

**“Corporate Social Responsibility in Zambia: Mineral Resource
Extraction or Local Communities’ Extinction, a Policy and
Legislative Concern”**

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Abstract

Historically, mining has had devastating effects on the communities in which extractive activities are undertaken. The companies, which are mostly mineral resource hungry, have adopted a 'don't care' attitude to the negative effects of their operations. Unfortunately, the law that regulates mining companies is devoid of clear provisions that compel them to conduct their activities in a socially responsible manner that ensures good neighbourliness in the communities in which they operate. Similarly, though standards have been developed at an international level by entities such as the International Council for Mining and Metals, World Bank and International Standards Organisations, these have not yielded much result given the voluntary nature of these standards and the lack of enforcement mechanisms either within themselves or at law. The consequence has been deterioration of community livelihood in area mining companies operate, as these companies are free to act with impunity and without sanction.

In view of this, the paper examines the dearth of corporate social responsibility of mining companies in the context of international standards, codes of conduct, policy and legislative provisions. It argues that there are no mechanisms under the Mineral Resources Development Policy of 2013 or the Mines and Minerals Development Act of 2015 that ensure that local communities positively benefit from mining activities.

Key words: *Corporate Social Responsibility; Codes of Conduct; Konkola Copper Mines; Mopani Copper Mines; Kalumbila Minerals Limited; Lumwana Copper Mines.*

Introduction

Mining has been the main stay of Zambia's economy for the past 80 years. Currently, the mining sector accounts for 70% of the country's Gross Domestic Product.¹ This is attributed to the presence of rich mineral resources that have remained either unexplored or in abundance for exploration. Besides exports, the sector has also created employment for over 300 000 people. Due to the significance of the sector, the government has continued to promote investment in the sector. Notwithstanding this, the concern has been the effect of mining activities on the local communities. Numerous studies conducted have attempted to document the negative effect that mining activities have had on the communities. Cumulatively, these studies have established that while mining activities have had a positive effect on the communities, they have also, for the most part, had a negative effect. The negative effects are myriad but include environmental degradation and underdevelopment of local communities (in some instances, no local community development). This state of affairs has, in effect, put a strain on the relationship between the mining companies and the local communities.

In order to bridge the divide, mining companies have adopted policies that require them to conduct corporate social responsibility (CSR) activities in areas where they conduct mining activities. These activities are not new to Zambia's mining sector and can be traced to the period immediately after independence when the mining sector was under government control. During the period 1969 and 2000, CSR activities (e.g. provision of health, social, recreational, and welfare activities) were conducted by government's conglomerate— Zambia Consolidated Copper Mines (ZCCM). In 2000, the mines were privatised and new mine owners declined to carry on CSR activities previously undertaken by the ZCCM. Notwithstanding this, there has been pressure, globally, on companies to be more accountable and transparent about their actions in the communities they operate.² The basic notion is that conducting CSR activities demonstrates a company's ideals and ideologies to the communities located in the areas of their operation.³ Although this may be viewed as good corporate citizenry behaviour, the activities conducted are of a voluntary nature and anchored on a company's good will.

¹ African Development Bank, Organisation for Economic Cooperation and Development, and United Nations Development Program *African economic outlook* (2014) 2.

² The pressure exerted on these companies require them to direct the focus of their core business to social responsibilities which imply being involved in the sustainable development of the communities and not just on profitability and production. See: Bench Marks Foundation 'Corporate social responsibility and the mining sector in southern Africa: a focus on mining in Malawi, South Africa and Zambia' June 2008 5.

³ The notion of CSR is also used to promote sustainability of the sector which is viewed in three dimensions— economic, environmental, and social. By economic development, the mining company invests its generated revenues in the community so as to ensure its future development and long-term livelihood. Under the environmental dimension, it is about minimising the effects that mining activities have on the environment as a result of mineral resource exploitation. The social aspect enables the mining company to dialogue and contributes to the social well-being of communities and stakeholders while being transparent in its operations. This reduces the social and cultural disruption to communities. See: H Jenkins and L Obara 'Corporate social responsibility in the mining industry – the risk of community dependency' 2. Available: <http://pdfsu.com/booklib.php?ref=EbookDig&q=Corporate-Social-Responsibility-CSR-in-the-mining-.pdf> (accessed 23 November 2016).

Internationally, there are standards or guidelines that have been developed. Also, corporations, have adopted policies on CSR, however, these are inadequate and unresponsive to the needs of the communities. At a domestic level, the government has developed policies and enacted legislation for mineral extraction, however, these devoid of provisions that adequately allow communities to tap into the benefits of mining activities around their area.

In this paper, it is argued that the policy on mining and the legislation have not ensured that CSR activities are made responsive to the needs of the communities. Although CSR activities are conducted by mining companies, these are simply a façade leading to local communities' 'extinction'.

Corporate Social Responsibility

There is no single comprehensive definition of CSR and this is because the term is ambiguous and multifaceted leading to numerous definitions. According to Carroll, the term can mean one that 'conveys the idea of legal responsibility or liability' or 'socially responsible behaviour in an ethical sense' or 'responsible for' or 'charitable contribution' or a 'fiduciary duty imposing higher standards of behaviour on businessmen.'⁴ This multifarious description simply implies that the use of the term is dependent on the context in which it is used. However, whichever context it is used in, the most common aspects relate to the social responsibility of the company towards the community in which it operates and who are affected by its activities. Generally, CSR activities encompass three aspects: first, the voluntary actions of a company to mitigate the social and environmental impacts of its activities; second, is the extent to which the companies engage the local communities in its operations; and third, the societal expectations and the level to which these are met by the companies.

International Standards for CSR in the Mining Industry

Globally, there is no standard for CSR in the mining sector under international law. However, organisations such as the International Council on Mining and Metals (ICMM), World Bank, and International Standards Organisation (ISO) have developed guidelines which could be adopted by corporations or organisations.

1. International Council of Mining and Minerals

The ICMM, established in May 2001, is a body that brings together 23 mining and metal companies with a mandate to promote sustainable policies and practices in the mining and

⁴ AB Carroll 'Corporate social responsibility – evolution of a definitional construction' 38 *Business and Society* 3 268–295.

mineral production.⁵ To attain this mandate, the ICMM has developed 10 principles under the Sustainable Development Framework (SDF) of which 2 relate to CSR– human rights respect, and community development. On human rights, corporations are expected to human rights, culture and heritage of local communities. With respect to community development, corporations are to ensure that programmes on community health, education, and local business development are well designed and effectively delivered.

2. World Bank Guidelines– Equator Principles

The World Bank has developed guidelines that are aimed at guiding the operations of extractive industries. These guidelines are modelled on sustainable development policies and focus on the management of environmental and social concerns. These guidelines, inter alia, require corporations to demonstrate effective community engagement on an ongoing basis in a manner that is structurally and culturally appropriate.⁶

3. International Standards Organisation

Developed in 2010, the ISO 26000 standards are the most prominent and offer guidance on social responsibility and attempt to harmonise the socially responsible behaviour of enterprises at international level. It is a standard developed to offer orientation and recommendations on how responsible behaviour towards society can be enhanced. Thus, the standards address seven core areas of social responsibility: organizational governance; human rights; labour practices; environment; fair operating practices; and community involvement and development. With a specific focus on community involvement and development, the rationale is that doing so is a public good that helps to strengthen the relationship between the organisation and the locals. Where an organisation involves the community, it depicts its recognition as a stakeholder in the community with whom it shares common interests.⁷

Effects of these standards

These standards place emphasis on an organisation to act in a socially acceptable manner or in consonance with the ethos of the community. Their weakness is twofold: first, they are devoid of mechanisms for ensuring that organisations act in a socially acceptable manner. Second, they are merely guidelines which an organisation can choose adopt. Assuming that the guidelines are adopted, there is no sanction for failure to live up to the expected behaviour. The

⁵ International Council on Mining and Metals ‘The mining and metals industries: progress in contributing to sustainable development’ ICMM Working Paper, 27 February 2002, 7. The 23 members are: African Rainbow Minerals; Anglo American; Anglo Gold Ashanti; Antofagasta Minerals; Areva Mines SA; Barrick; BHP Billiton; Codelco; Freeport-McMoRan; Glencore; Goldcorp; Gold Fields; Hydro; JX Nippon; Lonmin; Mitsubishi Materials; MMG; Newmont; Polyus Gold; Rio Tinto; South32; Sumitomo Metal Mining; and Teck. See <http://www.icmm.com/en-gb/members/member-companies> (accessed 25 April 2017).

⁶ As above.

⁷ As above, 60.

positive aspect about the standards lies in its ability to conjure an acceptable behaviour by the organisation operating within the community.

Domestic Policy and legislation

Mining activities are regulated by the Mines and Minerals Development Act (MMDA) of 2015. The enactment of the MMDA was as a result of the policy shift by the government which had developed the Mineral Resources Development Policy (MRDP) in 2013. This brought in a new dimension is the regulation of the sector especially that the MMDA was heralded to have incorporated principle of sustainable development in the mining sector. With regard to CSR, there appear lurid references under the MRDP and MMDA.

Policy or legislation issue?

In terms of policy relating to mining, the MRDP is instructive. The Policy aims at enhancing sustainable extraction of mineral resources and ensuring that Zambians also benefit from the exploitation of mineral resources. It has outlined the policy objective of the government in the following manner:

Encourage mining companies to develop a participatory and collaborative approach to mine planning, development and decommissioning taking into account the needs and concerns of local communities, thereby fulfilling their role as socially responsible corporate citizens.⁸

It is clear from the objective that the role of the government is to encourage mining companies to develop a 'participatory' and 'collaborative' approach to mining. A participatory approach allows the local communities to engage with the mining companies on issues relating to the mining activities being conducted in their area. Collaboration entails the local communities working together with the mining companies to ensure that the mining activities yield a mutual benefit to both parties. Whether collaborative or participatory, the activities of the mines must be in tandem with the needs and concerns of the local community in which it operates. Where this is so, the mining company can be said to be fulfilling its role as a socially responsible corporate citizen.

The defect with the policy objective is that it is poorly drafted i.e. it is in an 'advisory' manner – 'encourage mining companies' to develop approaches to mining. Although it is not lucid that such an objective would refer to CSR, the wording of it suggests so. The role of government is to simply 'encourage' and not require the mining companies to adopt approaches to mining. This implies that mining companies are at liberty not to act in a socially responsible manner. Also, the approaches are to be developed by mining companies but in consideration of the needs and concerns of the local communities. There is no requirement under the policy that mining companies and local communities must jointly develop approaches to mining relating

⁸ As above, 6.

to their needs and concerns. Arguably, it is contended that the local communities are detached from the process leaving mining companies to act with impunity and in contemptuous disregard of their responsibilities.

The MRDP dovetails into the Seventh National Development Plan (7NDP) 2017–2021 which is aligned with the overall vision of the country– Vision 2030. The 7NDP embraces an integrated multi-sectoral approach to planning and attempts to create an environment that facilitates for the domestication of Sustainable Development Goals (SDGs), AU Agenda 2063, RISDP and other international and regional strategies. In relation to mining, the Plan aims to ‘create a diversified and resilient economy for sustained growth and socio-economic transformation driven.’⁹ In other words, the Plan attempts to diversify the economy away from mining and therefore, issues relating to mineral extraction and local community benefit are not covered.

Legislatively, the MMDA requires that mineral resources are explored and developed in a manner that promotes and contributes to socio-economic development.¹⁰ Socio-economic development entails that mineral resources while benefiting the economy as a whole, must also benefit the communities located in the areas where mining operations occur. The question is whether the MMDA does, impliedly or explicitly, contain provisions that require the mining companies to undertake CSR activities. Quite clearly, the provisions of the MMDA are devoid of an explicit provision(s) on CSR, however, conversely, it appears so. The Act enunciates two principles: first, the accessibility and benefit of citizens to mineral resources; and second, local community development where they are located in a mining area.

a. Accessibility to mineral resources

The mineral resources, though held by the President on behalf of all the citizens, are accessible to all citizens. Under the MMDA, citizens shall have equitable access to mineral resources and benefit from mineral resources development.¹¹ Access to mineral resources entails participation of citizens in the mining and development of mineral resources. This would mean that citizens have equitable access to mineral resources. The Act has enlisted ‘access’ and ‘benefit’ as a principle. It is argued that access to mineral resources is connected to ‘benefit’ and this means that, citizens must not only have access but also enjoy the mineral resources. It is further argued that the enjoyment, should not only mean community participating in extraction and processing but also by virtue of the resource being in the area.

b. Development of local communities

⁹ Ministry of National Development Planning *Seventh National Development Plan 2017-2021* (2017) 6-7.

¹⁰ See: Section 4(b)(c), MMDA.

¹¹ Section 4(e).

Maimunah Ismail defines a community as ‘a group of people sharing a common purpose, who are interdependent for the fulfilment of certain needs, who live in close proximity and interact on a regular basis.’¹² The sharing of a common purpose implies that such a group of persons has shared expectations and needs that must be fulfilled. Section 4(f) of the Act provides that mining and development should lead to ‘development of local communities in areas surrounding the mining area based on prioritisation of community needs, health and safety.’ The challenge that section 4(f) presents is the lack of definition of the words ‘development of local communities’ or the context in which such should be used. In simple terms, these words would imply an ‘activity of working with the people from a particular area in order to try to improve their quality of life.’¹³ This would, in turn, mean that the mining companies must work together with the local communities with a view to improving the lives of the locals. The condition precedent being that such activities must be based on ‘prioritisation of community needs, health and safety.’ Perhaps the impediment to the fulfilment of section 4(f) lies in the fact that such is not mandatory i.e. although the company is expected to abide by the principle, its failure to do so is not coupled by sanctions.

There is, however, section 119 which has attempted to give effect to the principle enunciated under section 4(f). Section 119 provides:

- (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.
- (2) In particular, and without prejudice to the generality of subsection (1), regulations may provide for—
...
(e) participation by mining right and mineral processing licence holders in the development of local communities.

A decipher of section 119 shows that the Minister can issue a statutory instrument for purposes of requiring mining right and mineral processing licence holders to participate in the development of local communities. While this would be the most plausible thing to do, the exercise of such power is discretionary. Considering that the Minister is part of the government, it would be unlikely that such regulations can be made given the fact that, in most instances, it is the foreign investor that would hold more power over their investment. Thus, making a statutory instrument compelling the foreign company to perform CSR, may not be well received by the mining company. A further problem, inherent in section 119, is that there is also no recourse where the Minister has not made such a statutory instrument. To date, there is such instrument issued by the Minister and this effectively means that mining operators are not legally obliged to carry on CSR under the MMDA.

¹² M Ismail ‘Corporate social responsibility and its role in community development: an international perspective’ (2009) 2 *Journal of International Social Research* Volume 9 203

¹³ <http://dictionary.cambridge.org/us/dictionary/english/community-development> (accessed 10 April 2017).

Mining Companies and CSR Activities

It is evident that a policy and legislative gap exists. The current policy and legislation does not effectively impose CSR obligations on mining companies, however, companies have conducted CSR activities.

1. *Konkola Copper Mines (KCM)*

Konkola Copper Mines, the largest copper mining company in Zambia, is owned by Vedanta Resources which acquired it in 2004 from Anglo American Corporation in 2002.¹⁴ According to its vision, KCM aims to ‘create sustainable livelihood opportunities and be actively involved in improving the quality of life for society by contributing to the basics needs of those in the community.’ Although this statement can be understood to refer to conducting of CSR activities, in terms of policy, the company does not have one that specifically relates to CSR.¹⁵ Nevertheless, the company has conducted CSR activities thereby ensuring that the impact of its investment goes beyond paying taxes by benefiting the communities in areas where the company operates.

Currently, KCM has spent well over US\$ 150 million on CSR activities which are in four main areas: health; education; sustainable livelihoods; and sports development.¹⁶ Pertaining to health, KCM has continued to operate two hospitals and eight clinics previously managed by ZCCM, providing free medical services to its employees and their dependents.¹⁷ In terms of education, the company has expanded the schools it inherited from its predecessor–ZCCM– and introduced literacy, hygiene, and scholarship programmes. In a bid to promote sustainable development, KCM works with the local community to originate sustainable projects that ensure self-sustenance and development beyond the life of the mine i.e. the company has introduced youth skills development and a sustainable livelihoods programme which provides livestock to small scale farmers. Regarding sports development, KCM supports four football teams which in turn provide employment to young talents.

2. *Mopani Copper Mines*

¹⁴ <http://kcm.co.zm/corporate-profile/company-overview/> (accessed on 12 October 2016).

¹⁵ The company has nine (9) Policies relating to: biodiversity; energy and carbon; HIV/AIDS; health, safety and environment; human rights; water management; supplier and contractor management; security; and whistle blower. See: <http://kcm.co.zm/corporate-profile/company-policies/> (accessed 29 August 2017)

¹⁶ <http://kcm.co.zm/our-commitment-to-zambia/corporate-social-investments/> (accessed 24 August 2017)

¹⁷ The company also provides subsidised healthcare to the general public while supporting a number of initiatives since 2007– eye screening financing, provision of artificial limbs, kidney disease surgery, malaria programme, and launch of an HIV/AIDS Policy.

Mopani Copper Mines Plc. (Mopani) is a company owned by Glencore AG, FQM, and ZCCM–IH. The company extracts Copper and Cobalt. In the last few years, as part of its CSR activities, Mopani has rehabilitated the Mufulira–Sabina road, funded the upgrade of the township infrastructure, rehabilitated the local sports facilities, and been supporting local sports.¹⁸ In conjunction with Copperbelt Energy Corporation, Mopani has constructed the Mwekera Bridge in Kitwe East and built a training school for mining and engineering artisans.¹⁹ Notwithstanding these laudable acts, the residents assert that CSR activities are merely used as a smokescreen to divert attention from real issues facing the community through provision of social services– the company’s obligation to ensure environmental soundness in its operations.²⁰

3. *Kansanshi Copper Mines*

The CSR programs conducted by Kansanshi are in five key areas– governance, economics, environment, social and labour. Thus, in conducting its mining activities, the company ensures that the host communities benefits. To this effect, the company recruits employees from local communities, makes charitable donations, offers scholarships and supports community initiatives and non-mining infrastructure development.²¹ Socially, the company aims to improve the community’s quality of life by conducting numerous activities e.g. supporting local entrepreneurs, community skills development, improving education infrastructure, and upgrading health facilities. In the recent past, the company has equipped Kansanshi Clinic, renovated Solwezi Hospital, supplied clean water, and conducted health sensitization programs.²²

4. *Kalumbila Mineral Limited*

Kalumbila Minerals Limited is operated by First Quantum Minerals (FQM) Ltd, an Australian firm, specialises in the mining of copper and gold.²³ The mine, located 200 kilometres from Solwezi, engages in mining and exploration of Copper, Cobalt, Nickel, Uranium, and Iron Ore. In terms of its CSR obligations, FQM does not have specific policies that guide its CSR activities. Notwithstanding this, the company has drilled boreholes that supply drinking water

¹⁸In 2012, MCM completed the rehabilitation of the Kitwe ring road and the Mufulira–Sabina road at a cost of \$4.5 million and \$10.5 million respectively. It also funded the upgrade of the sanitary infrastructure for an entire township. In 2013 it spent \$650,000 on the rehabilitation of the local sports stadiums which were in serious disrepair– <http://www.glencore.com/public-positions/supporting-development/zambia/> (accessed 14 July 2015).

¹⁹ <http://www.glencore.com/assets/public-positions/doc/20170330-Mopani-investment-statement.pdf> (accessed 1 September 2017)

²⁰ Informal discussion with Green and Justice Organisation on MCM, Friday, 3 July 2015.

²¹ <http://www.first-quantum.com/Corporate-Responsibility/Economics/default.aspx> (accessed 1 September 2017)

²² <http://www.first-quantum.com/Corporate-Responsibility/Social/default.aspx> (accessed 1 September 2017)

²³ <http://www.first-quantum.com/Our-Business/Our-Products/default.aspx> (accessed 9 October 2016).

to the community. The problem presented by the community is that of groundwater pollution from mining activities which has led to numerous diseases.²⁴ The other issue is that, while the ISO 26000 requires an organisation to respect the culture of the community, the same cannot be said of Kalumbila Minerals. In 2015 the land that was acquired by the mine extended beyond the community's burial site. In meetings held between the mine and the locals, the mine insisted that the graves are moved to another place or excavation is done around the burial site. The locals declined to accept the proposition citing cultural norms, however, the mine offered contracts of K10 000 to persons that would be willing to exhume the bones of the dead and bury them at a new grave site located a few kilometres away from the present site.²⁵

5. Zambia Consolidated Copper Mine–Investment Holdings

The Zambia Consolidated Copper Mine–Investment Holdings (ZCCM-IH) has implemented a number of CSR projects the recent being the ‘Clean water for Zambia’ Project which was carried out from 2016 to 2017. The drawback is that, despite these activities, the mine has not formulated a policy that will either act as a guide in implementing community development projects or make it a mandatory obligation on their part to perform the CSR projects.

6. Chambishi Metals

Chambishi Metals, as part of its CSR activities, renders assistance to a school located within the community. In the last few years, the company has sunk a borehole to supply water to the community.

7. Lumwana Copper Mines

Lumwana Mine is owned by a Canadian firm, Barrick Gold Mines. The company undertakes CSR activities in infrastructural development e.g. building of class room blocks and teachers houses in the district. In 2015, the company drilled boreholes within the community to enhance the water supply. They are also in the process of setting up water kiosks to serve as reservoirs that distribute water to the community. Despite the mine having a sustainable community department that interacts with the community, it has lagged behind in implementing community development projects.²⁶ Furthermore, the community has argued that these activities, though laudable, do not address the real issue at hand – unattended to environmental pollution. This

²⁴ Informal discussion with ActionAid, Thursday, 23 July 2015.

²⁵ Informal discussion with ActionAid, Thursday, 23 July 2015.

²⁶ W Mayondi ‘Mining and CSR in Zambia: a case study of Barrick Gold mine’ Unpublished Masters in Development Studies Victoria University 2014

has led to the community to be averse to the whole concept of CSR on account that it favours the mining company and not the community.²⁷

Mandatory or voluntary CSR?

The conducting of CSR activities are generally voluntary and demonstrates the company's ability to act in a sociable manner with the community. In some instances, the notion of CSR has been used to interpret a company's activities as a contribution to social and environmental assistance in the society beyond the focus of economic profits.²⁸ Notwithstanding this, there has been raging debate on whether CSR should be mandatory or voluntary. In this debate, the issue pertains to whether CSR should be adopted as a corporate strategy for voluntary use or be embedded in legislation. The proponents of voluntary CSR argue that these activities improve economic performance while at the same time reducing the economic risks.²⁹ Thus, there is no need for government to get involved in a company's CSR activities as the market offers enough motivation for companies to get involved in CSR initiatives. The challenge with the voluntariness of CSR activities is the risk of it being used as a public relations tool or a corporate strategy tool instead of it enhancing sustainable development.

The proponents of mandatory CSR argue that legislation is a means that can be used to increase the interaction of stakeholders as well as drive forward the policymaking process which in turn enhances the performance of a company. The problem posed by this assertion is its limitation – it based on assumptions or speculations.

In the end, regardless of the position taken, the role of the government cannot be detached from the issue. Thus, the government can stimulate voluntary CSR activities through preferential treatments, subsidies or incentives for companies that perform such activities. Although it remains debatable whether CSR activities should be voluntary or mandatory, it is argued in this paper that CSR should be made mandatory. In order to attain this, policies must be developed and implemented by the Government. Mosterti et al posit:

Zambian companies voluntarily contribute, heavily, towards education, health, sport and infrastructure sectors. However, voluntary mechanisms alone are insufficient to ensure that the ideals of CSR are realised; particularly where criticism of CSR generally is that it is used as a smokescreen by companies. One of the gaps in the...Zambian legal system is that there is no obligation placed on mining companies to ensure that communities become self-sufficient.³⁰

²⁷ Informal discussions with Lumwana Copper Mines, Friday, 24 July 2015.

²⁸ AI Dave 'Voluntary vs. Mandatory CSR' (2017) 3 *International Journal for Innovative Research in Multidisciplinary Field* 4 204

²⁹ B Sarna 'Voluntary CSR vs. Mandatory CSR – The Sound Of Employees' Unpublished Master's Thesis, Jyväskylä University 2016 18

³⁰ H Mostert, K-M Chisanga, J Howard, F Mandhu, M Van den Berg, and C-L Young 'Corporate Social Responsibility in the Mining Industries of Namibia, South Africa, and Zambia: Choices and Consequences' in L

As observed by Mosterti, CSR conducted by mining companies are voluntary in nature and as such, insufficient to ensure that the ideals of CSR are realized. The expectation of the community of CSR activities is uplifting of living standards, however, this aspiration is hardly met leading to an argument that such activities are merely used as a smokescreen by mining companies to obtain favours from government.

Conclusion

Mining activities must lead to harmony between the company and the local communities, however, it does not appear so. It may well be said that the mine has placed more emphasis on profit far above livelihood. This is compounded by the nature of the policies– mere statements of intent to commit and thus devoid of enforcement in the event of failure to adhere to it. Even where such policies are couched in a manner that depicts full commitment, CSR activities are voluntary and as such, the community cannot demand more than they receive. In other words, CSR activities are at the discretion of the mining companies. The end result is continued misery for the local communities who should be positively benefitting from the mining activities in their area.

The CSR programs may benefit both mining companies and local communities. The problem with these programs is their unsustainability in the long run as they depend on the company's policies and do not address the problems that mining activities cause. In other words, these programs are not tied to the effects of mining activities. Further, there is no obligation on mining companies to compensate local communities for the impacts associated with mining. Also, there is no requirement under the MMDA or indeed any other legislation which compels companies to conduct CSR activities or indeed other activities unrelated to mining. This gap has, unfortunately, not been filled by the MRDP. In some jurisdictions, the communities have been allowed to participate in the ownership or corporate activities of the mining company. This approach, which differs from the traditional CSR, allows the community to benefit from the mine operating in its area.³¹

Suggestions

1. The duty to conduct activities that companies do primarily lie with the government. In recognition of this fact, the government must incentivise companies that perform CSR activities as this will ensure that these are done on a more sustainable basis. This would require that conditions must be attached to incentives that are granted to mining companies. Such conditions should include a requirement that CSR activities, which

Barrera-Hernández, B Barton, L Godden, A Lucas, and A Rønne (eds) *Sharing The Costs and Benefits of Energy and Resources Activity* (2016)(OUP: Oxford) 29

³¹ It is usually termed 'community share ownership scheme' or 'corporate social investment' depending on the country.

directly address the locals' main complaints resulting from mining activities, must be a precondition for awarding incentives. This would prevent companies that hide behind the cloak of CSR activities but without addressing the real problems that their mining activities have caused the communities.

2. The government must amend provisions of the MMDA and the MRDP to ensure more community participation in mining activities rather than subjecting the community to the whims and caprices of the mining company.
3. The codes of conduct that mining companies rely on should form part of the conditions upon which mining rights are assigned so much that, in the event of non-performance by the company, the local community can have legal recourse.
4. The undertaking of CSR activities must not be voluntary and hence, the Minister must issue guidelines as required of him or her under section 119 of the MMDA.
5. The government should develop a policy for all mining companies requiring them to set up value addition and beneficiation plants. This would ensure that extracted minerals are not exported in their raw or semi-process form and only later to be sold, as finished products, back to the country at an exorbitant price. This, in a way, ameliorates social responsibility and enhances sustainable development.

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