the empirical evidence https://bib.irb.hr/datoteka/820620.The_Resource_Curse_in_Sub_Saharan_Africa.pdf accessed 19 April 2022

Mbere 2022 https://www.miningweekly.com/article/esg-in-the-mining-industry-whats-missing-2022-03-31-1/rep_id:3650

Mbere M 2022 https://www.miningweekly.com/article/esg-in-the-mining-industry-whats-missing-2022-03-31-1/rep_id:3650 accessed 19 April 2022

Minerals Council South Africa date unknown
<https://www.miningforschools.co.za/lets-explore/diamond/uses-of-diamonds>

Minerals Council South Africa uses of diamonds date unknown
<https://www.miningforschools.co.za/lets-explore/diamond/uses-of-diamonds> accessed 6 February 2023

Mining for Zambia 2016 <https://miningforzambia.com/botswana-africas-model-mining-destination/>

Mining for Zambia 2016 <https://miningforzambia.com/botswana-africas-model-mining-destination/> accessed 18 August 2022

Newman 2012 <https://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-It-wz.pdf>

Newman 2012
<https://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-It-wz.pdf> accessed 18 August 2022

National Mining Association 2016 <https://nma.org/wp-content/uploads/2016/09/NMA-Fact-Sheet-Minerals-and-Uses.pdf>

National Mining Association Rare Earth Elements 2016 <https://nma.org/wp-content/uploads/2016/09/NMA-Fact-Sheet-Minerals-and-Uses.pdf> accessed 6 February 2023

Nocera 2008
<https://www.nytimes.com/2008/08/09/business/worldbusiness/09nocera.html>.

Nocera J 2008 Diamonds Are Forever in Botswana
<https://www.nytimes.com/2008/08/09/business/worldbusiness/09nocera.html>. accessed 23 March 2022

Oxfam 2017 <https://www.cdn.oxfam.org/s3fs-public/bp-africa-mining-vision-090317-en.pdf>

Oxfam 2017 From aspiration to reality unpacking the africa mining vision
<https://www.cdn.oxfam.org/s3fs-public/bp-africa-mining-vision-090317-en.pdf> accessed 26 April 2022

Patel 2017 <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/6Patel.pdf>

Patel P 2017 Realising the full potential of civil and political rights for marginalised populations in african countries
<https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/6Patel.pdf> accessed 16 June 2023

Phakoana unknown date <https://informativenews.co.ls/>

Phakoana L unknown date <https://informativenews.co.ls/> accessed 6 February 2023

Reuters 2023 <https://www.reuters.com/world/africa/botswana-mining-growth-seen-flat-amid-dim-diamond-outlook-2023-03-01/>

Reuters 2023 Botswana mining growth seen flat amid dim diamond outlook
<https://www.reuters.com/world/africa/botswana-mining-growth-seen-flat-amid-dim-diamond-outlook-2023-03-01/> accessed 27 May 2023

Sachs 2013 <https://www.worldpoliticsreview.com/>

Sachs ON 2013 Solid Ground: Toward Effective Resource-Based Development 2013 <https://www.worldpoliticsreview.com/> accessed 18 August 2022

Stephens and Ahern 2001 <https://pubs.iied.org/pdfs/G01051.pdf>

Stephens C and Ahern M 2001 Worker and Community Health Impacts Related to Mining Operations Internationally
<https://pubs.iied.org/pdfs/G01051.pdf> accessed 18 March 2023

Molelo unknown date Sunday standard

Molelo S unknown date Sunday standard <https://www.sundaystandard.info/>
accessed 18 March 2023

Obraztsova 2021 <https://www.rough-polished.com/en/analytics/123526.html>

Obraztsova E 2021 Rough polished analytics <https://www.rough-polished.com/en/analytics/123526.html> accessed on 23 April 2023

Open Government Declaration 2023

<https://opengovpartnership.org/glossary/open-government-declaration/>

Open Government Declaration 2023

<https://opengovpartnership.org/glossary/open-government-declaration/>
accessed 25 April 2022

The Nordic Africa Institute 2018 <https://reliefweb.int/report/world/africas-mineral-economies-breaking-their-dependence-mining>

The Nordic Africa Institute 2018 Africa's mineral economies: breaking their dependence on mining <https://reliefweb.int/report/world/africas-mineral-economies-breaking-their-dependence-mining> accessed 18 August 2022

The African Commission on Human and People's Rights
<https://achpr.org/statepartiestotheafricancharter>.

The African Commission on Human and People's Rights
<https://achpr.org/statepartiestotheafricancharter>. accessed 10 June 2022

The Government of Botswana 2023 <https://www.gov.bw/ministries/ministry-mineral-resources-green-technology-and-energy-security-mmge>.

The Government of Botswana 2023 Mineral resource green technology and energy security <https://www.gov.bw/ministries/ministry-mineral-resources-green-technology-and-energy-security-mmge>.

The Solomon 2023 <https://www.thesolomon.co.za/heyday-of-diamond-mining.html>

The Solomon 2023 The Heyday of Diamond Mining <https://www.thesolomon.co.za/heyday-of-diamond-mining.html> accessed 23 June 2023

Trading Economics 2022 <https://tradingeconomics.com/south-africa/gdp-from-mining>

Trading Economics 2022 GDP from Mining in South Africa increased to 200109.59 ZAR Million in the first quarter of 2023 from 198273.30 ZAR Million in the fourth quarter of 2022 <https://tradingeconomics.com/south-africa/gdp-from-mining> accessed 10 February 2023

University of Minnesota 2023 <http://hrlibrary.umn.edu/research/ratification-botswana.html>

University of Minnesota 2023 Ratification of International Human Rights Treaties – Botswana <http://hrlibrary.umn.edu/research/ratification-botswana.html> accessed 21 May 2023

Worldometer 2021 <https://www.worldometers.info/world-population/lesotho-population>

Worldometer 2021 Lesotho Population <https://www.worldometers.info/world-population/lesotho-population> accessed 25 April 2023

ANNEXURES A: BENCHMARK TO EVALUATE INDIVIDUAL COUNTRY FRAMEWORKS

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Framework	Key elements in framework relevant for formulation of own theory	Chapter setting out own theory	Botswana	South Africa	Lesotho	Conclusion/ findings/results (overarching interpretative chapter)	Recommendations for all countries and, in detail, Lesotho
IDENTIFIED THEORETICAL UNDERPINNINGS							
1.Human rights (background and relevant rights (e.g. socio-economic)	Socio-economic rights: evolution and scope, protection of host communities, constitutional protections implementation challenges. Legal frameworks: National laws, policies and regulatory bodies.	Chapter 2	Socio-economic rights not constitutionally protected and need better implementation in the mining sector.	Strong legal framework for socio-economic rights but disparities remain in mining communities.	Socio-economic rights are recognised but require stronger enforcement mechanisms.	Human rights frameworks are present but need robust implementation and enforcement across all countries.	Enhance legal frameworks to ensure the protection and promotion of socio-economic rights.

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2. Relevant theories							
a) e.g.social justice	Theories by Rawls and Fraser, policies for equitable distribution.	Chapter 2	Theories of social justice are incorporated into policies but lack practical application.	Social justice theory acknowledged in national policies.	Theories of social justice are less integrated into national policies.	Social justice theory should be better integrated into national policies and be consistently applied across all countries.	Promote integration of social justice theory into national mining policies.
b) e.g. resource curse	Economic implications, risks, policy responses.	Chapter 2	Pitfalls of the resource curse largely avoided and mitigated.	Resource curse theory acknowledged in policies.	Theories of resource curse are less implemented into national policies.	Resource curse theory should be better integrated into national policies and be consistently applied across all countries. (Especially South Africa and Lesotho).	Integrate the resource curse theory into national mining policies.
c) e.g. community participation	Legal mandates, practical implementation and challenges.	Chapter 2	Community participation is mandated by law but often not practiced.	Active community participation is promoted but faces challenges in enforcement	Community participation is minimal and needs substantial improvement.	Effective community participation and its mechanisms are essential for ensuring socio-economic rights	Strengthen community participation and its enforcement through laws that ensure that local communities are

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						are upheld in the diamond mining sector.	actively involved in decision making processes.

Framework	Key elements in framework relevant for formulation of own theory	Chapter setting out own theory	Botswana	South Africa	Lesotho	Conclusion/ findings/results (overarching interpretative chapter)	Recommendations for all countries and, in detail, Lesotho
INTERNATIONAL INSTRUMENTS							
BINDING							
1. <i>ICESCR</i>	Ensures right to work, right to adequate standard of living, right to education, right to participate in cultural life. Emphasises creating legal framework and allocating	Chapter 3	Implemented and monitored by government.	Ratified and incorporated into national law.	Ratified but needs better implementation.	Effective monitoring and evaluation mechanisms are necessary for full compliance with international standards.	Enhance legal frameworks and enforcement mechanisms to ensure compliance with international treaties

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	resources progressively.						
2. <i>ICCPR</i>	Guarantees civil and political rights. Mandates non-discrimination and equal protection under law.	Chapter 3	Integrated into national laws.	Incorporated into the Bill of Rights.	Integrated into national laws.	Strong legal provisions but require better public awareness and implementation.	Improve public education on rights and strengthen legal enforcement.
NON-BINDING							
1. <i>UDHR</i>	Right to life, liberty, security, education, work, arbitrary arrest, freedom of expression and participation in governance.	Chapter 3	Guides national human rights policies	Fundamental in shaping the Bill of Rights.	Serves as a guiding framework.	Provides foundational principles but requires national laws for enforcement.	Continue to align national laws with <i>UDHR</i> principles and ensure robust implementation.
2. 2007 Declaration on the Rights of Indigenous People	Protection of lands and resources. Participation in decision making.	Chapter 3	Recognised and integrated into national policy.	Recognised but needs better implementation.	Needs integration into national policy.	Recognition of indigenous people is necessary for socio-economic development.	Incorporate rights of indigenous people into national policies and programmes.

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	Prevention of dispossession and discrimination.						
3. <i>SDGs</i>	Eradication of poverty and hunger. Access to quality education and health care. Gender equality and women's empowerment. Environmental protection.	Chapter 2	Aligned with national development plans.	Integrated into the national development strategy.	Requires better alignment with national policies.	Aligning national development plans with <i>SDGs</i> is crucial for sustainable growth.	Strengthen integration of <i>SDGs</i> into national development policies and strategies.
AFRICAN INSTRUMENTS							
BINDING							
1. African Charter on Human and Peoples' Rights	Protection of human rights. Right to self-determination and development. Equality and non-discrimination.	Chapter 3	Incorporated into national laws.	Integrated into national legal framework.	Needs better implementation and enforcement.	Strong legal framework but requires better implementation and public awareness.	Enhance public education on human rights and strengthen enforcement mechanisms.

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	Promotion of socio-economic development.						

Framework	Key elements in framework relevant for formulation of own theory	Chapter setting out own theory	Botswana	South Africa	Lesotho	Conclusion/ findings/results (overarching interpretative chapter)	Recommendations for all countries and, in detail, Lesotho
NON-BINDING							
1. Africa Mining Vision (<i>AMV</i>)	Sustainable development. Resource Management. Economic diversification. Environmental and social responsibility.	Chapter 3	Need better alignment.	Integrated into national mining strategy.	Aligned with <i>AMV</i> through country mining vision(<i>CMV</i>).	Aligning national policies with the <i>AMV</i> is crucial for sustainable development.	Strengthen integration of <i>AMV</i> into national mining policies and strategies.

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Framework	Key elements in framework relevant for formulation of own theory	Chapter setting out own theory	Botswana	South Africa	Lesotho	Conclusion/ findings/results (overarching interpretative chapter)	Recommendations for all countries and, in detail, Lesotho
SADC INSTRUMENTS							
BINDING							
1. <i>SADC</i> Treaty	Regional cooperation. Economic development. Peace and security.	Chapter 3	Ratified and incorporated into national laws.	Integrated into national legal frameworks.	Need better implementation.	Strong legal framework but requires better implementation and public awareness.	Enhance public education on regional treaties and strengthen enforcement mechanisms.
2. <i>SADC</i> Protocol on Mining	Sustainable development. Elimination of discrimination. Participation.	Chapter 3	Integrated into national mining policies.	Aligned with national mining strategy	Needs better alignment.	Aligning national mining policies with the <i>SADC Protocol on Mining</i> is crucial for sustainable development.	Strengthen integration of <i>SADC Protocol on Mining</i> into national mining policies and strategies.
NON-BINDING							

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Framework	Key elements in framework relevant for formulation of own theory	Chapter setting out own theory	Botswana	South Africa	Lesotho	Conclusion/ findings/results (overarching interpretative chapter)	Recommendations for all countries and, in detail, Lesotho
VOLUNTARY GUIDELINES							
1. Kimberly Process (<i>KPCS</i>)	Conflict free diamonds. Certification scheme.	Chapter 3	Adheres to <i>KPCS</i> standards.	Integrated into national diamond industry standards	Adheres to <i>KPCS</i> standards but needs better enforcement	Compliance with <i>KPCS</i> is essential for ethical diamond extraction.	Enhance monitoring and enforcement of <i>KPCS</i> standards in the diamond mining industry.
2. Extractive Industries Transparency Initiative (<i>EITI</i>)	Transparency and accountability. Revenue disclosure.	Chapter 3	General principles supported but not official subscriber	Integrated into national transparency initiatives.	General principles supported but not official subscriber	Transparency in the extractive industry is crucial for accountability.	Strengthen participation in <i>EITI</i> and ensure robust implementation of transparency measures.
3. Publish What You Pay Coalition (<i>PWYP</i> Coalition)	Financial transparency. Civil society engagement.	Chapter 3	Supports <i>PWYP</i> initiatives.	Aligned with national transparency policies.	Needs better alignment.	Public transparency and accountability are essential for the extractive industry.	Strengthen alignment with <i>PWYP</i> coalition initiatives and ensure public transparency.

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4. Open Government Partnership (<i>OGP</i>)	Government transparency. Open data.	Chapter 3	Not a member.	Integrated into national open government initiatives.	Not a member.	Open government initiatives are essential for public trust and accountability.	Join <i>OGP</i> and strengthen participation in <i>OGP</i> to ensure robust implementation of open government measures.
5. Social Licence to Operate (<i>SLO</i>)	Community acceptance. Stakeholder engagement.	Chapter 2	Seeks social licence through community engagement.	Incorporated into national corporate policies.	Need better engagement.	Community engagement is crucial for obtaining a social licence to operate.	Enhance community engagement strategies and ensure continuous dialogue with stakeholders.
6. Corporate Social Responsibility (<i>CSR</i>)	Ethical business practices. Community development.	Chapter 2	Strong focus on <i>CSR</i> initiatives.	Incorporated into national corporate policies.	Needs better implementation and monitoring.	<i>CSR</i> is essential for sustainable business practices.	Strengthen <i>CSR</i> initiatives and ensure robust monitoring and evaluation.
7. Free, Prior and Informed Consent (<i>FPIC</i>)	Community consent. Informed decision making.	Chapter 2	Seeks <i>FPIC</i> from affected communities.	Incorporated into national corporate policies.	Needs better implementation and enforcement.	<i>FPIC</i> is essential for community rights and participation.	Strengthen implementation of <i>FPIC</i> and ensure robust enforcement mechanisms.
Framework	Key elements in framework relevant for	Chapter setting out own theory	Botswana	South Africa	Lesotho	Conclusion/ findings/results (overarching interpretative chapter)	Recommendations for all countries and, in detail, Lesotho

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	formulation of own theory						
COUNTRY LEVEL ELEMENTS							
			Constitution: No protection for socio- economic rights.	Constitution: Protection of socio-economic rights under the Bill of Rights.	Constitution: Limited protection of socio-economic rights (principles of state policy)	Constitutional provisions vary from non-existent to fully justiciable and require better enforcement and public awareness.	Enhance education on Constitutional rights and strengthen enforcement mechanisms.
			Policy framework: Aligned with national development goals.	Policy framework: Integrated with national development policies.	Policy framework: Needs better alignment.	Policy frameworks are essential for guiding national development.	Strengthen integration of national development goals into policy frameworks.
			Legislative framework: Comprehensive legal protection.	Legislative framework: Strong legal framework.	Legislative framework: Needs better implementation and enforcement	Strong legislative frameworks but require better implementation and enforcement.	Enhance legal frameworks and ensure robust enforcement mechanisms.
			Institutional framework:	Institutional framework:	Institutional framework:	Institutional frameworks are essential for	Strengthen institutional capacities and

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			Effective institutional structures.	Strong institutional framework.	Needs better capacity and resources.	effective governance	ensure adequate resources for effective governance.
			Resource framework: Adequate resources for implementation.	Resource framework: Comprehensive resource allocation	Resource framework: Needs better alignment with national goals.	Resource frameworks are essential for effective implementation of policies and programmes.	Enhance resource allocation and ensure alignment with national development goals.
			Strategies: Aligned with national development strategies.	<i>Strategies:</i> Integrated into national development plans	Strategies: Needs better alignment .	Strategic frameworks are essential for guiding national development.	Strengthen integration of national development strategies into strategic frameworks.
			Programmes: Comprehensive development programmes.	Programmes: Integrated into national development policies.	Programmes: Needs better alignment.	Development programmes are essential for achieving national development goals.	Enhance development programmes and ensure alignment with national development policies.
			MEAL structures and systems:	MEAL structures and systems:	MEAL structures and systems:	MEAL structures are important for ensuring	Strengthen MEAL structures and ensure robust

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			Effective monitoring and evaluation structures.	Integrated into national development policies.	Needs better implementation and monitoring	accountability and continuous improvement.	implementation and monitoring mechanisms.