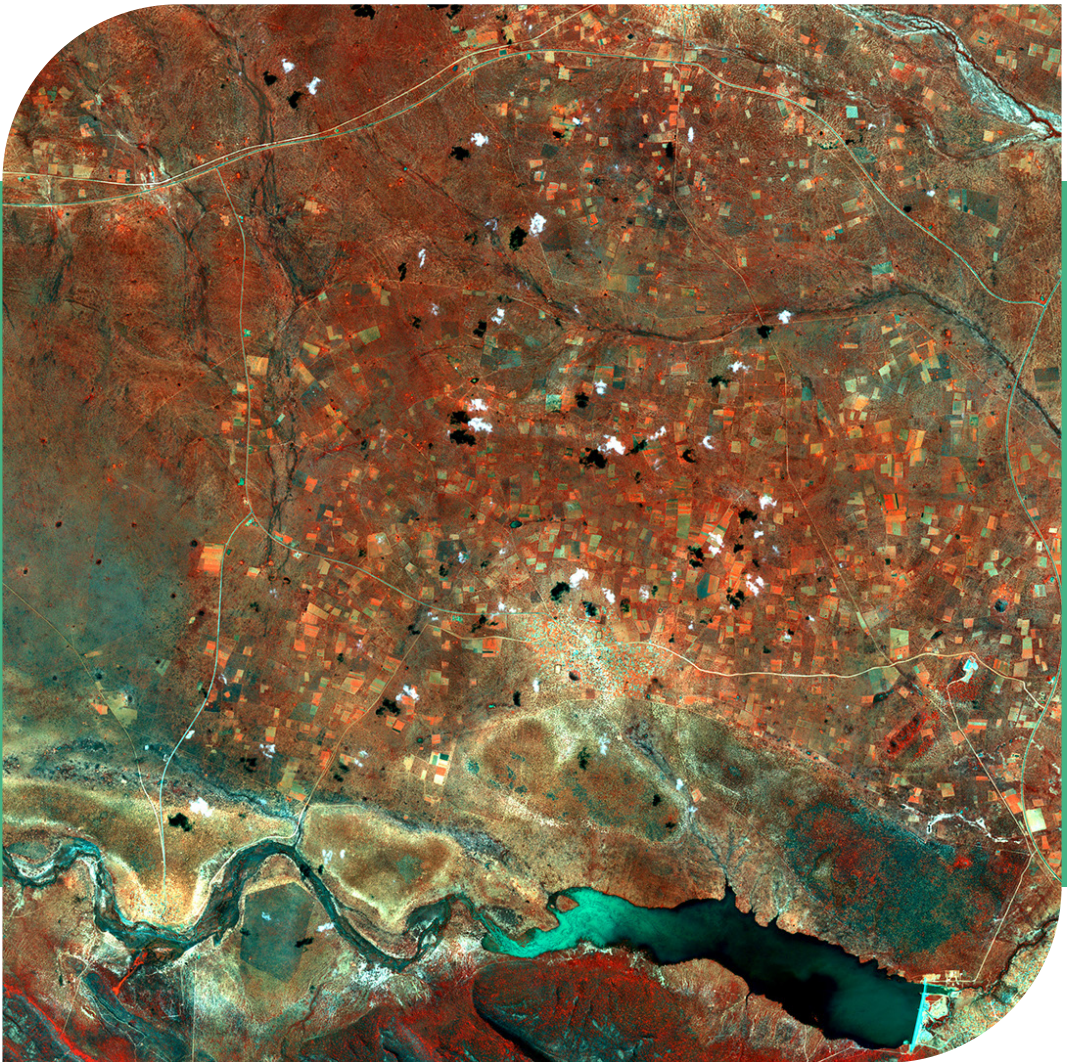




# MINERAL RESOURCE GOVERNANCE IN BOTSWANA



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*Xichavo Alecia Ndlovu and Christopher Vandome*

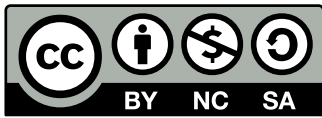


**International IDEA**  
Strömsborg  
SE-103 34 Stockholm  
SWEDEN  
+46 8 698 37 00  
info@idea.int  
www.idea.int

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International IDEA  
Strömsborg  
SE-103 34 Stockholm  
SWEDEN  
Tel: +46 8 698 37 00  
Email: [info@idea.int](mailto:info@idea.int)  
Website: <<https://www.idea.int>>

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# Abbreviations

<b>AfCFTA</b>	African Continental Free Trade Area
<b>AMDC</b>	African Minerals Development Centre
<b>AMV</b>	African Mining Vision
<b>BGI</b>	Botswana Geoscience Institute
<b>BWP</b>	Botswana pula (official currency)
<b>CEEP</b>	Citizen Economic Empowerment Policy
<b>CIM</b>	Canadian Institute of Mining
<b>CRIRSCO</b>	Committee for Mineral Reserves International Reporting Standards
<b>DCEC</b>	Directorate on Corruption and Economic Crime
<b>ESG</b>	Environmental, social and governance
<b>GDP</b>	Gross domestic product
<b>IGF</b>	Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development
<b>IMF</b>	International Monetary Fund
<b>ITA</b>	International Trade Administration
<b>JORC</b>	Joint Ore Reserves Committee
<b>SADC</b>	Southern African Development Community
<b>SAMREC</b>	Reporting of Exploration Results, Mineral Resources and Mineral Reserves
<b>UNDP</b>	United Nations Development Programme

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# EXECUTIVE SUMMARY

This report presents an overview of the historical, economic and regulatory dynamics that shape mineral resource governance in Botswana, as well as the ambitions for the sector that underpin the nation's economic diplomacy aspirations. It demonstrates that governance frameworks that emerged in the context of the diamond industry have evolved and can provide for a diversified mining industry. Still, the country can improve on issues such as transparency, human rights, gender equality and income inequality.

Environmental, social and governance (ESG) criteria and performance are areas for improvement in Botswana, as the country does not have an ESG reporting framework. The government should also consider taking part in regional and international governance initiatives to attract new investors and demonstrate its commitment to accepted best practices.

The study argues that the positive legislative and regulatory progress achieved to date will continue only through a consistent commitment to the fundamental principles of public–private partnership and that creeping nationalism in fledgling commodities will disincentivize investment and prevent the replication of the diamond success story.

Key recommendations include maintaining investor confidence, diversifying mining operations beyond diamonds, strengthening legal protections for Indigenous communities and land rights, enhancing gender integration in mining policies, adopting international standards in mining operations and addressing illicit financial flows and economic inequality.

# INTRODUCTION

**Botswana is an attractive investment destination for companies and governments seeking to develop supply chains for the minerals required for energy transition.**

Botswana is an attractive investment destination for companies and governments seeking to develop supply chains for the minerals required for energy transition. Botswana also provides an example of regulatory best practice for regional peers seeking to advance their mining industries. International surveys regularly place Botswana as the most favourable jurisdiction in Africa for investment, and the wealth generated by the industry is apparent to visitors to the country. Legislative decisions taken by the nation's founders provided for 55 years of diamond-based economic growth. The modest development of other metals and minerals—notably, copper, gold, silver, manganese and coal—has the potential for near-term expansion to mitigate the long-term exhaustion of diamond deposits and advance the diversification of the extractive sector.

The core of Botswana's success is that it has maintained a stable regulatory environment. Botswana's Mines and Minerals Act has been amended only twice in more than 50 years—partly due to the electoral dominance of the Botswana Democratic Party. Furthermore, the law eliminates ministerial discretionary powers, removing the risk of political interference and enabling consistent application on the part of technocrats. The state has also always respected laws and contracts. In March 2022, Botswana launched its first mining policy, presenting informal policy guidelines in a single document.

The citizens of Botswana have greatly benefited from the country's natural resources. Successive governments have consistently sought to ensure that local people, businesses and communities properly benefit from mineral wealth. In October 2024, the Botswana Democratic Party (BDP) lost power for the first time since independence in 1965. The new government will need to continue the

balance of delivering benefit to ordinary citizens, while encouraging investment and new exploration. Prior to the 2024 election, the previous government was proposing an amendment to the Mines and Minerals Act that would increase its optional shareholding in any mining project from the current 15 per cent to up to 24 per cent in the form of paid local ownership once a licence is granted. Such a move could provide for an even greater linkage between resources and society in the country. However, it could also be a red flag for investors who are already warning of the potential legal implications and opportunities for corruption.

Debates on regulatory changes have taken place alongside the finalization of a new deal between De Beers Group and the government, which has negotiated for a larger portion of diamonds to be sold through state-preferred channels. This deal has brought considerable attention. Writing in *Business Day*, Simon Wolfe noted, '[De Beers] has given Botswana stability, investment in healthcare, infrastructure and education, economic status and outsized soft power on the world stage. ... Economically, culturally and politically, the two are intertwined. If the partnership crumbles, both parties will suffer. And so will the natural diamond industry' (Wolfe 2023). The finalisation of the agreement is something that new President Duma Boko has said is a priority, and Duncan Wanblad, CEO of Anglo American, has said will take 'weeks' rather than months or years. However, with information regarding the deal having been kept a close secret by those involved, the new administration will need to get up to speed very quickly. Stakeholders from government, industry, civil society and international organizations must collaborate to ensure that Botswana continues benefiting from an equitable share of its natural resources while attracting private capital for exploration and extraction and resisting the temptations of creeping resource nationalism. National governments have repeatedly faced criticism for their overreliance on diamond revenues and for the lack of strategic planning for what will happen after the mines reach the end of their life.

This report presents an overview of the historical, economic and regulatory dynamics that shape mineral resource governance in Botswana, as well as the ambitions for the sector that underpin the nation's economic diplomacy aspirations. It demonstrates that governance frameworks that emerged in the context of the diamond industry have evolved and can drive diversification in the mining industry. Still, the country can improve on issues of transparency and human rights. The government should consider taking part in regional

and international governance initiatives to attract new investors and demonstrate its commitment to accepted best practices. The study argues that the positive legislative and regulatory progress achieved to date will continue only through a consistent commitment to the fundamental principles of public–private partnership and that creeping nationalism in fledgling commodities will disincentivize investment and prevent the replication of the diamond success story.

This report focuses on the regulatory environment, fiscal regime, ESG (environmental, social and governance factors) and the mining industry's impacts on development. As such, the study is mainly apolitical and does not go into detail concerning the political environment in the country, apart from where there are direct overlaps with the industry. The study is based on a brief literature review of existing material, including primary sources and legal documents, and an array of secondary material published by analysts and international organizations. This review is buttressed by the researchers' existing knowledge of the case material.

The report is structured as follows. Chapter 1 reviews the national mineral endowment and details how this has been capitalized upon through fiscal means for national benefits. Chapter 2 gives a detailed analysis of the legal frameworks guiding mineral resource governance and the gaps in this framework. Chapter 3 discusses the transparency and accountability of current licensing processes for mineral rights. Chapters 4 and 5 discuss the links between mining and economic and human development and the current ESG criteria framework. Chapter 6 provides an overview of the integration of regional policy frameworks, engagement with international initiatives and geopolitical considerations. Finally, Chapter 7 presents conclusions along with several recommendations.

## Chapter 1

# MINERAL RESOURCE ENDOWMENT, VALUE AND REVENUE MAXIMIZATION

The success of Botswana's economic management of its resources has been internationally lauded. The International Monetary Fund's (IMF) latest Article IV consultation for Botswana, conducted in mid-2023, stated:

Botswana has made impressive strides in economic development and has the objective of reaching high-income status by 2036. Since the early 2000s, supported by good governance and sound macroeconomic management, real per capita GDP has grown by one third, and today's GDP per capita is close to \$7,000 (current USD). To a large extent, the country has succeeded in avoiding the 'resource curse,' by investing diamond revenues in a transparent and productive manner. Poverty rates are roughly half of sub-Saharan Africa's average. (IMF 2024)

Botswana has the world's highest-value diamond deposits, and the industry's history has underpinned a period of economic success on the continent. In addition, the nation has deposits of other minerals that offer potential for expansion. The fiscal framework for diamonds was developed over many years, and so the key question for the administration is whether to apply the diamond model as it currently is to other industries or to replicate the evolutionary steps and incremental building of trust, engagement and mutual benefit.

---

**The success of Botswana's economic management of its resources has been internationally lauded.**

## 1.1. MINING SECTOR CONTRIBUTION AND CURRENT OPPORTUNITIES

In 2023, Botswana exported diamonds for more than USD 3.52 billion, equal to 57 per cent of total exports of goods and services of USD 6.1 billion (World Bank Group, 2023a), and 18 per cent of gross domestic product (GDP) of USD 19.4 billion (World Bank Group, 2023b). The country still has 280 million carats of diamond reserves (Jaganmohan, 2024), equal to 11 years of 2023 export levels.

Table 1.1 shows the production figures for the commodities that constitute the mining sector. Diamonds are the largest contributor by a long way; however, copper, silver and coal are the industries with the highest growth. The nature of the diamond industry and demand for stones means that production figures and contribution value fluctuate considerably, but De Beers's contribution during the 50 years of partnership with the government has been critical for national economic growth and development. Table 1.2 shows the value of commodity exports, highlighting the significant dominance of pearls and gemstones. Only a quarter of a million dollars comes from sources that are not diamonds, which accounted for USD 7.1 billion in trade in 2022.

**Table 1.1. 2023 mining production volumes and growth**

	Diamonds	Copper concentrate	Gold	Soda ash	Salt	Silver	Coal
<b>2023 production volume</b>	25,095 ('000 carats)	54,808 (tonnes)	331 (kg)	262,052 (tonnes)	387,956 (tonnes)	42,995 (kg)	2,064,373 (tonnes)
<b>Percentage change since 2013</b>	8.5	94.7	-72.6	15	-25.6	90	38

Source: Statistics Botswana, 'Index of the Physical Volume of Mining Production First Quarter 2024: Stats Brief', 2024a, <<https://statsbots.org/bw/sites/default/files/Index%20of%20The%20Physical%20Volume%20of%20Mining%20Production%20First%20Quarter%202024.pdf>>, accessed 21 November 2024.

Botswana has eight diamond mines, four of which are operated by Debswana, a joint venture between De Beers and the Government

**Table 1.2. Commodity exports by classification, 2022**

Commodity	USD
Pearls and gemstones	7.1 bn
Metals and minerals	513 m
Agricultural products	242 m
Fossil fuels	110 m
Forestry products	1.7 m

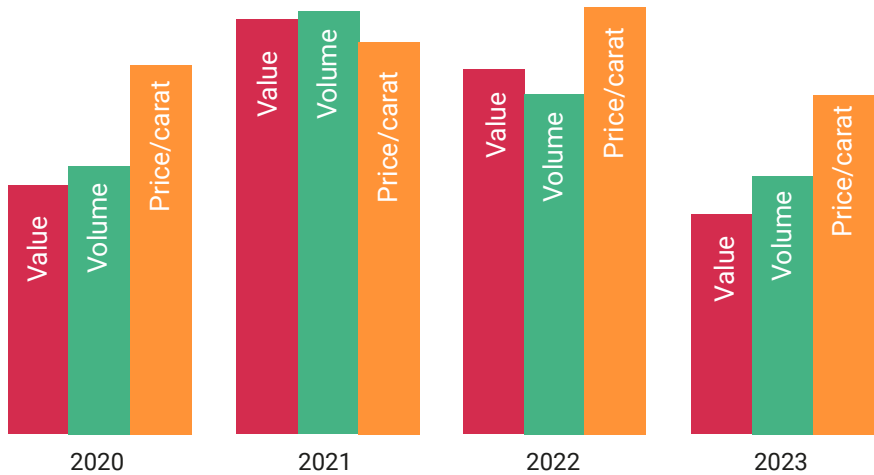
Source: ResourceTrade.Earth, <<https://resourcetrade.earth/?year=2022&exporter=72&units=value&autozoom=1>>, accessed 15 December 2024.

of Botswana (Debswana 2024). The Debswana operations at Orapa, Jwaneng and Letlhakane account for a considerable majority of the nation's diamond production and contribution to national wealth. In addition to the Debswana operations are the Karowe mine (owned by the Canadian company Lucara Diamond), which has a global reputation for finding large stones, including a 2,492-carat stone recovered in 2024, the second-largest recovery in history after the Cullinan Diamond. Lucara acquired its interest in the mine from the De Beers exploration company in 2010. Mines at BK11, Damtshaa, Ghaghoo and Lerala remain unproductive, are under maintenance or have closed. Russia's Alrosa was present in the country but divested from its exploration joint venture Sunland Minerals, selling its stake to Botswana Diamonds.

The Debswana mining company, founded in 1969, is the oldest public–private partnership in the world. The company is the bedrock of Botswana's economy, and its success has contributed significantly to the country's global reputation. The first deposit to be discovered was at Orapa in 1967. The discovery was made by a team of geologists working for the De Beers company. The mine became operational in 1972, and the nearby Letlhakane mine became operational in 1975. The excitement around diamonds in the centre of the country was paralleled by the De Beers discovery of the Jwaneng pipe in southern Botswana in 1972, which became operational in 1982 and has become the most lucrative diamond mine in the world. The Damtshaa mine was opened in 2003, with hopes that

**Table 1.3. Value and volume of Botswana's diamond exports from 2020 to 2023**

	2020	2021	2022	2023
Value (USD)	3,972,368,999	6,637,818,459	5,834,584,042	3,517,211,944
Volume (carats)	26,892,062	42,330,906	34,048,128	25,840,467
Price per carat (USD)	148	157	171	136



Sources: Kimberley Process, 'Annual Global Summary: 2020 Production, Imports, Exports and KPC Counts', [n.d.], <[https://kimberleyprocessstatistics.org/static/pdfs/public\\_statistics/2020/2020GlobalSummary.pdf](https://kimberleyprocessstatistics.org/static/pdfs/public_statistics/2020/2020GlobalSummary.pdf)>, accessed 21 November 2024; Kimberley Process, 'Annual Global Summary: 2021 Production, Imports, Exports and KPC Counts', [n.d.], <[https://kimberleyprocessstatistics.org/static/pdfs/public\\_statistics/2021/2021GlobalSummary.pdf](https://kimberleyprocessstatistics.org/static/pdfs/public_statistics/2021/2021GlobalSummary.pdf)>, accessed 21 November 2024; Kimberley Process, 'Annual Global Summary: 2022 Production, Imports, Exports and KPC Counts', [n.d.], <[https://kimberleyprocessstatistics.org/static/pdfs/public\\_statistics/2022/2022GlobalSummary.pdf](https://kimberleyprocessstatistics.org/static/pdfs/public_statistics/2022/2022GlobalSummary.pdf)>, accessed 21 November 2024; Kimberley Process, 'Annual Global Summary: 2023 Production, Imports, Exports and KPC Counts', [n.d.], <[https://kimberleyprocessstatistics.org/static/pdfs/public\\_statistics/2023/2023GlobalSummary.pdf](https://kimberleyprocessstatistics.org/static/pdfs/public_statistics/2023/2023GlobalSummary.pdf)>, accessed 21 November 2024.

it would represent an important continuity for Debswana, whose other mines are reaching the end of their life, but the mine closed in 2021 due to weak demand. In January 2024, the Jwaneng operation received the go-ahead for a USD 1 billion expansion to transition from surface open-pit operations to underground mining, extending the asset's life to 2036. The parent company, Anglo American (2023), lists the end of life of its Orapa and Lethakane assets as 2037 and 2043, respectively. The finite lifespan of this critical resource



has precipitated research and discussions on diversification and preparation of the economy for life after diamonds. However, attention on diversification has often tracked diamond prices—coming to the fore in price slumps, and diminishing as prices rise—and little headway towards genuine diversification has been made.

Botswana produces around 2.8 million tonnes of coal annually, mainly for domestic energy production. The largest coal producer is the Morupule coal mine, owned by the state via the Minerals Development Company Botswana, and supplying coal to the Morupule power station. The mine was the nation's only producing coal asset before Minergy Coal's commissioning of a new mine in 2019. In 2021, then-President Mokgweetsi Masisi committed to a new 1.4 million tonne per year coal mine at Morupule, and the government is also seeking to boost coal exports through intergovernmental cooperation to develop the port of Beira and a railway line with Mozambique and Zimbabwe to complement existing regional exports and international shipments via Mozambique and Namibia.

Botswana's dependence on coal for energy may present a concern for investors conscious of their scope 2 emissions. Some analysts see the president's support for the fuel as part of his effort to distance himself from Western-dominated narratives on the green transition and to align with African leaders emphasizing the developmental imperative to utilize available resources. The national budget for 2024 proposed around USD 100 million to enhance economic resilience and protect livelihoods and committed 'Botswana to increase the rate of transition from fossil fuels to renewable to 2 per cent by 2030' (Botswana 2024).

Botswana has fledgling operations in other metals and minerals that offer scope for upscaling, particularly in small-scale copper operations, where there has been a shift in focus from the east of the country to promising deposits in the west. Botswana has a history of copper and nickel production in the east, although state-run operations near Selebi-Phikwe went into liquidation in the mid-2010s. The Kalahari Copper Belt, straddling the Namibian border, is more promising for the future; it is smaller than other deposits in the region, such as the Central African Copperbelt, but its shallower deposit depth offers commercial viability. The Australian firm Sandfire officially opened the Motheo mine in August 2023 and is producing copper concentrate with a silver by-product, which is exported via Namibia. The company has stated its commitment to further

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exploration in the area. MMG, whose largest shareholder is China Minmetals, has also announced that the Khoemacau copper and silver mine has commenced operations following MMG's acquisition of the 168-million-tonne asset from Cuprous Capital in 2023 through a share purchase agreement. Some have described the mine as 'one of the highest quality new copper mines globally' (Moore 2023). Several other Australian, British and Canadian firms are active in the exploration of the Kalahari Copper Belt.

Further exploration projects are taking place in the critical-minerals space, with companies obtaining exploration licences for manganese, lithium, rare earth elements and nickel. At least a dozen exploration licences have been issued to local and international speculators exploring for lithium on the Makgadikgadi salt pans (ITA 2024). At present the Mupane mine is the only producing gold operation in the country, although exploration for the metal has increased. The country also has reserves of minerals not actively mined, such as uranium, lead and zinc (ITA 2024), which provide opportunities for further development of the mining sector. Some deposits of these metals have been known about since early geological surveys of the country, and the global demand for green minerals could increase their commercial viability. It is likely that global environmental groups will raise concerns around exploration in environmentally sensitive areas.

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**The contribution of mining to national development will depend on appropriate fiscal structures and the replication across different commodities of the benefits accrued through diamonds.**

Developing non-diamond mining is an important part of the ruling party's commitment to Botswana's Vision 2036 roadmap and the diversification of extractive industries. Over 80 per cent of the country has been covered by aeromagnetic surveys, and the government is eager to attract investors to develop known deposits and explore the remaining areas. The contribution of mining to national development will depend on appropriate fiscal structures and the replication across different commodities of the benefits accrued through diamonds. Achieving this replication will require an acknowledgement of the similarities and differences in supply chains and an understanding of the specific history of the evolution of the diamond industry.

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## **1.2. FISCAL REGIME: MAXIMIZING REVENUE AND TRANSFERRING BENEFITS**

There are two primary mechanisms by which Botswana benefits from its natural resources—fiscal transfers through taxes and royalties

and dividends accrued through joint ownership structures that give the government a share of operations. Notably, Botswana has a paid-for, rather than a carried, share of operations and participates in upstream and downstream operations. The state has an important presence in the industry via the Minerals Development Company Botswana and the Okavango Diamond Company, as well as other parastatal entities providing sectoral support, such as the Botswana Geoscience Institute (BGI) and regulatory bodies. However, resource revenues have not been used to prop up bloated state-owned enterprises, as has been the case in other mining jurisdictions in Southern Africa. Successive governments have emphasized the leadership and role of the private sector in exploration and extraction, which has led to the creation of successful and beneficial partnerships. Maintaining the nation's reputation as a preferred investment destination will require consistency, the continuation of this approach and resistance to the temptation of creeping resource nationalism for short-term political gains.

The 2022 Botswana Minerals Policy states that 'Government will maintain at all times a fiscal regime for mining operations that is internationally competitive and enables Botswana to obtain a fair share of economic rent generated from the sector. The fiscal regime will strike an optimal balance between investment attractiveness and revenue maximisation for the government' (Republic of Botswana 2022).

Mining profits (defined as profits of companies that hold a mining licence but exclusive of diamond mining) are taxed according to the following formula set out in the Income Tax Act: annual tax rate = 70 minus  $(1,500/x)$ , where  $x$  is taxable income as a percentage of gross income. The tax rate may not be less than the flat corporate income tax rate of 22 per cent. Diamond mining is usually taxed in terms of an agreement between the Government of Botswana and the individual companies. In addition, companies are subject to royalties paid at the rates outlined in Table 1.4, as stipulated in the Mines and Minerals Act 1999 (Republic of Botswana 1999).

The allocation of royalties under the 1999 Mines and Minerals Act also stipulates that, 'Where a prospecting licence or retention licence is granted over land in a tribal area, one-half of any money received under the provisions of this section shall be appropriated to the Land Board within the area in which the land is situated' (Republic of Botswana 1999).

**Table 1.4. Royalty rates for various products**

Mineral type	Percentage
Precious stones	10
Precious metals	5
Other minerals or mineral products	3

Source: Republic of Botswana, Law No. 17 of 1999, Mines and Minerals Act, 1999, <<https://botswanalaws.com/StatutesActpdf/1999Actpdf/MINES%20AND%20MINERALS%20ACT,%2017%20OF%201999.pdf>>, accessed 21 November 2024.

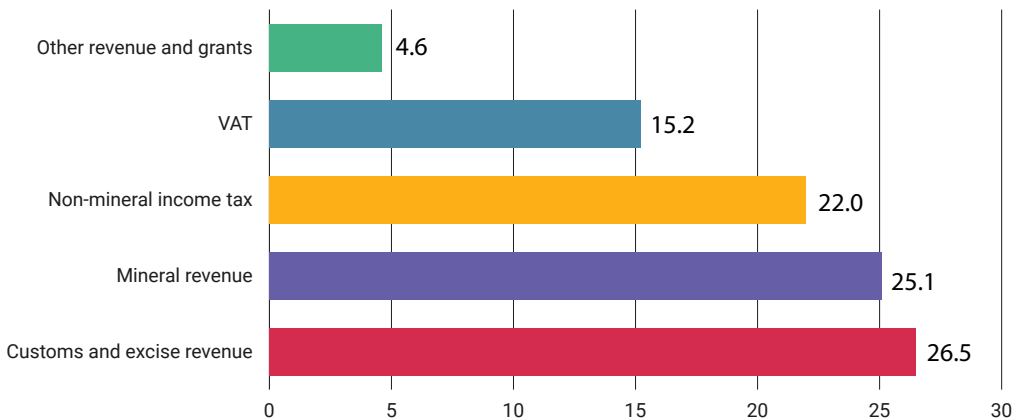
**The Government of Botswana's role as a shareholder entitles it to receive proportionate dividends declared by profitable mining companies.**

In addition to taxes and royalties, the government benefits from dividend payments on its shareholdings in mining companies in Botswana. Under the Mines and Minerals Act of 1999, the government is entitled to acquire a shareholding of up to 15 per cent in non-diamond mining companies at the time that a mining licence is granted. For diamond companies, the government shareholding is negotiated and codified in the relevant mining agreement and can be as high as 50 per cent. The government shareholding is paid for, with the government paying the relevant share of expenses incurred up to the stage of granting the mining licence (as well as being liable for a future share of investment costs, in line with its role as a shareholder). This arrangement sets the Government of Botswana apart from other governments in the region, which often prescribe a government 'free-carry'—a shareholding without a financial contribution. The Government of Botswana's role as a shareholder entitles it to receive proportionate dividends declared by profitable mining companies. The government directly owns shares in four Botswana mining companies—Bamangwato Concessions Limited, Botswana Ash, Debswana and Tati Nickel.

The Government of Botswana has been highly effective in capturing the value of its natural resources. The government's target is to achieve an average effective tax rate of 80 per cent for diamond mines and between 40 per cent and 60 per cent for gold and base metal mines. De Beers states that the government receives 85 per cent of the value of the diamonds mined in its mines through the Debswana partnership and through taxes and royalties. One estimate suggests that, between 1983 and 2014, mineral revenues were equal to 95 per cent of mineral rents. In other words, the government was

capturing 95 per cent of the available value. The cumulative effect of this value capture through tax, royalty and dividend frameworks is that mining revenues are a key part of the government treasury. At their peak, mineral revenues contributed 60 per cent of total government revenues, but they have since declined and now account for between a quarter and a third of the total, depending on exogenous criteria such as prices (see Table 1.3). Mineral rents can be highly volatile and dependent on prices (see Figure 1.3). For the 2024–2025 financial year, mineral revenue is expected to contribute 25.1 per cent of the total budget (see Figure 1.1) and in the 2022–2023 financial year, actual mineral revenues, including from dividends, exceeded the budget estimate (see Figure 1.2). The agreements with diamond companies are negotiated by the Minerals Policy Committee, made up of a small number of technocrats from the Ministry of Minerals and Energy, the treasury, the presidency, the Attorney General’s Office and the Bank of Botswana.

**Figure 1.1. Estimated sources of revenue for fiscal year 2024–2025 (BWP)**



Source: Botswana, Republic of, Ministry of Finance, The 2024/2025 Budget-In-Brief, p. 12, <<https://www.bankofbotswana.bw/sites/default/files/publications/2024-2025%20Budget-In-Brief%20FINAL.pdf>>, accessed 12 June 2024.

Details of the government’s rents are disclosed in parliamentary speeches on aggregate revenues and through the Bank of Botswana, which produces quarterly budget tables showing mineral resource revenues. This data is further aggregated and shared by Statistics Botswana. This reporting process is buttressed by a strong regulatory

framework and capable institutions, such as the Botswana Unified Revenue Service, a parastatal institution responsible for data analysis and reporting. The Service reports mineral revenues, including different revenue streams, such as royalties and dividends. It also publishes annual reports on production volumes. In addition, the Bank of Botswana publishes statistics on the value of mineral resource exports, licence fees and aggregate figures for all revenues accumulated from mining activities, including taxes, dividends and royalties.

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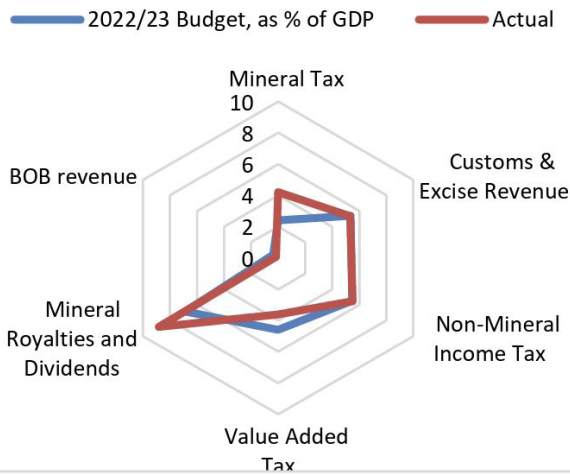
**While the availability of top-level data is good, there are concerns regarding the allocation and management of large-scale public investments.**

While the availability of top-level data is good, there are concerns regarding the allocation and management of large-scale public investments. Furthermore, mining agreements between companies and the government are not made public, so citizens do not know the specifics of any tax concessions or rebates included in the relationship. There is a lack of company-level disclosure. Parliamentary oversight of the relationship between companies and government is also weak.

A central criticism from African citizens and governments of diamond and gemstone value chains is that the valuation of stones at different stages of the process can be highly opaque, and that the highest proportion of the sales value is captured by retailers at the end of the value chain. This can lead to mistrust and a problem of asymmetric information between international vertically integrated companies operating along the value chain, and governments whose participation tends to be concentrated upstream. To overcome the information challenge, and to capture a higher proportion of the end value of the stones, the government of Botswana has done two things. It has set up a company that participates to some extent in downstream activities; and it employs the services of external auditors to get verification that the value that it gets from stones that pass from the joint venture to De Beers are appropriately values and that the company is not using its buying power to manipulate the relationship. The government's involvement in downstream operations in the diamond industry through the Okavango Diamond Company provides it with some knowledge of sales and marketing activities that offset the information asymmetry between government representatives and those of the established mining companies. The government employs an independent diamond valuator to audit and value diamonds sold by the Debswana joint venture to De Beers. For more than 30 years, the government has retained the services of Slaughter and May to support officials in negotiating all mining projects. This might explain the stability of negotiation outcomes

such that there has been no litigation over 50 years. However, some analysts point to the arrangements between the Okavango Diamond Company and HB Antwerp, a new market entrant, as demonstrating naivety on the part of the government. In 2023 Botswana acquired a 24 per cent stake in HB Antwerp, though the financial details of the transaction were undisclosed. As part of the deal, the partnership secured a supply of diamonds from the Okavango Diamond Company.

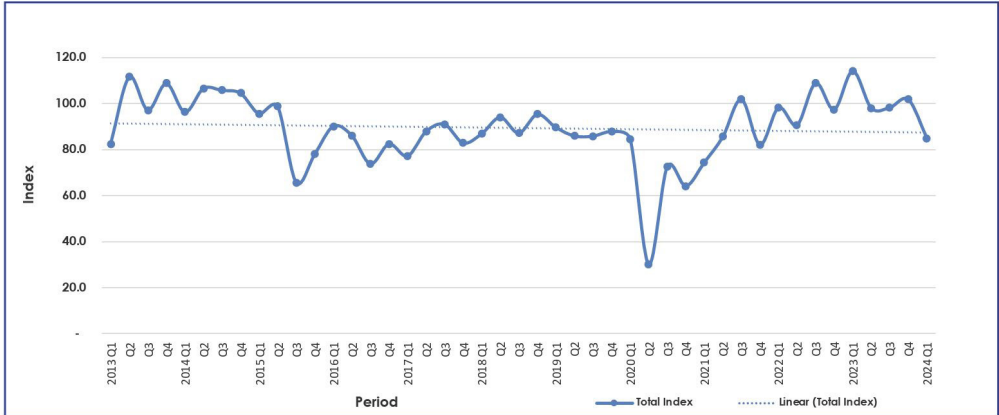
**Figure 1.2. Actual versus budget revenue as a percentage of GDP for fiscal year 2022–2023**



Source: Botswana, Republic of, Ministry of Finance, The 2024/2025 Budget-In-Brief, p. 14, <<https://www.bankofbotswana.bw/sites/default/files/publications/2024-2025%20Budget-In-Brief%20FINAL.pdf>>, accessed 24 September 2024.

### Figure 1.3. Index of diamond revenues

Figure 1: : Total Index of Mining Production: 2013 Q1 - 2024 Q1



Source: Statistics Botswana, 'Index of the Physical Volume of mining production first quarter 2024: Stats brief', 2024, <<https://statsbots.org.bw/sites/default/files/Index%20Of%20The%20Physical%20Volume%20Of%20Mining%20Production%20First%20Quarter%202024.pdf>>, accessed 21 November 2024.

## 1.3. FISCAL SAVING

Despite significant resource revenues, Botswana has thus far been able to prevent so-called Dutch disease thanks to three important factors—fiscal saving, a current-account surplus and significant government investment in infrastructure and human capital. These factors have helped control the exchange rate and inflation during resource booms. Some government savings have been invested offshore, limiting exchange rate depreciation and diversifying future foreign exchange sources. Through the Bank of Botswana, the government runs the Pula Fund—a long-term investment portfolio and the nation's sovereign wealth fund. The Pula Fund was established in 1994 to preserve part of the income from diamond exports for future generations. The creation of a separate investment portfolio made it possible to provide more appropriate, longer-term investment considerations in the guidelines for management of the Fund. Botswana also accumulated reserves to protect against drops in mineral revenues. Public savings were managed through the Public Service Debt Management Fund and the Revenue Stabilization Fund, which provided steady government income.



Investments in infrastructure and human capital boosted productivity without hurting private sector growth. As a result, Botswana avoided the typical boom-and-bust cycles seen in other mineral-rich economies and maintained macroeconomic stability. Though Botswana did save financially, most of its mineral revenues were invested in physical assets and human capital rather than financial savings. There were no rules mandating that a specific portion of mineral revenues be saved, giving the government flexibility to fund budget deficits. Furthermore, prudent fiscal management has allowed the government and citizens to benefit from spending on social goods and to support employment.

Over time, the government has implemented several fiscal rules to preserve fiscal discipline and generate public savings from mining revenues. The current rule is a debt ceiling of 40 per cent of GDP, with foreign debt at no more than half of this amount. Although this rule has thus far not been tested, the limit may be reached as a result of the combination of the impact of Covid-19 and the current administration's expansionary fiscal policy. Despite the existence of the Pula Fund and fiscal rules, public financial wealth has declined over the past two decades. The IMF now observes that forex reserves, which stood at 121 per cent of GDP in 2001, had fallen to 24 per cent by 2023, and the government's cash balances declined from 43 per cent to 4 per cent of GDP between 2008 and 2023 (IMF 2024). These trends mainly reflect a structural reduction in domestic diamond production and an elevated ratio of public spending to GDP. The decline in the government's cash reserves has prompted a reconsideration of resource management and support from international financial institutions regarding the creation of a new sovereign wealth fund to complement the Pula Fund and advance national financial stability.

The emergence of economic challenges owing to Botswana's weakening forex position, declining cash balance and subdued growth, partly due to global economic headwinds, are precipitating a revaluation of the relationship between resources and society in Botswana. There are still significant opportunities in the diamond sector, including through vertical diversification and new prospects in copper and critical minerals. To capture the benefit of these resources, the government can reflect on the success of its relationship with De Beers and replicate some of the elements that have given rise to the country's positive narrative.

**The partnership between the Government of Botswana and De Beers has been instrumental in driving national growth, with its success due in equal measure to the foresight, commitment and mutual consensus of both parties.**

## **1.4. THE DEBSWANA PUBLIC–PRIVATE PARTNERSHIP**

The partnership between the Government of Botswana and De Beers has been instrumental in driving national growth, with its success due in equal measure to the foresight, commitment and mutual consensus of both parties. Rather than being a story of a government taming the corporate excess of a private company, it is a history of mutual accountability and collaborative institutional evolution. A few key moments and structural conditions underpin the relationship and the nature of revenue sharing.

- *The nature of the diamond market at the time of the Orapa discovery.* At the time of the early discoveries in Botswana, the newly independent government was faced with a natural resource endowment, and it had no experience in a market that was monopolized by one company, De Beers. The company's Chairman, Harry Oppenheimer, had ingratiated himself with independence leaders across the continent. The critical aspect of the relationship was that De Beers was the only company that could enable the government to capitalize on its endowment.
- *The independence government's commitment to national ownership and to the principle that those companies responsible for a discovery would get the right of first refusal on extraction.* Before independence, the incoming leaders, predominantly traditional chiefs who had been in positions of authority under the British protectorate, agreed that natural resources were the property of the nation, not the sitting leader. Furthermore, once in government, they implemented a policy that the exploration company that discovered a deposit would then get the right of first refusal to the mining rights. This policy incentivized exploration and is a key incentive for companies to this day.
- *The use of diamond revenues for national rather than regional development.* The agreement that mineral resources were to benefit the nation was the bedrock for the success of the partnership. It was, in part, a move by the independence leader, President Seretse Khama, to shore up national support. The Orapa discoveries were made during his chieftaincy. He could already count on political support in this area but needed to develop national legitimacy. Thus, he established a tradition of using revenues to benefit the nation.

- *The establishment of a 50–50 joint venture.* Debswana was formed as the De Beers Botswana Mining Company on 23 June 1968. Over the next five years, the Government of Botswana increased its ownership stake from its original 15 per cent to 50 per cent, and the company eventually changed its name to Debswana.
- *The product swap that paved the way for government ownership of the parent company.* During the market slump of the 1980s, Debswana accumulated a significant stockpile of unsold diamonds. When the market recovered, De Beers was unable to offer cash for the entire stockpile; instead, a deal involving both cash and shares was agreed upon in 1986, which gave the Government of Botswana 5 per cent ownership of the parent company. In 2001 De Beers was restructured to become a privately owned company, and, as a result, the Government of Botswana's shareholding increased to 15 per cent. A 15 per cent paid shareholding is now an option for the government in all operations.
- *The establishment of beneficiation processes in Botswana.* In 2006 it was announced that De Beers would also establish a diamond trading centre ) in Botswana. The centre sorts and aggregates diamonds from other parts of the group and market. Despite not being commercially viable, given the economies of scale of existing hubs and the infrastructure deficits in Botswana, such as electricity, the centre was established in 2008. The move was an example of the government's successful negotiation with the company to accrue greater economic benefits for Botswana but was underpinned by the longevity of the partnership and mutual trust.

Some have accused the symbiotic relationship between De Beers and the ruling party—particularly in the early years of institutional development—of limiting democratic progress and entrenching the ruling party's power (Good 2008). In addition, some asserted that the company was funding the party during its early period of development. Despite its shaky beginnings, Botswana made important democratic institutional advances in the latter part of the 20th century, including in terms of the quality of its democratic institutions, such as the electoral commission. However, the country has still been accused of being an example of illiberal authoritarianism and presidentialism (Good and Taylor 2008).

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**Botswana is a leading producer of diamonds, and its experience in that sector has shaped its mining and minerals policies.**

Botswana is a leading producer of diamonds, and its experience in that sector has shaped its mining and minerals policies. The need for diversification away from dependence on gemstones has fuelled a desire on the part of the government to promote other mining activities in the country, including in copper, nickel, silver and coal, where it has a history of extraction, and in lithium, manganese and rare earth elements, which are all in demand for the green transition around the world. Botswana has a transparent and consistent fiscal framework for mining companies. It has pursued state ownership in the sector but maintained that this form of ownership would involve paid shareholdings, not a free-carry arrangement. For citizens to continue to benefit from the country's natural resources, however, national leaders must remain on the trajectory that has been in place since independence and not be tempted by short-term gains.

## Chapter 2

# LEGAL FRAMEWORKS GUIDING MINERAL RESOURCE GOVERNANCE

The success of the mining sector in Botswana and its ability to contribute to the national treasury are from the result of the regulatory clarity and consistency that have governed the industry and fostered confidence on the part of investors. Many of these frameworks were initially designed for the diamond industry but support an emerging diversified industry. This chapter discusses the legislative and regulatory frameworks in the country, highlighting best practices and identifying gaps (Table 2.1).

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## 2.1. KEY ISSUES IN MINING GOVERNANCE IN BOTSWANA

### 2.1.1. Clarity and comprehensiveness

According to a 2016 report by the World Bank on mining and governance in Botswana, the clarity and comprehensiveness of the country's legal framework are mostly sound. Botswana administers a real-time and interactive online cadastre portal, which ensures the speedy and transparent processing of licence applications. Nevertheless, while legislation is clear at the operations phase, the need for greater clarity around licensing has been identified, particularly in relation to the lack of legally established time frames for processing various types of licences (World Bank Group 2016: 14–15). Meanwhile, Botswana needs to update its mining legislation to remain aligned with international good practices and domestic priorities. Despite the government's recent intentions to diversify away from a reliance on diamonds, experts within the coal industry have pointed out that the existing legal framework, drafted in 1999, does not account for certain aspects in which coal mining differs from diamond mining (World Bank Group 2016: 25).

**Table 2.1. Legal frameworks guiding mineral resource governance in Botswana**

<b>Principal legislation</b>	<ul style="list-style-type: none"> <li>• Mines and Minerals Act, 1999</li> <li>• Mines and Minerals Amendment Act, 2007</li> </ul>
<b>Additional legislation and regulations</b>	<ul style="list-style-type: none"> <li>• Mines and Minerals (Prospecting and Leasing Charges) Regulations, 1967</li> <li>• Diamond Cutting Act, 1979</li> <li>• Precious and Semi-Precious Stones (Protection) Act, 1969</li> <li>• Mines, Quarries, Works and Machinery Act, 1978</li> <li>• Environmental Assessment Act, 2011</li> <li>• Unwrought Precious Metals Act, 1944</li> <li>• Explosives Act, 1961</li> <li>• Botswana Geoscience Institute Act, 2014</li> <li>• Petroleum (Exploration and Production) Act, 2013</li> <li>• Botswana Energy Regulatory Authority Act, 2016</li> <li>• Mineral Rights in Tribal Territories Act, 1967</li> <li>• Income Tax Act 1973, Chapter 52:1</li> <li>• Income Tax Amendment Act, 2020</li> <li>• Companies Act 2004, Chapter 42:01)</li> <li>• Companies Amendment Act, 2019</li> <li>• Companies Re-registration Act, 2018</li> <li>• Customs Act, 2018</li> <li>• Trade Act, 2019</li> <li>• Tribal Land Act, 2018</li> </ul>
<b>Key supporting policies</b>	<ul style="list-style-type: none"> <li>• National visions</li> <li>• Botswana Excellence Strategy</li> <li>• National development plans</li> <li>• National Water Policy</li> <li>• National Energy Policy</li> <li>• Land Policy</li> <li>• Citizen Economic Empowerment Policy</li> <li>• Minerals Policy, 2022</li> </ul>
<b>Key regulatory bodies</b>	<ul style="list-style-type: none"> <li>• Ministry of Mineral Resources, Green Technology and Energy Security</li> <li>• Department of Mines</li> <li>• Minerals Policy Committee</li> <li>• Minerals Affairs Division</li> <li>• Botswana Geoscience Institute</li> <li>• Diamond Hub</li> <li>• Coal Development Unit</li> <li>• Okavango Diamond Company</li> <li>• Minerals Development Company Botswana</li> <li>• Botswana Energy Regulatory Authority</li> </ul>

**Table 2.1. Legal frameworks guiding mineral resource governance in Botswana (cont.)**

<p><b>Licensing and permitting</b></p>	<ul style="list-style-type: none"> <li>• Licences and permits are issued by the Ministry of Mineral Resources, Green Technology and Energy Security.</li> <li>• Prospecting: A prospecting licence is issued for three years, with two options to renew, on condition that each period does not exceed two years and the licence covers a specified area (not exceeding 1,000 km<sup>2</sup>). The holder of a prospecting licence may apply for a retention licence provided that the area covered by the prospecting licence is the same. A retention licence is granted for two periods not exceeding three years each.</li> <li>• Mining: A mining licence is granted on condition that the applicant holds a prospecting licence, a retention licence or a waiver. A mining licence is valid for a period not exceeding 25 years. A minerals permit, which grants permission to conduct artisanal and small-scale mining operations, is for a period not exceeding five years.</li> </ul>
<p><b>Environmental standards and social safeguards</b></p>	<ul style="list-style-type: none"> <li>• Environmental impact assessments: The Mines and Minerals Act mandates that applicants for mining or retention licences must include an environmental impact assessment in their project feasibility reports. Environmental impact assessments often lack rigour and fail to provide informational value as a result of technical and human resource limitations, particularly with respect to preparing reports within the required time frames.</li> <li>• Social safeguards: The legal framework lacks clarity in addressing the displacement of communities due to mining activities. There is no clear resettlement policy or procedural guidance for companies tasked with the resettlement of displaced communities. There is a lack of clarity over the amount of compensation owed to the holders of customary land rights displaced as a result of the compulsory acquisition of land.</li> </ul>
<p><b>Artisanal and small-scale mining</b></p>	<ul style="list-style-type: none"> <li>• There is no specific legislative framework that focuses on artisanal and small-scale mining in Botswana. The Mines and Minerals Act of 1999 includes provisions on the issuance of minerals permits.</li> <li>• A minerals permit must be granted before any artisanal and small-scale mining operation may commence.</li> <li>• Permit holders must observe the following guidelines: The mining area must not exceed 0.5km<sup>2</sup> and must be mined for minerals besides diamonds. The total investment in the project's fixed assets cannot exceed BWP 1 million (approximately USD 75,000). Production cannot exceed 50,000 tonnes per annum.</li> </ul>

**Table 2.1. Legal frameworks guiding mineral resource governance in Botswana (cont.)**

<p><b>Transparency and accountability</b></p>	<ul style="list-style-type: none"> <li>• The auditor general audits the reports on mineral revenues produced by the Botswana Unified Revenue Service.</li> <li>• Detailed information and data on mineral revenues and government spending are not available in digital format; they can be found in hardcopy only, and publication may be delayed for months or even years.</li> <li>• The current regulatory framework for Botswana’s mining sector does not include specific anti-corruption laws. The Directorate on Corruption and Economic Crime (DCEC) was established to investigate corruption and economic crime within public bodies; however, its impact is limited due to jurisdictional restrictions. The DCEC cannot launch investigations into privately owned companies that are significant GDP contributors, like Debswana. Transparency and accountability are a concern.</li> <li>• It has been argued that Southern African countries like Botswana lack the necessary institutional capacity to independently prevent illicit financial flows. By working together, they can strengthen the institutional capacity and oversight mechanisms to reduce such flows.</li> </ul>
<p><b>Consultation processes and grievance mechanisms</b></p>	<ul style="list-style-type: none"> <li>• Consultation processes: The Environmental Assessment Act contains laws mandating the public disclosure of information relating to mining activities, as well as the holding of consultation meetings with affected individuals. There are gaps in the legal framework pertaining to public participation, consultation and the disclosure of information in land and mining acts, which have been criticized by local communities.</li> <li>• Grievance mechanisms: The Acquisition of Property Act provides for an assessment board tasked with settling disputes related to compensation and titles. Grievances can be escalated to the High Court if the initial assessments are disputed. The Mines and Minerals Act stipulates the use of arbitration processes if mineral concession holders do not pay the required compensation.</li> </ul>
<p><b>Land and resource rights</b></p>	<ul style="list-style-type: none"> <li>• Rights of ownership in minerals are vested in the state.</li> <li>• The Constitution of Botswana prohibits the compulsory acquisition of property unless it is for the sake of development or utilization of Botswana’s mineral resources. The Acquisition of Property Act grants the president the right to acquire property for development or public purposes.</li> <li>• The Tribal Land Act provides for the allocation and management of tribal land as administered by the land boards.</li> <li>• Botswana’s land laws and administration are held up as an example to follow for many developing countries, but they face issues related to land rights for minority groups.</li> </ul>

Source: Compiled by the authors.



There is also contention over how well the legal frameworks guiding Botswana's mineral governance deal with land issues. Ghebremusse (2020: 189) contends that 'any meaningful consultation with communities affected by mining development is lacking in the current mining governance regime', as only article 11 of the Environmental Assessment Act permits consultation with affected communities at the state's discretion. Ghebremusse (2020: 190) also highlights the example of the displacement of the Basarwa, a collective term for the San people in Botswana, as evidence of the fact that Botswana lacks a rights-based approach to mining governance. Despite voting in favour of the United Nations Declaration on the Rights of Indigenous Peoples, in addition to being a signatory to the African Charter on Human and Peoples' Rights, Botswana has yet to adopt and integrate international standards and best practices into its national legal framework.

### 2.1.2. Enforcement mechanisms

The Mines and Minerals Act of 1999 is the primary guiding document that regulates Botswana's mining and non-oil minerals sectors (African Mining Legislation Atlas (AMLA) 2024). While the regulatory framework for these sectors is extensive, notable acts include the Mines, Quarries, Works and Machinery Act, which deals with health, safety and welfare concerns of all workers engaged in mining activities and operations; the Environmental Assessment Act, which focuses on the possible environmental impact of mining and prospecting operations on the environment; and the Petroleum (Exploration and Production) Act, which focuses on petroleum exploration and extraction (Republic of Botswana 2022: 10; AMLA 2024).

The Ministry of Mineral Resources, Green Technology and Energy Security is the regulatory entity within the government tasked with the formulation, coordination, development and implementation of policies and programmes relating to Botswana's minerals and energy resources sectors (African Mining Legislation Atlas n.d.; Republic of Botswana 2022: 10). The Ministry is supported by auxiliary entities such as the Department of Mines, the Minerals Policy Committee, the Minerals Affairs Division, the Botswana Geoscience Institute, the Diamond Hub, the Coal Development Unit, the Okavango Diamond Company, the Minerals Development Company Botswana and the Botswana Energy Regulatory Authority (Republic of Botswana 2022: 10–11; Government of Botswana n.d.a). Each entity is responsible for certain aspects of implementing approved policies and programmes on minerals and energy (Republic of Botswana 2022: 10–11).

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**The Mines and Minerals Act of 1999 is the primary guiding document that regulates Botswana's mining and non-oil minerals sectors.**

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## All minerals found in Botswana are owned by the state.

All minerals found in Botswana are owned by the state. This means that any person wishing to conduct mining or prospecting operations in Botswana is required to apply for a licence or permit to proceed (LEX Africa 2022: 9). The minister of mineral resources, green technology and energy security grants licences and permits to conduct prospecting and mining activities (LEX Africa 2022: 9). The Mines and Minerals Act regulates the issuance of prospecting licences, retention licences, mining licences and mineral permits (KMPG Global Mining Institute 2014: 10; LEX Africa 2022: 9). Interested parties must apply for a prospecting and retention licence in order to carry out prospecting activities. A prospecting licence is issued for three years, with two options to renew, on condition that each period does not exceed two years and the licence covers a specified area (not exceeding 1,000 km<sup>2</sup>) (LEX Africa 2022: 9–10). The holder of a prospecting licence can apply for a retention licence provided the area covered by the prospecting licence is the same. A retention licence is granted for two periods not exceeding three years each (LEX Africa 2022: 10). If mining activities are to be conducted, the interested party must apply for a mining licence and minerals permit. A mining licence is granted on condition that the applicant is the holder of a prospecting licence, a retention licence or a waiver that is valid for a period not exceeding 25 years (LEX Africa 2022: 10–11). Minerals permits grant permission to conduct artisanal and small-scale mining operations and are valid for a period not exceeding five years (Government of Botswana n.d.b).

The Mines and Minerals Act of 1999 includes a provision allowing the government to acquire a minority stake (up to 15 per cent) in mining projects, excluding diamonds, and to install government representatives on the boards of mining projects (KPMG Global Mining Institute 2014: 10). The Mines Quarries, Works and Machinery Act provides for the safety, health and welfare of any person involved in prospecting, mining, quarrying or associated activities (Bookbinder and Peo 2015: 41). The Act specifies that mines, quarries, works and machinery involved in these activities are to undergo inspections and must be regulated (Bookbinder and Peo 2015: 41).

### 2.1.3. Sanctions and penalties

Part XIII (section 80–85) of the Mines and Minerals Act of 1999 sets out a comprehensive list of all offences and associated penalties pertaining to persons who are found to contravene any of the provisions laid out in the Act. Section 83 describes penalties in greater detail. Four subsections expand upon the penalty in proportion to the committed offence—that is, each subsection deals

with offences that escalate in severity. In the event of a violation, a penalty—either a fine or imprisonment—is imposed, depending on the severity of the offence. The first level of offence carries a punishment of either a fine not exceeding BWP 1,000 (approximately USD 75), a prison sentence of no more than three months or both. The second level of offence carries a punishment of either a fine not exceeding BWP 5,000 (approximately USD 375), a prison sentence of no more than 12 months or both. The third level of offence carries a punishment of either a fine not exceeding BWP 100,000 (approximately USD 7,500), a prison sentence of no more than five years or both. These punishments are doled out depending on whether or not the offence was the guilty party's first conviction. The fourth level of offence deals with repeat offenders, whereby the punishment is doubled, depending on which level of offence was committed.

#### 2.1.4. Environmental standards

Section 65(2) of the Mines and Minerals Act stipulates that any applicants for a mining or retention licence (including the renewal of either) must conduct and include an environmental impact assessment as part of their project feasibility report (Catholic Commission for Justice and Peace 2014: 23). Botswana's 2011 Environmental Assessment Act constitutes the legislative basis governing environmental standards and the implementation of environmental impact assessments—in addition to environmental management plans and strategic environmental assessments—for mining projects in the country (Matome and Fischer 2024: 267).

According to Matome and Fischer (2024: 270), environmental impact assessments and strategic environmental assessments tend to lack rigour and fail to provide informative value, owing in part to technical and human resource limitations but, importantly, also because these assessments are often conducted too late, 'after key decisions relating to location, scale and design of an initiative have been made'. Despite 2020 and 2021 amendments to the 2011 Environmental Assessment Act to simplify environmental assessment processes in order to reduce time, ultimately, the amendments eroded some of the previous benefits, including the scope of the evaluation, integration of criteria and considerations, and public participation (Matome and Fischer 2024: 277).

#### 2.1.5. Social safeguards

Botswana lacks a coherent legal framework for addressing the displacement of communities due to mining activities, mainly

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**Botswana lacks a coherent legal framework for addressing the displacement of communities due to mining activities.**

because there is no clear resettlement policy or procedural guidance for companies to follow when required to resettle displaced communities (Owen, Vivoda and Kemp 2020: 4925). The country's current legislation does not mandate the preparation of a resettlement plan, and thus it has no national institutions that are tasked with managing resettlement (Owen, Vivoda and Kemp 2020: 4923; Catholic Commission for Justice and Peace 2014: 14). This gap can be seen as problematic given the state's rights to acquire property for the purpose of development or for public benefit. These rights have resulted in notable population displacement in the service of mining activities to foster economic growth. Moreover, while Botswana's Constitution provides individual protections for property, the country's laws regarding the compulsory acquisition of land from customary rights holders are not as prescriptive. There is a lack of clarity over compensation, which generates tensions between the state, mining-affected communities and mining companies (Owen, Vivoda and Kemp 2020: 4915 and 4926).

#### **2.1.7. Anti-corruption measures**

The current regulatory framework for Botswana's mining sector does not include specific anti-corruption laws; however, the Mines and Minerals Act of 1999 includes a provision that allows the government to acquire a minority share (up to 15 per cent) in mining projects (LEX Africa 2022: 11; KPMG Global Mining Institute 2014: 10). As a minority shareholder, the government can place two representatives on the boards of these projects (LEX Africa 2022: 11; KPMG Global Mining Institute 2014: 10). James and Tonova (2024) posit that the Act's shareholder provision has enabled the government to substantially increase its stake in the country's mining projects. While the government has the right to acquire shareholder status in a project, it is not obliged to do so (LEX Africa 2022: 11; James and Tonova 2024).

Despite maintaining long-term political stability, relative economic stability and positive relations with regional neighbours, Botswana still faces the risk of corruption (World Bank Group 2016: 24; James and Tonova 2024). Dikuelo (2016) argues that Botswana is quite susceptible to illicit financial flows, with an estimated total of BWP 200 billion (approximately USD 15 billion) in illegal transfers to have occurred over a 10-year period up to 2013. In addition, according to a 2015 report by Global Financial Integrity, approximately USD 20 billion may have been moved out of Botswana in the form of illicit financial flows (Gumede and Fadiran 2019: 29). Gumede and

Fadiran (2019: 44–45) argue that most Southern African countries, like Botswana, lack the necessary institutional capacity required to independently prevent illicit financial flows from occurring in the mining sector. It is recommended that the governments of these countries band together to jointly audit their abilities to address the problem.

In 1994 the Directorate on Corruption and Economic Crime was established to investigate corruption and economic crime within public bodies (Goredema 2011: 14; Mantzaris and Pillay 2020: 100). The Legal Services Unit, the Financial Intelligence Agency and the Directorate of Public Prosecution work alongside the DCEC by assisting the Directorate with the processing and investigation of suspicious-activity reports as well as complaints of corruption and money laundering (Goredema 2011: 14–15). While the Directorate plays a crucial part in mitigating corruption, Mantzaris and Pillay (2020: 100–01) highlight that jurisdictional constraints limit the Directorate's effectiveness, as it cannot investigate the activities of privately owned companies. Mantzaris and Pillay (2020: 101) illustrate this point by referring to the Debswana Diamond Mining Company, which is a significant GDP contributor and an invaluable asset to the country. However, given that Debswana is jointly owned by the government and De Beers, the DCEC cannot launch any inquiry into the company's governance, management or operations (Mantzaris and Pillay 2020: 101). This loophole allows privately owned companies to circumvent standard operating and governance procedures that public bodies are required to adhere to.

#### **2.1.8. Consultation processes**

Although section 7(1) of the 2011 Environmental Assessment Act stipulates requirements for the public disclosure of information related to mining activities in addition to the holding of consultation meetings with affected communities, Botswana's legal framework lacks provisions relating to public participation, consultation and disclosure of information in its mining and various land acts (Catholic Commission for Justice and Peace 2014: 26). According to Ghebremusse (2020: 189), 'consultations that have occurred were criticised by local communities for not being sufficiently inclusive of traditional institutions ... or only being procedural and not substantive considerations of a community's concerns'.

**Botswana's Acquisition of Property Act provides for a board of assessment that is specifically tasked with settling disputes or grievances relating to compensation and contracts.**

### 2.1.9. Grievance mechanisms

In terms of dispute resolution, Botswana's Acquisition of Property Act provides for a board of assessment that is specifically tasked with settling disputes or grievances relating to compensation and contracts. It also allows challenges concerning the legality of compulsory acquisitions to be escalated to the High Court (Catholic Commission for Justice and Peace 2014: 29). For mining activities, section 62(2) of the Mines and Minerals Act stipulates the use of arbitration processes if mineral concession holders do not pay the compensation required of them (Catholic Commission for Justice and Peace 2014: 29).

### 2.1.10. Land and resource rights

Botswana has extensive legislation pertaining to its land and resource rights, with recent reforms to its Tribal Land Act following a 2015 policy to 'protect and promote land rights of all landholders and promote sustainable human settlements' (Government of Botswana 2015: 2009). The Tribal Land Act provides for the allocation and management of tribal land administered by the decentralized land boards overseeing different territories. Though national laws protect customary land and private property rights, the rights of ownership in minerals are vested in the republic, and thus provisions are made for the acquisition of property when deemed necessary for public purposes or development (Catholic Commission for Justice and Peace 2014: 14; Manatsha 2019: 75). These rights and provisions are stipulated in section 9 of the Constitution, which permits the state to possess interests or rights if it is in the interest of developing and utilizing mineral resources, while the Acquisition of Property Act also stipulates the president's right to acquire property for this purpose if it is in the public interest (Catholic Commission for Justice and Peace 2014: 20–21).

While many regard Botswana's land administration systems as a model for other developing countries to emulate, Manatsha (2019: 74) notes that these systems are not without drawbacks, including ongoing conflicts over land rights involving marginalized ethnic groups such as the Basarwa and San. In addition, increasing land acquisition by non-citizens has also become a point of contention that calls into question Botswana's development policy and strategies. While recent reforms to the Tribal Land Act have been aimed at responding to these issues, Kalabamu (2019: 344) argues that updated land policies remain too silent on land rights for minority groups and have not addressed the issue of 'inadequate monetary compensation for tribal land repossessed by the land boards for

public uses or expansion of settlements'. Moreover, according to Kalabamu (2019: 344), despite its objectives of providing more tenure security and protection of land rights to its citizens, the new land policy has added more grounds for the state and land boards to justify the cancellation of customary land rights. With the added provision that land rights can be cancelled if the land is deemed to be 'idle', 'neglected' or 'deteriorating', this policy has added subjectivity that allows for abuse by the elites and potential sources of future conflict (Kalabamu 2019: 344).

### 2.1.11. Artisanal and small-scale mining

No specific legislative framework focuses on artisanal and small-scale mining in Botswana (Tychsen, Batista and Carvalho 2022: 171). As mentioned previously, the Mines and Minerals Act of 1999 is the principal document that guides the mining industry. The Act includes several provisions regarding the regulation of mining activities in Botswana. A mining licence is required for larger-scale mining operations, and a minerals permit is required for artisanal and small-scale mining (World Bank Group 2016: 17). Tychsen, Batista and Carvalho (2022: 170) define small-scale mines as 'operations with low plant investment, have small production rates, less complex operation and are highly labour intensive'.

Before any small-scale mining operation commences, individuals or companies apply for a minerals permit through the Department of Mines, which grants permission to conduct artisanal and small-scale mining operations in Botswana (Government of Botswana n.d.b). Once an application is submitted, the applicant must obtain permission in the form of surface rights from the landowner or land authority, and then the applicant must obtain authorization from the Department of Environmental Affairs regarding the environmental impact of the project, and lastly, the applicant must obtain archaeological clearance from the Department of National Museum and Monuments to begin mining (Government of Botswana n.d.b). Once the application is approved, the following rules must be observed by permit holders: (a) the mining area must not be greater than 0.5 km<sup>2</sup> and must be mined for minerals besides diamonds; (b) the total investment in the project's fixed assets cannot exceed BWP 1 million (approximately USD 75,000); and (c) production cannot exceed 50,000 tonnes per annum (Government of Botswana n.d.b).

The Botswana Geoscience Institute is responsible for conducting research within the geoscience field, providing specialized geoscientific services and advising on geohazards (Tychsen, Batista

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**No specific legislative framework focuses on artisanal and small-scale mining in Botswana.**

and Carvalho 2022: 172). Due to its prominence in the geoscience field, the BGI plays a crucial role in artisanal and small-scale mining by disseminating information on known mineral deposits in Botswana, as well as improving access to research and geo-resource archives (Tychsen, Batista and Carvalho 2022: 173). The BGI supports artisanal and small-scale mining projects by conducting initial assessments of deposits during those stages which are costly and dangerous for small-scale miners (Tychsen, Batista and Carvalho 2022: 173). The Institute assigns technical experts to assess deposits through several specialized processes, ensuring that the area is ready for the tendering process (Tychsen, Batista and Carvalho 2022: 173).

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**The Mines and Minerals Act of 1999 outlines the structure the government is entitled to employ when collecting royalties from mining, prospecting and mineral permit holders.**

#### 2.1.12. Taxation and revenue

The Mines and Minerals Act of 1999 outlines the structure the government is entitled to employ when collecting royalties from mining, prospecting and mineral permit holders. Botswana's taxation framework for mineral revenues aims to strike a balance between maximizing benefits for the country while also creating an environment for investors to receive competitive returns on their investments. Nevertheless, the framework prioritizes the recovery of mineral revenues through several avenues—royalties, taxation and dividends (Jefferis 2016: 9–11). The Mines and Minerals Act details the fixed royalty rates associated with three categories of minerals—precious stones (10 per cent), precious metals (5 per cent) and other minerals or mineral products (3 per cent) (Jefferis 2016 9). Companies with mining licences are subject to a specialized taxation regime that is detailed in schedule 12 of the Income Tax Act, which differs from the standard corporate taxation regime (Jefferis 2016: 9; LEX Africa 2022: 13). The government employs this rent appropriation strategy to account for sudden 'super-normal or windfall profits' enjoyed by mining companies (Jefferis 2016: 9). Essentially, the more profitable a mining enterprise is, the higher its tax rate will be. As mentioned earlier, the Mines and Minerals Act allows the government to acquire minority shareholder status in a licensed mining company, which permits the government to collect mineral revenue in the form of dividends from the respective company (Jefferis 2016: 10).

Given that Botswana has a mineral-based economy that revolves around the mining of non-renewable resources, the government has prioritized a public finance policy framework that supports the sustainable use of mineral resources and focuses on maintaining the country's current asset base (African Natural Resources 2016:



11). In order to attain these objectives, the government is guided by the asset-preservation principle, reinvesting the mineral revenues that accrue from mining non-renewable resources into alternative income streams that will in turn replace the current inflow of mineral revenues (African Natural Resources Center 2016: 11). Mineral revenues are not placed in a separate budget; instead, they are combined into a 'general revenue pool' (African Natural Resources Center 2016: 11). While guidelines are in place on how to spend mineral revenues, it should be noted there are no official regulations governing these guidelines, nor are there directions on how to distribute the revenue between the different types of assets—for example, human, physical and financial capital (African Natural Resources Center 2016: 11–12).

#### 2.1.13. Revenue management

Botswana's bureaucratic and institutional performance, particularly with regard to the management of mineral revenues, is often referred to as high-functioning and highly skilled (World Bank Group 2016: 19). However, the African Development Bank posits that Botswana's management of mineral revenue and spending is rather ambiguous (African Natural Resources Center 2016: 24). Although detailed data and information are available, access to the available data is often impossible, as some information is accessible only in hardcopy (Jefferis 2016: 26).

The Botswana Unified Revenue Service is a government parastatal that provides crucial services such as reporting on mineral revenues, royalties and dividends as well as data analysis. The reports published by the Revenue Service are audited by the Office of the Auditor General (World Bank Group 2016: 19). However, Jefferis (2016: 26) claims that the auditor general is usually delayed when it comes to publishing reports, which, again, are not available in digital format. While expenditure data is made publicly available, it is published only a full year after the relevant budget year has ended (African Natural Resources Center 2016: 24; Jefferis 2016: 26). Additionally, when it comes to contracts between the government and mining companies, tax arrangements and environmental impact assessments, no information has been made available to the public (African Natural Resources Center 2016: 24).

Botswana's Pula Fund is legally divided into two parts: the government controls the government investment account, and the Bank of Botswana controls the foreign reserves account (World

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**Botswana's bureaucratic and institutional performance, particularly with regard to the management of mineral revenues, is often referred to as high-functioning and highly skilled.**

Bank Group 2016: 19). The Fund is managed using internationally recognized standards (i.e. the Santiago Principles) and regularly undergoes independent external audits (World Bank Group 2016: 19). Jefferis (2016: 27) counters again, asserting that finer details about the Pula Fund's assets, rate of return, investment guidelines, employment of asset managers and their performance are not made available.

## Chapter 3

# TRANSPARENCY AND ACCOUNTABILITY OF CURRENT LICENSING PROCESSES FOR MINERAL RIGHTS

The Mines and Minerals Act of 1999 is the primary document regulating the issuance of prospecting and mining licences and permits. According to a World Bank (2016: 12) review of Botswana's mining investment and governance, the Act provides a comprehensive licensing framework for the mining sector. In addition, the World Bank emphasized in its report how much detail the Act provides when describing the licensing of each mining activity. The Act remains a very comprehensive document, detailing the rights and obligations of licence and permit holders, as well as the duration of licences and permits, for both large-scale and small-scale mining operations. The Department of Mines, which falls under the Ministry of Mineral Resources, Green Technology and Energy Security's broader jurisdiction, oversees the processing of licences and permits. However, the minister of mineral resources, green technology and energy security is responsible for granting licences and permits (World Bank Group 2016: 13; LEX Africa 2022: 9). The World Bank (2016: 13) claims that industry stakeholders believe Botswana to have equitable and fair licensing processes that do not discriminate against applicants. Nevertheless, not much current information is available on whether Botswana's licensing processes are, in fact, fair and equitable.

Khama (2023) notes that mining companies in Botswana take a calculated financial risk when electing to embark on a mining venture, as there is no guarantee that a mining project will be geologically favourable. While the government reserves the right to grant a licence, it also assumes a level of risk, assuming that the company will be successful in its operation (Khama 2023).

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### 3.1. SYSTEM DEVELOPMENT

No information is available regarding the development of a comprehensive licensing and mineral rights system. The only information available on licensing regulations and the procedures for issuing licences is detailed in the Mines and Minerals Act. While various sources have described the licensing process, it appears that there is not much commentary on the effectiveness of these processes, nor is there much insight available into how the Ministry of Mineral Resources, Green Technology and Energy Security conducts the licensing procedure. Although the Department of Mines oversees the licence application process, and there are some criteria that applicants must meet before they are granted a licence or permit (World Bank Group 2016: 13; LEX Africa 2022: 9), there is no information on how the Department and, subsequently, the Ministry of Mineral Resources, Green Technology and Energy Security decide on which companies or individuals satisfy the licence criteria.

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### 3.2. STAKEHOLDER INVOLVEMENT

While provisions are made for procedural, or surface-level, consultation and involvement with affected communities, Botswana's legislation (which prioritizes state projects over the protection of landholder rights) and lack of corporate social responsibility regulations in comparison with other Southern African countries, such as South Africa, means that the country's civil society is weak and thus ultimately lacks substantive involvement in decision-making and licensing processes (Corrigan 2018: 236–37). All of the above can be seen as an intentional outcome of Botswana's development strategy based on the intensive extraction of its mineral resources (particularly diamonds) in pursuit of economic growth (Mueller 2024: 6). As such, a command-and-control legislative framework with regard to land and mineral rights was deemed necessary to best facilitate mineral extraction and mutually beneficial relations with private mining companies (Chitsove and Madebwe 2024: 65–66; Kalabamu 2019: 341–42).

Feedback mechanisms are largely procedural. Though the most recent reforms to the Land Act provide that land boards need to consult with the respective district council and tribal administration when formulating policy, it appears unclear whether these mechanisms are having a substantive impact, with Ghebremusse

(2020: 189) arguing that no meaningful consultation with affected communities takes place and Kalabamu (2019: 344) insisting that there remains a need for the observation of inclusive and participatory processes. Moreover, the fact that the chairpersons of land boards are appointed by the minister of land management, water and sanitation services further undermines the independence of the land boards from the directives of the president in dealing with community concerns and holding the government accountable (Manatsha 2019: 76).

Lastly, displaced Indigenous groups such as the Basarwa and San have been the greatest victims of Botswana's development strategy and have been effectively silenced without reliable means of holding the Government of Botswana accountable. This is because Botswana's legal frameworks provide justifications for the relocation of these groups and for the acquisition of their land. The state marginalizes issues raised by the San without facing significant external backlash because of its ability to frame its actions as part of its conservation efforts (Mueller 2024: 5–9, 16).

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### 3.3. GEOLOGICAL AND INFORMATION SYSTEMS

The Botswana Geoscience Institute plays a crucial role in the mining sector, providing a wide range of expert services, and it is also referred to as the 'custodian of geoscience information' (Masialeli and Matshediso 2022: 185; BGI n.d.a). The BGI is the main entity in Botswana responsible for undertaking geoscientific research and disseminating geoscientific knowledge (BGI n.d.a; Republic of Botswana 2022: 10). The BGI recently launched three information and data portals on its website where the public and potential investors may remotely access digitized information and data about Botswana's mining industry (BGI n.d.b). The three portals are called the Botswana Geoscience Portal, the LIBWIN Library Systems and the Borehole Information System (BOREHIVE), and collectively they provide an entry point for accessing Botswana's extensive collections of data, publications, bulletins, thematic maps and various other online services (BGI n.d.b). The establishment of these portals further highlights the BGI's commitment and mandate to provide access to geoscientific information and knowledge about Botswana.

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**The Botswana Geoscience Institute plays a crucial role in the mining sector, providing a wide range of expert services.**

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### 3.4. INVESTMENT AND DEVELOPMENT

A significant part of Botswana's development strategy focuses on attracting investment and entering into beneficial joint ventures with mining companies based on the favourable licensing and regulatory conditions it can offer, in addition to similarly attractive tax conditions (Mueller 2024: 5–6; Corrigan 2018: 339; Jefferis 2016: 9–11). In addition, Botswana has benefited from positioning itself as a 'champion of clean diamonds, human rights and responsible investment' (Mueller 2024: 8).

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**Because of the state's direct involvement and intimate connections with mining companies such as De Beers, this relationship means that the decision-making process over investment and development is interconnected.**

Because of the state's direct involvement and intimate connections with mining companies such as De Beers, this relationship means that the decision-making process over investment and development is interconnected. Debswana is an apt representation of this, as government officials sit on the company's corporate social investment decision-making body (Corrigan 2018: 239). This situation can lead to transparency gaps; however, as Corrigan (2018: 240) points out, 'local officials also often lack information on company promises made to the national government, so they are at a disadvantage in terms of their ability to hold companies or the national government accountable for these promises'.

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### 3.5. REPORTING STANDARDS

The Committee for Mineral Reserves International Reporting Standards (CRIRSCO) are international reporting standards that mining companies can use when justifying their resource and reserve classifications (Sefemo 2021: 12). CRIRSCO develops mineral reporting codes, such as the Joint Ore Reserves Committee (JORC) Code; the Canadian Institute of Mining (CIM) Code; the South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves (SAMREC); and the Society for Mining Metallurgy and Exploration Guide (Sefemo 2021: 12). Botswana conforms to the SAMREC, JORC and CIM standards when reporting mineral data (Sefemo 2021: 12).

The Department of Mines conducts a mining production survey that encompasses all mining companies and projects in Botswana. The Department sends all the collected data to Statistics Botswana, where it is cleaned using internationally recognized standards (Statistics Botswana 2022: 11). It should be noted that Statistics

Botswana does not identify which international standards are applied during the data-cleaning stage. Once the data is cleaned, statistical tables and reports are generated, packaged and prepared for distribution. The survey results are essential, as they estimate the country's GDP per quarter (Statistics Botswana 2022: 11).

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**Statistics Botswana does not identify which international standards are applied during the data-cleaning stage.**

## Chapter 4

# LINKS BETWEEN MINING AND ECONOMIC DEVELOPMENT

Since diamonds were first discovered in the country, Botswana has achieved a degree of social and economic development that is supported by revenue from the mining industry. UNICEF notes that Government spending on social services has historically been high (35-40 per cent of GDP), with over one-third of fiscal spending devoted to child-focused priority areas (health, primary and secondary education, and social assistance) (UNICEF Botswana 2018). However, UNICEF has also noted considerable gaps in results and raised concerns on the value for money of this expenditure (UNICEF Botswana 2018). This money has financed investments in infrastructure, for example, which has helped connect the vast but sparsely populated country (Hillbom 2014: 171). GDP per capita in constant international 2021 dollars, adjusted for purchasing power parity, increased by more than 70 per cent between 1990 and 2022, from around 10,000 to 17,000. This is less than the global average, which increased by more than 80 per cent during the same period and now exceeds Botswana's GDP per capita by almost 20 per cent, up from 10 per cent in 1990. Still, the average citizen of Botswana is almost four times richer than the average sub-Saharan African (World Bank Group 2023c).

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**Botswana's Human Development Index has also risen more than 20 per cent, from 0.587 in 1990 to 0.708 in 2022.**

Botswana's Human Development Index has also risen more than 20 per cent, from 0.587 in 1990 to 0.708 in 2022 (Our World in Data 2024). Still, Botswana remains almost as economically unequal today as it was in 1990, with the Gini index, a measure of wealth inequality, having fallen from 54.2 in 1990 to only 53.3 in 2013, less than 2 per cent (World Bank Group n.d.).



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## 4.1. EDUCATION AND SKILLS DEVELOPMENT

In July 2016, the Government of Botswana's presidential task team published its Vision 2036 report, a follow-up document to the Vision 2016 report. Subtitled *Achieving Prosperity for All*, the report provides an overview of the country's ambitions to 2036. The authors of the report outline how they envision Botswana in 2036 in different spheres of society and through different pillars, including social and economic development, governance and the environment.

While Botswana continues to pursue an export-led economic model, it wishes to expand beyond commodity exports by building a knowledge-based economy focused on increased productivity and diversified exports, including services. The government aims to make this happen through investments in key areas of economic growth and facilitated migration. The Vision 2036 report mentions innovation, technology, infrastructure, education and research and development as key investment areas for economic growth. When it comes to education, the country wants to ensure access to quality education and life-long learning with equal emphasis on vocational, technical and academic education, and to provide science, technology, engineering and maths education from the primary to tertiary levels (Government of Botswana 2016: 20). In terms of migration, the country wants to promote immigration on the part of highly skilled workers and investors, as well as emigration of excess workers to reduce unemployment, especially among the young, as well as to secure international exposure (Government of Botswana 2016: 13). Additionally, the report says that growth should be led by the private sector, with secure property rights, including for intellectual property, and not stifled by unnecessary bureaucracy and regulation (Government of Botswana 2016: 12). These reforms have the potential to help transform the mining sector from a purely commodity-exporting sector to a wider industrial and service-oriented sector benefiting from beneficiation and other opportunities relating to minerals.

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## 4.2. SECTOR LINKAGES

Botswana was still a poor country at independence, but it became a middle-income economy by the 1990s. Despite this transformation, the country still experiences high unemployment, and economic growth has halved, from an average of 8 per cent per year between

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**Botswana was still a poor country at independence, but it became a middle-income economy by the 1990s.**

independence and the mid-1990s to an average of 4 per cent per year today, lower than the regional average for countries in sub-Saharan Africa. To counter its dependence on diamond mining and spur further economic growth and job creation, the government has implemented several initiatives to develop industries linked to diamond mining and diamond beneficiation, which currently employ more than 3,000 people (IGF 2018: 2).

Botswana depends on equipment imported from abroad to exploit its rich mineral resources. Only light equipment not specifically produced for the mining industry, such as switches, pumps and cleaning equipment, is supplied by local companies, while all machinery and heavy equipment are imported from abroad. South Africa is the leading supplier of such equipment, although some is produced in other countries, especially in the United States. However, since imports are recorded from the supplying country rather than the country of origin, the import value of the equipment is skewed in favour of the former (ITA 2024).

Botswana has implemented measures to increase domestic production of mining equipment, and in 2014 the government established a committee to oversee equipment procurement with a 10 per cent quota for local production. This measure is not a legal requirement but is recommended by the government and seen as an industry standard. Mining companies such as De Beers comply with the recommendation, which shows a willingness to contribute to increased domestic production (ITA 2024).

The Government of Botswana has implemented several initiatives to front the country's diamond industry and encourage investments to drive the industry's continued development. These initiatives include Botswana's Diamond Hub, which was founded to make the country a hub for trade in diamonds that can compete on a global level, and the Diamond Trading Company of Botswana, which has the capacity to value and sort 45 million carats annually (ITA 2024). The country is implementing a training programme for entrepreneurship called Tokofala, a partnership between the Government of Botswana, Anglo American, De Beers and Debswana. Botswana also hopes to spur innovation in industries related to mining, such as trading, jewellery manufacturing and ancillary business (IGF 2018: 5), which would ensure that a larger part of the added value would be driven domestically and that the country would have more control over the diamonds' value chain. These are a few examples of how the government has sought to use the mining industry to promote

positive economic effects in other parts of the economy and thus avoid the resource curse that so many other African commodity-producing economies have experienced, whereby resources have often not only failed to spur economic development but have even contributed to economic stagnation and recession.

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### 4.3. VALUE-ADDED ACTIVITIES

In the 1980s the government pressured De Beers to build factories to cut and polish diamonds. The company had said that diamond beneficiation would be unprofitable, which turned out to be true. However, some believe that the company made the factories fail on purpose to avoid further government pressure (IGF 2018: 3).

In 1990, De Beers had a near monopoly in the diamond industry with a 90 per cent share of the global market. The company's share was more than halved in less than two decades, however, having shrunk to 40 per cent in 2008. With its operating licence in Botswana set to expire in the 2000s (IGF 2018: 3), De Beers had to negotiate with the government for a renewal. At the time, Botswana was the source of 60 per cent of De Beers's rough diamonds and 70 per cent of its profits, meaning the company was heavily dependent on renewing its licence. This gave the government leverage to add conditions of industry diversification as a requirement for approving the renewal.

When De Beers's licence was renewed in 2005, the government ensured that a certain amount of the rough diamonds mined by De Beers would be cut and polished by companies located in the country. The government thus invited international companies to open in Botswana, which they did. In total, 16 companies were licensed to operate in the country. This number later increased to 21. In selecting these companies, the government evaluated several criteria, some of which emphasized the promotion of skills development, local manufacturing and job creation (IGF 2018: 3). This move on the part of the government served both to encourage investment in value-added mineral activities in the country and to attract technology know-how to the country.

Additionally, De Beers agreed to move its aggregation business from London to Gaborone over time. The government hoped that the move, which was completed in 2013, would have a positive impact on other

**Beneficiation services cost significantly more in Botswana than in other overseas markets, and competition is especially rife from competitors in Asia.**

parts of the economy, including services such as hospitality, finance and transport (IGF 2018: 4).

However, beneficiation services cost significantly more in Botswana than in other overseas markets, and competition is especially rife from competitors in Asia. For example, cutting and polishing costs in Botswana are three to five times higher than in India. Despite this cost disadvantage, the government has made these services viable in Botswana through its cooperation with De Beers, which ensures that rough diamonds are sold to domestic companies at prices 20 to 30 per cent below actual market value (IGF 2018: 4). Botswana is also not the only country where high-cost cutting and polishing services are still provided. Expensive European and Middle Eastern markets, such as Belgium and Israel, also provide these services and can stay competitive because they specialize in niche parts of the industry. For its part, Botswana is in a mid-level sphere between these expensive markets and cheap Asian markets and can remain competitive in the future (IGF 2018: 6).

In 2021 and 2022, Botswana's exports of rough diamonds increased by 32 per cent, whereas exports of polished diamonds increased by 45 per cent, thus increasing the share of polished diamonds in total diamond exports (see Table 4.1).

**Table 4.1. Exports of rough and polished diamonds from Botswana 2012–2022 (million USD)**

Type	2014	2015	2016	2017	2018	2019	2020	2021	2022
Rough	3,968	2,606	4,023	3,479	3,625	3,049	2,121	3,466	4,588
Polished	821	441	407	541	846	841	561	842	1,221

Source: Edahn Golan, 'Diamond statistics', [n.d.], <<https://www.edahngolan.com/diamond-statistics>>, accessed 21 November 2024.

## Chapter 5

# ENVIRONMENTAL, SOCIAL AND GOVERNANCE PERFORMANCE

The ESG criteria and performance are areas for improvement in Botswana. Analysts have called the country's environmental legislation outdated, too fragmented and insufficiently coordinated and centralized (Madebwe 2020). Botswana does not have an ESG reporting framework, and the Bank of Botswana, for example, has been working with the United Nations Development Programme (UNDP) to develop a reporting framework.

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### 5.1. NATIONAL POLICIES ADDRESSING ENVIRONMENTAL IMPACTS

#### 5.1.1. Environmental protection

According to the UN, neither Botswana's Constitution nor other legislation contains provisions for the so-called third-generation right to a clean environment, unlike the laws in 45 other African countries (Boyd 2023). However, Botswana has established an impressive legal framework to ensure sustainable management of natural resources. For example, sustainable development is one of the four cardinal pillars of the country's vision for 2036 (Government of Botswana 2016). Environmental management in Botswana is the responsibility of the Ministry of Environment, Wildlife and Tourism. Below, is a description of key policy and legal frameworks for environmental impact assessment in Botswana.

#### 5.1.2. International agreements and conventions

Botswana has signed several international conventions, including the 1992 Basel Convention on the Control of Transboundary Movements on Hazardous Wastes and their Disposal, the 1985

Vienna Convention for the Protection of the Ozone Layer, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1992 UN Framework on Climate Change and the Kyoto Protocol, the 1992 Convention on Biological Diversity and the 2001 Stockholm Convention on Persistent Organic Pollutants (United Nations Human Rights Council 2023).

### 5.1.3. Environmental Assessment Act

The Ministry of Environment, Natural Resources, Conservation, and Tourism's (formerly the Ministry of Environment, Wildlife and Tourism) Department of Environmental Affairs, established through the Environmental Assessment Act of 2011, administers environmental impact assessments. The Act is meant to 'provide for environmental impact assessment to be used to assess the potential effects of planned developmental activities; to determine and to provide mitigation measures for effects of such activities as may have a significant adverse impact on the environment; to put in place a monitoring process and evaluation of the environmental impacts of implemented activities and to provide for matters incidental to the foregoing' (Republic of Botswana 2011). The Environmental Assessment Act prescribes the requirements for an environmental assessment, including mitigation measures in case mining activities negatively impact the environment.

### 5.1.4. National conservation strategy

Botswana's Government introduced a national conservation strategy to ensure sustainable future development in 1990. The strategy was adopted due to increased awareness that the country's natural resources were under increased pressure and, if not properly managed, might not be able to meet the needs of future generations. As a result, the strategy is aimed at developing policies and measures that ensure efficient management of natural resources and the minimization of environmental side effects. The strategy requires that, in cases where trade-offs in the development of natural resources are necessary, environmental concerns have to be accorded appropriate consideration (Government of Botswana 1990).

### 5.1.5. Periodic renewal of environmental authorization

To monitor and mitigate environmental damage, Botswana's Statutory Instrument No. 58 of 2012 requires mining companies to obtain environmental authorization before implementing any activity. Authorization is subject to periodic renewal and may be revoked under specific conditions, including because of an unanticipated, irreversible or adverse environmental impact stemming from mining

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**Botswana's Statutory Instrument No. 58 of 2012 requires mining companies to obtain environmental authorization before implementing any activity.**

activities. The Instrument also specifies penalties for environmental offences. Additionally, under the Mines and Minerals Act, the Minister of Environment, Natural Resources Conservation and Tourism is empowered to monitor mining companies' activities. In cases where a holder 'of a mining lease is using wasteful mining or treatment practices, the minister may notify that holder accordingly and require the holder to cease using those practices' (Madebwe 2020).

#### 5.1.6. Environmental standards

Botswana's National Development Plan No. 9, running from 2003 to 2009, identified the need for environmental quality and emission standards as one of its priorities. In 2019 the Botswana Bureau of Standards adopted the Air Emissions from Stationary Sources standard, which specifies air emissions limits.

#### 5.1.7. Climate Change Policy

The Ministry of Environment, Wildlife and Tourism adopted the Botswana Climate Change Policy in 2021 to mainstream sustainability and climate change in development planning. The Policy recognized mining as one of the leading sectors targeted for a reduction in greenhouse gas emissions by promoting low-carbon sources (Government of Botswana 2021).

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## 5.2. SOCIAL AND ECONOMIC BENEFITS

### 5.2.1. Local compensation

Due to the limited amount of arable and productive land available in Botswana, land issues constitute one of the most contentious aspects of mining. The country's land management system includes land boards and tribunals. These institutions are responsible for setting out the requirements for compensation and resettlement in areas where mining development requires land. Mining companies must compensate affected communities and facilitate their resettlement. The country's regulatory framework also provides mechanisms for mining companies to compensate farmers when the depth of a mine reaches the level of aquifers (World Bank Group 2016).

### 5.2.2. Botswana's centrist approach to social and economic development

In terms of administering social and economic development, the Government of Botswana prefers a centralized national policy in

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**Due to the limited amount of arable and productive land available in Botswana, land issues constitute one of the most contentious aspects of mining.**

which mineral resource rents are collected by the treasury and dispersed according to the country's five-year plan to ensure equitable development (World Bank Group 2016). Unlike Ghana, Mozambique, Papua New Guinea and Senegal, Botswana does not have specific legal requirements requiring the allocation of a portion of mining revenues from mineral exploitation to affected communities, usually through local government, to address the negative impact of mining in those communities. Instead of a formula-based mineral revenue policy, as used in other countries, the Government of Botswana prefers equitable development where all communities share equally in the country's mineral wealth.

The government pays less attention to the impact of mining on local communities because it prioritizes attracting investment in the mining sector and using tax and dividend revenues to finance its national development priorities to benefit the entire population, not only specific affected communities (World Bank Group 2016). Botswana has not yet acceded to the African Union's Africa Mining Vision Implementation Plan on managing mineral resource revenue and rents, which states that countries should 'develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities' (African Union 2009).

### **5.2.3. Voluntary corporate social responsibility**

Although there are no de jure policies or legal frameworks to ensure the equitable distribution of benefits to affected communities, this does not explain the whole picture. De facto, most mining companies engage with local communities to obtain social capital or a social licence to operate (World Bank Group 2016). Most mining companies finance corporate social responsibility activities by providing boreholes and health and education facilities to communities affected by their mining activities. However, the absence of legal frameworks and corporate social responsibility means that there is no formal framework that applies across the mining sector. The voluntary nature of mining companies' engagement with local communities creates uneven social development.

### **5.2.4. Human rights impact**

The Government of Botswana pursues a centralized national approach to mining development. The net effect of this approach is that local concerns and rights issues relating to mining activities are not accorded high status. The absence of a legal framework to protect the social and cultural rights of mining communities was laid



bare when the San people were removed from the Central Kalahari Game Reserve in favour of mining development. The aboriginal rights of the San community are not adequately protected by law (Taylor and Mokhawa 2003).

The treatment of the San community in the Central Kalahari Game Reserve has attracted global attention. In 2006 the High Court of Botswana ruled that the treatment of the San people found in the Central Kalahari Game Reserve equalled 'death by starvation', as they had been prohibited from hunting there since the government allowed mineral prospecting by mining companies. Mining activities are legally permitted in national parks where Indigenous people like the San are found. The government has been caught between ensuring continued resource development and eco-tourism. The handling of the rights of Indigenous people with an occupational and cultural relationship to their land has raised concerns about human rights in Botswana (Williamson 1994).

Civil society organizations in Botswana have accused the government of being too closely tied to the mining industry due to its involvement in the sector, which they argue undermines its autonomy and ability to avoid capture, which explains why the government sides with industry interests when such interests clash with environmental and cultural interests (van Wyk 2009).

In terms of the environmental impact of the extractive and exploration industry, van Wyk (2009) notes that there is no responsible mining taking place in Botswana and that profitability takes priority over environmental concerns. Van Wyk's scathing report, published by the Bench Marks Foundation, revealed extreme social and environmental problems in mining communities, adding that the general perception on the part of the Botswana people is that such problems are caused by mines and the government's complicit participation. The report highlighted the limited social transformation, as communities near the Debswana mine were still using pit latrines as of 2009.

A study on the socio-economic and environmental impact of mining at the Selebi-Phikwe copper–nickel mine shows that mining has led to unsustainable population growth that has outstripped local capacity (Asare and Darkoh 2001). Mining activities have contributed to air, soil, land and water pollution. According to the Department of Mines' air pollution monitoring unit, the Bamangwato Concessions Limited copper–nickel mine is the largest air polluter. The pollution produced by the mine has resulted in a high prevalence of respiratory

health problems and reduced fish and vegetation in the area of the mine (Imakando 2016).

On a positive note, Debswana has spent millions of dollars on corporate social investment. In 2007 the company invested over BWP 23 million (approximately USD 1.7 million) in initiatives in the areas of education, health, agriculture and infrastructure development. However, van Wyk (2009) says that corporate social investment is part of a 'glossy global corporate annual report with little bearing on the realities on the ground'. For example, the Selebi-Phikwe copper–nickel mine has created employment opportunities, but the quality of life in the community remains poor (Asare and Darkoh 2001).

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**The impact of Botswana's extractive and exploration industry on health is somewhat mixed.**

The impact of Botswana's extractive and exploration industry on health is somewhat mixed. Mining companies in Selebi-Phikwe and Jwaneng have built hospitals for local communities (Imakando 2016), and Debswana has made significant investments to ensure access to healthcare—for example, by adopting a free anti-retroviral treatment programme for its workers infected with HIV/AIDS. Debswana was the first company globally to introduce a programme to manage the disease. However, some observers accuse the company of practising 'medical apartheid' by providing treatment to their employees only and not the adjacent community (van Wyk 2009).

Other studies show that the only people in Selebi-Phikwe and Jwaneng who have better access to healthcare are the mine employees, not other local residents (Imakando 2016). Mining companies have played a major role in the spread of HIV/AIDS in Botswana. The high prevalence of HIV in Botswana was first observed at the diamond mines, where up to 40 per cent of workers were found to be HIV-positive, and highly mobile mining workers fuelled the spread of HIV/AIDS. Mining operations expose surrounding communities to a high risk of HIV/AIDS, as they attract sex workers, drug abuse and population growth (Cronjé and Chenga 2007).

One of the positive effects brought about by mining companies in Botswana is the development of new businesses and developments to support mining activities. For instance, in Jwaneng and Selebi-Phikwe, lodges, roads, schools and better housing have been developed, benefiting both developers and local communities (Imakando 2016).

Finally, the government's 'marriage' to the leading diamond mining corporation, De Beers, creates a perception that the mining corporation has 'carte blanche as far as community and human rights, the environment and mining are concerned' (van Wyk 2009). There is a general perception that the government is a tool of De Beers rather than an independent arbiter in issues relating to the impact of mining on society, communities and the environment (van Wyk 2009).

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### 5.3. COMMUNITY CAPACITY BUILDING

Community participation in natural resource governance is limited, especially in the diamond mining industry. Civil society organizations have raised concerns about the lack of transparency around secretive and closed government negotiations for large-scale diamond contracts. Most mining activities occur in rural areas, and the residents feel disenfranchised and cut off from the country's capital (World Bank Group 2016). Poverty is higher in rural areas where mining is taking place, indicating the absence of effective initiatives aimed at improving quality of life for mining-affected communities.

One of the few legal frameworks in place to promote community participation in natural resource governance is the Environmental Assessment Act, which makes provisions for holding public hearings depending on the degree of negative response concerning proposed mining development ventures. The Act also lays out public consultation processes and stipulates that environmental impact assessments must be published in local newspapers (Republic of Botswana 2011). Pursuant to the Act, communities affected by proposed mining activities may submit objections. However, the fact that public consultations are discretionary is a significant drawback.

Mining companies operating in Botswana are not legally required to contribute to local economic development, including in terms of local labour procurement, nor are mining companies legally required to contribute to local development funds to build the capacity of local communities to manage and benefit from mineral extraction. The Citizen Economic Empowerment Policy (CEEP), drafted in 2012, includes various measures to increase the participation of the Botswana people in the economy. Although not a mining industry-specific policy, the localization policy part of the CEEP gives preference in employment opportunities to local citizens over non-

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**Community participation in natural resource governance is limited, especially in the diamond mining industry.**

citizens given similar qualifications (World Bank Group 2016). Apart from the localization policy, Botswana's Government has yet to fully implement the CEEP in the mining sector. Also, the shortage of local skills, expertise and experience needed by mining companies has been cited as one of the reasons behind the failure of the localization policy (World Bank Group 2016).

In 1993 Botswana adopted the Community-Based Natural Resource Management policy to achieve biodiversity and rural development, and especially to improve the livelihood of rural dwellers (Mbaiwa 2015). In accordance with the policy, communities establish community-based trusts to enable locals to participate in natural resource governance for their own benefit. However, most community trusts are found in conservation activities, especially in tourism and wildlife. There is no evidence of community trusts in extractive industries.

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**The low level of community participation in natural resource governance must be understood within the broader framework of Botswana's development strategy.**

The low level of community participation in natural resource governance must be understood within the broader framework of Botswana's development strategy. Botswana pursues a business-like, investor-friendly strategy to attract mining investments and maximize tax and dividend revenues for equitable national development. Unlike most other resource-rich developing countries, mining companies are not required to provide basic services in rural areas or local economic development. 'In this light, the Government of Botswana has paid relatively less attention to the impacts of mining on local communities' (World Bank Group 2016: 21).

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#### **5.4. GENDER EQUALITY PROMOTION**

Despite the existence of policies and legal frameworks aimed at advancing gender equality, there has been limited integration of gender issues into national policies and regulatory frameworks governing the mining sector in Botswana. Most gender equality or women's empowerment policies are not specific to the mining sector. Nevertheless, Botswana has taken considerable steps to grant women equal rights. For example, the 1992 Employment Act lifted previous restrictions on women's right to work at night and eliminated the ban on women's employment in mining. In 2021 the Government of Botswana introduced the Economic Inclusion Act to promote the effective participation of women in the country's economic development. It also amended the Mines, Quarries, Works and

Machinery Act to allow women to work in quarries and underground mines. However, more action is needed to ensure increased participation of women in mining.

Botswana's Government has introduced many general women's empowerment programmes and policies over the last few years. In 1996 the country ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. It also signed the Southern African Development Community (SADC) gender protocol. Pillar 2 of Botswana's Vision 2036 highlights gender equality as one of its central aims. The country adopted the National Policy on Gender and Development in 2015, and the National Gender Commission was established in 2016 to administer the Policy. Gender has also been a prominent issue within the Ministry of Nationality, Immigration and Gender Affairs. In the past, the government has committed increased resources to its women's empowerment programme and developed a Women's Business Directory to promote market access for women entrepreneurs. According to Statistics Botswana (2020), as of 2020 women made up 18 per cent of the country's mining industry workforce. The Women in Mining Botswana Organisation, an advocacy organization calling for the promotion and empowerment of women in mining, has been vocal about women's exclusion in the mining industry in Botswana.

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**Botswana's Government has introduced many general women's empowerment programmes and policies over the last few years.**

## Chapter 6

# GEOPOLITICS AND ADOPTING AND DOMESTICATING REGIONAL AND CONTINENTAL FRAMEWORKS

The Government of Botswana has repeatedly stated its commitment to continental and regional frameworks governing extractive industries. However, legislative change has not reflected the rhetoric towards homogenized policy frameworks, due in part to the admirable policy consistency of the government, having changed its mining laws only twice in 50 years. However, a review is currently underway. Like other governments in the region, the Government of Botswana will need to assess how it can adopt regional and international mining protocols and best practices and implement them to support and incentivize private industry players. Botswana has a reputation as a continental leader in revenue capture and management, but it has scope to improve on transparency, accountability and citizen engagement issues.

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**The government's commitment to regional mining protocols was reaffirmed at a conference in Botswana in June 2024, hosted by the African Union, International IDEA and the UNDP.**

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### 6.1. REGIONAL FRAMEWORKS

The government's commitment to regional mining protocols was reaffirmed at a conference in Botswana in June 2024, hosted by the African Union, International IDEA and the UNDP. At the event, President Masisi stated that 'Botswana stands ready to share in its relative success, as we profoundly recognise that as a small, landlocked, and developing country, no person is an island. We strongly believe in the multilateral, continental, and regional frameworks and institutions, to which we are aligned, as they promulgate global, continental and regional development linkages' (African Peer Review Mechanism 2024). The statement reflects two aspects of how Botswana views regional initiatives—firstly, that Botswana is a leader and provides an example of best practices

that regional partners can replicate, and secondly, that regional cooperation is paramount for the country due to its lack of a coastal port and thus direct access to export markets.

The Government of Botswana has signed up for continental and regional initiatives but has been slow to implement them. The primary continental mineral development policy framework is the Africa Mining Vision (AMV), which was adopted by all 54 African Union member countries, including Botswana, in 2009. Notably, while the 2022 mining policy reflects some of the intentions of the AMV, it is not explicitly referenced. However, the policy acknowledges the Commonwealth Secretariat's support, which may reflect the government's desire for mutual learning in collaboration with countries such as Australia and Canada.

The ongoing discussion in Botswana about revising the Mines and Minerals Act will be a litmus test to determine the extent to which the AMV has been incorporated into national legislation. After the signing of the AMV, the African Minerals Development Centre (AMDC) was created to be the main implementing body for the AMV and was central to creating the African Green Minerals Strategy. The AMDC has suggested that 47 out of the 56 African Union member states have altered their mining policy framework in some way to align with the AMV, but it remains in limbo. A minimum of 15 ratifications by member states is required to put AMV in force and fully operationalize the AMDC; however, only four countries have done so—Guinea, Mali, Nigeria and Zambia. In some ways, Botswana's lacklustre attitude towards the AMV reflects a wider continental malaise, where activities and the impetus surrounding the AMV have waned. However, unlike countries seeking short-term benefits for political gain, Botswana stands apart in some ways as a model of how a nation can benefit from its resources.

Botswana's implementation of the AMV is similar to that of the SADC mining protocol, which pre-dates the AMV. The protocol was established in 1997 and promotes sustainable development; a regional approach to conducting environmental impact assessments, especially concerning shared systems and cross-border environmental effects; a commitment to transparency, policy harmonization, capacity and funding; information and geology; mining, marketing and mineral processing; small-scale mining; human resources development and technology; environmental protection; and gender mainstreaming in the mining sector. In the case of both the AMV and the SADC mining protocol, the regional

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**The ongoing discussion in Botswana about revising the Mines and Minerals Act will be a litmus test to determine the extent to which the AMV has been incorporated into national legislation.**

impetus for countries to engage in policy harmonization has waned, and the government's attention to changing its mining regulations to match prescriptions has faltered. In the case of both documents, however, many of the recommendations for best practices on revenue sharing and benefits are already in place in Botswana. Still, the narrative to that effect has hidden areas of potential improvement in transparency and accountability.

Botswana's geographic circumstances as a landlocked country have made it a keen advocate of regional trade and infrastructure development, including the African Continental Free Trade Area (AfCFTA) and SADC corridors. Botswana is a member of the Southern African Customs Union, the oldest customs union in the world, enabling tariff-free trade with neighbouring Namibia and South Africa as well as Eswatini and Lesotho. In 2024 Botswana began trading under the AfCFTA agreement. The continental initiative presents an important opportunity for Botswana. The country has traditionally looked south and west for its markets, with most of its trade being with South Africa and some materials being exported via Walvis Bay in Namibia. The new arrangement could open up more countries to the north and link the country to processing and extraction opportunities, gaining attention and investment in Central Africa. Botswana and Zambia were both financial contributors to the Kazungula Bridge project, which also received financing from the Japan International Cooperation Agency and the African Development Bank and was built by the South Korean firm Daewoo E&C.

The Kazungula Bridge project and broader continental trade initiatives reflect the aims of Botswana's economic diplomacy to open up the country to regional and international markets through cross-border infrastructure. While the full ambitions of the SADC are yet to be realized, Botswana has used the institution to advance its regional connections through infrastructure and development programmes. The SADC headquarters is located in Gaborone, and in 2021 Motswana Elias M. Magosi, former principal secretary to the president of Botswana, became the Executive Secretary of the regional body. Botswana advocated the appointment of Magosi as part of its own regional economic diplomacy ambitions.



## 6.2. INTERNATIONAL FRAMEWORKS AND INITIATIVES

One of the most important and critical areas of Botswana's economic diplomacy around diamonds has been its role in establishing and promoting the Kimberley Process for diamond certification. The Kimberley Process, effectively the gatekeeper to the legitimate global diamond market, was initiated in the late 1990s following UN resolutions sanctioning Angolan diamonds due to their use by the rebel group UNITA (National Union for the Total Independence of Angola) to finance its activities. Conscious consumerism spurred by articles about the role of diamonds in perpetuating wars in Angola and Sierra Leone presented an existential threat to the industry and producer states.

The establishment of the Kimberley Process was the result of a three-year process that brought together stakeholders from governments, civil society and companies and culminated in the creation of a diamond certification scheme in 2003. Botswana was instrumental in working with other Southern African countries as a driving force to work with the international community to create a system by which their legitimate stones could be differentiated from conflict stones, thus protecting the economic interests of the nations involved. In particular, former President Festus Mogae lobbied regional partners to support the process. Furthermore, in 2006, following the release of the film *Blood Diamond*, which depicted the link between stones and the war in Sierra Leone, then-President Mogae went on a public-relations tour of the USA, then the largest diamond market in the world, to educate consumers on the difference between conflict stones and those that are unrelated to conflict.

While membership of the Kimberley Process is voluntary, members are required to 'amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions' (Kimberley Process n.d.). Given that the largest consumer markets for gemstones—China and the USA—and countries that occupy key positions in the supply chain, such as Belgium, India, Israel and the United Arab Emirates), are members, the certification process is critical for the diamond market, and Botswana played an instrumental role in its creation.

The Kimberley Process now faces existential threats of its own that are testing Botswana's diplomatic capacity. Firstly, the Kimberley

**One of the most important and critical areas of Botswana's economic diplomacy around diamonds has been its role in establishing and promoting the Kimberley Process for diamond certification.**

Process has always faced criticism for its reliance on government as the regulator, leading to allegations of corruption within bureaucratic systems to allow smuggled stones to be illegitimately certified. Secondly, from the outset, the definition of ‘conflict diamonds’ as being those used by non-state armed groups has received criticism for not being able to prevent state abuse (Mining Review Africa 2019). Famously, Global Witness pulled out of the Kimberley Process in 2011 due to the scheme’s inability to prevent human rights abuses in Zimbabwe’s Marange diamond fields, as the Process repeatedly found the country’s diamonds to be legitimate (Global Witness 2011). Given Botswana’s political relationships with Zimbabwe, the situation placed Botswana in a difficult position.

Since Russia’s invasion of Ukraine, the Kimberley Process has once again been put to the test. Western stakeholders—predominantly Ukraine and the USA, with the support of the European Union, the United Kingdom and others—have criticized the process for not being able to curtail Alrosa or Russian diamond exports, which they claim are being used to fund the war in Ukraine (Vandome 2023). Botswana and other African stakeholders have been keen to find a solution, but they are highly sceptical of proposed resolutions that reshape existing value chains or require all certification to take place in Antwerp. Botswana has once again played a key role in defending the African position.

Botswana is not a signatory to or proponent of other voluntary institutions and has been repeatedly criticized for not acceding to organizations which are seen as setting industry standards. The government notes that it meets the standards but does not support the organizations, especially those dominated by Western actors. However, many of these organizations have increasing African representation, in both their membership and their leadership. Botswana is not an implementing country of the Extractive Industries Transparency Initiative and does not formerly engage with the organizations involved in the Initiative. Nor is it a member of the Voluntary Principles Initiative, the international organization representing the Voluntary Principles on Security and Human Rights.

Botswana is a signatory of the UN Guiding Principles on Business and Human Rights and the UN Global Compact, but it has not commenced work on the requisite national action plan prescribed by the UN Guiding Principles. Participation in these initiatives is not just an important signal to potential investors; the initiatives provide a level playing field for monitoring, grievance raising and

dispute resolution where companies, governments and civil society can address issues. De Beers's code of conduct highlights that the company is a signatory to the UN Global Compact, a supporter of the UN Guiding Principles on Business and Human Rights, and a signatory to the Voluntary Principles on Security and Human Rights. The Voluntary Principles include resettlement guidelines pertinent to issues faced in Botswana concerning communities and land access around mine sites.

Botswana has participated in global initiatives on critical minerals, including those that recommend voluntary adherence. Botswana is a member of the UN Secretary-General's Panel on Critical Energy and Transition Minerals, which takes the UN Guiding Principles and other UN initiatives as a foundation and includes the Extractive Industries Transparency Initiative as a partner. The UN Guiding Principles make several recommendations on transparency, accountability, human rights protection and environmental safeguards, but they stop short of recommending state membership in existing non-UN initiatives.

Botswana has also been an observer within the Minerals Security Partnership, a transition resource initiative spearheaded by the USA. Botswana and other countries from Southern Africa participated in a meeting on the sidelines of the African Mining Indaba, a major mining conference, held in Cape Town, South Africa, in 2023. However, Botswana has not joined the Partnership Forum, a platform for engagement between producer and consumer states, unlike neighbouring Namibia, which is a member. The nature of Botswana's engagement with these programmes is consistent with its non-aligned foreign policy. It is reluctant to be drawn into exclusionary geopolitical alliances, preferring to keep trade options open, and is sceptical of Western-dominated institutions.

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**Botswana has participated in global initiatives on critical minerals, including those that recommend voluntary adherence.**

## Chapter 7

# CONCLUSION AND POLICY RECOMMENDATIONS

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### **Botswana is an important example of mining success.**

This report has presented a detailed analysis and overview of the mining sector in Botswana, covering the legislative, regulatory and fiscal arrangements that govern the industry and the relationship between mining companies and society. Botswana is an important example of mining success. Proponents of this success have highlighted how Botswana has seemingly avoided the so-called resource curse and has enjoyed significant material benefits from its resources through meaningful and lasting partnerships with the private sector enterprises responsible for resource extraction. Detractors point to allegations of human rights abuses, especially concerning relocation, as well as a lack of planning for diversification and broader economic development beyond diamonds. This report presented an overview of these issues without making a value judgement. However, some key policy recommendations can be drawn from the analysis:

- **Maintain investor confidence.** Botswana's proposed amendment to increase local ownership of mining projects from 15 per cent to 24 per cent can strengthen the link between its mineral wealth and societal benefits. However, should the new government decide to proceed with implementing this amendment, it should do so with safeguards to ensure that it does not deter foreign investors or lead to legal disputes. Establishing clear guidelines for local ownership and avoiding political interference can create transparency and investor confidence. Additionally, supporting local businesses through skills development programmes and creating joint ventures can ensure that increased local ownership translates into meaningful participation.

- **Diversify mining operations beyond diamonds.** While diamonds have been the cornerstone of Botswana's economic success, their finite lifespan necessitates a diversification strategy. Botswana should prioritize the exploration and development of its other mineral resources, such as copper, coal, lithium and rare earth elements. Government incentives, such as tax breaks for exploration or public–private partnerships, can attract investment in these critical minerals, which are essential for the global energy transition. A strong emphasis on renewable energy development could also position Botswana as a key player in sustainable mining practices, enhancing its international standing.
- **Strengthen legal protections for Indigenous communities and land rights.** Botswana should develop and enforce robust legal frameworks that protect the rights of all citizens, ensuring that groups are adequately protected against abuse and compensated appropriately when resettlement is necessary. Transparent, inclusive and meaningful consultations with affected communities should be mandated, empowering them to hold the government accountable for actions affecting their land and livelihoods.
- **Enhance gender integration in mining policies.** Botswana should integrate gender equality considerations into the mining sector by developing specific policies that promote the inclusion and empowerment of women in all areas, from employment to decision-making roles. Gender equality must be embedded in national regulations governing mining operations, ensuring that women benefit equitably from the country's natural resource wealth.
- **Adopt international standards in mining operations.** Botswana should consider acceding to the Voluntary Principles on Security and Human Rights to ensure that mining operations adhere to international standards for human rights protection. It should also consider joining the Extractive Industries Transparency Initiative. As a signatory of the UN Guiding Principles, Botswana should accelerate the development of its national action plan. These initiatives will not only foster a more responsible and transparent mining industry, promoting corporate accountability and improving security measures in a way that respects the rights of affected populations; they are also important signals to potential investors.

- **Address illicit financial flows and economic inequality.** The government should implement stronger policies to combat tax avoidance and illicit financial flows in the mining and resource extraction sectors. Ensuring that revenues from these industries are effectively captured and redistributed can help reduce economic inequality, contributing to more inclusive development and narrowing the country's Gini index disparity.

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# About the authors

**Alecia Ndlovu** is a senior lecturer at the University of Cape Town, Department of Political Studies, specialising in political economy and quantitative research methods. Her research focuses on party politics, socio-economic development, and the governance of Africa's natural resources. She leads a Worldwide Universities Network Project exploring Mining Accountability and Development in Africa and co-edits the Encyclopaedia of African Politics (Edward Elgar Publishing) and a special issue on institutions, development, and extractive industries in Africa (Extractive Industries and Society Journal). Alecia has a PhD from the University of Witwatersrand. Her thesis, which examined political accountability and development in resource-rich African economies, received two Honourable Mention awards: the APCG-Lynne Rienner Best Dissertation Award and the African Studies Review Best Africa-Based Dissertation Award.

**Christopher Vandome** is a senior research fellow with the Chatham House Africa Programme. His research focuses on the political economy and international relations of Southern Africa, as well as regional and continental peace and security, environmental issues and extractive industries. He has written several multi-author and single-author peer-reviewed book chapters, reports, articles and papers. Christopher writes and comments regularly on political issues in southern Africa including for Africa Report, Al Jazeera, BBC, SABC, Huffington Post, Mail and Guardian, Newsweek and the Telegraph. In 2017–2018 Christopher undertook a secondment with a major global mining firm to support the development of their Africa strategy. Christopher has a Master's degree from the University of Cape Town and is currently a PhD candidate in International Relations at the University of the Witwatersrand, Johannesburg.

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**International IDEA**  
Strömsborg  
SE-103 34 Stockholm  
SWEDEN  
+46 8 698 37 00  
info@idea.int  
www.idea.int



This report presents an overview of the historical, economic and regulatory dynamics that shape mineral resource governance in Botswana, as well as the ambitions for the sector that underpin the nation's economic diplomacy aspirations. It demonstrates that governance frameworks that emerged in the context of the diamond industry have evolved and can provide for a diversified mining industry. Still, the country can improve on issues such as transparency, human rights, gender equality and income inequality.

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