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Harmonization of Mining Policies, Standards, Legislative and Regulatory Frameworks in Southern Africa

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Harmonization of Mining Policies, Standards, Legislative and Regulatory Frameworks in Southern Africa*

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Foreword

This publication on the harmonization of mining policies, standards, legal, and regulatory regimes in Southern Africa presents a framework for creating a competitive environment in the minerals industry through alignment of the policies of member States. The framework is presented as a set of recommendations in nine thematic areas for member States to consider.

The regional framework creates a highly competitive investment environment as it is derived from best international practices in minerals development policies. The foundation for the gradual harmonization of mineral policies through standardization and policy alignment in Southern Africa is derived from international best practices. The harmonized policy environment is expected to reduce detrimental competition among the member States, lead to the sharing of capacities and competencies through a liberal movement of economic factors, including capital and labour, across the sub-region and ensure attractiveness of the region as an investment destination and promote economic growth in the region. International competitiveness and the challenge of meeting the legitimate expectations of key stakeholders are the guiding themes in the proposed regional minerals policy framework. In the longer term and through this process, convergence and a harmonized policy regime in the minerals sector will be attained as intended by the SADC Treaty.

I would like to express my appreciation to all the experts whose input was instrumental in refocusing the technical publication and ensuring that the framework is aligned to the Regional Indicative Strategic Development Plan (RISDP).

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Abstract

International experience has demonstrated that a properly structured and administered minerals industry has potential to generate substantial benefits to individual economies and regions. Apart from being a direct source of foreign exchange, mining generates substantial direct revenues to government through corporate taxes, royalties and employee taxes from miners. In addition, the exploitation of minerals can lead to regional development and can facilitate diffusion of technology and be pivotal to skills training in mining areas.

The report presents a framework for harmonizing mineral industry policies, standards, legal and regulatory environments in Southern Africa. The framework developed from a review of twelve SADC member States should, in the longer term, lead to convergence and a harmonized regime in the minerals sector as intended by the SADC Treaty. The elements of harmonization in the minerals industry have been investigated to identify factors impacting on the overall development of the sector in the region, especially international competitiveness. Areas in which harmonization of policy is both feasible and attractive, as well as conditions necessary for such harmonization to be successful, are outlined and further work required to develop a detailed basis for integrating the Common Agenda are provided. A time frame for the attainment of a harmonized framework has been set.

A harmonized minerals industry regime in Southern Africa will create a uniform business environment for investors. Member States will benefit from cross-border investment activities and possibilities for cluster development and deeper regional integration in a harmonized environment. A growing minerals industry in a harmonized environment provides significant resources to enable countries to tackle social and economic challenges.

Political, social and economic considerations crucial in harmonization within the region include economic growth patterns, unemployment, political stability, exchange rate regimes, inflation rates, the HIV/AIDS pandemic, poverty alleviation, investment regulations, and fiscal and monetary policies. Political stability is important in investment decisions and is critical for the realization of the benefits of harmonization as investors seek long-term stability.

In a global environment, the harmonized Southern African mineral policy environment has to be internationally competitive, as Foreign Direct Investment (FDI) will continue to play an important role in the sector due to the shortage of a local critical capital mass to develop the sector. Studies during the last decade have shown that governments with competitive investment regimes have attracted more investors compared with those with

unattractive environments. The new regional framework is informed by these developments and endeavours to create a competitive regime in Southern Africa.

The regional framework highlights the importance of a mineral policy statement in outlining the operating environment in any country as it defines government objectives in minerals development and clearly states the socio-economic responsibilities of the mining industry in return for the contribution made by investors. The regional framework advocates for mineral policy statements and legal frameworks that provide an enabling environment in which the state, mining business, and the public can prosper. The development of uniform policies across the region is an important initial step in gradual harmonization. Mineral administration issues including governance, participation in ownership and management, beneficiation and value addition, minerals marketing and environmental management are addressed as part of the regional framework. The framework provides direction in artisanal and small-scale mining, gender, research and development and human resources issues in the region. While accepting that harmonization creates a uniform operating environment, the regional framework recognizes that overall prospectivity, types of mineral commodities, stage of development of the minerals industry, land tenure arrangements, alternative uses of land, maturity and sophistication of legal and regulatory arrangements, infrastructure and political stability will continue to influence the actual destination of investment.

The framework developed for the region is aligned to the Regional Indicative Strategic Development Plan (RISDP) and is informed by developments within NEPAD and the African Mining Partnership (AMP).

Abbreviations and Acronyms

AIDS	Acquired Immune Deficiency Syndrome
AMP	African Mining Partnership
APT	Additional Profits Tax
ASM	Artisanal and Small-Scale Mining
BPFA	Beijing Platform for Action
CASM	Communities and Small-Scale Mining
CIF	Competitive Investment Framework
CMA	Common Monetary Area
DRC	Democratic Republic of Congo
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
HIV	Human Immune Deficiency Virus
LOM	Life of Mine
MEPC	Minerals and Energy Policy Centre
MDF	Minerals Development Fund
MIASA	Mining Industry Association of Southern Africa
MSP	Mining Strategic Plan
NA	Not Applicable
NEPAD	New Partnership for Africa's Development
NGO's	Non – Governmental Organizations

NMP	National Mineral Policy
NSONR	National Sovereignty Over Natural Resources
na	not available
OECD	Organization for Economic Cooperation & Development
PRSP	Poverty Reduction Strategy Papers
R&D	Research and Development
REI	Regional Economic Integration
RISDP	Regional Indicative Strategic Development Programme
SADC	Southern African Development Community
SADCC	Southern African Development Coordination Conference
STD's	Sexually Transmitted Diseases
UNECA	United Nations Economic Commission for Africa
VAT	Value Added Tax

1.0 Introduction

1

1.1 Background to Regional Economic Integration in Southern Africa

The Southern African Development Coordination Conference (SADCC) was constituted in Lusaka, Zambia, on 1 April 1980 following adoption of the Lusaka Declaration-Southern Africa: Towards Economic Liberation. Units were established in each of the member States to coordinate an area of common interest for the benefit of the region. A decentralized structure was believed to provide a sense of regional belonging and responsibility across national boundaries. The responsibility to coordinate the mining sector was allocated to Zambia. The SADCC was transformed into SADC on 17 August 1992 in Windhoek, Namibia, with a declaration of a Treaty giving the organization a legal character. The SADC Treaty provides for the development of sector protocols to spell out the objectives, scope and institutional mechanisms for cooperation and integration. In 2004 SADC member States were Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

Since its inception, SADC has delivered on a sense of regional belonging, a tradition of consultation and programme of action, and has implemented several economic and social projects. It has recorded remarkable achievements despite facing several obstacles including:

1. The lack of institutional reforms for effective transformation from SADCC to SADC;

2. The lack of synergy of the objectives of the Treaty on the one hand and the existing programme of action and the institutional framework on the other; and,

3. The lack of appropriate mechanisms capable of translating the high degree of political commitment into concrete community building and integration programmes.

SADC was restructured in 1992 in order to overcome these obstacles, increase the efficiency and the effectiveness of SADC policies and programmes and provide a framework for implementing a more coherent and better-coordinated strategy to eliminate poverty in the region. Restructuring resulted in the transformation of the original 21 sectors into clusters falling under four directorates at the SADC Secretariat.

The purpose of SADC is to promote deeper economic cooperation and integration in Southern Africa to help address many of the factors that make it difficult to sustain economic growth and socio-economic development. The SADC vision is one of a common future in a regional community that will ensure improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples of Southern Africa. This shared vision is enshrined in the SADC Treaty and historical and cultural affinities that exist between the peoples of Southern Africa. The SADC mission is to promote sustainable and equitable economic growth and socio-economic development through productive systems, deeper cooperation and integration, good governance and durable peace and security, so that the region emerges as a competitive and effective player in international relations and the world economy. The SADC Common Agenda[1] includes the following broad objectives:

1. Promotion of sustainable economic growth and socio-economic development;

2. Alleviation of poverty;

3. Enhancing the standard and quality of life of peoples of Southern Africa and supporting the socially disadvantaged through Regional Economic Integration (REI);

4. Achieving sustainable utilization of mineral resources and protection of the environment;

5. Achieving complementarities between national and regional strategies and programmes; and,

6. Mainstreaming gender in the process.

According to the SADC Common Agenda, to achieve the above objectives, the following actions would be required at the regional level:

1. Harmonizing policies and plans of member States;

2. Encouraging people and institutions in the region to forge ties among themselves and participate in programme implementation;

3. Promoting development of human resources; and,

4. Promoting development, transfer and mastery of technology.

The minerals sector is the backbone of the majority of economies in the SADC region and harmonization of policies in this sector would enhance regional integration. Formal mining in the region accounts for about 60 per cent of foreign exchange earnings, 10 per cent of GDP and five per cent of formal employment (SADC Review, 2003). Due to the region's endowment of world-class deposits of coal, chromite, gold, diamonds, platinum and copper, the minerals sector has played a major role in the development of infrastructure in SADC.

The minerals industry has been the nucleus for the growth of many towns and cities within the sub-region. Most rail and road infrastructure was developed to serve the movement of material inputs to and outputs from the mines to local, regional and external markets. Similarly, since the mining sector uses substantial quantities of electric power, many generating units were constructed to service the sector. The infrastructure built from the development of the region's mineral resources has had spin-off benefits to the rest of the economy. The sector therefore has the potential to contribute to increased economic growth and job opportunities as further exploration and mineral development takes place and further mineral processing occurs within the regional boundaries. In addition to these forward and backward linkages, the minerals industry is a source of rent for use in other economic and social sectors and many countries in the region have been able to develop infrastructure and improve human capital using rent from the sector. Other mining sector issues that are significant in the SADC context are:

1. Artisanal and small-scale mining (ASM) which poses both opportunity for rural economic development and regulatory and promotional challenges for governments in the region;

2. Gender issues dealing with participation of women in the minerals industry and the role of SADC States in removing barriers to entry for women;

3. Shortage of skilled nationals to develop the minerals sector;

4. Weak R & D infrastructure. The region lacks capacity (in quantity and quality) to make a meaningful difference in developing technologies for further processing of minerals; and,

5. Underdeveloped markets with limited capacity to consume mineral products.

1.2 The Mining Protocol

The SADC Mining Protocol came into force in February 2000 after ratification by member States (SADC, 2000). The objective of the protocol is to create a thriving mining sector that can contribute to economic development, alleviate poverty and improve the standard and quality of life in the region. This is in line with the SADC Common Agenda articulated in the SADC Treaty. The protocol specifies the following areas of cooperation:

1. Harmonizing national and regional policies, strategies and programmes;

2. Developing human and technological capacities;

3. Promoting private sector exploitation of mineral resources;

4. Improving availability of information to the private sector;

5. Promoting small-scale mining;

6. Developing and observing internationally accepted standards of health, mining safety and environmental protection; and,

7. Promoting economic empowerment of the historically disadvantaged in the sector.

The important issues of value addition (beneficiation) and the participation of women in mining are not explicitly discussed in the Mining Protocol. Yet they are important in harmonization within the regional minerals sector. The further processing of minerals and mineral products has important implications for the contribution of the sector to the economic welfare of member States. It helps strengthen forward and backward linkages with the rest of the economy and in the process generates increased rent from these linkages. To maximize economic rent, the region has to mine, process and market its minerals and mineral products.

1.3 SADC Mining Strategic Plan (MSP)

In August 2001, the SADC Mining Ministers approved the Mining Strategic Plan, (SADC, 2001). The Plan spells out how the Mining Protocol would be implemented to realize the SADC agenda. The Plan covers seven areas, namely:

1. Mining protocol - dealing with issues of institutional framework, policy harmonization, capacity and funding;

2. Information and geology – dealing with efficient information generation and dissemination;

3. Mining, marketing and mineral processing – dealing with promotion of investment in the sector;

4. Small-scale mining – dealing with supporting the development of the sub-sector in the region;

5. Human resource development and technology – dealing with development of skills and technology base;

6. Environmental protection – dealing with environmental standards and initiatives; and,

7. Gender mainstreaming in the mining sector – facilitating the active involvement of women in the sector.

The SADC Mining Strategic Plan is the operational instrument of the Mining Protocol, aimed at achieving the protocol's objectives each of which is associated with sub-objectives and a prioritized list of actions in the form of an implementation plan.

1.4 The Regional Indicative Strategic Development Plan (RISDP)

The RISDP outlines the necessary conditions to be realized towards the attainment of the region's integration and development goals. It sets targets that indicate major milestones towards the attainment of the agreed goals and sets up a coherent implementation programme of the main activities necessary for the achievement of the region's broader goals within a reasonable, feasible and agreeable time frame that takes into account resource constraints. RISDP also incorporates tenets of the SADC Mining Strategic Plan.

The RIDSP recognizes development differences that exist among member States and thus adopts a flexible approach towards deepening integration and gradually aligning economies towards regional standards. The implementation of various policy reforms and recommendations also takes a flexible approach.

The RISDP identifies and strengthens the linkages, programmes and policies of the various sectors with a view to improving efficiency and delivery of the SADC Programme of Action. Therefore, policy actions in the minerals sector should be interlinked with milestones in other sectors, most of which are programmed for short-term achievement.

The ultimate objective of the RISDP is to deepen the integration agenda of SADC with a view to accelerating poverty eradication and the attainment of other economic and non-economic development goals. It identified the following four challenges for the mining sector:

i. Acquisition of technology and know-how to facilitate value addition;

ii. Facilitation of more investment into the sector;

iii. Ensuring environmentally sustainable development; and,

iv. Increasing participation of small-scale operators and vulnerable groups, including women in the sector.

All these SADC initiatives have culminated in a strategy to harmonize the finance, trade and investment sectors. The areas of focus are firstly, market integration through the establishment of the SADC Free Trade Area, the SADC Customs Union and the SADC Common Market; secondly, attainment of macroeconomic convergence; thirdly, development and strengthening of financial and capital markets; fourthly, attainment of deeper monetary cooperation; fifthly, increasing levels of investment in SADC, including FDI; and finally, enhancing SADC competitiveness for effective participation in the global economy. Mining has the potential to play the leading role in achieving the objectives of the Common Agenda, with the new mining legislative regime in South Africa being an example. Its Charter-concept aims to be the catalyst for social change, not only in the mining sector, but also to prompt other sectors to introduce similar instruments.

Notes

1 The SADC Common Agenda is spelt out in Article 5 of the Treaty

2.0 Study Methodology

2

A template was used to standardize the primary and secondary country data from twelve SADC member States - Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Primary information on regional economic integration in SADC was gathered from discussions with the Mining Expert at the Secretariat in Botswana, while secondary information was obtained from the SADC Secretariat's official website and other official documents. Secondary information on member States was obtained from the MEPC's database, the Internet and several other sources. Contact was made with countries to validate the secondary information collected for this report. A detailed summary of country information used in constructing this analysis appears in Annexes 1 to 6.

Each country was described in terms of its political economy, investment indicators, fiscal regime, minerals development policies, minerals administration systems, artisanal and small-scale mining, gender, skills development and research and development policies and practices. The approach adopted in this report is that in order to achieve harmonization in policy within the region, it would be imperative, in the first instance, for those countries that are significantly different from the rest to gradually move closer to the regional average through a change in the parameters.

A Competitive Investment Framework (CIF), developed by the Minerals and Energy Policy Centre (MEPC) in South Africa for reference in guiding mineral policy development in Malawi is used in coming up with the preferred harmonized framework for the region. CIF provides international best practices against which the investment climate of Southern Africa would be benchmarked. The creation of a CIF involved a review of the mineral legislation and policies of carefully selected countries in order to develop the policy for the region. In developing this framework, countries that had recently attracted a significant share of international investment, as a direct result of changes in policy that reduced risk to investors, were selected. Internationally competitive developing countries (with competitive mineral policy frameworks - namely Chile, Mexico, Argentina, Brazil and China) were identified and their operating frameworks were used to derive the Competitive Investment Framework.

The Competitive Investment Framework is broadly defined as an operating environment, which is stable, competitive and ensures that a region remains a preferred destination for local and international investors in the minerals industry. The CIF is the primary reference in setting the agenda for a harmonized and competitive framework for Southern Africa.

The analysis presented in this report makes bold statements about how Southern Africa should shape its minerals industry environment given its priorities and aspirations.

A comparison of mineral investment environments of Southern African States was undertaken with a view to identifying challenges to, and scope for, harmonization. The recommendations emanate from an assessment of the minerals policy environment in SADC compared with international approaches as approximated by the CIF.

The framework developed from this study is provided as a set of recommendations in each of the nine main thematic areas:

1. Mineral policies;
2. Political, economic and social environment;
3. General investment environment;
4. Mining fiscal environment;
5. Minerals administration;
6. Artisanal and small-scale mining (ASM);
7. Research and Development (R&D);
8. Human resources and skills development; and,
9. Gender.

The framework also provides recommendations on the participation of citizens in management of the sector, environmental management, management of mineral wealth, beneficiation, mineral clusters and minerals marketing under the broad theme of minerals administration and development.

3.0 Definition of and Rationale for Harmonization

3

3.1 Definition of Harmonization

In order to provide a solid foundation for the discussion of harmonization as presented in this document and the framework developed, it is instructive to define the concept of harmonization.

This study defines harmonization to encompass the merging of national systems into a unified approach to reduce differences in operating environments between countries as much as possible. The establishment of common arrangements, simplification of procedures and sharing of information are all at the core of any harmonization process. Harmonization as an equalization approach encompasses two broad activities or processes:

1. The development of a common set of standards for Southern African member States – **standardization**; and,

2. The alignment of national policies, laws and regulations towards a common goal - **policy alignment**.

3.1.1 Standardization

Standardization in the harmonized Southern African minerals industry framework refers to the alignment of technical and engineering requirements for the minerals industry; geologic nomenclature; health and safety requirements; skills, training and qualifications; social obligations; responsibilities and regulations; and, regional mineral valuation procedures.

3.1.2 Policy Alignment

The areas of policy alignment in the harmonized SADC framework include exploration and mining licensing procedures; land rights and tenure; mining fiscal regimes; minerals marketing; minerals processing and value addition; environmental requirements; social obligations and responsibilities; institutional framework; infrastructure for minerals development (transport, water and energy); artisanal mining; small-scale mining; gender;

labour – laws, occupational health; cross-border movement of mineral skills; cross-border movement of capital, minerals, goods and services; customs and tariffs; economic and political frameworks, investment regulations, and, product security.

Standardization of the identified parameters and alignment of policy areas outlined above would constitute harmonization in the minerals industry in Southern Africa. Harmonization converges policies to the needs of the region, as all countries will conform to a set of common operating conditions working towards a common objective, which in this case is sustainable development of the regional minerals industry. By creating and strengthening synergies in the sector, harmonization eliminates national weaknesses and helps overcome the small size of national economies, as consideration will be at the regional level.

3.2 Rationale for Harmonization

Harmonization enables countries to work together (i.e. regional cooperation) towards poverty alleviation using the minerals sector as a vehicle. A harmonized environment facilitates the creation of a sustainable, competitive and profitable minerals industry within SADC; helps in the reduction of the costs and risks of doing business across the region; assists in the advancement of transparent, simple and transferable best practice systems; and, helps facilitate economic growth, development and general prosperity within the region. Harmonization in mining, one of the region's major economic sectors, enables Southern Africa to consolidate its position as a global player in the world economy. Yet, harmonization may be unpopular in some countries in the region, which already enjoy the benefits of competitive environments and benefit from unattractive regimes in other member States.

The harmonization of policy regimes has been identified as a strategic imperative within SADC, NEPAD and the African Union as it helps deepen regional integration. By creating common goals within the region, harmonization eliminates detrimental competition between SADC States, facilitates sharing of capacities and competencies through liberal movement of economic factors across the region and ensures sustained economic growth, an important requirement for attracting investment. In a global village where economic blocs have become important in the international political economy, harmonization will give Southern Africa substantial negotiating powers in its dealings with other economic groupings and will help reduce prospects for marginalization. As noted in the African Development Report (2003), open regionalism is an important step towards globalization and the strengthening of regional activities. Harmonization in SADC would achieve this same objective in the longer-term. The current skewed destination of FDI in favour of a few countries, mainly South Africa and Botswana, would be averted in a harmonized environment, as capital will be spread efficiently across the entire region. Additionally, a harmonized policy environment will enhance regional human capital and technological development, facilitate regional infrastructure development and enhance the efficient development of natural resources. The region can, in a timely and adequate manner, respond to environmental and sustainable development challenges in a harmonized environment.

Despite these immense benefits, differences in geological prospectivity, types of mineral commodities sought by investors, stage of development of the minerals industry, land tenure arrangements and alternative uses of land, maturity and sophistication of legal and regulatory arrangements, political and economic stability and other country-specific factors pose challenges for harmonization of mineral industry policies across the region. These country differences have to be factored into any harmonization strategies. Inherent country differences normally influence the approach to mineral development, which explains differences in incentives offered by sovereign States to investors in the sector. It is important to appreciate that, across the board, harmonization would not be easy and efforts should be directed towards areas of commonality in the initial stages of this gradual process. The process should be guided by the fact that harmonization is gradual and is, in this framework, broadly divided into the two areas – standardization and policy alignment.

The remainder of this publication presents the framework for the gradual harmonization of mineral policies within the sub-region and the suggested time frame for the attainment of milestones in the process. The framework is presented according to the nine thematic areas and their components as identified in the introductory section of the publication.

4.0 Areas of Harmonization in the Regional Minerals Industry

4

The development of a harmonized minerals industry environment in Southern Africa requires addressing the major issues impacting on minerals development and international competitiveness. Some of the issues are peculiar and specific to the minerals industry while others are crosscutting. As a result, the pursuit of harmonization has to be holistic and should encompass all economic, political and social facets in the region. In the initial stage, however, harmonization of aspects specific to the minerals industry is needed before tackling broader issues.

4.1 Mineral Policies

Minerals form part of national assets whose development should meet national development objectives. A national mineral policy is the primary tool through which governments enunciate the roles of all players in minerals development. Mineral policy defines government objectives in minerals development and states the socio-economic and environmental responsibilities of the minerals industry.

An investor into the minerals industry requires assurance that the mineral policy, legislative framework, and administrative procedures of the host country will not be changed in a way that would affect subsequent returns during project life. In addition to internationally competitive monetary and fiscal policies, constancy, clarity and stability of national mineral policies are important considerations for investors. Host governments normally ensure that their mineral policy and legal frameworks provide an enabling environment in which the state, mining business, and the public can prosper. In addition to defining property rights, the legislative environment also outlines the safety, health and environmental responsibilities of mining companies. The integrity of public officers interpreting and applying mineral policies is also a crucial consideration for investors.

There are significant differences in mineral policy regimes in SADC except for the policies obtaining in South Africa, Malawi and Namibia. The mineral policies for Malawi, Namibia and South Africa incorporate regional cooperation and have similar themes which makes harmonization easier. The themes dealt with in these policies are similar, which in turn facilitates harmonization. The policies incorporate issues that fall outside the Common Mining Agenda, including sustainable development, empowerment of nationals and general social issues affecting miners and mining regions.

International practice has shown that having a clearly articulated mineral policy statement is an important prerequisite for attracting investors. A national mineral policy is part of the package for creating a conducive and enabling environment for mineral resources development. Although some Member States have historically operated without mineral policy statements, it has become common practice internationally for countries to develop such statements.

Recommendation for Mineral Policy Formulation

For harmonization, all member States should develop mineral policy documents informed by the following regional principles:

- Mineral policy stability, making allowance for adjustments from time to time;
- Consistency and transparency;
- Stakeholder dialogue in policy formulation;
- Management of stakeholder expectations;
- Tradability of mineral rights; and,
- Integrated land use and development plans, including social development plans.

The template in Box 1 is recommended for use by Member States developing a mineral policy statement.

Box 1: Regional Mineral Policy Template for SADC

Business Climate and Mineral Development

- Investment and regulatory climate
- Taxation
- Mineral rights and prospectivity information
- Artisanal mining
- Small Scale Mining
- Mineral beneficiation and value addition
- Minerals clusters
- Mineral marketing
- R&D

Participation in Ownership and Management

- Ownership regulations – government share, local capital share and foreign capital share, joint venture regulations

People Issues

- Health and safety
- Human resources development
- Gender
- Housing and living conditions
- Migrant labour
- Labour, industrial relations and employment conditions
- Downscaling

Environment Management

Regional Co-operation

Governance

- Regulation and promotion
- Management of mineral revenues
- National government, provincial government and municipality
- Stakeholder consultation

4.2 Political, Economic and Social Environment

Stable political, economic and social conditions are important in investment decisions for both local and foreign investors. These factors combine to form an important pillar in harmonization and in enhancing overall attractiveness of a country or region. Political risk evaluation is done together with other risk factors including geological, technical and regulatory and fiscal elements in decisions to invest in a particular jurisdiction. Table 1 illustrates the region's position regarding important economic variables. A comparison of the regional framework with the CIF, for example, shows that the regional inflation rate is eight times the CIF rate and the regional interest rate is one and a half times the CIF rate. Using these parameters, the region is less favourable as an investment destination compared to the desired CIF position. Annex 1 is a summary of the political, economic and social environment in Southern Africa.

Low economic growth, high unemployment, HIV/AIDS, high inflation and poverty are some of the major economic and social issues impacting on the attractiveness of the region as an investment destination. Insufficient security for long-term investment, due to political instability in some of the countries in the region, has adversely affected the whole of Southern Africa.

Table 1 Economic and Social Indicators in SADC Member States

Economic and Social Parameters	SADC Range	SADC Average
GDP in US$ million (2002)	714 – 106 347	18 305
GDP Growth per cent (2001)	-8 – 14	3
Tax Revenue/GDP per cent (2001)	27 – 30	27
Unemployment per cent (2001)	23 – 70	45
Population below poverty line per cent (<US$2/day)	15 – 87	55
International investment position in US $m (2000)	255 – 11 126	2 275
Inflation per cent (2002)	5 – 360	63
Exchange rate to US$1 (December 2002)	5 – 23 854	2 477
Nominal treasury (risk-free) rate (2002)	4 – 49	22
Interest rate (2002)	9 – 140	40

Sources: Country Reports (Annex 1) and MEPC (2004)

In 2004 SADC had a population of about 215 million. This offers a sizable market for goods and services. However, due to the HIV/AIDS pandemic, the expected average population growth rate up to 2015 is two per cent. The HIV/AIDS prevalence rate in the region is about 30 per cent, with South Africa, Zimbabwe, Zambia and Botswana being the hardest hit (Goldfields Sustainable Development Report, 2003) The HIV/AIDS prevalence rate within the region poses a big challenge in the minerals industry as it will continue to widen the manpower deficit.

With an average unemployment rate of 45 per cent, SADC is positioned reasonably well compared to other developing nations where the average unemployment rate is estimated at about 60 per cent. However, some countries in the region have unemployment rates as high as 75 per cent, which poses a great challenge to development planning. Economic contraction in the region has resulted in a decline in formal employment and this continues to put pressure on social services. Unemployment in the minerals sector can partly be attributed to low mineral prices and the use of capital-intensive mining techniques. The declining trend in mining employment is likely to continue as technology improves but can be more than offset by opportunities from secondary industries, such as value-addition, outsourcing, services and supply of inputs. Regional employment policy should concentrate on these secondary sources of job opportunities.

While the current view that the most progressive way to address most economic problems is to open any economy to FDI holds, it is imperative that efforts to develop local social and human capital be put in motion to completely capture the benefits brought about by increased investment. This will require policies to strengthen regional institutional and training capacity.

A major concern of investors is the ability of host governments to manage the macroeconomic variables to ensure long-term economic stability. High inflation results in increased producer cost and high interest rates. Inflation in the region (at an average of 63 per cent) is unacceptably high compared to the SADC single digit policy target enunciated in 2002. High inflation is a deterrent to investment when mineral production is sold on the international markets, although production costs and debt servicing are in local currency.

When considering harmonization of policies, disparity in exchange rates between countries is an obstacle to establishing and expanding common monetary areas (CMA). The commendable target of having SADC Monetary Union by 2016 must be vigorously pursued. SADC Monetary Union will assist trade in the region and strengthen SADC as a competitive and attractive international investment destination.

Perceived political and economic risk is also reflected in treasury (regarded as risk-free) interest rates. Interest rates are important to investors because they influence the cost of local capital. However, if funds are obtained from outside the host country, the home country interest rate is more relevant in investment decisions. SADC countries show a significantly wide range of lending rates of 9 to 140 per cent, figures well above the competitive investment rate of 27 per cent. The high local interest rates affect the participation of domestic investors in the capital-intensive minerals industry.

Recommendations for political, social and economic harmonization

1. The regional strategy to tackle HIV/AIDS as defined in the SADC Agenda should be pursued and Member States should continue to manage the impact of HIV/AIDS in SADC as outlined in the Strategic Framework and Plan of Action of 2003-2007;

2. Member States must develop economic strategies to reduce unemployment in the region, including supporting the informal sector and small-scale industries, especially the artisanal and small-scale mining sector. Reducing unemployment will also help alleviate poverty. The mining sector has the potential to contribute to employment directly and in secondary activities through promotion of further procession of minerals and the development of mineral-based products;

3. Member States must collectively develop strategies to attract FDI into the regional minerals industry. Efforts should be targeted at reducing the perceived political risk to investors and enhancing cooperation among member States in the social, economic and political spheres. Regional member countries with politically unstable environments should be assisted to achieve stability for the benefit of the region; and,

4. Member States must improve their macroeconomic policies and aim at reaching regional macroeconomic convergence. On inflation, individual countries should ensure compliance with the regional target of less than ten per cent per year.

4.3 General Investment Environment

A direct and positive correlation exists between investment in the minerals industry and prospectivity for particular target minerals. When there is geological potential for particular minerals, there is a good chance that investment (local or foreign) will follow. Investment will initially be for exploration, then for minerals development once an economic deposit has been found. Investors expect good government policies, investment incentives and legal framework to sufficiently mitigate the inherent risks in mining projects. Consequently, SADC governments must create an investment environment conducive to exploration and mining activities. Appropriately crafted government regulations and taxation policies can reduce risks to the investor and influence the flow of investment funds. Conversely, risks will increase and investment will fall if the investment environment is constrained by inadequate protection of property rights, excessive government intervention, and unacceptable distribution of mineral rents.

Macro-economic issues, such as investment policy and restrictions on capital mobility, influence the risk perception of investors and hence investment decisions. For international competitiveness, the SADC framework should be guided by components in Box 2:

Box 2: Guiding principles in international competitiveness of mining regimes

i. Design transparent, predictable, stable and competitive frameworks;
ii. Ensure maximum control of operations by investor with minimum state intervention;
iii. Minimize government intervention with regard to the flow and control of foreign exchange;
iv. Ensure availability of basic geological information;
v. Guarantee political stability;
vi. Provide supporting infrastructure; and,
vii. Create an environment for the existence of potentially strong business partnership with either government or local private capital.

During the past decade, SADC countries have worked on establishing credible track records of political and economic stability and investor-friendly environments. This has led to reduced business risk and resulted in increased investment, mainly in mining and oil exploration (Business Map of South Africa, 2003). During 2001 and 2002, these two sectors attracted the largest shares of international investment into SADC with mining including metals and mineral beneficiation accounting for 75 per cent of FDI into the region in 2002.

Table 2 Foreign Investment Requirements in SADC States

Parameters	SADC Range	SADC Average	CIF Average
Foreign ownership allowed (per cent)	50 – 100	94	96.6
Compulsory government share (per cent)	0 – 50	7	0

Sources: Country Reports (Annex 2) and MEPC (2004)

The degree or extent of state involvement in any project is an area of concern for any investor. Table 2 summarized from Annex 2 indicates that some SADC countries insist on state co-ownership of mines and mineral development companies. Although this does not necessarily deter FDI, such ownership should be kept as low as possible and should not affect the business of mining. In some countries, free carried interest (acquisition of government share in a business venture without any monetary contribution) is used to acquire government share of ownership. Some investors may view this unfavourably. Notwithstanding, the experience in SADC is mixed, as some countries have done well in attracting foreign investors despite having government equity participation in mining ventures as a requirement, while in others, investors voice concern at such arrangements. In West Africa, Ghana has managed to maintain the government's 10 per cent share in the equity of mining companies without compromising competitiveness.

The sector is an important source of foreign currency for most nations of the SADC region as it accounts for an average of 60 per cent of export earnings. For countries like Zambia and Botswana, for example, the proportion is over 70 per cent. Because of the sector's importance and the reliance of most countries in the region on foreign currency inflows, most SADC countries have controls over movement of foreign currency. On the other hand, mining companies are concerned about the degree to which they are able to remit their share of the mineral rent to foreign shareholders. Exchange controls in SADC range from none at all to fairly strict, with most countries opting for some limited control. The effectiveness of a mining fiscal regime to attract FDI into any country is adversely affected by controls on foreign currency movement. Foreign investors require the right to operate offshore bank accounts, keep the proceeds of the sale of minerals overseas, and to repatriate to the host country any foreign currency necessary to pay local taxes and to meet local costs. Inability to remit shareholder dividends or service foreign debt obligations in a timely manner due to exchange control arrangements or other restrictions is a major investment disincentive. Contradictions between governments and investors usually occur when the former considers minerals part of the productive assets that should assist other non-exporting sectors with foreign currency. Thus, they insist, the sector should make foreign currency available for use in other sectors in the economy. A balance has to be struck between these competing views.

At times, state equity participation is linked to local empowerment, where government takes equity positions for empowerment purposes. In light of this, the investment climate within the region has to be attractive to foreign, regional and domestic investors. The participation of domestic investors facilitates the development of cooperative linkages with foreign investors.

Recommendations for harmonization of investment environment

1. Member States have the right to acquire local equity stakes in mineral development projects provided these are done on commercial terms. This should be clearly stated in the mineral policy statement; and,

2. Member States should gradually and cautiously reduce exchange controls without compromising the ability of inflows of foreign currency into the sector to assist other foreign currency dependent sectors of the economy and in enabling the government

to retire foreign debts. Foreign currency regulations should not restrict the ability of foreign investors to pay dividends to foreign shareholders.

4.4 Mining Fiscal Environment

The fiscal regime applied in the minerals sector is of major importance in the realization of national objectives as outlined in the mineral policy. Corporate income tax, administrative fees, surface taxes, royalties, export taxes, import taxes, income taxes and tax concessions all form part of the fiscal regime. Governments collect revenue from economic activities through taxation and use these revenues to fund social services, infrastructure and other national activities. Governments thus consider the minerals industry as part of productive assets that should assist in overall national development. Mining companies, on the other hand, are in business to generate wealth for their shareholders and are concerned about the level of profits and growth of shareholder value. Conflicting government and investor goals can be a source of friction as companies view negatively any imposition that impacts on profitability while governments view the same imposition as a source of revenue.

The taxation policy of a country is an important consideration for any investor as it impacts on levels of returns and growth in shareholder value. Host countries can apply a range of fiscal instruments to control the amount and timing of their share of the rents generated by the mining industry. These taxes are payable at different definitions of income[1] and on different items of production. For example, mineral royalties[2] are normally payable on units produced, concentrates produced or gross proceeds, while income taxes are payable on revenue after the deduction of costs and allowable deductions (these deductions vary from country to country), and dividend taxes (withholding taxes) are levied on distributable earnings. Annex 3 provides a detailed description of the minerals industry fiscal regime in the region. The fiscal regimes differ significantly in both structure and in instruments of application. However, as can be seen in Table 3, there are similarities, namely:

- None of the SADC States allows backward carrying of losses;
- There are no limits on allowable cost in the taxable income calculation;
- All States charge fuel levies and payroll taxes; and,
- None of the provincial/local governments in SADC charges a corporate tax but some countries have local taxes in various forms including development levies.

For international competitiveness, the fiscal regime in Southern Africa should be informed by the principles described in Box 3:

Box 3: Important tenets in the design of minerals industry fiscal regimes

i. Fiscal regimes that allow for an easy flow of capital and minimize double taxation of the same income are an important incentive for investors. Targeted tax credits for foreign investors to avoid or minimize double taxation of the same income may be used;
ii. Introduction of mineral resource rent taxes for projects that generate more profits than other sectors of the economy;
iii. The provision for minimum taxes payable should be kept at low rates;
iv. Capital gains should be included in the definition of income;
v. Special incentives for developing mines in remote areas through accelerated depreciation and other incentives should be provided;
vi. Accelerated depreciation for capital equipment should be considered for large investments; and,
vii. Constraints for the application of ring fencing within a country should be eliminated.

Table 3 Instruments of Mining Fiscal Regimes in SADC States

Mining Fiscal Regime Parameters	SADC Range	SADC Average	CIF Average
Tax stability agreements	Yes/No	No	NA
Corporate tax rate (per cent) (national)	15 – 60	33	31.8
Branch office tax (per cent)	20 – 60	36	31.8
Income tax credits for foreigners	Yes/No	No	NA
Corporate tax on oil and gas (per cent)	42 – 58	Not specified	38.8
Minimum corporate tax (per cent)	0 – 15	4	0.7
Additional profits tax (per cent)	0 – 25	5	1.3
Tax holidays (years)	0 – 10	3	0
Tax treaties	Yes/No	Yes	Yes
Deduct exploration/development costs (years)	1 – 5	2	NA
Ring fencing	Yes/No	Yes	No
Forward carry of losses (years)	2 – Indefinitely (25)	18	Yes
Backward carry of losses	No	No	No
Maximum cost deduction	Unlimited	Unlimited	NA
Depreciation (years)	1 – 25 (LOM)	9	NA
Capital gains tax (per cent)	0 – 40	14	25.4
Tax on assets	Yes/No	No	NA
Value added /sales tax	0 – 20	14	17
Fuel tax	Yes	Yes	Yes
Repatriation/dividend/withholding tax	0 – 25	14	1.3
Import duties	0 – 15	3	0
Export duties	0 – 10	1	0
Payroll tax	Yes	Yes	Yes
Land tax	Yes/No	Yes	Yes
Provincial (State) taxes	No	No	No
Municipal taxes	Property/Services	Services	Services

Sources: Country Descriptions (Annex 3) and MEPC (2004)

In the following discussion, the components of the mining fiscal regime are grouped into international, national and local issues in order to highlight the peculiar aspects of each tax and its impact on competitiveness.

4.4.1 International tax issues

Tax Treaties/Double Taxation Agreements

With the globalization of mining finance, it has become important for investors to avoid being taxed twice on the same income. This could happen if the host country (in which the mine is situated) taxes an investor's income and the same income is taxed again when profits are remitted to the country of origin. To minimize double taxation, the two countries usually enter into a tax treaty. Most governments now appreciate the importance of giving tax credits to foreign investors, mainly to give assurance that double taxation of the same income will be reduced as far as is practical. The most common way of doing this is to allow income taxes payable in countries of operation (in SADC in this case) as credits in calculating the taxable income in the home country. The details of the credits are stipulated in the double taxation agreement or tax treaty between the two countries. These credits are normally confined to income (corporate) taxes and withholding (dividend) taxes.

Withholding Tax

Dividend repatriation taxes or withholding taxes have also become a standard fiscal instrument over the years. The average rate charged in SADC is 14 per cent, which is significantly higher than the CIF rate of 1.3 per cent. Investors do not favour this type of tax because it reduces dividends to shareholders. The mobility of international capital has caused many developing countries, eager to attract investment, to either abolish or reduce the rates of withholding taxes. In many cases, double taxation agreements are used to further reduce the impact of withholding taxes.

Import and Export Duties

The international trend is to exempt mining capital imports and product exports from customs duties. Given the lack of locally available exploration and mining equipment and machinery, duty exemption enables investors to import all required equipment at reduced cost. Both import and export duties increase investment and production costs and hence can be a deterrent to investment. The increase in cost due to duties raises the cut-off grade, which reduces the production life of a mine and as a consequence reduces government revenue over the long term.

Transfer Pricing

Mozambique, Namibia, South Africa, Tanzania and Zimbabwe apply the OECD (arm's-length) approach with respect to transfer pricing. All the other countries in the region do not have rules to guard against transfer pricing by international investors. Transfer pricing rules are essential for countries that host multinationals and tax worldwide incomes.

Recommendations for harmonization of international taxation approaches

1. Host States may consider entering into tax treaties with the resident country of international investors in order to minimize the likelihood of double taxation;

2. Member States should limit withholding tax rates to internationally competitive rates;

3. Member States should provide relief for import and export duties on mining sector items; and,

4. To protect the domestic tax base, member States need to introduce transfer-pricing rules based on OECD (arm's length) principles.

4.4.2 National Tax Issues

Corporate Tax

The corporate income tax rate is arguably one of the most important fiscal criteria on which to base an investment decision and hence impacts on competitiveness. This is because most other tax expenditures are deductible for the purpose of calculating taxable income, which means that their impact is less severe than that of corporate taxes. However, for any country, the appropriateness of the corporate tax – its level and structure, - has to be assessed holistically, that is it must be determined after taking into account the impact of all fiscal elements on the investment competitiveness of a country's mining regime and international trends. The average corporate tax rate, in the region of 33 per cent, compares well with international best practice as represented by CIF.

Tax Stability Agreements

A historically popular investment incentive in the minerals industry is a tax stability guarantee. This guarantee is designed to shield the investor from tax volatility and may be advantageous to both government and the investor, provided the tax level offered by this instrument is fair. Tax stability contracts typically provide for a fixed (all-inclusive), overall income tax rate for a specified period of time. Such a contract gives investors the assurance that the original total tax liability, terms and conditions will remain unchanged even if new legislation, with different rules, were to be enacted. As an alternative to stability agreements, investors may be assured that the tax liability will not be subject to sudden increases. The experience of countries such as Chile, Peru and Papua New Guinea shows that appropriately designed and implemented stabilization agreements are significant incentives for attracting investment in the minerals industry. However, tax stability agreements should be used judiciously.

Minimum Taxes

Although investors do not favour minimum taxes, this form of tax insurance by host governments is gaining popularity worldwide. The tax, based on revenues after some allowed deductions, limits the extent to which income can be shielded from taxation. Currently the average minimum tax rate for SADC States is four per cent, which should be regarded as a maximum rate for harmonization purposes considering that the rate internationally is much lower.

Royalty

A mineral royalty is charged by the owner of a resource as compensation for depletion of the minerals that are mined and removed from the land. Royalties are for the States' benefit as sovereign owner of all natural resources. Table 5 indicates that the average mineral royalty rate in SADC is about six per cent, which is rather high compared to the CIF rate of one per cent. This percentage is normally applied to net smelter return value, which by definition allows for limited cost deductions from gross (sales) value. The term *'net smelter'* is misleading insofar as it refers to the sale of all mineral products, regardless of whether these need smelting or not. The general international definition of net smelter return allows for the deduction of the following costs from the sales price:

- Transport from the mine to the point of sale;
- Handling fees, which include insurance, penalties, sampling and assaying during transport;
- Processing and refining costs when value-addition is a policy objective; and,
- Marketing costs.

Mineral resources differ in terms of location, quality, quantity and type. The result is that each mineral deposit is unique and for this reason, it is standard international practice to group minerals and apply a different royalty rate to each group. This argument, considered with the need for mineral royalties to support the national objectives, requires some discretion when deciding on the structure and rate of royalties. International practice is that different royalty rates are applied to different minerals, an approach which the SADC framework should incorporate.

Additional Profit Tax (APT)

APT is an example of a resource rent tax, which has been applied in some countries when profits exceed a predetermined threshold rate (return on investment). APT operates on the principle that the investor is allowed to earn a certain minimum rate of return on investment (threshold rate of return) over the life of the mine above which APT is charged. APT liability is assessed on post-tax profits, the net cash flow after capital costs, operating costs, royalty, income tax and all other taxes and charges have been accounted for. Therefore, the APT rate would essentially be influenced by other elements of the fiscal regime, including the threshold rate of return. It is only in the context of the overall fiscal package that the suitability of a given APT rate can be determined. Furthermore, in practice, APT can be structured in such a way that any of its elements (rate and threshold) is biddable, negotiable or fixed in legislation, depending on intended objectives. These taxes should not affect investment decisions as they are on profits and above the threshold rate – after the investor has earned the required minimum return on investment (opportunity cost). Although the regional average of five per cent is significantly higher than the CIF average rate of APT at 1.3 per cent, is fair because the tax is only triggered under the unusual circumstances of profits above a certain threshold.

Tax Holidays

Although host countries have granted tax holidays to investors in the past, internationally this incentive has declined in use in recent years. Tax holidays are useful if linked to a specific policy goal, for example drastically changing the investor's perception of any particular country in the short to medium term. Some of the member States provide tax holiday incentives in an attempt to attract investors and these tax incentives are gradually phased out as a country matures as an investment destination. Tax holidays have lost their place as credible incentives because recent international experience is that they often lead to high-grading of minerals or cherry-picking during tax holiday periods, thus sterilizing low grade mineral reserves and result in inefficient tax collection and leakages to foreign tax jurisdictions. Accelerated depreciation, low front-end taxes and royalties are now regarded as efficient incentives for investment compared with tax holidays.

Deduction of Exploration and Mineral Development Costs

An important consideration for investors in the mining sector is the ability to deduct exploration expenditure from mining income for tax purposes. All the SADC States allow for the deduction of exploration and mineral development costs in calculating the taxable income. The deduction ranges from all costs being deducted in the first year of production to a 20 per cent straight-line method over five years.

Ring Fencing

Ring fencing is a standard feature in mining regimes and facilitates the provision of mining specific fiscal treatment to accommodate the spatial characteristics of mining investment: high capital cost; high investment risk; long lead times; and, potential for generating resource rent. Therefore, ring fencing of mineral revenues and costs from other sources of investor's operations allows for proper accounting and reporting for tax purposes and other obligations. In practice, ring fencing could be defined countrywide, licence-wide or field-wide, typically depending on mining policy and investment strategies of a country.

Post-production exploration expenditure is normally tax-deductible when it occurs inside the boundaries of a current mining area. However, when prospecting activities occur outside the fence, some governments do not allow this as a tax deduction. Governments should realize the importance of deducting post-production exploration expenditure in sustaining a minerals operation since exploration is the lifeblood of mining companies.

Most States impose limits to the application of ring fencing to reduce the amount deductible in calculating the taxable income. Investors are not comfortable with this practice because of the high likelihood of project failure at exploration stage. However, a blanket removal of ring fencing may put the tax base under severe pressure. A trade-off position is to introduce a country ring fence to allow resident mining companies to deduct all exploration expenditure incurred inside that country from mining profits. However, countrywide ring fencing requires strict monitoring to ensure that companies do not hide behind dubious exploration spending to avoid paying taxes.

When satisfied with countrywide ring fencing, policy-makers may consider then to gradually expand the fence until all losses within the region can be deducted for those companies resident in SADC. Further research is required before this approach can be pursued, as two tax jurisdictions will be affected by regional ring fencing.

Loss carry forward

Mining is capital intensive and is characterised by long lead times and thus policies have to be tailored to attract scarce capital into this industry and enable investors to obtain reasonable returns. Host governments should allow current losses to be carried forward until they can be offset by future profits. Current indications are that investors take the carry forward of losses for granted. A further development is the practice of indexing the amount carried forward to make sure that these losses are adjusted by some measure of the time value of money. The current regional practice of unlimited forward carrying of mine losses is not consistent with international practice and should be avoided. Allowing for the unlimited carrying forward of losses exposes the region to 'gold plating' by mining companies which further erodes the national tax base. 'Gold plating' is a term which has been coined in the South African minerals industry to refer to a situation in which mining companies are able to deliberately avoid taxes on revenues by declaring and carrying forward losses. Loss-carry backward is not favoured internationally and should be avoided because of the difficulties involved in apportioning current losses to previously earned profits. The national tax system may not be advanced enough to monitor such apportionment accurately.

Capital Allowances

Capital equipment purchases in a given year reduce the taxable income of a mining operation, causing a reduction in state revenue for that year. Accelerated depreciation is a feature of modern mining regimes. It reduces the tax burden in the early years of the project when ability to pay taxes is low due to huge capital investments.

To provide a steady flow of taxation revenue to the government, capital equipment costs and, sometimes, development costs are redeemed over a number of years at a pre-determined depreciation rate. Although the straight-line method is still the most widely applied policy instrument in the treatment of capital expenditure, accelerated depreciation is being viewed more favourably recently in reducing the tax burden for investors in the current year. It is very difficult to standardize depreciation rates on plant, machinery, vehicles, and other capital expense items. The usual practice is to depreciate these items over their useful lives or the life of a mine.

Capital Gains Tax

Despite administrative difficulties associated with its collection, capital gains tax is another fiscal instrument that is gaining popularity in the developing world. According to the competitive investment framework a 25 per cent rate is acceptable to investors. The current capital gains taxes in the region range from zero to 40 per cent.

Value Added Tax (VAT)

The introduction of either sales tax or VAT has become standard practice internationally. The CIF shows a rate of 17 per cent which is slightly above the regional average. The level of VAT needs to be harmonized within the region as it currently ranges from none in some countries to 20 per cent in others.

Payroll Taxes

Payroll taxes are standard in international taxation arrangements, which is also the case in SADC. They are another source of state revenue that is easy and cheap to administer. This tax is charged on total salary payments and must be paid by the employer regardless of mine profitability.

Fuel Taxes

Fuel taxes are sources of government revenue that require very little administration. This characteristic makes it a popular fiscal instrument for governments internationally.

Recommendations for harmonization of national taxation issues

1. Member States may offer tax stability agreements to investments above a minimum threshold. Tax stability agreements should be used judiciously and only as a temporary measure;

2. Member States should ensure that the minimum tax rate is kept at an internationally competitive level;

3. Member States must introduce mineral specific royalties as compensation for mineral depletion in line with international norms. Consideration could be given over time to reform the mineral royalty regime by implementing a sliding scale mechanism to target a portion of the mineral rents generated by highly profitable ventures;

4. Member States should all introduce additional profit taxes and ensure that rates are kept at internationally competitive rates;

5. Member States should avoid tax holidays. However, consideration could be given to the limited use thereof for investment projects that meet specific national policy and development objectives, for example value-addition;

6. Member States should allow for accelerated amortization and depreciation schedules for the treatment of exploration and mine development expenditures;

7. Member States should introduce countrywide tax ring fences for the treatment of exploration costs. Further research would be required for the extension of ring fencing to include the entire region;

8. There should be a limit on either the period of loss carry forward or the cost amount as determined in the income tax calculation. Member States must introduce measures to avoid dishonest practices by companies in calculating losses to be carried forward;

9. Member States should consider depreciation schedules for capital equipment based on the item's useful life; and,

10. Member States may consider including realized capital gains (or a portion thereof) in the annual income tax calculation. This ensures the rate does not exceed the corporate rate of taxation.

4.4.3 Local Government/Regional tax issues

Taxation on assets is not necessarily an investment deterrent, even when charged at a regional (geographical area within a country) level. The concern is the rate of taxes. These taxes are charged on either value of property or on turnover. For competitiveness, such taxes should be kept at low rate.

Land taxes are a common feature in the SADC region. They are either calculated as a percentage of the value of land or calculated as a transfer duty payable on sales transactions.

None of the countries selected allows provincial or municipal authorities to charge income taxes *per se*, but federal governments usually allow some local participation in payments that companies make to the state. In all countries, governments collect taxes from all business entities and then distribute to regions according to national priorities. In addition, some have put in place regional allocations based on source.

Recommendation for harmonization of local tax issues

Member States must ensure that regional/local tax rates are low because of the potentially damaging impact on the attractiveness of a region to investors.

4.5 Minerals Administration and Development Systems

The role of government in minerals development is to provide an operating framework supported by an efficient and transparent administration system. During the past few years, some SADC member States have articulated new mineral sector policies and developed appropriate legislation to support the new policies. These developments have been motivated by the desire to improve investment competitiveness and the attractiveness of these countries.

As can be seen in Annex 4 and Table 4, SADC has a uniform approach on the issue of mineral rights. Most countries in the region have adopted a system that provides for a combination of exploration and mining licences. The granting of exploration licences over vast areas suggests that it is not the size of the area that is important, but rather the way in which the licence is administered and the exploration licence utilized. Although governments have raised concerns over sterilization of resources by companies holding large exploration areas, a strict reporting regime can ensure that these companies continue to work on these large tracts of land. Further, if exploration licences for such areas are granted for relatively short periods, renewable once with strict reporting requirements, sterilization may not occur. Such renewals are usually also subject to strict relinquishment criteria including periodic reporting of exploration results and work undertaken.

Table 4 Minerals Administration Systems in SADC States

Minerals Administration Issues	SADC Range	CIF Average
State Agency	Ministry, through appropriate government department	Ministry
Reconnaissance licence	Yes/No	Yes
Retention licence	Yes/No	No
Exploration licence:	Yes	Yes
Exploration fee	Prescribed	Prescribed
Maximum size (ha)	4 – 10 000 000/Negotiable	> 2000
Duration (months)	24 – 60/Negotiable	48
Renewal (months)	24 – 48/Negotiable	19
Relinquish areas	Yes/No	Yes
Minimum spending	Yes/No	Yes
Work to program	Yes	Yes
Environmental plan	Yes/No	Yes
Social requirement	Yes/No	Yes
Reporting requirement	Yes/No	Yes
Rights of holder	Conversion/Registration/ Stability agreement	-
Mining licence:	Yes	Yes
Mining fee	Prescribed	Prescribed
Duration (years)	21 – 30/Negotiable	> 30
Renewal	10 – 30/Negotiable	Yes
Minimum spending	No	Yes
Work to program	Yes	Yes
Environmental plan	Yes/No	Yes
Social requirement	Yes/No	No
Reporting requirement	Yes/No	Yes
Rights of holder	Exclusive/ Registration/ Stability agreement	-
Other	Traditional authority requirements/Sustainable development/ Government participation	

Sources: Country Reports (Annex 3) and MEPC (2004)

Box 4: Common mineral administration issues in SADC Countries

i. An appropriate Ministry, assisted by a suitable administrative department, dealing with mineral development exists at national level;
ii. All States have separate rights for exploration and mining;
iii. Exploration and mining licence fees are fixed and prescribed by law;
iv. Stipulation of minimum spending is not a requirement as the ‘use-it-or-lose-it’ principle applies;
v. All exploration and mine development rights are granted subject to a work programme requirement; and,
vi. Holders of exploration rights can convert them to rights for mine development if they have complied with the terms and conditions of exploration rights.

As can be seen in Box 4, there is already some degree of harmonization in many mineral administration issues in the region.

Despite the existence of such excellent administration systems in the region, inefficiency in the administration of mineral rights and the discretionary use of powers by government machinery can be a deterrent to investment.

Six SADC countries have introduced reconnaissance rights in their mineral development legislation, while six have not made provision for such rights. The same applies to retention rights. However, because there is no clear international trend for either reconnaissance or retention rights, there is insufficient evidence for making a clear harmonization recommendation on these two issues. Member States should exercise discretion on the necessity of these rights after taking national and regional policy objectives into account.

The maximum size for exploration rights differ significantly within SADC, ranging from four ha per application to 10,000,000 ha. A system that allows for negotiation on a case-by-case basis would be better. The CIF position awards acreage larger than the minimum SADC position. As noted earlier, size may not be an issue, but rather utilization of the area.

The duration for which first-time exploration rights are issued within the SADC range of 24 to 60 months with an average of 41 months. Only three States negotiate this duration on an ad-hoc basis. The SADC average compares favourably with the 48 months of the CIF. The term for renewal of exploration rights ranges from 24 to 48 months, with an average of 42 months, which is generous compared to the CIF of 19 months. Most States require relinquishment of some areas upon renewal, which could be as much as 50 per cent of the initial area. The basis of the relinquishment is unfavourable exploration results, as declared by the licence holder. This allows land to be allocated to other exploration companies.

Minimum spending commitments on exploration properties is a requirement only in Mozambique. However, most states use the compulsory work programme requirement, which necessitates spending. Upon introducing a work programme as a requirement for issuing exploration rights, minimum spending becomes an inappropriate instrument for enforcing the use-it-or-lose-it principle.

Except for one country, the rest of SADC has introduced strict reporting requirements and submission of information during exploration and mining. An aspect of the investment process that is sometimes not given sufficient attention is the availability and accessibility of geological and other mineral resource information to potential investors. The value of providing a standardized geographic information system to prospective investors is not appreciated sufficiently by some governments. During the administration of concessions, the state gathers a wealth of information and this information should be reported in a standard format and made available to future investors to avoid duplication of exploration effort and wasting of exploration funds (Von Below, 1992). Information gathered must be compiled in a comprehensive geographical information systems (GIS) format that is user-friendly and available throughout the region. Repositories of geological information should be at the same level in terms of sophistication, the quality and accessibility of geological information. Minnitt and Cawood (1999) argued that the efficient management of mineral resource information and optimal access to land would only be realized when there is access to information. A database that integrates resource, economic, geographic, administrative, and land information in a single system is proposed.

It is also important to consider the rights of holders of exploration licences who comply with the law, terms and conditions of licences and work programmes. An example is the right to limited discretion, easy and automatic progression from exploration to mining upon compliance.

Currently the duration for mining licences within Southern Africa ranges from 21 to 30 years, comparable to 30 years for the CIF average. All states allow for renewal of mining rights, ranging from 10 to 30 years.

Table 5 Minerals Development Policies in SADC States

Minerals Development Issues	SADC Range	CIF Average
Mineral royalty (per cent)	0 – 20	1.1
Oil/gas royalty (per cent)	2 – 12.5/Negotiable	9.4
Exploration fee	Prescribed/Negotiable	Prescribed
Surface rent	Landowner/Municipal tax	NA
Mineral ownership	State/Private	State
Compulsory environmental provision	Yes/No	Yes
Mining precedence over other land uses	Yes/No	No
Special incentives in remote areas	Yes/No	Yes

Source: Country Descriptions (Annex 5) and MEPC (2004)

Table 5 derived from Annex 5, provides a comparison of minerals development policies in the SADC and the competitive investment framework.

Surface rental fees are normally directly negotiable with the landowner. Some states have introduced standardized surface rental fees. This intervention may cause tension between the host government and landowners. Such conflict should rather be avoided and the issue of surface rentals be left to the property market for resolution. Standard rental fees could be considered for state-owned land.

Most countries in the region provide special incentives for industrial development in specific areas and typical strategies used in the region include the provision of tax incentives and the creation of development zones. Special incentives have traditionally worked well when linked to specific policy objectives, for example economic development that will make a meaningful difference in the lives of citizens living in such areas. Consideration could be given to incentives, such as accelerated depreciation. This initial sacrifice could stimulate other local economic activities and generate employment opportunities in the region.

Recommendations for harmonization of mineral administration and development systems

1. Member States should create simplified, transparent one-stop mineral administration systems within the appropriate ministries. Minerals administration should preferably be integrated in a one-stop-shop (housed in one place) dealing efficiently with all aspects of mining and exploration. These one-stop-institutions could be used for promoting investment in the region at various international events;

2. Member States should establish Broad-Based Mineral Boards to act as advisor and public watchdog in minerals administration. These Boards must link with the regional SADC Mining Sector Secretariat, SADC Mining Advisory Group and MIASA;

3. Member States should consider the merits of each application for an exploration licence separately and negotiate an appropriate size of area after taking the circumstances (uniqueness) of the application, the credibility of the applicant, the work programme and national and regional policy objectives into account;

4. Member States should limit the initial term for issuing exploration licences in order to reflect the exploration commitments in the work programme. Licences should be renewable once, for a shorter period. There should be a provision for relinquishment to enforce the 'use-it-or-lose-it' principle;

5. Member States should make it mandatory for holders of exploration and mining rights to regularly submit geological information in a standardized format, and upon the expiry of the right, issue the state with a detailed report of exploration/mining activities. Mechanisms for standardizing reporting require uniformity across the region. Geological endowment is an important determinant of investment in any area. The geology of the region needs to be studied in a harmonized way and its results published in a uniform format across the region. The geological information would

then be integrated into a regional information system, which can facilitate regional interpretation and joint-publication;

6. Member States should provide for automatic progression from exploration to mining for those holders of exploration rights who comply with the rules including submission of periodic information on exploration results;

7. Member States should introduce a fee structure that encourages exploration, avoids sterilization and is linked to the work programmes. The property market must establish surface rental fees. When the state is the landowner, the rates could be standardized but reviewed regularly to reflect market values; and,

8. SADC states should consider introducing incentives to stimulate specific policy objectives, such as economic development in mining areas, and the creation of value-adding (mineral beneficiation) industries. Incentives for local (regional) infrastructure development should be provided.

4.5.1 Beneficiation, Minerals Marketing, Cluster Development, Environmental Management and Participation in Management of Mining Enterprises

Mineral development policies should provide a framework for addressing mineral beneficiation, minerals marketing, industrial development (including minerals clusters), participation in ownership and minerals industry management and environmental management. This section discusses these issues as part of the regional framework.

Minerals Beneficiation

There is limited further processing of minerals within the region. Most minerals are exported in raw and semi-finished form. As a result, the industry remains an enclave with very limited local linkages but extensive linkages with the world economy. Reliance on the export of raw and semi-finished products exposes the region to fluctuating and declining prices and declining terms of trade. Value addition is beneficial to the region as finished products enjoy stable prices that increase over time and with the level of value addition. As a region, SADC should aim to add value to its mineral output before export in order to capture as much rent from the sector as possible. This would require dealing with trade barriers (tariff and non-tariff barriers) to market access in developed nations. Increased export revenues from the export of value-added products can be a source of regional growth.

Mineral beneficiation requires cooperation and coordination between the Ministries responsible for minerals, trade and industry, finance and the private sector. The beneficiation of minerals and value addition overlap with many other issues raised in this report. Projects for R&D in mining, mineral processing and value-addition identified by the SADC Mining Sector Coordinating Unit should be pursued.

Recommendations for mineral beneficiation

1. Member States must identify minerals with potential for value addition and concentrate resources into establishing beneficiation plants in economic regional locations after taking into consideration all input costs and regional priorities;

2. States must review regional supporting infrastructure (transport, energy and water), technology, skills and other inputs for value addition before deciding on an appropriate regional strategy to further process minerals;

3. States must strengthen the regional markets for value added products through promotion of new products; and,

4. States must support the efforts of MIASA and other producer associations to deal with barriers to value addition through appropriate fiscal incentives.

Minerals Clusters

The development of clusters in mining areas has been demonstrated in the South African and Mozambican studies to generate significant benefits for mining regions (UNECA, 2004). The linkages that arise as a consequence of mutual interactions between individual industries and with associated institutions within a cluster contribute to economic development in the cluster area. Clusters arise through the flow of information or products between companies that are functionally linked together. The agglomeration of producers, customers and competitors, whether based on geographical proximity or linked by complementary expertise, promotes efficiency and increases specialization and contributes to regional development. Lessons from mineral clusters in Sweden and Finland could provide important policy options for the development of clusters in the region.

Recommendation for mineral clusters development

Member States should adopt a collaborative approach to applied R&D in the area of cluster development, emphasizing the need for further beneficiation of minerals, the provision of mineral transport infrastructure in the region and promotion of industrial agglomeration within mining areas and the development of linkages in these areas.

Minerals Marketing

A few countries in the region still have controls in the marketing of minerals and mineral products. This approach has outlived its usefulness and is considered an unnecessary burden by investors. However, limited state intervention is justifiable when there are market failures, economic barriers and/or transfer-pricing issues exist. As argued later in this publication, state intervention is also justifiable in the case of artisanal and small-scale miners. A regional minerals marketing strategy could be a route in the ASM sector.

Recommendations for minerals marketing approaches

1. Member States should leave minerals marketing to market forces. Intervention should be limited to the case of artisanal and small-scale mining sector where producers are widely dispersed, are too small for any elementary further processing and lack the necessary marketing skills to participate in the international market individually; and,

2. Member States should identify and develop suitable niche markets for unique mineral-based products like African-design jewelry.

Participation in Ownership and Management

Social obligations including participation in ownership and management have become part of the international minerals investment regime. The incorporation of social responsibilities into investment agreements ensures social sustainability is promoted in resource exploitation. Social obligations are introduced at all phases of the minerals supply cycle from exploration to minerals marketing.

Only three member States have introduced social obligations for investors during the exploration phase. Four states expect holders of mining rights to contribute to social advancement of their countries and have introduced charters, black economic empowerment programmes and regulations for responsible downscaling of mining activities. This trend is likely to continue as other SADC States align their investment regulations in line with principles of sustainable development. The introduction of social requirements, such as local procurement of goods and services, and frequent reporting thereon, into mineral law are other emerging progressive issues, which should be captured by the new framework. Such obligations will ensure communities in exploration and mining areas benefit from resource exploitation throughout the project cycle.

Recommendations for approaches to participation in ownership

1. States should make local empowerment a mandatory requirement on holders of exploration and mining licences. This requires development of systems that encourage investors to provide meaningful empowerment opportunities to historically disadvantaged persons and communities; and,

2. States should link the granting and renewing of exploration and mining licences to social obligations. Compliance with these obligations can be assessed through regular reporting of progress. An enforceable system, which punishes failure to adhere to these requirements, should be developed.

Environmental Management

As can be seen in Tables 4 and 5, most states have not yet introduced environmental regulations during the exploration stage contrary to the trend internationally. Requirements for environmental impact assessments and management reports during the exploration and mining stages in SADC vary from no obligation at all in some countries, to the need to observe international integrated environmental management standards in others. Structures have been established in a few SADC countries to provide environmental impact assessment services. The role of a government agency is important in reviewing environmental impact assessments to ensure that they are as inclusive as possible.

Countries within the region are changing their regulatory frameworks to ensure that sufficient funds will be available at mine closure to rehabilitate the environment and monitor the post-mining environment. Various schemes are in use internationally to ensure sufficient financial provision for rehabilitation. The schemes range from government control through a central fund (from company contributions) to each mine controlling its own fund. The international move towards sustainable mineral development demands that the natural environment be protected during and after mining. By its very nature, mining will always impact on the environment by changing the landscape and removing vegetation cover and dumping of waste.

The precedence of mining over other land uses has been a norm in some SADC countries. Current thinking on sustainable development and optimal use of natural resources is against this practice. Although most of the member States are not giving precedence to mineral development, which was a colonial norm to ensure easy and cheap access to resources, some SADC States must still commit themselves to ensuring access to land for all uses without precedence.

Recommendations for harmonization of approaches to environmental management

1. Member States should introduce similar regulations about basic environmental impact assessments before the granting of exploration and mining rights. International principles of integrated environmental management should be consulted in setting requirements for regional projects;

2. Member States must introduce similar principles, legislation and implementation mechanisms for integrated environmental management, which will include environmental and social impact assessments and should make financial provision for rehabilitation of land and reduce adverse impacts on community livelihoods;

3. Member States should include post-mining use of land obligations in the process of granting exploration and mining licences. The regulations and standards should also make provisions for post-mining monitoring of mined-out areas and tailings;

4. Member States should consider multiple land use planning when granting mining licences;

5. Member States should set up environmental agencies where they do not exist, adequately man and fund them to review impact assessments and monitor compliance with environmental provisions;

6. Member States should make it mandatory that future adverse impacts are factored into financial decisions during mining and applications for mining rights should be accompanied by environmental impact assessments. In addition, compulsory finan-

cial provisions for restoring the natural environment to some productive capacity after mining must be imposed; and,

7. A Minerals Development Fund should be introduced by all Member States to provide for environmental disasters and social decline after mine closure. This will require that a portion of the mineral rents be channelled towards the fund, or alternatively, a fund be established that is dedicated for this purpose.

Governance

The proper management of mineral revenues to achieve national socio-economic and environmental objectives is important in the overall governance of the sector. Good governance is essential for building trust among the wide range of stakeholders and is important in sustainable resource exploitation.

A very important aspect of any government's role is to exercise permanent National Sovereignty Over Natural Resources (NSONR), which requires either public ownership or custodianship over natural resources. This allows the government to manage the public's mineral wealth and link mineral development with national economic development priorities. Given the finite nature of mineral resources, government has responsibility to ensure mineral revenues are utilized to promote sustainable development. The need for governments to create the policy framework for structural reform in order to diversify their economies and exports is an important part of governance in the sector. The governance framework should clearly define the roles and responsibilities of government and industry and ensure that accountability is well outlined.

The ability of any government to effectively manage national responsibilities depends on many factors including capacity and accountability. Capacity issues include organizational (regulatory) delivery structures, training and education programmes and the requirement for officials to make fair decisions. Accountability issues include holding officials responsible for their performance, transparent decision-making processes, collection and distribution of mineral rents, dealing with corruption and public participation in decision-making.

Consideration for which level (or levels) of government should own minerals, set policy and administer mineral rights, including collection and distribution of rents, is important. Ownership, control of sectoral activities, and administration of the sector can be at national level, as is the case in all SADC countries. A second possibility is for central government to set policy, leaving ownership and administration of mineral rights to lower level governments such as provincial or local levels. A third possibility is a system of shared responsibility, where policy and administration are done at national level and sharing ratios of mineral revenues are introduced among local, provincial, and national governments. Provincial and municipal governments are funded in various ways, such as national subsidies, land taxes, mineral royalty payments, and payment for services. Scott (1978) identified several criteria for the level of government collection and the distributional requirements of natural (mineral) resource rents. Among the key policy level considerations are the following:

- The right of lower levels of government to share in the rent through the collection of royalty-like payments as is the case in some countries in the region;

- The importance of distributional grants to promote equity between mineral-rich and mineral-poor provinces;

- The redistribution of the rent should take into account the uniqueness of the mineral deposit in terms of commodity markets, life of the operation, location and existing infrastructure. Some areas may be more sensitive than others to sudden mine closures and, therefore, may require a larger proportion of the rent, especially for mineral operations with a short lifespan; and,

- The size, location, and demography of the population to whom the benefits should be distributed may be especially important where gross geographic product and infrastructure are vastly disparate.

Government strategies for improved decision-making and the regional strategy for mineral development are important issues of governance. According to the resource curse thesis, weak mineral governance, corruption and rent plundering result in countries failing to benefit from mineral exploitation.

Corporate governance in the sector has attracted significant attention in recent years. Mining companies subscribe to sustainable development and hence are now more than ever before being forced to consult with indigenous populations in project locations and ensure that there is adherence to environmental requirements. Promulgations like the Berlin Guidelines of 1991 and Minerals, Mining and Sustainable Development (MMSD) of 2002 demonstrate the commitment of mining companies to environmental stewardship and sustainable development respectively.

Self-regulations through industry associations like the Mining Industry Association of Southern Africa (MIASA) by way of codes of industry practice and individual company codes of conduct, has become common internationally. Industry initiatives need support and enhancement through, for example, responsibility indices that rank companies in terms of good corporate citizenship and compliance with government rules. However, the state retains the overall monitoring responsibility of environmental issues as custodian of the management of natural resources.

Recommendations for harmonization of governance issues in the sector

1. Member States should introduce sustainable development objectives into the mineral policy framework. This will require member States to give specific attention to economic, environmental, social and governance provisions within the framework;

2. Member States should create adequate structures to ensure transparent management of mineral revenues so that the regions benefits from mineral extraction;

3. Member States should ensure security and continuity of tenure with reasonable exclusivity, enforceability and transferability of rights;

4. Member States must facilitate programmes towards meaningful empowerment and participation of nationals in mineral projects;

5. Member States should link corporate social responsibility programmes with the granting of mineral development rights;

6. Member States should introduce mineral management systems at lower levels of government for certain minerals to reduce bureaucracy and empower local communities to manage benefits of mineral exploitation. Examples for which this would be appropriate include low value aggregates and locally marketed construction materials; and,

7. Member States should consider the creation of corporate responsibility indices that rank companies in terms of good corporate citizenship and compliance with government rules.

4.6 Artisanal and Small-Scale Mining (ASM)

The importance of the ASM sector in mineral extraction in the SADC region has increased during the past decade due to many reasons, including the emergence of a framework to regulate the sector and the realization of the important role it could play in poverty alleviation. Yet, the sector remains bedevilled with serious operational constraints. The Harare Guidelines on Small- and Medium-Scale Mining (1993) and the Yaoundé Vision for ASM (2002) classified constraints in the sector into legal, financial, commercial, technical, environmental and social issues. Both the Harare Guidelines and the Yaoundé Vision provide a framework for encouraging development of small and medium scale mining as a legal, sustainable activity in order to optimise its contribution to social and economic development. The importance of providing simple, clear, understandable and stable laws and regulations in the sector is re-emphasized in the guidelines. Governments have an important role to play in the sector and are supposed to provide adequate institutional framework and a stable business environment by mobilizing and extending social, technical and economic support to small and medium scale mining.

In a similar manner, the Yaoundé Vision for ASM in Africa emphasized the role of the sector in the reduction of poverty and provided recommendations on how the sector could be helped grow from a subsistence activity to a sustainable one.

National policies dealing with ASM differ significantly between countries in the region and reflect the 'maturity' of the sector in the different SADC countries. In countries like Zimbabwe with a very long history in ASM, policies are more developed compared to say Tanzania, where the sector is still in its infancy. The regional framework captures and integrates progressive practices from different countries in the region and elsewhere and includes strategies outlined in the Yaoundé statement, Harare Declaration and from Communities and Small Scale Mining (CASM) Initiative. Annex 6 is a summary of ASM policies in the SADC region.

The distinction between artisanal, small, and large mining enterprises is important in designing appropriate operating environments for the three groups of operators within the region. Such distinction enables planners to recognize the existence of the ASM sub-sector and to promote, assist and regulate it accordingly. Absence of appropriate systems invariably leads to an illegal, unsafe, and environmentally destructive sector, characterised by lawlessness.

A regulated ASM should include provision for training and education for the miners themselves and communities, identification of the means of government assistance, designation of suitable areas for ASM, simplification of administration procedures to encourage compliance, and provision of realistic marketing arrangements for output from the sector. Despite adequate provisions for ASM in some member States, there is generally limited control over the sub-sector. A significant part of the sector in the region remains illegal due to lack of sufficient capacity and resources by the states for monitoring.

Governments are familiar with the operations of large-scale mining and the opportunities that these operations can offer in the development of ASM. Yet potential conflicts often arise between the two sectors due to many reasons including allegations of product theft, encroaching on mining areas, health, safety and environmental hazards. The ASM sector often perceives large-scale operators as getting preferential treatment from government, because at times the large-scale operators are granted land rights, which ASM operators consider as their own. Yet, better collaboration between the two sectors could provide the ASM sector with improved access to processing and mining technologies, better health, safety and environmental practices, product marketing and equipment supply. It can be a symbiotic relationship as large-scale operators can benefit from ASM activity to mine in sub-optimal resource areas within their licence boundaries and by assessing ASM mining patterns to establish future prospecting areas. Another benefit relates to stability because of the harmony achieved through cooperation. Because of the inseparable link between the ASM sector and the local community, in an environment where cooperation between the two sectors is promoted, there are better chances that large-scale mining will be accepted.

At the continental level, the African Mining Partnership (AMP), a continent wide initiative to spearhead the development of the minerals and mineral processing industry, acknowledges that ASM is a major generator of local employment and has a role to play in poverty alleviation in the region. The AMP argues that ASM should be addressed through broad-based rural regeneration strategies aimed at creating alternative but sustainable livelihoods and opportunities for poverty reduction. For this to happen, ASM activities require assistance from government for the sector to graduate into a sustainable activity. Examples of the special mineral development rights available to the ASM sector in SADC are presented in Box 5.

Box 5: Operating conditions for Artisanal and Small Scale miners in SADC

1. A range of rights for ASM (namely prospecting permits, special purpose tenements for gemstones, small-scale mining licences, and artisanal miners' rights) to facilitate exploration, mining, mineral processing by the sector;
2. The reservation of specific deposits (areas) for such activities;
3. The introduction of preferential rights, which not only give communities preference in the granting of licences, but also give them strong negotiation powers to enter into third-party agreements;
4. Granting local commissioners the authority to issue ASM rights, register rights and collect returns, claim fees and mineral royalties.

The constraints faced by the sector related to access to finance, marketing and access to technology are well documented (ECA/RCID/03/02, 2003). Small-scale miners are unable to access finance due to collateral problems and this affects their capacity to run commercially viable operations. Marketing problems diminish the role of the sector in poverty alleviation and contribution to sustainable development, as miners are unable to sell output at competitive international prices. Low revenues perpetuate the vicious cycle of poverty in the sector. Access to appropriate and affordable technology is a constraint to productivity in the sector.

Recommendations for ASM harmonization

1. SADC member States should develop specific and appropriate legislation for the ASM sector and allocate resources for the:

    a. Administration of relevant legislation;

    b. Training and education of players in the sub-sector;

    c. Providing support for the development of cooperatives; and,

    d. Assisting with seed finance, marketing of output and other technical matters. The regional framework should provide a financial support system including the creation of Mineral Development Funds, Mining Industry Loan Funds or Technical and Financial Assistance Programmes for the ASM.

2. Member States should revisit mineral policies in order to assess how the link between mining and poverty alleviation can be addressed and how ASM is factored into Poverty Reduction Strategies;

3. Member States should reform the ASM sector by reviewing existing policies and legislation with implications for traditional land rights and the role of central government in land allocation;

4. Member States should mount education programmes to increase awareness on the benefits of adding value to mineral commodities by establishing appropriate processing industries;

5. Member States should designate certain areas of known mineral potential for ASM and reserve the right to operate these designated areas exclusively for their nationals;

6. Member States should develop special mineral development rights for the sector that are simple to apply for, easy to comply with, transferable and give adequate security of tenure. The issuing, registering and managing of ASM rights should be delegated to regional authorities but co-ordinated by the central ministry in Member States;

7. Member States should develop, adopt and enforce appropriate and uniform health, safety and environmental guidelines for the sector;

8. Member States should establish partnerships involving government, miners, NGOs, finance institutions, the formal mining sector, manufacturers of suitable ASM mining equipment and professional organizations to tackle problems in the sector;

9. Member States should enact policies to remove barriers to the participation of women in the sector;

10. Member States should ensure that employment and working conditions for miners are within internationally accepted standards through enforcing the adoption of health, safety and environmental standards. Employment of child labour in the sector should be a punishable offence in all member States;

11. Member States should strengthen institutions dealing with training on HIV/AIDS and STDs;

12. Member States should ensure that the ASM sector is integrated into rural community development programmes and other sectors of the rural economy;

13. Member States should facilitate access to basic social services and transport infrastructure by the sector;

14. Member States should simplify the ASM taxation regime by introducing a standard tax based on a percentage of gross income and this rate should include all taxes, levies, mineral royalties and other payments to the state;

15. Member States must develop administrative structures within Ministries to provide assistance to the sector. They should provide the resources (officials to administer the sector efficiently, capacity-building and training programmes) to support the sector and incentives for it to operate legally and efficiently. Training programmes including all aspects of ASM should be on-site and preferably commodity specific delivered by government-employed or supported extension workers;

16. Member States should reform the legal framework to make mineral rights tradeable to enable miners to use them as collateral in order to access finance from commercial banks;

17. Governments should provide the necessary environment in which miners can operate and also in which various stakeholders can participate effectively in the development of the sub-sector. Governments should also provide guidance and support to meet both economic and technological challenges facing ASM, in addition to improving the availability of appropriate technologies;

18. Member States should provide for networking and knowledge-sharing activities to ensure that mistakes are not repeated, already proven technological advances and ideas do not have to be re-invented and lessons learned in one context are made freely available to others;

19. Member states should establish specific credit, savings and loan schemes to assist with technology and human resources, to finance ASM - and train participants in the ASM sub-sector. A portion of royalties could be legislated as a source of support funds for the ASM sub-sector or a line item in the responsible Ministry's budget could be included to support its growth; and,

20. Member States should establish flexible, equitable and free marketing systems to purchase legal mineral production from ASM at market-related prices. The establishment of regional exchanges and centres to assist in value-addition should be part of the regional framework. The establishment of official buying centres in remote mining areas where miners receive a fair price should be part of the framework;

4.7 Research and Development (R&D)

R&D is very important for maintaining a globally competitive minerals industry. The industry's competitiveness is to a large extent based on the use of new and more efficient technologies and on the development of new product uses. Only one member State, South Africa, has internationally competitive R&D facilities to maintain productive efficiency in the industry. As a result, the majority of equipment supplies in SADC mines are sourced from South Africa. The R&D capacity in South Africa must be developed and used in the region for the production of value-added mineral-based products. This would have added benefits of promoting regional integration through the availability of tradable mineral-based goods across the region and strengthening forward and backward linkages.

As can be seen in Annex 6, not much emphasis is placed on R&D issues in SADC. R&D is an area where the region lags behind the rest of the world, mostly because the region has few universities and research organizations capable of conducting high-level research in mineral development matters. Other hurdles are the resources required for R&D staffing and establishing the necessary infrastructure. Regional centres of excellence in R&D can cooperate with similar organizations within the region, which will bring about a critical mass in capacity.

Recommendations for R&D harmonization

1. Governments should take the lead in funding fundamental research and encourage industry participation in funding applied research programmes in the mineral sector;

2. Member States should develop and maintain regional centres of excellence in R&D. These centres must develop and maintain links, establish networks, and share resources, competencies, experts and research outcomes with similar organizations and skills within the region and outside;

3. Countries without R&D capacity must collaborate and support existing centres in other countries in the region to encourage regional skills and technology transfer;

4. Member States must provide some support and reward for research outcomes that address specific issues in the minerals industry. Cooperation with the private sector in R&D activities is important;

5. Member States should emphasize technological innovation by industry through appropriate instruments especially where R&D contributes to development of the fabrication sector;

6. Member States should provide support and development of small-scale industry to fabricate for local markets and develop a sector strategy to include R&D, training, marketing, finance, technology and management skills; and,

7. Member States should establish and maintain a user friendly and uniform geological information management framework for the region.

4.8 Human Resources and Skills Development

Highly skilled human capital is critically important for innovativeness and competitiveness in the international minerals industry. Annex 6 is a summary of skills development approaches in the SADC region.

International mining schools traditionally complemented graduates and diploma holders from regional institutions as a source of skilled labour for the local minerals industry. With the downscaling of minerals industry training institutions around the world, the region will face problems in closing the skills base unless local training institutions to provide this skilled manpower are expanded and strengthened.

Box 6 is a summary of the findings of the UNECA survey (1996) on the available quality and quantity of skills in the region.

Box 6: Mining skills situation in SADC, 1996

1. All countries in SADC were faced with varying skill deficiencies in several categories;
2. Deficiencies were most acute in traditionally non-mining countries;
3. Dynamic mining sectors relied on a high level of expatriate manpower; and,
4. Comprehensive skills development facilities only existed in three countries. A few other countries trained geologists only and rarely for mining-related disciplines.

No other comprehensive study has been undertaken since then. The findings of this study have been used extensively by a number of SADC countries for skills development planning purposes. Although now almost ten years old, the findings of the study still hold: the region has a huge skills gap in the minerals industry and since mining is a skills intensive industry the quality of the human resources factor is key to competitiveness. Updating this study will help in developing appropriate training programmes for the region.

A regional approach to skills development at tertiary level is required in the light of the above discussion. This will require networking the activities of SADC educational institutions; unhindered student and staff exchanges, development of common programmes and certification, and utilization of available facilities. Rationalized and planned resource utilization will avoid duplication and encourage economies of scale. As a consequence, an environment will be created where there will be free mobility of skills across the region.

The growth of the minerals industry in the region during the last few years has forced many countries to develop technician-training level courses to service the industry. New mineral-related courses have been introduced at more universities in the region, for example at the Universities of Namibia and Botswana.

The skills development backlog in SADC necessitates starting at adult literacy and numeracy training programmes. The low literacy levels are a constraint to meaningful empowerment in the sector as they limit the ability to grasp business skills. Higher literacy levels allow for increased efficiency through ability to assimilate new technologies

Some countries link the granting of mineral development rights to skills development and capacity-building programmes. The different approaches employed by SADC countries to entice mining companies to invest in manpower training are given in Box 7.

Box 7: Current instruments to encourage manpower training in SADC

1. Mandatory skills and local capacity development;
2. Allowable deductions through tax relief on actual expenditure on skills development;
3. Tax rebates on the training of nationals and national qualification authorities, and,
4. Mandatory skills levies used by government to develop appropriate qualifications and support programmes.

Recommendations for harmonization of human resources and skills development

1. Member States should encourage industry participation in professional training and development programmes through the provision of fiscal incentives to encourage skills development programmes. The partnership between education institutions, government departments and the mining industry in developing skills and numeracy programmes should be strengthened;

2. An assessment of skills deficiencies in the mining industries of SADC should be undertaken by Member States and used to develop benchmarks for each country and the SADC as a whole. An active database on mining skills in the region should be developed and maintained;

3. Member States should create an environment to facilitate the mobility of skills across SADC through standardization of qualifications and a reduction in immigration restrictions;

4. Member States must continue to develop mining-related skills development programmes up to technician level. Once these are established, States can gradually increase capacity to offer higher learning programmes if the demand for graduates justifies such expansion;

5. Companies should be required to present social and labour plans as part of the package for accessing mine development rights;

6. Member States should promote a regional approach to skills development through sharing and utilization of existing training infrastructure; and

7. Companies should be required to train employees in alternative skills as a social obligation. This will enable employees to better manage downscaling.

4.9 Gender

As in many other countries worldwide, the empowerment of women is a growing issue of concern in SADC (Annex 6 shows gender approaches in the region). The Beijing Platform for Action (BPFA) outlined clear areas where challenges need to be addressed to enhance the status of women worldwide. The Beijing Decade Review in 2004 noted that a few countries had met their obligations. All SADC countries have ministries responsible for gender issues.

Participation of women in the minerals sector has historically been low compared to that of men. Factors such as the lack of required skills and taboos have contributed to the low participation of women in the sector. On average, the SADC minerals sector draws about five per cent of its labour force from women. The proportion of women in the sector is much higher in ASM when women are carriers of ore, providers of ancillary services and are responsible for marketing output.

Commendable progress has been made on gender issues in the SADC over the last decade. The September 1997 SADC declaration on Gender and Development included the following specific targets on women issues in the region:

- Achieve 30 percent women in decision-making structures by 2005;
- Empower women through access to, and control over, productive resources; and,
- Amend Constitutions accordingly.

The encouragement of women's participation in mining is one of the objectives of the African Mining Partnership (AMP). Yet, no concrete and targeted programmes are in place to resolve gender issues in the minerals industry.

Education, training and skill retention are key to the sustainable integration of women as they currently lack the required skills to enter the sector.

Cultural barriers are a prominent source of gender inequality in Southern Africa. Stereotypes are known to block the development process, which further inhibits the attainment of gender equity. Various forms of discrimination have been found to be associated with a negative image of women. Although this situation is not specific to the minerals sector, it is however even more true of traditionally male-dominated sectors such as mining, where the worst forms of discrimination are known to exist.

Women's empowerment would be best monitored through the establishment of strong specialized associations and institutions. SADC's continuous support could also be expected by existing women's organizations such as the African Women in Mining Network, Association of Women in Mining in SADC and the SADC Women in Mining Trust. Strengthening capacity in Mining Ministries and establishing strong networks will assist with economic empowerment of women in the mining sector. Unfortunately, the SADC Mining Protocol is silent on the participation of women in mining. Issues of gender and women are provided for under general principles in article 2, which states that member States shall promote economic empowerment of the historically disadvantaged in the mining sector.

The weakness of machinery for law enforcement, advocacy and sensitization is noticeable when dealing with issues of protection of girls and women from all forms of violence. Women in the minerals sector often face forms of violence and are exposed to situations in which they are vulnerable. Other challenges include: cumulative effects of HIV and AIDS; tuberculosis and malaria; food insecurity; low economic productivity; low levels of education; abusive child labour practices; and, increased sexual violence.

Recommendations for harmonization on gender issues

1. Member States should revise Constitutions to include specific provisions for gender equality and equity enforcement and develop targeted policies to empower women in mining and/or support gender equality in mining policies with appropriate legislation;

2. All countries should apply the 50/50 gender equality principle as a regional goal and annual targets should be set on the number of women to be recruited in senior positions at Ministries of Mines, schools of mines and in mining companies. Attainment of annual targets should be monitored;

3. Member States must develop and implement education programmes to increase women's access, adaptability in the minerals industry and ensure retention of skilled women in the minerals sector. Training programmes should be extended to include officers in the Ministries of Mines;

4. Member States should introduce communication and sensitization programmes to remove resistance against women empowerment and to remove cultural barriers preventing women's effective participation and contribution to the sector and develop and apply punitive policy measures aimed at discouraging discrimination against women in the minerals sector;

5. Member States should adopt an "Affirmative action" approach to foster the enrolment of women in technical and other key disciplines for minerals development in the SADC region;

6. Member States should ensure that existing associations of women in mining are given adequate support, including organizational strengthening and financial resources. Local chapters of the Women in Mining Forum should be supported through direct funding by States. Member States should facilitate the creation of strong women miner's networks and link these with rural women groups. Given the importance of the ASM sector in poverty alleviation and the large number of women in the sector, adequate resources should be deployed to support their associations and networks;

7. Member States should address social issues associated with women in mining effectively and involve women in the adoption of minerals policies that tackle human rights issues;

8. Member States should strengthen and/or create national Gender and Women in Development Policies in order to guide empowerment of women in the mining sector. In the medium term, initiatives similar to the empowerment charters in South Africa, should guide the women empowerment process in the region; and,

9. Member States should develop educational programmes aimed at both increasing men's sensitivity to women issues and women's empowerment in all sectors of minerals development. Support to National Gender Policies needs to be strengthened in member States. Member States should tackle the removal of cultural barriers to women empowerment collectively.

Notes

[1] The definition of taxable income is affected by allowed cost deductions from the revenue amount.

[2] Although not strictly a tax, mineral royalties are normally governed by the tax authority in administration. Mineral royalties are meant as compensation for the 'loss' of the national asset and are therefore different to the fiscal instruments.

5.0 Summary of the Harmonized Framework for Southern Africa

5

The regional framework summarized in this chapter is derived from discussions in the previous sections and encompasses the elements of the mineral sector engagement that member States practice. This chapter summarizes what benchmarks the member States should set within the international context towards developing a common approach to the minerals sector.

5.1 Mineral Policies

1. Member States should articulate mineral policies in accordance with the regional template. The policies should be informed by the principles of stability, consistency, stakeholder dialogue, management of expectations, social obligations, tradability of mineral rights and integrated land use planning and development plans.

5.2 Political, Economic and Social Environment

1. Member States should continue to manage the impact of HIV/AIDS as outlined in the SADC Framework Document;

2. Member States should develop economic strategies to reduce unemployment in the region including supporting the informal sector and small-scale industries and collectively develop strategies to attract FDI; and,

3. Member States should strive for macroeconomic and political stability.

5.3 General Investment Regulations

1. Member States should reserve the right of the state to acquire local equity stakes in mineral development projects on commercial terms; and,

2. Member States should gradually and cautiously reduce exchange controls.

5.4 Mining Fiscal Environment

International tax issues

1. Member States should sign tax treaties with the home countries of investors to avoid double taxation on the investor;

2. States should use withholding taxes but set rates at internationally competitive rates;

3. States should provide relief for import and export duties on minerals sector items; and,

4. Member States should protect the domestic tax base by introducing transfer-pricing rules based on OECD (arm's length) principles.

National tax issues

1. Member States should enter into tax stability agreements only as a temporary measure;

2. Member States should ensure that the minimum tax rate is kept at an internationally competitive minimum;

3. Member States should introduce APT to share bonanza profits over and above the required investor return on investment;

4. Member States should remove tax holidays from the regional framework;

5. States should allow for accelerated amortization and depreciation schedules for the treatment of exploration and mine development expenditures;

6. Member States should introduce countrywide tax ring fences for the treatment of exploration costs;

7. Member States should limit either the period of loss carry forward or the cost amount as determined in the income tax calculation;

8. States should consider using depreciation schedules for capital equipment based on the item's useful life; and,

9. Member States should consider including realized capital gains (or a portion thereof) in the annual income tax calculation.

Local Government/Regional tax issues

1. Member States should ensure that the local taxes are kept to a minimum to reduce adverse impact on attractiveness of particular regions.

5.5 Mineral Administration and Development Systems

1. Member States should create simplified, transparent one-stop mineral administration systems within the appropriate ministries;

2. States should consider the merits of each application for an exploration licence separately and negotiate an appropriate size of area after taking the circumstances (uniqueness) of the application, the credibility of the applicant, the work programme and national and regional policy objectives into account;

3. Member States should limit the initial term for issuing exploration licences in order to reflect the exploration commitments in the work programme and make them renewable once for a shorter period. Provision for relinquishment should be made to enforce the 'use-it-or-lose-it' principle, as holders should demonstrate work.

4. Member States must make it mandatory for holders of exploration and mining rights to regularly submit information in a standardized format, and upon the expiry of the right, issue the state with a detailed report of exploration and mining activities;

5. Member States should integrate their geological information into a regional information management system, allowing for a regional interpretation and join publication;

6. Member States should provide for automatic progression from exploration to mining for those holders of exploration rights who comply with the rules;

7. Member States should give consideration to issuing mining rights initially for a sufficient duration to firstly, conform to the business plan and secondly, allow holders to realize the required return on the initial investment;

8. Member States should introduce internationally competitive mineral royalties as compensation for mineral depletion. Royalty rates should be mineral-specific;

9. Member States should introduce an exploration fee structure that encourages exploration, avoids sterilization and is linked to work programmes;

10. Member States must establish surface rental fees by the property market, which will require negotiated rates with landowners. For state land, the rates could be standardized but reviewed t regularly to reflect market values; and,

11. Member States should introduce incentives to stimulate specific policy objectives, such as economic development in mining areas, and the creation of value-adding (mineral beneficiation) industries.

Mineral Beneficiation

1. Member States must identify and analyse minerals that have potential for value addition in the region and work on beneficiation projects on a regional scale;

2. Member States must review the supporting infrastructure (transport, energy and water), technology, skills and other inputs for value addition;

3. Member States must strengthen the regional markets for value added mineral products; and,

4. Member States should support initiatives of producer associations like MIASA to deal with barriers to value addition, appropriate incentives should be provided.

Minerals Clusters

1. Member States should adopt a collaborative approach to applied R&D in the area of cluster development, emphasizing the need for further beneficiation of minerals and the provision of mineral transport infrastructure in the region.

Minerals Marketing

1. Member States should leave the marketing of minerals to the free market and only monitor through the responsible ministry. Assistance in marketing should be reserved for the artisanal and small-scale mining sector;

2. Member States should identify suitable niche markets for marketing of unique products like African-design jewellery; and,

3. Member States should develop a database of tariff and non-tariff barriers for target countries for use of regional producers and also develop a regional tariff schedule.

Participation in Ownership and Management

1. States should impose reasonable social obligations upon holders of exploration and mining licences and should make commitment to social obligations a requirement for the granting and renewing of exploration and mining licences; and,

2. Member states should encourage mining companies and state mining organizations to provide free literacy and numerous programmes to the communities within which they operate.

Environmental Management

1. Member States should incorporate similar principles on integrated environmental management, similar legislation and implementation mechanisms, regulations on basic environmental impact assessments before the granting of exploration rights. For mining rights, the international principles of integrated environmental management should apply for all projects;

2. Member States should make it mandatory for mining companies to provide for rehabilitation of land and pay for adverse impacts on community livelihoods;

3. Member States should incorporate post-mining use of land issues into the process of granting exploration and mining licences;

4. Member States must incorporate multiple land use planning into the licence granting process; and,

5. Member States must introduce a Minerals Development Fund to include provision for environmental disasters and social decline as a consequence of mining in their legislation.

Governance

1. Member States should introduce sustainable development objectives into mineral law;

2. States should ensure security and continuity of tenure with reasonable exclusivity, enforceability and transferability of rights;

3. Member States should put in place programmes towards meaningful empowerment and participation of nationals to empower locals to manage benefits of mineral exploitation;

4. States should link corporate social responsibility programmes with the granting of exploration and mineral development rights; and,

5. Member States should establish Broad-Based Mineral Boards to act as advisor and public watchdog in minerals administration. These Boards must link with the SADC Mining Sector Secretariat and minerals industry associations in the region, for example, MIASA.

5.6 Artisanal and Small-Scale Mining (ASM)

1. SADC member States should develop specific and appropriate legislation for the ASM sector and allocate resources for administration of relevant legislation, training and education in the sub-sector, providing support for the development of cooperatives; and assisting with seed finance, marketing of output and other technical matters;

2. Member States should revisit mineral policies in order to assess how the link between mining and poverty alleviation is addressed and how ASM is factored into Poverty Reduction Strategies;

3. Member States should review existing ASM policies and legislation with implications for traditional land rights and the role of central government in land allocation;

4. Member states increase awareness on the benefits of adding value to mineral commodities through education and increase value addition through establishing appropriate processing industries;

5. Member States should designate certain areas of known mineral potential for ASM and reserve the right to operate these designated areas exclusively for their nationals;

6. Member States should develop special mineral development rights for the sector that are simple to apply for, easy to comply with, transferable and give adequate security of tenure. Allocate the issuing, registering and managing ASM rights to regional authorities but co-ordinated by the central ministry in Member States;

7. Member States should develop, adopt and enforce appropriate and uniform health, safety and environmental guidelines for the sector;

8. Member States should establish partnerships involving government, miners, NGOs, finance institutions, the formal mining sector, manufacturers of suitable ASM mining equipment and professional organizations to tackle problems in the sector;

9. Member States should enact policies to remove barriers to the participation of women in the sector;

10. Member States should ensure that employment and working conditions for miners are within internationally accepted standards through enforcing the adoption of health, safety and environmental standards;

11. Member States should make employment of child labour a punishable offence;

12. Member States should strengthen institutions dealing with training on HIV/AIDS and STDs;

13. Member States should ensure that the ASM sector is integrated into rural community development programmes;

14. Member States should facilitate access to basic social services and transport infrastructure by the sector;

15. Member States should simplify the ASM taxation regime by introducing a standard tax based on a percentage of gross income and this rate should include all taxes, levies, mineral royalties and other payments to the state;

16. Member States must develop administrative structures within Ministries to provide assistance to the sector;

17. Member States should make mineral rights tradeable to enable miners to use them as collateral in order to access finance from commercial banks;

18. Governments should provide the necessary environment in which miners can operate and also in which various stakeholders can participate effectively in the development of the sub-sector;

19. Member States should provide for networking and knowledge-sharing activities to ensure that mistakes are not repeated, already proven technological advances and ideas are not re-invented and lessons learned in one context are made freely available to others;

20. Member States should establish specific credit, savings and loan schemes to assist with technology and human resources, to finance ASM, and train participants in the ASM sub-sector; and,

21. Member States should establish flexible, equitable and free marketing systems to purchase legal mineral production from ASM at market-related prices.

5.7 Research and Development (R&D)

1. Regional governments should take the lead in funding fundamental research and encourage industry participation in funding applied research programmes in the mineral sector;

2. Member States should develop and maintain regional centres of excellence on R&D. These centres must develop and maintain links; establish networks; and share resources, capacity and research outcomes with similar organizations;

3. Member States should collaborate in research, encourage skills and technology transfers within the region;

4. Governments must provide some support and reward for research outcomes that address specific SADC problems. Cooperation with the private sector in R&D activities is important; and,

5. Member States should encourage technological innovation, support development of small-scale sector to fabricate for local markets and develop a sector strategy to include R&D, training, marketing, finance, technology and management skills.

5.8 Human Resources and Skills Development

1. Member States should encourage industry participation in professional training and development programmes through the provision of fiscal incentives to encourage skills development programmes;

2. The region should assess skills deficiencies in the regional minerals industry and develop and maintain an active database on mining skills;

3. Member States should create an environment to facilitate the mobility of skills across SADC through standardization of qualifications and a reduction in immigration restrictions;

4. Member States must continue to develop mining-related skills development programmes;

5. Member States should require companies to present social and labour plans as part of the package for accessing mine development rights and encourage companies to train employees in alternative skills in order to manage downscaling; and,

6. Member States should promote a regional approach to skills development through sharing and utilization of existing training infrastructure.

5.9 Gender

1. Member States should revise Constitutions, where this has not been done, to include specific provisions for gender equality and equity enforcement and develop targeted policies to empower women in mining and/or support gender equality in mining policies with appropriate legislation;

2. The 50/50 gender equality principle should be applied as a regional goal and annual targets should be set on the number of women to be recruited in senior positions at Ministries of Mines, schools of mines and in mining companies. Attainment of annual targets should be monitored;

3. Member States must develop and implement education programmes to increase women's access, adaptability in the minerals industry and ensure retention of skilled women in the minerals sector. Training programmes should be extended to include officers in the Ministries of Mines;

4. Member States should introduce communication and sensitization programmes to remove resistance against women empowerment and to remove cultural barriers preventing women's effective participation and contribution to the sector and develop and apply punitive policy measures aimed at discouraging discrimination against women in the minerals sector;

5. Member States should adopt an "Affirmative action" approach to foster the enrolment of women in technical and other key disciplines for minerals development in the SADC region;

6. Member States should provide financial and organizational support and strengthen local chapters of the Women in Mining Forum;

7. Member States should facilitate the creation of strong women miner's networks and link these with rural women groups and deploy resources to these associations and networks;

8. Member States should address social issues associated with women in mining effectively and involve women in the adoption of minerals policies that tackle Human Rights issues;

9. Member States should strengthen and/or create national Gender and Women in Development Policies in order to guide empowerment of women in the mining sector. In the medium term, initiatives similar to the empowerment charters in South Africa, should guide the women empowerment process in the region; and,

10. Member States should develop educational programmes aimed at both increasing men's sensitivity to women issues and women's empowerment in all sectors of minerals development. Support to National Gender Policies need to the strengthened in member States. Member States should tackle the removal of cultural barriers to women empowerment.

6.0 Milestones Towards Harmonization in the Southern African Minerals Industry

6

Harmonization is an essential step towards deeper cooperation among member States in fulfilment of the SADC Common Agenda. However, not all harmonization objectives will be met simultaneously due to limited resources and the intricacies involved in merging systems in different countries. Also, some objectives will rely on the successful outcome from other related objectives. The harmonization process is gradual and, as can be seen in Table 6, it has varying time frames – including immediate, short term and long-term time frames. Each time frame is associated with attainment of specific objectives.

6.1 Immediate Milestones

Immediate action should be taken by member States to standardize and align policies, taking into account activities in other sectors as defined in SADC's 15 year RISDP Operationalization Outlook. Areas of immediate standardization are geology (nomenclature, reporting, etc.), mineral valuation standards, and health and safety issues. For policy alignment, member States could immediately work on environmental requirements, institutional framework, artisanal mining, small-scale mining, and product security.

6.2 Short Term Milestones

The second stage of the harmonization strategy will consist of the standardization of technical and engineering requirements, skills, training and qualifications and environmental regulations in the sector. In the short-term, policy alignment will be in the following areas: exploration and mining licensing; mining fiscal regime; minerals marketing; social obligations and regulations; infrastructure for minerals development (energy, transport, water, etc.); and, gender parity.

Table 6: Milestones Standardization and Policy Alignment in the Southern African Minerals Industry

AREAS OF HARMONIZATION	MAJOR COMPONENTS	TIME FRAME FOR ACHIEVEMENT OF HARMONIZATION		
		IMMEDIATE -TERM (Up to 2 years)	SHORT TERM (2-5 years)	MEDIUM TERM (5 to 10 years)
STANDARDIZATION	Technical and Engineering requirements		♦	
	Geology	♦		
	Health and safety	♦		
	Skills, training and Qualifications		♦	
	Environmental Regulations		♦	
	Social Obligations and Regulations			♦
	Mineral Valuation standards	♦		
POLICY ALIGNMENT	Exploration and Mining licensing		♦	
	Land rights and tenure			♦
	Mining Fiscal regime		♦	
	Minerals Marketing		♦	
	Minerals Processing and Value Addition			♦
	Minerals Cluster Development	♦		
	Environmental Requirements	♦		
	Social Obligations and Regulations		♦	
	Institutional Framework	♦		
	Infrastructure for minerals development (energy, transport, water)			♦
	Artisanal Mining		♦	
	Small Scale Mining		♦	
	Gender Parity		♦	
	Labour Policies			♦
	Cross-border movement of minerals skills			♦
	Cross-border movement of capital, minerals, goods and services			♦
	Investment Regulations	♦		
	Economic and Political Framework			♦
	Customs and tariffs Harmonization			♦
	Product Security	♦		

6.3 Medium Term Milestones

The third stage of the harmonization strategy will consist of: standardization in social obligations and regulations and policy alignment in land rights and tenure; minerals processing and value-addition; labour policies; cross-border movement of mineral skills; cross-border movement of capital, minerals, goods and services; and, customs and tariffs.

The expectation is that after a ten-year period, the minerals industry environment within Southern Africa will be harmonized with a similar operating framework.

6.4 Championing Harmonization

The process of standardization and policy alignment will gradually generate a harmonized environment in the minerals industry in Southern Africa. A tracking system is required to follow through on progress to ensure that targets are met and where problems are identified, appropriate adjustments are made. It has to be recognized that in this dynamic minerals sector, parameters and conditions keep changing and these require intermediate modifications or adjustments to the framework to maintain competitiveness. Progress monitoring and periodic reporting are important to ensure continued relevance of the model.

The regional harmonization effort requires a champion mandated over the suggested time frame to run with the process and drive it to its logical conclusion. The champion will ensure that member States adhere to milestones. An evaluation mechanism should be put in place to ensure that the region ultimately benefits from integration and the sharing of competencies in the minerals industry.

The region's harmonization programme and strategy could eventually be consolidated into a NEPAD agenda that is applicable to the African continent.

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Annexes

Annex 1 The Political Economy of SADC Member States

DESCRIPTION	ANGOLA	BOTSWANA	DRC	LESOTHO
Population (2001)	14 million	1.8 million	52 million	2 million
Population growth (2001 – 2015)	2.6 per cent (Estimate)	0,5 per cent pa	2.6 per cent	0.8 per cent (Estimate)
Surface area	1 247 000 km^2	582 000 km^2	2,345,000 km^2	30 000 km^2
GDP (2002)	US$ 16.9 billion	US$ 5 853 million	US$ 35.62 billion	US$714 million
GDP Growth (2001)	+3.2 per cent	6,3 per cent	6 per cent	4 per cent
Tax Revenue/GDP (2001)	Not available		Not available	Not available
Unemployment (2001)	Not available		Not available	Not available
Population below international poverty line	Not available	50,1 per cent		66 per cent on < US$2 per day
International investment position (2000)	US$ 2 146 million	US$ +790,4	US$ 331 million	Not available
Inflation (2002)	119 per cent	8,0 per cent	360 per cent	34 per cent
Exchange rate (December 2002)	43.53 Kwanza = US$1	1US$ = P5.4675	1US$ = 346 Congo Franks	10.54 Loti = US$1
Nominal treasury (risk-free) rate (2002)	49 per cent		Not specified	11 per cent
Interest rate (2002)	97 per cent	15,3 per cent	140 per cent	16 per cent

DESCRIPTION	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA
Population (2001)	11 million	18 million	2 million	43 million
Population growth (2001 – 2015)	1.8 per cent	1.6 per cent	1.2 per cent (estimated)	0.4 per cent (Estimate)
Surface area	118,000km^2	802 000 km^2	824 km^2	1 221 km^2
GDP (2002)	US$1 345 million	US$3 469 million	US$3 901 million	US$106 347 million
GDP Growth (2001)	-1.5 per cent	13.9 per cent	2.7 per cent	+1.2 per cent
Tax Revenue/GDP (2001)	Not available		29.9 per cent	26.5 per cent
Unemployment (2001)	Not available 76.1 per cent on		35 per cent	23.3 per cent
Population below international poverty line	< US$2 per day	78.4 per cent < US$1/Day		14,5 per cent on < US$2 per day
International investment position (2000)	Not available	+US$255.4 million	US$+1 231 million	US$11 126 million+
Inflation (2002)	14.8 per cent	16.8 per cent	11.4 per cent	8.9 per cent
Exchange rate (December 2002)	76.7 Kwacha = US$1	1US$ = 23 854 Meticais	N$8.64 = $1US	10.54 ZAR = US$1
Nominal treasury (risk-free) rate (2002)	42.4 per cent	24.8 per cent	11.0 per cent	11.2 per cent
Interest rate (2002)	50.5 per cent	26.7 per cent	13.8 per cent	13.5 per cent

DESCRIPTION	SWAZILAND	TANZANIA	ZAMBIA	ZIMBABWE
Population (2001)	1.1 million	36 million	10 million	12.8 million
Population growth (2001 – 2015)	1.2 per cent (Estimate)	2.9 per cent per annum	1.2 per cent	0.6 per cent
Surface area	17,000km^2	945 090 km^2	753,000km^2	391,000km^2
GDP (2002)	US$1 422 million	US$ 9 119 million	$8.9 billion	$26.07 billion
GDP Growth (2001)	1.6 per cent	5.7 per cent	4.2 per cent	-8.4 per cent
Tax Revenue/GDP (2001)	26.6 per cent	Not available		Not available
Unemployment (2001)	Not available	Not available	50 per cent	70 per cent
Population below international poverty line	40 per cent below national poverty line	60 per cent below US$2 per day	87.4 per cent<US$2/Day	64.2 per cent<US$2/Day
International investment position (2000)	US$442 million+	US$ 1 878 million		Not available
Inflation (2002)	12 per cent	5.1 per cent	21 per cent	140 per cent
Exchange rate (December 2002)	8.64 Lilangeni = US$1	US$1 = TZS 976	1US$ = 4 334 Kwacha	1US$ = 55.04Z$
Nominal treasury (risk-free) rate (2002)	8.6 per cent	3.6 per cent	34.5 per cent	28.5 per cent
Interest rate (2002)	13.5 per cent	9.2 per cent	45.2 per cent	36.5 per cent

Annex 2: Foreign Investment Regulations/Requirements in SADC Member States

DESCRIPTION	ANGOLA	BOTSWANA	DRC	LESOTHO
Foreign ownership allowed		85 - 100 per cent	Not specified	100 per cent
Compulsory government share	10 - 15 per cent free	15 per cent paid equity, optional	Yes	0 per cent
Foreign exchange controls	Fairly strict control	Limited	Limited	Yes, outside CMA
Transfer pricing requirements			Not specified	None

DESCRIPTION	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA
Foreign ownership allowed	100 per cent	100 per cent	100 per cent	100 per cent
Compulsory government share	0 per cent	0 per cent	0 per cent	0 per cent
Foreign exchange controls	Limited	Limited	Limited	Limited
Transfer pricing requirements	None	Arm's-length	Arm's-length	Yes, OECD

DESCRIPTION	SWAZILAND	TANZANIA	ZAMBIA	ZIMBABWE
Foreign ownership allowed	Not available	100 per cent	100 per cent	100 per cent
Compulsory government share	50 per cent, of which 25 per cent is free	None	0 per cent	0 per cent
Foreign exchange controls	Limited	Limited	None	Yes
Transfer pricing requirements	None	Arm's-length		Arm's-length

Annex 3: Mining Fiscal Regimes of SADC Member States

DESCRIPTION	ANGOLA	BOTSWANA	DRC	LESOTHO
Tax stability agreements		Yes	Yes	No
Corporate tax rate (national)	25 per cent - 45 per cent	15 per cent	40 per cent	37 per cent
Branch office tax		25 per cent	40 per cent	Same as corporate rate
Income tax credits for foreigners	None	No	No	Not specified
Corporate tax on oil and gas			Negotiable	Not available
Tax base		Botswana only	DRC	Lesotho income only
Minimum corporate tax		No	No	None
Additional profits tax		10 per cent	0 per cent	None
Tax holidays (years)	0, but negotiable	No	3 – 7 years	No
Tax treaties	No	Yes	Yes	Yes
Deduct exploration/development costs	Accelerated	100 per cent in first year	Negotiable	100 per cent over 5 years
Capital/depletion allowance	0	0 per cent	15 per cent of sales value	Discretionary
Ring fencing		Yes	Negotiable	Not specified
Forward carry of losses	5 years	Indefinitely	2 years	Yes
Backward carry of losses	No	Not allowed	None	No
Maximum cost deduction		No	Not specified	No
Depreciation		10 – 25 per cent	3 - 33 per cent straight line	10 - 25 per cent
Capital gains tax	10 per cent - 15 per cent	15 per cent	40 per cent	None
Tax on assets		No	0.30 - 1.50US$	No
Value added /sales tax		10 per cent	Average 15 per cent	14 per cent (introduced in 2003)
Fuel tax		Yes	Not specified	Not specified
Repatriation/dividend/withholding tax	15 per cent	15 per cent	20 per cent	25 per cent
Import duties	Mining exempt	Yes, SACU exemptions	3 per cent	0 - 15 per cent for mining
Export duties	Negotiable	0 per cent	3 per cent	Not specified
Payroll tax	Yes		1 per cent Education levy	Yes
Land tax		Transfer duty of 5 per cent	Not specified	No
Provincial (State) taxes		No	Not specified	No
Municipal taxes		Services	Services	Services

DESCRIPTION	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA
Tax stability agreements	No	No	None	None
Corporate tax rate (national)	15 – 30 per cent	35 per cent	35 per cent - 60 per cent	30 - 35 per cent
Branch office tax	20 – 35 per cent	35 per cent	35 per cent - 60 per cent	35 per cent
Income tax credits for foreigners	According to tax treaty	According to tax treaty	None	None
Corporate tax on oil and gas	Not available	Not available	42 per cent	58 per cent
Tax base	Malawian income only	Domestic + 1/3rd foreign	Namibian only	International income
Minimum corporate tax	1 – 12 per cent	Municipal property tax	0 per cent	0 per cent
Additional profits tax	Mining exempt	15 per cent surtax	25 per cent	0 per cent
Tax holidays (years)	Discretionary 10 years	Discretionary 10 years	None	0
Tax treaties	Yes	Yes	Yes	Yes, continuously updated
Deduct exploration/ development costs	Yes, over 5 years	33,3 per cent, see text	Yes, 100 per cent in year 1	Yes, 100 per cent
Capital/depletion allowance	Discretionary 20 – 40 per cent	0 per cent	No	0 per cent
Ring fencing	No	Limited	Yes (Oil and gas)	Yes
Forward carry of losses	Indefinitely (discretionary)	Limited to 3 years	Yes, indefinitely	Yes, indefinitely, indexed
Backward carry of losses	No	No	No	Not permitted
Maximum cost deduction	No	No	Unlimited	Unlimited
Depreciation	20 per cent	2 – 25 per cent Straight line	4 - 33 per cent straight line	20-100 per cent Straight line
Capital gains tax	30 –35 per cent	18 per cent	0 per cent	15 per cent
Tax on assets	No	7.25 - 14 per cent	0 per cent	0 per cent
Value added /sales tax	0 per cent	17 per cent	15 per cent	14 per cent
Fuel tax	Not available		Yes	Yes, 33 per cent of pump price
Repatriation/dividend/ withholding tax	10 per cent	18 per cent, 10 years exemption	0 - 10 per cent	12,5 per cent STC, see text
Import duties	Discretionary exemption	5 per cent, Mining exempt	14 per cent	0 per cent
Export duties	Discretionary exemption	Mining exempt	10 per cent diamond exempt	0 per cent
Payroll tax	2 per cent on payroll	0 - 30 per cent	Yes	Yes
Land tax	Yes	Yes	No	Mining exempt
Provincial (State) taxes	None	None	No	0 per cent
Municipal taxes	Services	0.2 – 1 per cent on property	Services	Services

DESCRIPTION	SWAZILAND	TANZANIA	ZAMBIA	ZIMBABWE
Tax stability agreements	No	Full project life	No	No
Corporate tax rate (national)	27 per cent - 37.5 per cent	22.5 – 30 per cent	30 per cent	15 per cent - 30 per cent
Branch office tax	Same as corporate tax	35 per cent	35 per cent	Same Corporate tax rate
Income tax credits for foreigners	According to tax treaty	Yes	Yes	No
Corporate tax on oil and gas	Not available	Not specified		Not specified
Tax base	Swaziland income only	Worldwide income	Worldwide income	Zim + part of international
Minimum corporate tax	0 per cent	No	15 per cent	15 per cent
Additional profits tax	0 per cent	0 per cent	None	3 per cent AIDS surcharge
Tax holidays (years)	Discretionary 5 years	10 years for EPZ	3 – 5 years for ASM	0
Tax treaties	Yes	Yes	Yes	Yes
Deduct exploration/ development costs	100 per cent	Immediate	100 per cent	100 per cent, Immediate
Capital/depletion allowance	Yes, 3 per cent for unreduced capital	15 per cent on unred capital	No	No
Ring fencing	Not available	Not specified		None for Zim expenditure
Forward carry of losses	Yes	Unlimited	Maximum 10 years	6 years, mining indefinite
Backward carry of losses	No	No	Restricted to farming	No
Maximum cost deduction	No	No	No	No
Depreciation	10 – 33.3 per cent	12.5 – 37.5 per cent straight line	5 – 100 per cent	Accel y1 = 50 per cent, 2&3 = 25 per cent
Capital gains tax	0 per cent	10 per cent	None	20 per cent
Tax on assets	0 per cent	Municipal property tax	2.5 per cent upon transfer	No
Value added /sales tax	14 per cent	20 per cent	17.5 per cent	15 per cent
Fuel tax	Not available	Yes		Not specified
Repatriation/dividend/ withholding tax	12.5 - 15 per cent	5 - 10 per cent	10 per cent	20 per cent
Import duties	Discretionary exemption	5 per cent, Mining exempt	Mining exempt	Mining exempt
Export duties	Discretionary exemption	Mining exempt		Mining exempt
Payroll tax	0 per cent – 33 per cent	4 per cent		Not specified
Land tax	See surface rent	Municipal property tax	Yes	Land reform programme
Provincial (State) taxes	None	No		No
Municipal taxes	Services	Property tax on value		Property taxes and services

Annex 4 Minerals Administration Systems in SADC states

DESCRIPTION	ANGOLA	BOTSWANA	DRC	LESOTHO
State Agency	Ministry: Geology & Mines	Geol. Survey/Dept Mines	Ministry: Mines & Energy	Ministry: Natural resources
Reconnaissance licence	No	No	No	No
Retention licence	No	Yes	Negotiable	No
Exploration licence:	Yes	Yes	Negotiable, no details available	Yes
Exploration fee	Prescribed	Prescribed		Prescribed
Maximum size (ha)	Negotiable	10 000 000 ha		4 ha
Duration (months)	60	36		Negotiable
Renewal (months)	Negotiable	24 + 24 = 48		Negotiable
Relinquish areas	50 per cent of area	50 per cent of area		No
Minimum spending	Yes	No		No
Work to program	Yes	Yes		Weak requirement
Environmental plan	No	No		No
Social requirement	No	No		No
Reporting requirement	Yes	Yes		No
Rights	Holder may convert	Holder may convert		Holder may convert
Mining licence:	Yes	Yes	Negotiable, no details available	Yes
Mining fee	Prescribed	Prescribed		Prescribed
Duration (years)	Negotiable	25		Negotiable
Renewal	Negotiable	25		Negotiable
Minimum spending	No	No		No
Work to program	Yes	Yes		Weak requirement
Environmental plan	Weak requirement	Weak requirement		Weak requirement
Social requirement	No	No		No
Reporting requirement	Yes	Yes		No
Rights	Exclusive	Exclusive		Exclusive
Other	Government participation	Government participation		Land owner compensation

DESCRIPTION	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA
State Agency	Ministry: Natural Res & Env	Ministry:Mineral Res & Energy	Ministry: Mines & Energy	Dept: Minerals & Energy
Reconnaissance licence	Yes	Yes	Yes	Yes
Retention licence	No	No	Yes	Yes
Exploration licence:	Yes	Yes	Yes	Yes
Exploration fee	Prescribed	Prescribed	Prescribed	Prescribed
Maximum size (ha)	250 000 ha	Negotiable	100 000 ha	Negotiable
Duration (months)	36	48	36	60
Renewal (months)	24 + 24 = 48	24	48	36
Relinquish areas	Yes	50 per cent of area	50 per cent of area	No
Minimum spending	No	Yes	No	No
Work to program	Yes	Yes	Yes	Yes
Environmental plan	Yes	No	Yes	Yes
Social requirement	Yes	No	No	No
Reporting requirement	Yes	Yes	Yes	Yes
Rights	Holder may convert	Holder may convert	Holder may convert	May convert/Registrable
Mining licence:	Yes	Yes	Yes	Yes
Mining fee	Prescribed	Prescribed	Prescribed	Prescribed
Duration (years)	25	25	25	30
Renewal	15	15	15	30
Minimum spending	No	No	No	No
Work to program	Yes	Yes	Yes	Yes
Environmental plan	Yes	Yes	Yes	Yes
Social requirement	Yes	No	Notice of downscaling	Yes
Reporting requirement	Yes	Yes	Yes	Yes
Rights	Exclusive	Exclusive	Exclusive	Exclusive/Registrable
Other	New mineral policy	Holder entitled to land rights	New mineral policy	Sustainable development

DESCRIPTION	SWAZILAND	TANZANIA	ZAMBIA	ZIMBABWE
State Agency	Min: Natural Res & En + Ngwenyama	Min: M&E/Commissioner of Mineral Resources	Min: Mines & Mineral Development	Min: Mines and Mining Development
Reconnaissance licence	No	Yes	Yes	No
Retention licence	No	Yes	Yes	No
Exploration licence:	Yes	Yes	Yes	Yes
Exploration fee	Prescribed	Prescribed	Prescribed	Prescribed
Maximum size (ha)	Negotiable	Negotiable	Negotiable	130 000 ha
Duration (months)	Negotiable	36	24	36
Renewal (months)	Negotiable	24 + 24 = 48	24 + 24 = 48	36
Relinquish areas	No	50 per cent of area	50 per cent of area	No
Minimum spending	No	No	Yes	No
Work to program	Weak requirement	Yes	Yes	Yes
Environmental plan	No	No	Yes	No
Social requirement	No	Yes	Yes	No
Reporting requirement	Yes	Yes	Yes	Yes
Rights	Holder may convert	Stability agreement possible	Holder may convert	Holder may convert
Mining licence:	Yes	Yes	Yes	Yes
Mining fee	Prescribed	Prescribed	Prescribed	Prescribed
Duration (years)	21	25	25	25
Renewal	21	15	25	10
Minimum spending	No	No	No	No
Work to program	Weak requirement	Yes	Yes	Yes
Environmental plan	No	Yes	Yes	No
Social requirement	No	Yes	Yes	No
Reporting requirement	Yes	Yes	Yes	Yes
Rights	Exclusive	Stability agreement possible	Exclusive	Exclusive
Other	Ngwenyama requirements	Sustainable development		

Annex 5 Mineral Development Policies of SADC Member States

DESCRIPTION	ANGOLA	BOTSWANA	DRC	LESOTHO
Mineral royalty	2 – 5 per cent	3 – 10 per cent	20 per cent	2.5 - 10 per cent
Oil/gas royalty			Negotiable	Not specified
Exploration fee	US$ 1 – 4/km2/an	Prescribed	Negotiable	Prescribed
Surface rent		Landowner permission	Negotiable	To landowner
Mineral ownership	State (National)	State	State	State (National)
Environmental provision allowed	Yes	No	No	Yes
Mining precedence over other land uses		No	Not specified	Not stated
Special incentives in remote areas	Yes, special tax incentives	Yes	Yes, tax holidays	No

DESCRIPTION	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA
Mineral royalty	5 – 10 per cent	3 - 10 per cent	5 - 10 per cent (Diamonds)	State-owned = 1 - 5 per cent
Oil/gas royalty	Negotiable	2 – 12,5 per cent	5 per cent	Negotiable
Exploration fee	Prescribed	US$1,00/ha	Yes	US$1.0 /hectare/annum
Surface rent	To landowner	Municipal property tax	To landowner	Negotiable
Mineral ownership	State (National)	State	State (National level)	Mixed system
Environmental provision allowed	No	Yes	Yes	Yes
Mining precedence over other land uses	No	Yes	No	No
Special incentives in remote areas	No, but welcomed	Yes, reduction in tax rate	EPZ	Yes, SDZ

DESCRIPTION	SWAZILAND	TANZANIA	ZAMBIA	ZIMBABWE
Mineral royalty	2 – 3 per cent	0 – 5 per cent	2 per cent	1-10 per cent
Oil/gas royalty	Not available	Not specified		None
Exploration fee	See surface rent	US$30/km2	US$ 1/km2/annum	Z$12[1]/km2
Surface rent	10 – 50US$/ha/an	US$1500/km2	US$ 15/km2/annum	US$66/km2/annum
Mineral ownership	State (National)	State, excl ind. minerals	State (National)	State
Environmental provision allowed	Yes	Yes	Yes	Yes
Mining precedence over other land uses	Not stated	No		Yes
Special incentives in remote areas	Yes	EPZ with tax incentives	Yes	Yes

[1] 1USD = Z$6,045.00, March 2005

Annex 6 ASM, Gender, Skills Development and R&D Issues in SADC states

DESCRIPTION	ANGOLA	BOTSWANA	DRC	LESOTHO
Special rules for small-scale miners	No specific legislation; Operate outside the legal framework; Mine Development Fund originally aimed at promoting small-scale mining; Some provisions in terms of the Diamond Law.	Mineral permits available for building, industrial and small-scale mineral projects; Technical assistance; Reserved for Botswana nationals; Special Financial Assistance Programmes.	No rules at all; Illegal and operated by warring factions.	No special conditions for small-scale mining
Gender issues	Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Has Women in Mining Association; Member of SADC Women in Mining Trust.	No specific legislation apart from Constitutional equity; Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Has Women in Mining Association; Member of SADC Women in Mining Trust.	No policy; Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Has Women in Mining Association; Member of SADC Women in Mining Trust.	Ministry of Gender, Youth and Sports is responsible for gender issues; Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women
Skills development issues	Agostino Neto University in Luanda offers mining related courses; Companies are required to train Angolans in order to be granted a mining licence.	200 per cent of costs deductible for income tax purposes; Skills training incentives in tax regime	Low levels of schooling.	100 per cent tax rebate on training expenditure for Lesotho nationals
Research and development issues	Limited capacity	All expenses deductible for income tax purposes	None.	

DESCRIPTION	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA
Special rules for small-scale miners	Different legal rights available to small-scale and artisanal miners; Specific deposits can be reserved for small-scale mining; State only administers size of area, duration of permit and basic environmental rehabilitation; Most operate outside the law	Governed by the Mining Certificate Regulations	Comprehensive policy on legalising the sector; Simplified mining claim registration system	Mining permit; Preferential rights to communities
Gender issues	Constitution enshrines gender equality in the national principles; National Gender and Women in Development Policies guide all economic development programmes; Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Has Women in Mining Association; Member of SADC Women in Mining Trust.	Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Has Women in Mining Association; Member of SADC Women in Mining Trust.	Free participation and no restrictions made possible by National Gender Policy; Education programme to remove cultural barriers; Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Has Women in Mining Association; Member of SADC Women in Mining Trust.	Free participation and no restrictions in any way; Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Has Women in Mining Association; Member of SADC Women in Mining Trust.
Skills development issues	The Mines and Minerals Act requires holders of rights to train nationals	5 per cent uplift in training costs for Mozambique citizens	Strong emphasis in Minerals Policy; Petroleum Agreements; Additional incentives under EPZ system.	Social and labour plans
Research and development issues	Insignificant		Emphasis on finding appropriate techniques for all types of mining; Provision of scientific and geological knowledge.	Strong emphasis on needs, finding solutions and attracting exploration and investment

DESCRIPTION	SWAZILAND	TANZANIA	ZAMBIA	ZIMBABWE
Special rules for small-scale miners	Legislation specific to small-scale mining being developed	Special prospecting rights and mining claims; Administered by local Commissioners; Designated areas for certain minerals and to Tanzanian nationals; Holders required to register rights, submit returns, pay royalties and claim fees.	Prospecting permit for all minerals except gemstones; Special purpose tenements for gemstones; Small-scale mining licence; Artisanal miner's right.	Special prospecting and mining tenements through a claim system; The artisanal miners (gold panners) are registered and fall under the jurisdiction of Rural District Councils (RDC). Proportion of revenues from gold sales remitted to RDCs by Reserve Bank Gold support price exists
Gender issues	The Ministry of Home Affairs gender unit is responsible for gender issues; SCOGWA is the technical body responsible for gender development; Has Women in Mining Association; Member of SADC Women in Mining Trust.	High by SADC standards; Encouragement of women in mining in Mineral Policy; Active women in mining organization (TAWOMA); Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Member of SADC Women in Mining Trust.	50 per cent of population are females; Female illiteracy improved from 41 per cent in 1990 to 27 per cent in 2001; Has Women in Mining Association; Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Member of SADC Women in Mining Trust.	National Gender Policy adopted in March 2004; Signatory to UN Convention on Elimination of All Forms of Discrimination Against Women; Has Women in Mining Association; Member of SADC Women in Mining Trust.
Skills development issues	No formal courses of geosciences and mining at Swaziland University; 100 per cent uplift on training of nationals allowed in income tax calculation.	Adult illiteracy rate low by SADC standards; Provision in Mineral Policy; Mineral licences require holders to employ nationals, develop skills & establish career paths.	Labour and skills development plans are requirements for mineral development.	50 per cent uplift on training infrastructure and equipment.
Research and development issues	None to report.	Lack of reliable information; Research Foundations supports mining-related research; Absent in Mineral Policy.		The Institute of Mining Research in collaboration with the University of Zimbabwe is responsible to carry out mining related research.

Annex 7
Recommendations from the Ad Hoc Expert Group Meeting on Harmonization of Mining Policies, Standards, Legislative and Regulatory Frameworks in Southern Africa, 3 – 5 November 2004, Lusaka, Zambia

(Extracted from ECA/SA/EGM/MINING/2004/01)

Recommendations on Report Structure and Study Methodology

1. The regional framework expand its scope to cover the minerals industry broadly defined, i.e. to include not only activities from exploration through to minerals marketing, but also the input industry producing capital goods, consumer goods and providing intellectual services;

2. The technical report, time frames and discussions take into account the SADC 15 year RISDP Operationalization (Outlook) Plan, NEPAD initiatives and African Mining Partnership (AMP) plans;

3. The technical report consider the written comments from experts as well as the comments made in the course of the meeting and incorporate the suggested changes;

4. The report be guided by international best practices as a starting point in developing the proposed regional framework; in that same vein, core principles enhancing the minerals industry in other regions should be identified and evaluated in terms of international competitiveness for possible adaptation in Southern Africa and move away from using regional statistical averages;

5. It was necessary to include in the framework, not only the objectives of making the region's mineral sector more competitive, but also reflect the challenges of how the sector can benefit its various constituencies;

6. The meaning and rationale for harmonization have to be further clarified and the framework for discussing the issue elaborated early in the report;

7. The question regarding the extent to which the harmonization objective is meaningful in the context of a competitive minerals industry has to be addressed in the introductory part of the report;

8. The regional policy recommendations should go beyond the confines of current practices and, where feasible, should make bold policy statements to achieve specific sub-regional goals and the respective areas suitable for harmonization and those which are not should be distinguished much more clearly in the report; and,

9. In setting out practice within SADC countries, the report must indicate elements of national practice which are peculiar or problematic.

Recommendations on the Harmonization Process

Provide a definition of and the rationale for harmonization before discussing the framework. Define harmonization to include;

- Development of a common set of standards, and,
- Alignment of national policies and laws and regulations towards a common goal.

The standardization and policy alignment components should include the items in Table 1.

Describe the reasons for harmonization to include:

- To create sustainable, competitive and profitable minerals industry within SADC;
- To reduce costs and risks of doing business across the region;
- To advance transparent, simple and transferable best practice systems; and,
- To help create economic growth and general prosperity within the region.

Table 1: Areas of Harmonization

Components	Areas
Standardization	Technical and engineering requirements Geology Health and safety Skills and training Environmental regulations Social obligations and responsibility Social oblige
Policy/Legislation/ Regulations Alignment	Exploration and mining licensing Land rights and tenure Mining Fiscal regime Minerals marketing Minerals processing and value addition Environmental requirements Social obligations and responsibility Institutional framework Infrastructure for minerals development (transport, water, energy) Artisanal mining Small-scale mining Gender Economic and political systems Investment regulations Labour – labour laws, occupational health Cross-border movement of minerals skills Cross-border movement of minerals, goods and services Customs and tariffs Product security etc.

Recommendations on Political, Economic and Social Issues and General Investment Regulations

Investment regulations, political stability, social issues and general macro-economic stability are encompassing and needed to be dealt with in the overall SADC framework as they affected all sectors.

Recommendations on the Mining Fiscal Regime

General Recommendations:

1. Aspects of fiscal policies falling into different categories be cross-referenced in the text to improve the flow in the document;

2. All secondary taxes be grouped and discussed under the same subheading;

3. The discussion of fiscal issues should first list the fiscal items and then discuss each separately; and,

4. Fiscal issues to be covered under this broad heading include the following items:

   - State equity participation;
   - Corporate income tax;
   - Transfer pricing;
   - Royalty;
   - Asset tax/property tax, sales tax/VAT/fuel taxes;
   - Import duties ;
   - Export duties/stamp duties ;
   - Tax stability agreements;
   - Double taxation treaties; and,
   - Sharing of government revenues with communities affected by mining.

Specific Recommendations:

On Corporate Income Tax:

1. Reference to taxation on worldwide income be removed from the regional framework due to the technical problems involved in effecting this recommendation;

2. The discussion on ring fencing be strengthened in the developing the framework and should be specific on project specific ring-fencing rather than region-specific

3. The discussion on depletion allowances should be removed from the report;

4. Tax holidays should not be part of the regional framework;

5. The report should make a clearer distinction between tax creditability and tax deductibility;

6. Various aspects of corporate income tax should be concluded before the discussions relating to stability agreements and tax treaties; and,

7. The corporate income tax rates in the model should be based on an indicative range of what is acceptable and competitive in international practice: the model should not seek to prescribe a specific rate of tax to be adopted within SADC.

On State equity participation in mineral projects, the meeting recommended:

1. That a distinction be made between commercially acquired state equity and free state equity; and,

2. That the regional framework discourages free-carried state interest in projects.

On royalty payments:

1. Mine-revenues based royalties are justifiable in the minerals industry since mineral resources are wasting assets (non-renewable) but the royalty rates should be kept reasonable. Here again the framework should be guided by international best practice;

2. The royalty rates in the framework be mineral specific i.e. distinguish between gold, diamonds, base metals and industrial minerals; and,

3. Royalties be fixed for certainty and not be made negotiable from project to project.

On Additional Profit Taxes (APT):

1. The report should distinguish the tax rate from the threshold criteria that have to be met for the rate to be applied.

On tax stability agreements:

1. These be used judiciously and be a temporary measure in the fiscal regime; that the ultimate goal should be to establish overall conditions which would make it possible to do away with them; and,

2. A passage be inserted identifying the principal challenges in setting a tax stability agreement: its duration, the fixing of transparent criteria for determining qualifying projects, and the need to leave room for the imposition of fiscal measures of a minor character even during the period of the agreement.

On tax treaties, the meeting recommended that:

1. The report identify taxes to be covered by the treaties and the implied allocation of tax revenue between the countries which are parties to the treaty; and,

2. The report discusses the issue of institutional capacity to manage the administration of these treaties.

On Payroll Taxes, the meeting agreed that:

1. Clarity was needed on the definition of the term and its justification before its inclusion in the framework.

Recommendations on mineral policies

1. Each SADC member State develop a mineral policy;

2. The principles that should inform mineral policy formulation of member States include:

    a. Assurance of a stable mining policy regime over time;

    b. Procedures for adjusting policy from to time to time such that changes become predictable for investors and communities;

    c. Creation of a stakeholder dialogue in the development of policy;

    d. The policy should manage the expectations of various stakeholders;

    e. Tradability of mineral rights as an important component of policies;

    f. Integrated land use plans including social plans for employees and communities; and,

    g. Consistency and transparency in the administration of the policy.

3. The SADC member States use Table 2 in developing their mineral policies.

Table 2: Integrated Mineral Policy Template for Southern Africa

Major Area	Components
Business Climate and Mineral Development	Investment and Regulatory Climate Taxation Mineral Rights and Prospectivity Information Artisanal Mining Small Scale Mining Mineral Beneficiation and Value Addition Mineral Clusters Mineral Marketing Research and Development
Participation in Ownership and Management	Shares in entities, for Government, local investors and foreigners, joint ventures
People Issues	Health and safety Human Resources Development Gender Housing and Living conditions Migrant Labour Labour, industrial relations, employment conditions Downscaling, relocation, compensation
Environmental Management	Environmental requirements, responsibilities
Regional Cooperation	Regional vision
Governance	Regulation and Promotion Management of mining revenues Stakeholder consultation National Government, provincial government, Municipalities, other local authorities

Recommendations on mineral administration and development

The framework should:

1. Advocate for a simplified, transparent - one-stop shop and predictable minerals administration system across the region to reduce red tape and eliminate discretion;

2. Emphasize procedural (not discretionary) progression from exploration to mining within the licensing framework;

3. Incorporate social obligations including consultation with communities and the local procurement of goods and services in all phases of the project -from exploration through mining to mineral processing;

4. Encourage the structuring of exploration licence fees to promote exploration work and avoid sterilization of prospective land;

5. Provide for periodic submission of exploration and mining information by investors, a mechanism to enforce this requirement is required even after closure of mines;

6. Promote the standardization of geological nomenclature and codes across the region;

7. Make the implementation of an agreed exploration work program a condition for licence retention across the region, through the “use it or lose it principle”;

8. Mining rights be long enough to allow for recovery of capital;

9. Provide for the renewal of licences upon satisfaction of agreed work programme conditions;

10. The size of an exploration area should not be part of issues for harmonization as it would depend on individual country situations;

11. Member States adopt similar environmental regulations, based on accepted international principles of integrated environmental management, about basic environmental impact assessments for granting of exploration and mining rights ;

12. Facilitate and encourage the development by member States of similar accessible geology and mineral resource information (databases) for use by potential investors;

13. Make it mandatory for holders of exploration and mining rights regularly submit all information, and upon expiry of rights; and,

14. Member States strengthen mechanisms to ensure compliance with this requirement and ensure that information gathered is compiled into a comprehensive and user-friendly GIS format that can be made available throughout the region.

Recommendations on Artisanal and Small Scale Mining (ASM)

The regional framework should:

1. Refer to, review and incorporate, where appropriate, the Harare Declaration, the Yaoundé Vision and CASM Strategic Plan on Artisanal and Small Scale Mining in its analysis and recommendations;

2. Include discussions on conflicts between small and large scale mining and the potential role that large scale operators can play to assist in the development and operation of small scale mines;

3. Include a discussion on the potential of industrial minerals as a viable business option for small scale miners;

4. Expand discussion on market access and marketing of output from small scale miners’ production and include issues such as establishment of national and or regional mineral marketing exchanges;

5. Articulate clearly how training and other forms of assistance to ASM should be provided within the new framework;

6. Emphasize the development of a well coordinated decentralized system of licensing ASM to facilitate ease of obtaining legal status for the many miners in remote areas;

7. Recognize existing different tenure land systems and articulate how they can be harmonized within the region; and,

8. Discuss new marketing opportunities provided by Green Gold / Certification of precious metals and minerals and fair trade and how these could be built into the framework in the long-term.

Recommendations on Gender Issues

1. Information about how countries were handling gender issues in the minerals industry be incorporated and tabulated in the main text;

2. Issues of women's participation in the mining sector be broken down into (i) ownership and access to mineral rights, (ii) professional training, (iii) women workers, and, (iv) women in artisanal mining;

3. Financial barriers to women's participation in the sector be identified as an issue in the discussion of a regional framework;

4. The regional framework on gender in the sector recognize Beijing Outcomes and commitments on Gender Mainstreaming as well as SADC Protocols on Gender and AU Gender Commitments;

5. The model articulate barriers to effective participation in the minerals sector, including - institutional, ownership, professional development, employment, leadership, cultural, financial and stereotypes;

6. The gender section of the report adopt the text modified at the meeting; and,

7. The report articulate the following Gender issues clearly:

    a. Economic empowerment of women;

    b. Human rights;

    c. Education and training of women; and

    d. Stereotypes and discrimination.

Recommendations on Skills Development

The regional framework should:

1. Make it imperative for companies to train mining employees on alternative skills to better manage downscaling or closure of mines;

2. Encourage industry participation in expanding the skills base in the minerals industry through offering appropriate incentives by regional governments;

3. Identify skills gaps in the sector and provide for the creation and maintenance of a database on mining skills in the sub-region;

4. Discuss the issues of brain drain and the utilization of skills in the Diaspora and efficiency in the use of existing skills regionally;

5. Promote regional approach to skills development through sharing and utilizing existing training facilities;

6. Create an environment to facilitate skills mobility across the region through standardization of qualification standards and a reduction in immigration restrictions;

7. Recognize lack of skills training institutions in some countries and promote networking among institutions to fill the gap;

8. Encourage uniformity of training standards to enable regional recognition of qualifications and facilitate regional recognition and skills mobility;

9. Rationalize resources to avoid duplication and encourage economies of scale; and,

10. Discuss the role of human resource development in promoting minerals cluster development.

Recommendations for Research and Development (R&D)

The framework should:

1. Emphasize that governments take the lead in funding fundamental research and skills training as part of its national responsibility since mining was a skills-intensive industry and such training would help grow the sector;

2. Encourage industry participation in funding and undertaking applied R&D through provision of resources to existing centres in order to strengthen their capacities;

3. Encourage collaboration between R&D institutions across the region to share competencies, create a critical mass and efficiently utilize resources;

4. Help rationalize existing manpower, technological and financial resources and capacity to create critical mass in regional centres of excellence; and,

5. Ensure countries establish and maintain a geological knowledge management framework for the region in a form that is uniform and user-friendly.

Recommendations on the Time frame for Harmonization

Harmonization should proceed according to the timetable shown in Table 3.

Table 3: Milestones for a Harmonized Regional Mining Policy Environment, Standards, Legislative and Regulatory Framework in SADC

AREAS OF HARMONIZATION	MAJOR COMPONENTS	TIME-FRAME FOR ACHIEVEMT OF HARMONIZATION		
		IMMEDIATE -TERM (Up to 2 years)	SHORT TERM (2-5 years)	MEDIUM TERM (5 to 10 years)
STANDARDIZATION	Technical and Engineering requirements		◆	
	Geology	◆		
	Health and safety	◆		
	Skills, training and Qualifications		◆	
	Environmental Regulations		◆	
	Social Obligations and Regulations			◆
	Mineral Valuation standards	◆		
POLICY ALIGNMENT	Exploration and Mining licensing		◆	
	Land rights and tenure			◆
	Mining Fiscal regime		◆	
	Minerals Marketing		◆	
	Minerals Processing and Value Addition			◆
	Minerals Cluster Development	◆		
	Environmental Requirements	◆		
	Social Obligations and Regulations		◆	
	Institutional Framework	◆		
	Infrastructure for minerals development (energy, transport, water)			◆
	Artisanal Mining		◆	
	Small Scale Mining		◆	
	Gender Parity		◆	
	Labour Policies			◆
	Cross-border movement of minerals skills			◆
	Cross-border movement of capital, minerals, goods and services			◆
	Investment Regulations	◆		
	Economic and Political Framework			
	Customs and tariffs Harmonization			◆
	Product Security	◆		