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Sharing Mining Benefits in Developing Countries



The Experience with
Foundations, Trusts, and Funds

Elizabeth Wall

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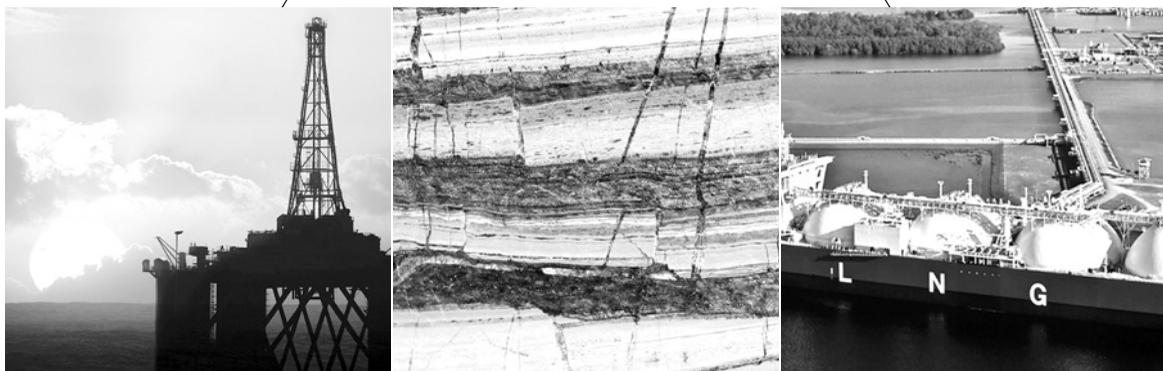
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Acronyms

AACF	Anglo-American Chairman's Fund
AHRC	Australian Human Rights Commission
ALAC	Asociación Los Andes de Cajamarca
AMPA	Argyle Management Plan Agreement
ASRP	Ahafo Social Responsibility Plan
CMCA	Community Mine Continuation Agreement
CODELCO	Corporación Nacional del Cobre, Chile
CSR	corporate social responsibility
DRC	Democratic Republic of Congo
FMA	Fondo Minero Antamina
FOSBAM	Las Bambas Social Fund
FSC	Fondo Solidaridad Cajamarca
FTF	foundations, trusts, and funds
GDP	gross domestic product
GKB	Gnaala Karla Booja
GRCF	Greater Rustenburg Community Foundation
IBP	integrated benefits package
ICMM	International Council on Mining and Metals
IDAP	integrated development action plan
IFC	International Finance Corporation
ILUA	indigenous land-use agreement
LPMK	Freeport Partnership Fund for Community Development
LSDP	Lihir Sustainable Development Plan
MCDT	Mozal Community Development Trust
MDF	mineral development fund
MMDA	model mining development agreement
NADeF	Newmont Ahafo Development Foundation
NGO	nongovernmental organization
NRC	Natural Resources Canada
OTDF	Ok Tedi Development Foundation
OTFRDP	Ok Tedi Fly River Development Program
OTML	Ok Tedi Mining Limited

PNG	Papua New Guinea
PNGSDP	Papua New Guinea Sustainable Development Program
RUL	Rössing Uranium Limited
SEGOM	World Bank Oil, Gas, and Mining Policy Division
TSI	Tshikululu Social Investment
US\$	United States dollars

Executive Summary

Mining projects in developing countries are increasingly expected to deliver sustainable benefits to local, regional, and national stakeholders. With high mineral prices generating windfall profits and focusing growing attention on compensation payments and the necessity of earning and retaining their “social license to operate,” many governments and companies have been considering the use of foundations, trusts, and funds (FTFs) as vehicles for sharing the benefits of mining operations with the surrounding communities. If conceived as independent entities they can provide opportunities for shared governance that can be sustained long into the future. To achieve sustainable benefits, however, mining FTFs need to be integrated into the local context with a level of complexity proportionate to their vision, funding, and capacity.

The choice of a dedicated instrument, such as an FTF, can bring particular value where local capacities are limited, public services are absent or weak, and there is a need to demonstrate continued benefit from mining after operations have closed. FTFs can be used to deliver community investment programs for companies, facilitate the use of government payments derived from mining for development, and manage compensation funds.

Comparing the experience of mining FTFs is made challenging through the varied definitions of foundations, trusts, and funds around the world. In order to conduct any form of comparison it is necessary to focus on the key attributes of the FTF, which typically have little connection to their formal legal structure. The research conducted for this study identified six sliding-scale criteria that facilitate comparison and analysis of FTFs. The six criteria are as follows:

- *Programming approach*—from grant making to fully operational approaches.
- *Financing structure*—ranging from fully endowed funds to annual budget allocations from a single source or multiple donors.
- *Geographic focus*—extending outward from the project’s direct area of influence to national and international programs.

- *Community participation in governance*—from no participation through to advisory committees and boards that include community representatives.
- *Influence of mining company*—moving from full ownership and control by the mining company through to complete independence from the company.
- *Influence of government*—from minimal governmental influence over the FTF's activities through to a legal requirement to establish an FTF and control over the nature and location of development activities.

There is no standard approach to mining FTFs—experience around the world is varied and difficult to compare. Nevertheless, one critical condition for success is evident: adaptation to the local context. Adaptation is presented in three distinct components: complexity, context, and integration. The *complexity* of the FTF should be proportionate with the funding and capacity of the operating environment. The *context* needs to be well understood through extensive social assessment in order to appropriately define the vision, beneficiaries, and projects to be supported by the FTF. Wrapping this together is the *integration* of the FTF with local and regional development plans. Brief case studies that illustrate the interplay of these components appear in Chapter 4 of this publication.

In addition to presenting conditions for success, the case studies highlight three principles of leading practice for mining FTFs. Those principles can be expressed as follows:

- Higher levels of stakeholder participation are likely to lead to more grounded, sustainable development activities in a region, thereby justifying the additional time and resources that greater participation requires.
- Attention to the detail of governance structures and appropriate management of administrative responsibilities can greatly increase the performance of an FTF and the likelihood that it will attract external financing.
- Planning for the sustainability of an FTF, whether by endowing funds or expanding stakeholder participation in the governance structure, improves the likelihood of delivering long-term benefits from mining projects in developing countries.

Introduction

Message

Foundations, trusts, and funds (FTFs) can be good instruments for companies and governments to use to share the benefits of mining operations with communities. To succeed, however, FTFs must be properly integrated in their local context and must have a level of complexity proportionate to their vision, funding, and capacity. From the research conducted, it is clear that highly participative, financially sustainable, and well-managed FTFs are defining leading practice in this field.

Objective

FTFs first emerged in the mining industry in the 1930s. There are now more than 60 such institutions in the developing world alone (BSR 2010). The Oil, Gas, and Mining Unit of the World Bank (SEGOM) undertook to capture this substantial experience through research and to inform a wide audience on how FTFs have been used to enhance positive impacts from mining operations on local development.

Audience

This publication is intended mainly for governments and companies grappling with the challenge of sharing mining benefits. For that reason, it alternates between the interests and perspectives of these two types of stakeholders. This is not to neglect the perspective of communities and civil society organizations, which, as targeted beneficiaries, should participate in the decision-making process. As there is no single formula for making decisions in this field, this publication presents diverse approaches that address local, regional, and national contexts so that interested stakeholders can consider how best to use FTFs to promote development through mineral wealth.

Definition and Scope

For the purpose of this publication, FTFs represent a wide range of financial and institutional instruments designed to channel revenues

generated from mining operations to communities. The following definitions apply:

- *Financial and institutional instruments.* FTFs have legal definitions in most jurisdictions. Although those definitions are not consistent from one country to another, the relative purposes and characteristics of the corresponding FTFs are sometimes so similar (at least in the set of cases presented here) that it makes little practical sense to treat them as different categories.
- *Revenues.* The notion of revenues generated by mining operations refers chiefly to government payments, compensation, and community investments. Government payments are taxes and royalties as well as other payment schemes that may exist between mining companies and various levels of government. Compensation refers to payments or other benefits (such as housing, in case of resettlement) provided by companies to affected communities to compensate for economic, social, environmental, or cultural damage directly caused by the mining operation. Community investment refers to voluntary actions or contributions by companies that are beyond the scope of their normal business operations and intended to benefit local communities in their area of operation (IFC 2010). National revenue management schemes, such as stabilization funds, are beyond the scope of this publication.
- *Communities.* The FTFs considered in this publication primarily target local communities, understood as the population living close enough to a mine that their livelihood, way of living, or environment is directly or indirectly affected by the mining project. However, the scope of FTFs may extend from the mine area to the local district, region, province, or even the entire country. In addition, FTFs may target whole communities or may focus on a specific group, as is often seen with benefit-sharing FTFs that target indigenous groups.

The focus of this publication is on developing countries. However, examples from Australia and Canada are also included in order to capture the substantial experience of using FTFs to share the benefits of major mining industries with indigenous peoples.

Structure

This publication examines the role of FTFs in delivering benefits derived from mining projects in the developing world. Chapter 2 addresses the necessity of sharing benefits from mining projects and identifies the situations under which a dedicated instrument such as an FTF can support

that process. Chapter 3 reveals both the diversity and similarities of FTFs by reviewing six key attributes: their programming approach; their financing structure; their geographic focus; the extent of community participation in governance; the influence of the mining company on FTF operations; and the influence of the government on the FTF. Chapter 4 identifies key conditions for success and areas of leading practice based on experience with mining FTFs globally and drawing on specific cases in Namibia, Papua New Guinea, Peru, and South Africa.

Readers seeking more information on this topic are directed to the World Bank's *Mining Foundations, Trusts, and Funds: A Sourcebook*, available at www.worldbank.org/mining>Publications/Mining Publications.

The Context of Benefit Sharing in the Mining Industry

The mining industry has a number of characteristics that draw it into economic and social development at the local, regional, and sometimes national levels:

- Because mining operations are often conducted in environments where government institutions may be absent, weak, or lacking in capacity, there may be gaps in essential public services.
- The social and environmental footprints of mining operations often have negative effects on local communities that require compensation or mitigation programs.
- The remote location of many operations heightens expectations for employment and economic development in host communities.
- The enclave nature of the mining industry can limit the trickle down of benefits unless specific social investment programs are undertaken.

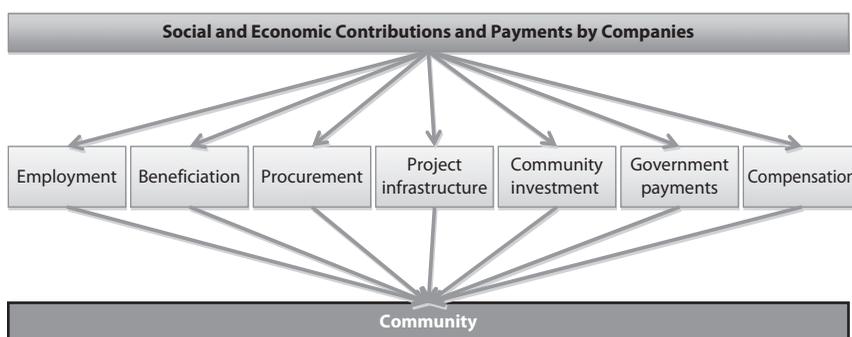
In this context, mining companies and governments must often take action to share benefits at the local level and sometimes to establish an instrument dedicated for that purpose.

Sharing Benefits at the Local Level

Mining projects can contribute to development through a number of channels, ranging from employment and tax payments to local procurement and community investment projects (figure 2.1). Sharing benefits and compensating for damages generated by mining operations within communities is widely recognized as a necessity. The sharing may be mandatory or voluntary.

This publication focuses on three of these benefit-sharing channels: government payments, compensation, and community investment. Changes in the mining industry and in community expectations have

Figure 2.1: Benefit-Sharing Channels



Note: The relative importance of the different channels varies considerably and is not captured in the figure.

focused growing attention on benefit-sharing approaches in each of these areas in recent years.

The Company Perspective: Providing Compensation and Acquiring a Social License to Operate

Compensation for landholders and populations affected by the granting of a mining lease is typically a legal obligation that the leaseholder must fulfill on top of regular tax payments. Management and disbursement of compensation funds can be a challenge, and companies do not always find mechanisms in place that will help them to meet existing laws and regulations. Not only does the value of the compensation need to meet expectations, but also its form, with growing recognition that one-off cash payments are not a sufficient answer. The lack of authorized and transparent mechanisms also makes it difficult for communities to hold companies accountable for payment of the compensation they owe.

Companies and governments are under great scrutiny to ensure that benefits from mining projects are not limited to compensation for damages and to contribute positively to communities affected by mining developments. Where this obligation is enforced, mining projects can operate only when a “social license” to do so is granted by the surrounding communities. To gain and retain a social license, companies typically need to go beyond the government’s requirements for taxation and compensation and actually invest in community development.

The role of community investment around mining projects has grown significantly in the last two decades for a number of reasons:

- *Sectoral changes.* Between 1989 and 2001, more than 75 countries liberalized their investment regimes for mining, oil, and gas exploitation and privatized state mining companies (BSR 2010). This had the dual effect of increasing foreign investment by multinational mining companies in developing countries and reducing the provision of “social wages”—subsidized housing, education, and health care—for workers in state-owned companies. Technological improvements have reduced the labor needs of mining projects. Along with an increase in “fly-in, fly-out” operations, these changes are diminishing many of the traditional benefits received by communities. Pressure has risen to replace them with new benefit-sharing instruments, often in the form of community investment.
- *Operational drivers.* Improved access to communications across the world and an increase in the number of advocacy groups focused on the mining sector have raised community expectations from mineral developments. Employees have also raised their expectations of the companies they work for, increasing the focus on corporate social responsibility (CSR) in operations.
- *Expectations of corporate social responsibility.* The growth of CSR across all industries has led shareholders and stakeholders to review the social contribution of private industry in far more detail than in the past. Peer performance has also raised the bar for more strategic and effective community investment with a long-term view of sustainable development (ICMM 2005). Commercial investors also review these commitments and contributions.

Unless mining companies address these changing expectations of benefit sharing, they may fail to obtain and retain a social license to operate. In turn, community rejection of a project because of inadequate or inappropriate compensation can disrupt the project and swing popular opinion against mineral development in the country.

The Government Perspective: Demonstrating Locally Positive Impacts from Mining

The concept of promoting sustainable development in communities affected by mining operations has gained currency over the past decade. Governments are increasingly under pressure to demonstrate the local positive impact of mining throughout a project’s lifecycle, from exploration to mine closure, in order to gain political support for continued mineral development. To achieve that support, one option is

Table 2.1: Examples of Royalty/Tax Redistribution in Mining Areas

Royalty/tax	Percentage Allocated to Decentralized Authorities by Law
Madagascar royalty	42 percent to communes of extraction; 21 percent to region; 7 percent to province
Peru royalty	20 percent to the district of exploitation; 20 percent to the province; 40 percent to other districts and provinces in the region; 20 percent to the region, including 5 percent to universities
Indonesia state receipts from natural resources, including mining	80 percent to the region (split as 64 percent to the regencies and 16 percent to the provincial government)

to establish mining tax regimes that include direct or indirect payments to decentralized development authorities. Along with taxes based on property value, royalties levied mine by mine are well suited for financing local distributions. The extent to which royalty collection and expenditure are decentralized from the general budget varies widely (table 2.1).

Legal provisions to impose redistribution at the local level are often implemented when only limited benefits accrue to the host communities that bear most of the negative impact of mining operations. However, in practice, royalties payable to the central government rarely revert back to the affected region, even when the legislation specifies that this should be the case. While decentralization of benefit sharing from mining activities is becoming increasingly common, it must be noted that many nations still prefer to see all major taxes flow to a general fund, allowing central or provincial governments to determine where and how monies should be expended for the good of the public as a whole.

Among communities and governments, recent escalating mineral prices have placed additional focus upon the benefit-sharing arrangements in place in mineral-dependent economies. Countries with multinational mining corporations using *ad valorem*¹ taxation and royalty schemes have seen the majority of windfall profits leave their national borders, causing local controversy and sometimes a reassessment of the means by which both production and profit can be shared.

¹Ad valorem refers to duties which are levied on commodities at certain rates per centum on their value.

Establishing Dedicated Instruments

General Drivers

Recognizing the need for development contributions at the local level, governments and companies alike have considered the role of a dedicated instrument, such as an FTF, to deliver this contribution. As independent vehicles to channel revenues generated by mining operations to communities, FTFs can be designed to meet multiple goals, including the following specific cases, each of which is addressed in greater detail in this section.

- Companies can work in partnership with local communities through shared FTF governance arrangements to fund development projects.
- FTFs can support government decentralization processes by increasing the transparency and traceability of financing from mining regions into development initiatives.
- Agreements between indigenous people and mining developments can be formalized and made actionable through the creation of an FTF.

This is not to suggest that these goals can be achieved only through the use of a dedicated instrument such as an FTF. In fact, companies and governments may choose to develop systems internally or partner with development agencies as an alternative to establishing an FTF. While the appropriate means of channeling development contributions from mining projects depends heavily on site-specific conditions, dedicated instruments can bring particular value in the following situations:

- *Lack of local capacity.* Where funds are allocated to decentralized authorities or groups with limited capacity, the use of a dedicated vehicle such as a foundation can increase the resources available to the group for delivery of sustainable development outcomes from mining. The creation of a specific vehicle can also increase the accountability of those responsible for delivering the development projects, increasing the likelihood of a positive outcome.
- *Weak or absent public services.* Mineral projects are increasingly being developed in frontier regions of developing countries, outside the reach of government-provided public services such as water, sanitation, and electricity. The responsibility for providing public services in these situations often falls to mining companies. Through use of a foundation model in partnership with local authorities the potential for blurring of roles can be minimized.
- *Continued benefit beyond mine closure.* Ideally, the exploitation of mineral resources transforms natural capital into other forms of capital

to be shared among project beneficiaries over the long term. When delivered through an endowed FTF, benefit-sharing approaches, such as community investment initiatives, experience a smoother and more likely successful transition to sustainability after the mine closes.

The Company Perspective

In the absence of a government framework mandating an approach to benefit sharing, companies are often left to develop their own approaches in consultation with communities and government representatives. The IFC's community investment strategies handbook (2010) provides a detailed analysis of the business case for community investment by companies and the basis for choosing a dedicated instrument to deliver such activities, a summary of which is provided below.

The vast majority of FTFs are initiated by companies and are used to deliver community investment programs. The choice of an FTF over other models (such as in-house management of community programs or partnering with an external development actor) is based on a number of advantages identified with FTFs. While these advantages can be found individually outside FTFs, the combination that FTFs can deliver presents a significant benefit. The use of FTFs can:

- Signal commitment and establish a formal, professional, and systematic approach to development that can help to build an informal expression of consensus (“social license to operate”).
- Support long-term, multi-year development projects without necessarily being tied to annual company budget cycles.
- Foster stakeholder participation in the management and operation of community investment programs. Independent management and governance structures can provide a more formal approach to shared decision making and to the inclusion of the community, nongovernmental organizations, and governments.
- Build bridges to other development actors and formalize collaboration between a company and other stakeholders by providing a neutral facilitator. The role as a neutral party can also increase the likelihood of being able to find and obtain external financing.
- Separate legal liability for the actions of community development programs from those of a mining company, thereby minimizing company risk.
- Provide a guarantee of financial support for development independent of the boom-and-bust cycle of mining.

- Provide financial benefits, such as tax advantages, that may not be available through other community investment vehicles.
- Develop long-term institutional knowledge and attract and retain specialized expertise from the development sector.
- Represent a participatory, transparent, and accountable mechanism for investing revenues in development, particularly in situations where public and private institutions are distrusted or seen as corrupt.

The payments made by mining companies as compensation for social and environmental impacts can be considerable. A trust structure can help ensure effective management of funds intended for compensation-related community projects and payments over time.

Benefit-sharing agreements between mining companies and communities can also generate significant funds, and the need for a dedicated instrument to manage these funds can emerge during the process of negotiating a community development agreement (CDA, box 2.1).

Box 2.1: The Use of FTFs in Community Development Agreements

As part of the development agreement for the Lihir gold mine in Papua New Guinea, an integrated benefits package (IBP) that includes compensation as well as community investment was approved in 1995. A progress review of the IBP was to be conducted every five years. Disappointment in the early results led to the recasting of the IBP as the Lihir Sustainable Development Plan (LSDP) in 2007, with an increased focus on long-term outcomes. Included within the LSDP are agreements on trust fund payments and a broadening of ownership of the plan, now shared between the company and landowners.

The Ahafo Social Responsibility Agreement (ASRA) is the first of three CDAs in existence at Newmont's Ahafo mine in Ghana. The ASRA defines the roles and responsibilities of stakeholders in the CDA process and includes a commitment to establish the Newmont Ahafo Development Foundation (NADeF). NADeF is financed by a payment from Newmont of US\$1 per ounce of gold sold by the company from the Ahafo lease, as well as a commitment that 1 percent of net before-tax income will be paid to the foundation.

Source: World Bank, 2010a.

FTFs and other dedicated instruments have figured prominently in the negotiation of benefit-sharing arrangements between mining companies and indigenous peoples, as discussed at the end of this section.

The Government Perspective

Governments may establish FTFs or promote their use for the following reasons:

- To bypass existing structures, processes, and politicians and establish direct channels to beneficiaries.
- To manage mandatory or voluntary funds received from companies through taxes, royalties, or fees.
- To stabilize economic contributions from the mining sector to weather severe fluctuations in commodity prices.
- To set communities and regions on a path to sustainable development that will extend beyond the life of the mine.

Some countries' mining regulations include requirements for benefit sharing or other initiatives designed to help communities grow. However, such mandates are still comparatively rare. Countries with strong policy and regulatory approaches include Chile, Papua New Guinea, and South Africa. In addition, Egypt, Eritrea, Guinea, Mozambique, Nigeria, Sierra Leone, and Yemen have recently introduced community development regulations, and the Democratic Republic of Congo (DRC), Ghana, Namibia, and Tanzania are reportedly seeking to embed community development initiatives within their policy framework.

In 2009, the Mining Law Committee of the International Bar Association established a project to prepare a model mining development agreement (MMDA) to be used by mining companies and host governments. The project is aimed primarily as a tool for use with and in developing countries, in particular where a mature mining code is not in place or has proven ineffective. The MMDA is being developed in a public fashion. A version 1.0 dated April 4, 2011, includes an explicit recommendation for the establishment of a community development foundation by mining companies:²

The Company shall provide an annual payment of [X AMOUNT] to a Community Development Foundation established as part of the Community Development Plan, which shall be managed and disbursed, in efforts to promote local and regional development, or health education and welfare in the communities affected by the Project. The governing body

²For further details on this project see www.mmdaproject.org

of the Community Development Foundation shall include members of communities affected by the Project. The annual budget and disbursements from the Community Development Foundation shall be public and shall be subject to audit procedures provided for by Applicable Law and the terms of the agreement. Periodic reports and audit reports shall be made available to the Company, to the State, and to the public.

Given the difficulty governments face in renegotiating taxation arrangements with companies, which often come under particular scrutiny during times of changing mineral prices, governments may also resort to FTFs for the following purposes:

- To invest a portion of the taxation and royalties received from mining into a stabilization fund to help balance annual budgets and allow the government to plan longer-term projects. This approach is particularly relevant where taxation is strongly based on *in personam*³ taxes, over which the government can exert little or no control, and where mining constitutes a significant portion of the country's GDP.
- To avoid renegotiating contracts during times of windfall profits where taxes are based heavily on the use of *in rem*⁴ taxes, some governments have turned to the implementation of "voluntary contributions" from companies using FTF models to manage these contributions for immediate implementation at the community level.
- Where public services are inadequate, governments may promote the establishment of a company FTF model to provide complementary resources to fill gaps in service provision or extend the scope of services. Ideally, these programs are targeted toward building the capacity of local governments to implement the projects in the future. The use of FTFs in such situations can allow a beneficiary to experience more rapid development than would have resulted from government distribution of revenues for infrastructure owing to resource limitations, low capacity, political factors, or corruption. Implicit within this model, however, is a blurring of the roles between the private sector and government.
- In some jurisdictions the negotiation of mineral licenses identifies the whole package of benefits and payments due to communities. This integrated approach to benefits can generate large lumped sums of

³In personam taxes are charges against some definition of net revenue and, as such, are tightly linked to the profitability of the mining project.

⁴In rem taxes include taxes on fixed and variable costs of production, such as unit-based royalties.

money payable to communities over an extended period of time. By using an FTF model, transparency can be maintained between communities, government, and companies in such cases.

Box 2.2 provides examples of two governments that have set up FTFs.

Box 2.2: Government-Authored Benefit-Sharing Schemes Using FTFs: The Cases of Madagascar and Senegal

Madagascar. After centuries of artisanal mining, in 2005 the first world-class industrial mining investment was committed in Madagascar. The joint venture between Rio Tinto and the state (represented by OMNIS, a public agency) started exporting ilmenite in 2009 amid considerable concern over the collection, redistribution, and use of royalties. Madagascar's national mining code (passed in 1999 and reviewed in 2005) allocated part of the royalties to decentralized authorities. However, the distribution rules in the code were designed for application to small-scale and artisanal mining and could not easily be adapted to large-scale enterprise.

If the distribution rules had been applied directly, only two small villages would have benefited from the royalty, with the adjacent city of Fort Dauphin receiving nothing. The distribution system was also incapable of accommodating the mobile nature of a dredging operation that affects different communes over time, depending on the company's mining decisions. Despite these problems with the existing mining code, the government was reluctant to propose a new law. Instead, it convened a dialogue with local stakeholders to consider a variety of options that would respect the spirit of the law while providing a pragmatic and inclusive solution. From this dialogue a proposal was developed for a "Mining Community Foundation." This dedicated instrument was to have the following attributes:

- It would channel a part of the royalty stream to a wide list of beneficiary communes to achieve greater equity.
- It would be endowed, with the mining company (QMM) agreeing in principle to make significant contributions.
- A community forum would be established and meet regularly with the foundation's board to ensure that the commune's authorities and members of civil society would be able to participate in programming choices.

Because of a political crisis that hit Madagascar at the time, the proposal stalled before the Mining Community Foundation could be implemented.

Box 2.2: Government-Authored Benefit-Sharing Schemes Using FTFs: The Cases of Madagascar and Senegal *(continued)*

The proposal also faced some opposition, as critics felt that the creation of the dedicated instrument would undermine existing governance institutions and the broader decentralization process. There was also fear that the structure might allow payments to be captured by central elites and that it was not sufficiently owned by local communities.

Senegal. An alternative approach to a comparable situation was chosen in Senegal, where the 2003 mining code stipulated that “part of the fiscal revenues generated by mining operations are paid into a Balancing Fund to be allocated to local authorities.” However, detailed provisions were left to subsequent regulations. After extensive consultation, Decree n° 2009-1334 (November 20, 2009) clarified that 20 percent of mining revenues (taxes and royalties) would be used to create a national equalization fund. The local authorities from the mining region would receive 60 percent of the fund, with the remaining 40 percent being shared by other local authorities in the country. The funds are shared between mining regions in amounts that are proportional to the revenues generated and the local population.

In parallel, the government negotiated a Mining Social Plan with companies, financed by annual contributions from the companies as agreed in their respective mining agreements. The ministry in charge of mining approves and supervises the use of these resources. The first Mining Social Plan is dedicated to the population living in the areas around the operation of three companies: OROMIN Exploration Limited, Mineral Deposits Limited, and Arcelor Mittal.

The Special Case of Indigenous Communities

Negotiated agreements between indigenous peoples and mining companies have become commonplace in the past two decades in Australia and North America, where customary ownership has been formally recognized (ICMM 2010). Typically, the agreements cover financial payments, disbursement arrangements, employment commitments, governance structures, and other locally important provisions. The ICMM’s Good Practice Guide on Indigenous Peoples and Mining (2010) provides additional information on this topic.

The agreements often use FTF structures to implement the agreed financial disbursements, both for immediate use and for longer-term investments. Some agreements include the allocation of funds for future generations, and FTF structures are often used to make the resulting investments. FTFs can present significant advantages in such cases owing to their potential independence, tax-efficient status, and capacity to attract funding from other sources. The structure can also present good opportunities for long-term sustainability and for gradual transition of ownership (box 2.3).

Box 2.3: Benefit-Sharing FTFs between Indigenous Peoples and Mining Companies

Canada. Signed in 1995, the Raglan Agreement has been used as a benchmark for First Nations agreements in the mining industry. The Raglan mine is located in the Nunavik Territory. The agreement was signed between the two closest communities to the mine (Salluit and Kangiqsujuaq), the Makivik Corporation (an Inuit owned company which oversees the political, social, and economic development of Nunavik), and Raglan mine, now owned by Xstrata Nickel. The Agreement is governed by the Raglan Committee, comprising equal representation from Inuit groups and the company (six members in total). The profit sharing arrangement includes a commitment to provide 4.5 percent of operating profit to community partners (this equated to a payment of close to C\$17 million in 2007). All funds are placed in a Trust which in turns distributes 25 percent of the money to the Makivik Corporation, 30 percent to Kangiqsujuaq, and 45 percent to Salluit, who then distribute the funds to the fourteen communities in Nunavik based on a needs assessment.

Australia. The Gnaala Karla Booja (GKB), who are part of the Noongar Nation, are the 'traditional owners' of the land in the Newmont-owned Bodington gold mine's area of operations in Western Australia. A Community Partnership Agreement was signed between the Gnaala Karla Booja and the mine operators and owners in 2006 to acknowledge the traditional owners and to assist in building an economic base for GKB People and their children. The agreement covers employment opportunities, as well as commitments for annual financial assistance which started in 2009. A charitable trust structure has been established to manage these funds for investment in local business development and community development projects. The

Box 2.3: Benefit-Sharing FTFs between Indigenous Peoples and Mining Companies *(continued)*

Trust is jointly managed by a Traditional Owner Liaison Committee and mine representatives.

Elsewhere in Australia, the Indigenous Land Use Agreement (ILUA) and Argyle Management Plan Agreement (AMPA) together were considered the most comprehensive agreements ever negotiated between a resource company and traditional owners in Australia in 2006. The Rio Tinto owned Argyle Diamond Mine is located in the East Kimberley region of Western Australia and occupies the traditional country of a number of indigenous groups. The ILUA is a voluntary agreement entered in good faith by all parties and it was the result of three years of negotiation, replacing an earlier “Good Neighbour Agreement” dating from the 1980s. The ILUA established two trusts: the Gelganyem Trust and the Kilkayi Trust. The Gelganyem Trust comprises eleven trustees, nine representing the seven traditional owner estate groups that are party to the ILUA and two independent trustees. This Trust administers the Sustainability Fund, the Law and Culture Fund, the Education and Training Fund, and the Miriuwung and Gija Partnership Fund. The Sustainability Fund provides future generations of Miriuwung and Gija people with a significant capital base including money for future generations.

The Gelganyem Trust has developed a number of projects including an indigenous business development facility, scholarships funds, renal health care, and holiday programs for youth at risk. The Trust is funded through royalty payments and has successfully used these payments to leverage funding from the federal and state governments and private funding partners. The Kilkayi Trust has only two trustees and has been established to administer payments from Argyle to individual families party to the ILUA.

Laos. The Sepon Trust Fund was established to implement the Community/ Indigenous Peoples Development Plan developed for the Sepon gold and copper project in Laos. The Trust Fund was specifically chosen to reduce the risk of the mine becoming the provider of government services at the local level. All projects supported by the Trust Fund have to be aligned with the broad government plan for the area to improve sustainability. An eight member board comprised of representatives from the company, government, and the two main ethnic groups govern the Fund, and a 17 member committee manages its day-to-day operations.

Sources: ICMM 2010, NRC 2007, Newmont 2010, Jones et al. 2004, AHRC 2006.

Chapter 3

Key Attributes of Foundations, Trusts, and Funds

In order to consider the conditions for success of foundations, trusts, and funds (FTFs), it is necessary to first understand the diversity of models used. FTFs can be distinguished not only by their legal structure but also by their position on six important scales: programming approach; financing structure; geographic focus; community participation in governance; the influence of the mining company; and the influence of government. The variety of approaches is summarized in this section and re-examined in Chapter 4, drawing on brief examples from global experience.⁵ The choice of attributes for an FTF will depend on the local context in which the FTF is being established. Summary guidance on the applicability of different options is provided below.

Brief History

The use of FTFs to deliver benefits from mining has grown considerably since the 1980s. Between 1950 and 1980, just a handful of FTFs were in operation; by 2008, this figure had risen to 61 in developing countries alone. Furthermore, it appears that FTFs have grown faster in the mining industry than in other industries (BSR 2010).

As mining FTFs have grown in quantity, the quality of their structures and program execution tactics has evolved. The Alcoa Foundation and Phelps Dodge Foundation, both established in the 1950s and now closed, used a corporate foundation model to support philanthropic donations to local initiatives across their global operating locations. The foundations formed in the 1970s in southern Africa, by contrast, became major actors in national development initiatives, in some cases displacing the government as the dominant social institution in some areas. In the 1980s, locally managed funds with targeted objectives were created, such

⁵Appendix 1 provides a nonexhaustive list of mining foundations, trusts, and funds.

as the Fundación Montelibano in Colombia, which focused on providing scholarships for the education of employees' children.

The last two decades have seen the emergence of a sustainable-development philosophy within FTFs and the use of FTF models by a broader audience through the emergence of community foundations and government-mandated corporate foundations. The past two decades have also seen an increase in the use of FTF models to manage a greater range of social and economic contributions and payments, especially compensation and benefit-sharing arrangements with governments.

The Challenge of Comparing

To compare the experience of FTFs in the mining industry, it would seem logical to compare trusts with trusts and foundations with foundations around the world. This is made complex, however, by the country-specific and widely varying definitions of foundations, trusts and funds, which render comparison by name alone impossible.

Legal Distinctions

The choice of a foundation, trust, or fund depends in large part upon the legal context in the host country. In general, “trusts” are employed in countries that use common law, whereas “foundations” are preferred in countries adhering to civil law. The “fund” designation does not confer a separate legal status and is instead used as a general term to describe a trust, foundation, or company budget item. Other relevant distinctions include:

- The term “foundation” applies to an institution “used for charitable or family purposes, while a “trust” is one form such an institution can take” (Warhurst 2002).
- FTFs may be closely aligned with the founding actors or actors (such as a mining company) or, in the case of trusts and foundations, deliberately established as stand-alone entities with independent status.
- The terms are often used loosely in vernacular conversation and even in the names given to particular institutions. For example, the Anglo American Chairman’s “Fund” and the Rössing “Foundation” are both legally incorporated as “trusts.”

The legal frameworks under which FTFs are established typically control the following structural elements:

- Legal process for establishment
- Purpose for which the entity may be established
- Permissible economic activity

- Provisions for supervision and management
- Provisions for accountability and auditing
- Provisions for amendment of statutes or articles of incorporation or dissolution
- Tax status of donors
- Tax status of the foundation, trust, or fund.

Recognizing that the attributes of FTFs vary from country to country, the typical characteristics for each mechanism are defined in table 3.1.

Using the general descriptions provided above, foundations arguably provide greater flexibility than trusts. Funds require an implementation

Table 3.1: Typical Characteristics of Foundations, Trusts, and Funds

Foundation	Trust	Fund
Relatively flexible in the activities they may conduct. Separate legal entities that own the assets under their control.	Represents a legal relationship between the settler of assets, the trustee, and the beneficiaries. The trustee is assigned specific responsibilities that can make this mechanism less flexible than a foundation.	The term describes a mechanism that can be legally defined as a trust or foundation or can be used to refer to a designated line item within a company budget.
Typically have a management board or some other form of committee governing their activities.	Governed by a board of trustees.	
The duty of care of a foundation council member is to act in accordance with the regulations and the law and to act in the “best interest” of the foundation (less legally onerous than a trust).	Trustees can be held liable for their management responsibilities and are required to exercise “all reasonable care”—a stronger legal concept than is used for other instruments.	
For a foundation to exist, its charter must be publicly registered, thereby establishing it as an entity with juridical personality.	Lower public-domain information requirements than other instruments.	
Two main types: company/corporate foundations and community foundations.	Establishment of a trust is a juridical act and only secures “absolute certainty” when a court proclaims the trust to be valid.	
	A trust may conduct profit-making activities.	

vehicle of some sort to be activated. The inconsistency of definitions, however, illustrates the point that the specific type of instrument is less important than its practical attributes.

Practical Criteria

Given the difficulty of comparing FTFs on the basis of definitions alone, a set of experience-based criteria has been developed to allow fruitful comparisons. These criteria assess key attributes of FTFs and allow them to be compared on a sliding scale. The six criteria in no way imply a normative evaluation of any institution, since FTFs can be evaluated only against the goals they were set to meet, and these vary in each case and for each of their stakeholders.

The six scales that have been developed cover:

- *The programmatic approach taken by the entity*: Does the entity make grants, or does it operate field programs?
- *Its financing structure*: How is the entity financed? Annual operating budgets present options for investment that differ from those of endowed funds.
- *Its geographic focus*: Where does the entity operate? On this scale, mining FTFs may target specific communities, such as indigenous or vulnerable people within the mine's area of influence, or they may operate across a broader area.
- *The degree of community participation in governance*: How involved are communities/beneficiaries in the governance structure of the entity?
- *The influence of the mining company*: How much influence does the company exert over the activities of the FTF?
- *The influence of the government*: How much influence does the government (at all levels) exert over the activities of the FTF? How much influence did it exert over the establishment of the FTF?

Figure 3.1 provides an intuitive and visual way of comparing the attributes. Each case study presented in Chapter 4 includes a sliding-scale graph that shows the position of the FTF on each of the six scales.

Analysis of the Attributes of FTFs

Programming Approach

There are two main programming options when developing an FTF:

- Grant-making
- Operational and implementation approaches.

Figure 3.1: Sliding Scales of Attributes Useful in Comparing FTFs

Programming Approach	Grant making	Operational	
Financing Structure	Annual Budget	Endowed	
Geographic Focus	Targeted community	Mine Area of Influence	Broader community
Community Participation in Governance	No participation	Board Membership	
Influence of Mining Company	No Influence	Mining Company Ownership	
Influence of Government	No Influence	Legal Requirement	

Grant-making FTFs provide grants to other organizations, whereas operational FTFs use their funds to deliver development projects directly. Many FTFs use a hybrid approach with some grant-making activities and some projects delivered by an in-house team. Table 3.2 highlights some of the key strengths and weaknesses of each approach.

Often linked to the programming approach, the program choices taken by an FTF should be grounded in a deep understanding of beneficiaries’ needs, owner priorities, and gaps in existing development activities. FTFs can choose, or be directed, to support any number of programming directions, from literacy programs for targeted groups in a vulnerable community to support of national culture through sponsorship of the fine arts. Common programming areas for FTFs in the mining sector include local economic and business development; health and wellness; education and vocational training; basic infrastructure; employment- and income-generating projects; environment; and capacity building programs for local authorities and community-based organizations.

A common programming trend progresses from supporting basic infrastructure, health, and education at the FTF’s inception to supporting alternative livelihood projects and a focus on capacity building as the FTF matures. Monitoring and evaluation of the development impacts of projects supported by FTFs is one of the best means of recognizing the changing needs of communities and allowing modifications to strategies to be developed. For that reason, monitoring and evaluation are essential.

FTFs can be established at any time during the mining cycle (box 3.1), but most are established after operations have commenced, a decision linked primarily to the cost of capital in the early stages of a project. An increasing trend of early-development FTFs is emerging, however, often in response to government requirements, community expectations, or both. FTFs can also be used as a vehicle for managing social programs after a mine closes.

Table 3.2: Comparing Programming Approaches

Strengths		Weaknesses	
Grant-making	Operational	Grant-making	Operational
Particularly applicable when other development actors are in the area.	Particularly applicable in regions where few development actors operate and FTF has longer-term future.	Needs strong transparency policy to ensure disbursements and decisions are undisputed.	Higher overhead costs and initial start-up costs.
Can reduce risk of overlap and duplication.	Clearer opportunities for company branding and connection to social license to operate.	Requires strong oversight and monitoring to reduce risk of failure.	Long time lag from decision to establish FTF to delivery of first development project.
No geographical limit placed on FTF's activities.	Opportunities exist to seek external financing if good reputation is developed.	Limited direct contact at project level.	A large staff with development skills may be needed.
Can become a conduit for funding from other sources.		Size of budget for grants needs to be appropriate to number of grant applicants.	Difficult or expensive to operate across multiple geographic regions.
Small overheads and staffing complement.		Reputational benefit for company or contributing party can be diluted or lost.	

Financing

FTFs can be compared on the basis of their financing structure, the sources of their financing, and their financial management scheme.

An FTF's financing structure has significant implications for its long-term sustainability and its ability to commit to multi-year projects. The main approaches to structuring the funding of an FTF are by endowment, annual budget allocations, or a combination of both. Broadly speaking, endowment funding favors FTFs that are designed to exist beyond the period of a mining operation, while budget cycle allocations are better suited to FTFs established to deliver benefits solely while a mining project is operational. Table 3.3 summarizes the strengths and weaknesses of the two funding structures.

Box 3.1: The Starting Points of FTFs May Vary

The development of a social trust fund has been required as a condition of the privatization transactions surrounding several mineral projects in Peru. The Las Bambas Social Fund (FOSBAM) was created to manage the funds associated with the Xstrata Las Bambas project social trust fund and to deliver development projects to communities during the exploration and project development phases (that is, in advance of royalty and tax payments). The Ahafo Development Foundation was developed a number of years into the operation of the mine. This delayed start was made possible through the existence of other community development projects currently being run by the company through in-house expertise

The Anum Lio Foundation at Kelian, Indonesia, was established to manage the social programs which have continued beyond mine closure.

Table 3.3: Comparing Funding Structures

Endowment Funding		Annual Budget Allocations	
Strengths	Weaknesses	Strengths	Weaknesses
Greatly enhances sustainability of FTF.	Ideally requires early investment of development funding when money is most expensive.	Allows financing commitments to be scaled and modified depending on external factors affecting source of funding.	Potential limiting factor for multi-year projects, as commitments may be limited to the budget cycle.
Facilitates multi-year project commitments.	Large sums of money can attract corrupt practices and poor financial management practices.	Can drive close collaboration between funding source and FTF.	Threatens long-term sustainability of company-funded FTFs, as an entirely new funding source is required when operation closes.
Can protect FTFs from fluctuations in mineral prices.		Can drive the development of a strong monitoring and evaluation program.	
Can provide a smooth transition to a post-mine closure operating environment.		Allows funding to be managed through existing accounting systems.	

There are four main sources of financing available to mining FTFs: companies, communities, governments, and mixed sources. The most common is mining companies themselves, and companies face a challenge in determining the appropriate amount to invest. A common method of addressing this dilemma is to set the payment as a percentage of revenue. From a government or community perspective, payments on a revenue or production basis are preferable because they guarantee a financial contribution independent of company profit. However, companies sometimes prefer to compute payments on a before- or after-tax basis rather than having them assessed directly on revenues. Companies may also choose to fund FTFs based on a percentage of capital or operating expenditure. Yet another approach used by companies requires an annual negotiation based on an internal company assessment of funding availability. This approach retains almost complete control within the company, but it can also appear opaque to external stakeholders, especially during tight financial times. Combining a number of these approaches can correct disadvantages associated with each (box 3.2).

Box 3.2: Computing Company Contributions

Freeport Partnership Fund for Community Development (LPMAK), Indonesia

Fund receives 1 percent of mine revenues, with total contributions of US\$242 million. Ten percent of all future receipts are to be invested in a long-term fund.

Minera Escondida Foundation, Chile

Funded by allocation of 1 percent of before-tax annual profit based on a three-year rolling average, with total contributions exceeding US\$9 million.

Ahafo Community Foundation, Ghana

Funded through a combination of 1 percent of net operational profit (before-tax) from Ahafo South mine plus US\$1 per ounce of gold from Ahafo (estimated at US\$0.5 million per year).

Greater Rustenburg Community Foundation (GRCF), South Africa

The GRCF is a community-developed foundation located in the platinum-rich area of Rustenburg in South Africa. Focused on developing a sustainable future for community members, there is no direct company involvement in the GRCF. The foundation relies on donations from individual and corporate donors, whose generosity supports the grantmaking program.

Communities or local nongovernmental organizations (NGOs) may provide funding to an FTF in order to establish a direct, vested interest in its outcomes. Alternatively, communities may choose to use their own funding to establish a community foundation that will advance social development within their local area thanks to the donations of community members. The model has particular application where there is a differential in wealth in the host community, such as the gap between those earning mining salaries and the rest of the community.

Governments contribute to development projects by drawing on payments from the mining sector related to: (a) concessions, licenses, and land access; and (b) royalties, taxes, and fees. Governments may also require contributions in the form of closure bonds and trusts (box 3.3).

A well-established FTF may enjoy financing from a variety of sources. Such diversity can minimize the boom-and-bust effects associated with funding derived from mining profits or revenues alone and can be a step toward a sustainable future. Potential funders include NGOs, donors, governments, communities, other FTFs, and, in some cases, other mining companies. Cofinancing is often proclaimed as an operational goal for

Box 3.3: Government Funding Mechanisms

Government-operated. In Peru, the ‘canon minero’ is a royalty payment that provides a large percentage of the funds that the central government pays out to the regions that host mining operations. The regions use the payments to fund their development projects.

Government-directed. The Namibian government requires all mining companies to establish an environmental trust fund and to pay into the fund over the lifespan of the project to meet obligations associated with mine closure.

Payment for concessions. Half of the price of the Rio Tinto La Granja concessions paid to the government of Peru as part of the privatization process is to be invested in an FTF that will fund development programs in the region while the project develops.

Government cofinancing. In Peru, canon minero financing is being used to support Aporte Voluntario projects (an initiative of the mining companies nationwide to combat poverty in their areas of influence). This effectively increases the implementation record of canon minero monies while expanding the reach of the Aporte Voluntario scheme.

FTFs, but it can have unintended consequences if the reputational benefit associated with a project is diluted by being shared with multiple partners.

A final funding option available to FTFs is to generate income by investing in profit-making development projects.

FTFs can also be compared in terms of their approach to financial management. Establishing and running an FTF involves transaction and operating costs, the scale of which needs to be considered in proportion to the amount of money invested in development. Some FTFs impose limits on the administrative proportion of spending, often on the order of 15-20 percent of total expenditure.

Geographic Focus

The geographic reach of an FTF is defined largely by its purpose. In general, the geographic scale has five points:

- *Area of influence.* This is the area defined as being influenced by a specific mining operation. It is normally defined during assessment of the project's environmental and social impact. This approach is typically adopted to support a company's community investment or compensation program.
- *Special focus groups.* In some situations, FTFs are established to benefit a subset of the mine's affected population or to benefit a specific group deemed to require special assistance but that may not otherwise receive benefits from the project.
- *Regional.* Expanding the focus of FTFs and mining sector benefit-sharing mechanisms to the regional level traditionally fell within the purview of governments. Over and above royalty payments to regions, governments have also established FTFs to better coordinate social and environmental issues in regions. Some companies have also developed FTFs at a regional level to support several mines operating within a region. Community foundations may also operate at a regional level.
- *National.* Mineral wealth is often considered to belong to the nation rather than to any particular region. As such it is not surprising that a number of national FTF organizations exist. From a company perspective national FTFs are typically employed when a company has a very significant national footprint and seeks to contribute (often at a philanthropic level) to national development outside of the immediate area of its operations.
- *International.* Utilized by companies with a large global footprint, international FTFs can provide mining companies with a means to

support charitable organizations in the countries that host their headquarters, even if no mining operations are found there.

Community Participation in Governance

FTFs require a governing body in order to be considered separate legal entities. The composition of these bodies varies from representation of mine owners only, through to multistakeholder bodies representing beneficiaries, civil society, government authorities, and technical experts. Greater diversity within a governance structure can support a system of checks and balances, with complementary roles played by different partners. Multistakeholder governance can also demonstrate corporate responsibility, engagement with stakeholders, and the potential for leveraging additional resources in the community from other donors (box 3.4 and table 3.4).

At the opposite end of the spectrum are governing bodies comprising representation from owners alone. Such a structure can be simpler to manage and, in the case of company FTFs, can fall within company oversight almost as an additional company department. While high levels of control can be beneficial in meeting a company's needs, this approach can add significant challenges to eventual transfer during and after mine closure.

The composition of the governance structure is often believed to convey the relative influence of different stakeholders over the FTF's activities, but it may not present a complete picture. The best examples of the distinction between governing power and influence are seen where an FTF's structure, mandate, vision, and existence have been controlled through regulatory processes, even though the government is not represented on the FTF's governing body.

Box 3.4: Participation and Capacity: Mali

High levels of participation of community members in FTF governance structures is generally considered to be a positive attribute of an FTF. The benefit of such participation may be compromised, however, by the capacity of community representatives to contribute to the governance process. The Integrated Development Action Plan (IDAP) of the Sadiola and Yatela mines in Mali employs a highly participative independent governance structure. This approach has allowed programs to achieve considerable grounding in local communities but has proved challenging when developing strategic plans and planning for mine closure.

Table 3.4: Highly Participative Governance Structures

Strengths	Weaknesses
Creates beneficiary ownership, enhancing relevance, effectiveness, and sustainability of foundation	Can result in conflicting agendas and priorities on governing body
Provides a means of holding beneficiaries accountable, particularly if they participate in decision making	Often requires more time to build capacity and ensure that community participation is effective
Provides local stakeholders with a voice	Link to company or government objectives can be diluted
May provide enhanced opportunities for seeking external financing	Can be more expensive in the short term

Influence of the Mining Company

Mining companies have established the majority of the FTFs in existence in the mining industry (BSR 2010). The decision to establish an FTF often rests with the company, as does the level of influence that the company will exert over the day-to-day operation and direction of the FTF. That level of involvement can vary significantly and is moderated through the following broadly defined avenues for participation in the FTF's structure:

- *FTF design.* Deciding on the structure and design of an FTF through a collaborative process that engages a wide range of stakeholders can provide a solid basis for an FTF. Depending on the size of the stakeholder group and the group's experience with FTF structures in the past, participation of this form can be time-intensive, thus limiting the application of this approach in situations where a company or government needs to deliver development benefits speedily.
- *Governance.* FTF governance, at its simplest, can be described by the membership of the board of directors or trustees. The level of participation in the governance structure can be adjusted through the inclusion of stakeholder representatives from groups other than the owning entity. It should be noted that there is a difference between participation and representation. Expanding the representativeness of a governing body is also likely to have an impact on the level of control exerted over the FTF by the owner.
- *Project generation.* Regardless of whether the FTF employs a grant-making or operational approach, projects can be generated internally,

externally, or by a combined approach. Beneficiary participation in the identification and development of projects can improve the community ownership of the outcomes of the project. Beneficiaries can also participate in the evaluation and review process for proposed projects.

- *Cofinancing.* The trend toward cofinancing projects with beneficiaries is evident across the development sector and typically occurs at a project level. Beneficiary contributions tend to be in the form of in-kind support rather than purely financial contributions.
- *Public reporting.* Community development projects are increasingly being evaluated through the assessments expressed by interested stakeholders in public reports.
- *Monitoring and Evaluation.* Beneficiary participation in monitoring and evaluation programs is fast becoming standard operating practice and can help to ensure community perceptions are being addressed effectively as company or government requirements.

Influence of Government

Around the world, the number of countries with legislation that mandates mining FTFs remains relatively low. However, where FTFs exist, governments exert influence on them in a variety of ways (box 3.5):

- *Legal requirement.* In a small number of cases, governments have prescribed the creation of an FTF as part of the permitting, development, or closure process for a mining operation.
- *Legal definition.* As discussed at the beginning of this section, the definitions of foundations, trusts, and funds vary across countries. Governments control the legal structure in which these vehicles can be established.
- *Tax incentives.* In many jurisdictions, governments have incentivized the selection of FTFs by applying tax-efficiency measures to these organizations.
- *Local and regional development plans.* Governments can exert influence over programming decisions by requiring that the development activities of an FTF be integrated with local or regional development plans.
- *Benefit-sharing agreements.* Where FTFs are used as the implementing instrument for benefit-sharing agreements, the location and scale of the development activity supported by the FTF is often dictated by government requirement.

Box 3.5: Government Actions Supporting the Use of Foundations, Trusts, and Funds

Ghana. Ghana has created a Mineral Development Fund (MDF) to return a portion of royalty income to communities directly affected by mineral development. Twenty percent of the collected royalties are paid into the MDF, with the proceeds then being shared among local government authorities, landowners, and communities adversely affected by mining.

Namibia. Namibia has also created a Namibian Mineral Development Fund. However, its focus is on broadening the contribution of the mining industry to the national economy through diversification and by stimulating economic linkages.

Peru. The Aporte Voluntario is an agreement the Peruvian government signed with 40 companies in 2007 to make a voluntary contribution to local and regional funds for the poorest provinces and regions of Peru. The payment addressed perceived inequities between project revenues and anticipated royalty and tax payments as commodity prices rose. The agreement also included company commitments to good management of these funds to help circumvent bureaucratic difficulties in management and disbursement of royalties to provinces and municipalities. Xstrata, Rio Tinto, and Vale have also established social trusts as part of their payments to secure the Las Bambas, La Granja, and Bayovar development projects in Peru.

South Africa. In South Africa, the Broad-Based Socio-Economic Empowerment Charter has been a key driver of company social investment initiatives. A considerable number of trust funds have been established to fulfill social obligations as part of the conversion of 'old order' mining rights.

Philippines. The Philippines Mineral Law of 1995 requires that companies obtain consent from indigenous cultural communities for use of their ancestral lands and that royalties be paid into a trust fund "for the socioeconomic well-being of the indigenous cultural community."

Laos. The new Laotian Minerals Law will make community-development funds a standard requirement for investors.

Drawing Lessons from Experience: Case Studies

To illustrate and confirm the experience presented in this publication a series of case studies was conducted on mining foundations, trusts, and funds (FTFs) in three mining regions of the world: Southern Africa, Peru, and Papua New Guinea. Each has a long history of mining FTFs driven by a mix of company policy, government regulation, and community expectations. Fourteen case studies were completed. Full details of each can be found in the *World Bank Mining Foundations, Trusts, and Funds Sourcebook*. The case studies presented here demonstrate the variety of approaches adopted by FTFs under very different conditions.

Conditions for Success

The experience with mining FTFs around the developing world is vast, varied, and difficult to compare. However, a number of broad conditions for success and leading practices have been identified. The success conditions are grouped under three headings: complexity, context, and integration, each of which is addressed below.

Appropriate Complexity

The complexity of the FTF model should be proportional to the level of financing and capacity available locally.

As was evident earlier in this publication, there are many different options available to companies and governments when structuring FTFs to share benefits derived from mining. FTF models can range from locally-focused, small-scale, grant-making activities to large financial structures that deliver government-collected payments to entire provinces. There is no predetermined level of complexity suitable for an FTF.

Starting simply: The Mozal Community Development Trust (MCDT), Mozambique

The MCDT is the community development arm of the Mozal aluminum smelter in Mozambique. Located 17 kilometers from the capital, Maputo,

the majority owner of the smelter is BHP Billiton. When production started in 2000, it was the largest foreign investment in Mozambique's history and one of the first major investments made following the conclusion of Mozambique's civil war. The MCDT was developed by the company in an environment devoid of national experience with mining FTFs. It is BHP Billiton corporate policy to establish a trust or foundation (depending on host government laws) for sustainable development associated with each of its operations, and financed by an annual contribution of 1 percent of pre-tax profits. For MCDT, that formula yields approximately US\$2.5 million per year.

The MCDT implements the community investment contributions and stakeholder engagement activities of the smelter and is governed by the Mozal smelter's board of directors. Although it is focused on projects in the immediate area of influence of the smelter, it has also delivered some projects in impoverished areas in the north of the country. Projects are identified in coordination with district-level government agencies, and several projects have been undertaken with significant cofinancing.

With a staff complement of nine, the MCDT represents a reasonably straightforward FTF model for the mining industry (figure 4.1). By retaining complete control of governance, the company is able to exert significant influence over the activities of the MCDT, which is useful, as the MCDT is the custodian of all community relationships for the smelter.

The challenge of complexity: The Lihir Sustainable Development Plan, Papua New Guinea

Under Papua New Guinean law, an integrated benefits package was defined and agreed between the Lihirian landowners and the mining company seeking to develop the Lihir Gold Project in 1995. The package encompassed the major benefit-sharing mechanisms for the surrounding community, including compensation payments, royalties, and social

Figure 4.1: Mozal Community Development Trust



development projects. It was subsequently reframed as the Lihir Sustainable Development Plan (LSDP).

The LSDP has five chapters: Lihir destiny; destruction; development; security and sustainability; and rehabilitation. A different party is responsible for the implementation of each. Implementing parties include the mining company, landholder companies, and local government groups. The management process of the LSDP is an evolutionary process; some “chapter owners” require considerable capacity building in order to undertake their roles (figure 4.2).

The grouping of compensation, community investment, and royalties into a single framework provides a clear description of the total package available for affected communities. However, it can also blur the distinction between these different benefits among recipients. With the LSDP, this blurring has resulted in a loss of the reputational benefit normally accruing to community investment projects, as all activities tend to be seen as compensation that is ‘owed’ to communities.

The largest development organization in the country: The Papua New Guinea Sustainable Development Program (PNGSDP)

The PNGSDP was created in 2002 as part of the exit arrangement between BHP Billiton and the government of Papua New Guinea, whereby a 52 percent share of the Ok Tedi Mine was incorporated in Singapore as a not-for-profit company. High mineral prices and prudent management of the funds from dividends paid by Ok Tedi Mining Limited (OTML) have generated a very large development agency, with funds expected to exceed US\$1 billion by the end of 2010.

The PNGSDP has two main funds with different objectives. The Long-Term Fund receives two-thirds of the net income derived from OTML; the Development Fund receives the remaining third. The Long-Term fund is invested in low-risk ventures and can be accessed only after the mine

Figure 4.2: Lihir Sustainable Development Plan



Figure 4.3: Papua New Guinea Sustainable Development Program



closes. The Development Fund is used to support sustainable development programs across the country while the mine is operating. One third of the Development Fund is to be spent in Western Province, where the mining activity is located, with the remainder spent in the rest of the country (figure 4.3). The PNGSDP is both a grant maker and an implementation partner and has a staff of 70. It undertakes projects as diverse as supporting the development of sustainable forestry to planning for the future economic activity of the mining town of Tabubil once the mine closes.

Between 2002 and 2008, the PNGSDP spent more than US\$140 million on development projects. Governing the development enterprise is a high-powered, seven-member board that includes representatives of the government of Papua New Guinea. The PNGSDP's structure is undeniably complex, but it is in line with the scale of the financing and vision for the company.

Knowledge of the Context

The FTF's vision, beneficiaries, and projects need to be identified on the basis of extensive social assessment.

Mining projects are undertaken in a wide variety of settings, and FTFs are increasingly used to share the benefits from these projects in an equally diverse context. Before designing an FTF, the context in which it is being established must be understood.

In developing an FTF, there are some basic contextual questions that need to be addressed:

- Why is the FTF being established?
- Who does it seek to benefit?
- What does it aim to achieve?

While the broad direction for some of the questions may be established through government regulation or other requirements, the mission, vision,

objectives, and intended beneficiaries of an FTF should be grounded in a deep understanding of stakeholders' needs, owner priorities, and gaps in existing development activities (box 4.1). Companies, in particular, can be faced with the temptation to implement an FTF model that has been successful for them elsewhere, potentially failing to recognize the unique features of the new context.

The process of environmental and social impact assessment can provide extremely valuable information to guide the design of an FTF. However, that knowledge needs to be grounded through discussions with the intended beneficiaries. The context will also change over time, and FTF

Box 4.1: Approaches to Identifying Need

Company staff knowledge of beneficiaries. The AngloGold Ashanti Fund (South Africa) uses local area committees of company staff to identify community needs and projects to receive funding from the centrally managed corporate trust.

Partner knowledge of beneficiaries. Grant-making foundations in particular rely on the applicant's knowledge of beneficiaries' needs. The Asociación Ancash (Peru) funds initiatives generated by local organizations, working groups, or other associations. Escondida (Chile) adopted national government targets for child education as a shared priority and works closely with the regional government of Antofagasta and the Junta Nacional de Jardines Infantiles (National Kindergarten Board) to meet this previously defined need.

Formal consultation with intended beneficiaries, either as part of existing company consultation processes or separately. The Goldfields Ghana Foundation works with standing community committees created by the company to facilitate communication between the company and communities to generate development project ideas. The Inti Raymi Foundation (Bolivia) carried out a two-stage process involving: (1) diagnosis and characterization of its area of action; and (2) a series of community workshops designed to identify and prioritize infrastructure needs.

Baseline or needs assessment at the regional or local level sponsored by the company, foundation, or government. All of the VALE Foundation's "territorial development" initiatives in Brazil are based on a thorough baseline assessment.

structures must be adapted to accommodate and respond to these changing conditions.

Finding a niche: The Asociación Ancash, Peru

The Asociación Ancash was established in 2002 to maximize the sustainable development contribution of the Antamina mine in Peru. Community relationships had been challenging during the early years of development and production at Antamina. For that reason, the Asociación was intentionally separated from the company to provide a distinction between compensation and community development activities.

Between 2002 and 2007, the Asociación Ancash undertook a wide variety of development projects in line with needs identified through community engagement. Its role underwent a major change with the establishment of the Fondo Minero Antamina (FMA) in 2007. The FMA was established to meet the government’s Aporte Voluntario requirements, under which 3.75 percent of Antamina’s sales over a five-year period were channeled through a new FTF. With an annual budget of just under US\$1 million, the Asociación was dwarfed by the establishment of the FMA, which invested US\$135.5 million in development projects between 2007 and March 2010. The operational context changed so significantly with the introduction of the FMA that the Asociación undertook an extensive strategic visioning exercise and identified three lines of specialization: sustainable tourism, local culture, and conservation of natural resources of the Ancash region.

By identifying niche activities that were important to local communities and were likely to be supported by external donors (more than 12 percent of the Asociación’s funding is sourced externally), the Asociación Ancash has secured an important role in the community and derives considerable reputational benefit from the activities it undertakes (figure 4.4).

Figure 4.4: Asociación Ancash



Buying in expertise: The Anglo American Chairman’s Fund (AACF), South Africa

The AACF was established in South Africa in the 1950s. Since 1998, following restructuring of the company, it has been managed by a professional corporate social responsibility organization, Tshikululu Social Investment (TSI). The AACF is a national grant-making fund that supports development initiatives aimed at transforming lives in South Africa’s disadvantaged communities. This national focus is important for Anglo American, both at present and historically, because of the company’s prominence in South Africa. Community development projects, needed by the company to gain and retain its social license to operate, are conducted by individual business units and are largely disconnected from the activities of the AACF.

The AACF seeks to “back champions” in social development across the country and typically supports NGOs that are doing innovative work in fields of interest. TSI determines these fields of interest through extensive research and networking across the country (figure 4.5). For its services, TSI receives a management fee valued at 10 percent of the development budget. Founded by Anglo American, TSI recruits experts in social development in a number of fields to ensure that investment decisions are grounded in local knowledge and understanding.

Integration into Development Plans

FTF activities must be integrated into local and regional development plans.

Mechanisms for sharing benefits from mining activities do not operate in isolation. Regardless of the remoteness of a mining development and the seeming paucity of development activities in the region, the emergence of a new development actor, such as an FTF, will influence

Figure 4.5: Anglo American Chairman’s Fund



the local development spectrum, just as the existing players on the development scene will influence the activities and priorities of the FTF.

The emergence of an FTF focusing on development activities related to a mining project can generate a range of responses. Ideally, development actors, including government authorities, will seek to work together, and new FTFs will be integrated into the local development setting. However, the emergence of a new FTF can also be seen as a reason for other development actors to reduce their existing support for a mining region and to focus their activities on areas that have no other sources of funding.

Integration with an existing development plan for an area may be voluntary, but growing numbers of governments are requiring it.

An integrated development plan: The Rio Tinto Palabora Mining Company, Ltd., South Africa

Mining has been a major component of the South African economy for more than a century. In 2007, its role was valued at 7.7 percent of GDP, equal to US\$18.4 billion (DME 2008). The South African mining industry has undergone significant modifications since the democratic changes of the 1990s, primarily targeted toward redressing the discriminatory policies that existed before 1994. The Mineral and Petroleum Resources Development Act (2002) requires that companies convert their “old order” rights to “new order” rights. A number of social development activities and commitments are required as part of the conversion process. For example, mining companies are required to submit a social and labor plan and to support broad-based socioeconomic empowerment in partnership with government.

Within this context, the Palabora Foundation has been operating in the Ba-Phalaborwa communities for 23 years as the social development arm of the Rio Tinto Palabora Mining Company, Ltd. (Palabora). Using an operational approach, the Palabora Foundation has a staffing complement of approximately 100 people and works with communities within a 50 km radius of the town of Phalaborwa (figure 4.6). The Foundation has defined several strategic objectives, one of which is directly focused on integration: “to facilitate, in partnership with the Ba-Phalaborwa Municipality and other stakeholders, the implementation of the Integrated Development Plan and Social and Labour Plan.” Both of these plans have been developed in coordination with the government; progress is reported annually.

The Foundation presents projects for consideration to community forums that include representation from each of the five tribal authorities.

Figure 4.6: Rio Tinto Palabora Mining Company, Ltd.



Projects endorsed at these forums are then taken to the Ba-Phalaborwa Municipality (local government) to determine their fit within the agreed integrated development plan for the municipality. This level of integration has generated some highly successful partnerships, as seen in the HIV/AIDS program coordinated by the Foundation. By seconding a senior government nurse to the Foundation for several years, the state has rolled out its agenda for HIV/AIDS faster than would have otherwise been possible, and the communities around Phalaborwa have gained access to anti-retroviral therapy sooner than they would have otherwise.

Partnering to build capacity and improve delivery: The Fondo Solidaridad Cajamarca, Peru

The Peruvian canon minero law requires that 50 percent of taxes paid by mining companies to the national government be channeled back to regional (25 percent) and municipal (75 percent) governments. The distribution of mining royalties is defined on the basis of where the minerals have come from, rather than where the impact is felt. Rising mineral prices, increased production in the last decade, and changing transfer requirements have seen exponential increases in the value of the canon minero—from US\$23 million in 2001 to US\$1.45 billion in 2007 (Arelano-Yanguas 2008). While the scale of the canon minero has increased, the record for spending these funds in mining provinces has been mixed. For example, while the Ancash region has the highest regional government budget in Peru, it also has the lowest spending record (as a percentage of budget).

As mineral prices rose, the pressure to implement a windfall profit tax in Peru was significant. After extensive consultation, the Peruvian state implemented the Aporte Voluntario scheme in 2007. Under this scheme

of voluntary contributions companies pay an additional 3.75 percent of their sales over a five-year period to support social development projects in their host provinces.

The Fondo Solidaridad Cajamarca (FSC) is the fund developed by Minera Yanacocha to meet its commitments under the scheme. All of the projects supported by the FSC are aligned to the priorities and investment plans of the local, regional, and national government. Critically, investments in complementary projects, basic infrastructure, and institutional strengthening are supporting the implementation of projects using canon minero financing. As such, the activities of the FSC both generate development benefits directly and also enhance the impact of funds derived from the canon minero.

Leading Practice: Partnership, Governance, and Sustainability

The definition of leading practice for an FTF model can vary significantly depending on the perspective of the stakeholder. For example, a highly participative governance structure may meet community requirements and be seen as a successful model by those stakeholders. At the same time it may be deemed a failure for the company because of its inability to control the activities of the FTF. Recognizing these different views, three areas of leading practice were evident in the case studies undertaken: participation; strong governance; and sustainability. Application of just one aspect of leading practice does not imply that an FTF is a success within its local context.

Participation

High levels of participation are seen to be leading practice in mining FTFs. As described in Chapter 3, there are a number of methods for increasing participation, from soliciting community proposals for projects to including stakeholder representatives on the FTF's governance structure. Typically, the greater the participation of beneficiaries in the design of the FTF, the greater the sense of ownership in the beneficiary community. By engaging stakeholders in design discussions, the FTF is likely to better represent the needs and desires of the community. It must be noted, however, that high levels of participation in the design of an FTF can greatly extend the time required to develop the FTF, likely delaying the commencement of activities. As such, FTF owners need to be certain that they have sufficient social capital within a community, and sufficient flexibility in their management approach, to accommodate a significant design phase.

Figure 4.7: Fondo Solidaridad Cajamarca



Multistakeholder boards that incorporate participation from a variety of stakeholders are also considered leading practice. Only one of the case studies conducted to inform this study had a board that represented the owner alone; all the others had at least some level of representation from communities or government authorities. Taking this approach a step further, the chairmanship of the governing body, which often carries considerable power, may be held by an external party.

Taking the time to generate a sense of ownership: The Asociación Los Andes de Cajamarca (ALAC), Peru

The ALAC is a corporate organization established as part of Minera Yanacocha’s social responsibility programs to promote sustainable human development for the Cajamarca region of Peru. It was launched in 2004, 12 years after construction of Yanacocha had commenced. During that period, community development activities focused on rural areas were undertaken by the company itself. Yanacocha had a mercury spill in 2000 and was also experiencing significant tension in its relationship with the surrounding communities over an exploration permit for Cerro Quillish. Within this context, ALAC was developed to increase corporate social investment within Yanacocha’s area of influence, promoting participation by civil society, the state, and the private sector in sustainable development proposals.

It was originally intended that ALAC would be a community foundation. In keeping with this approach, Yanacocha consulted widely with community stakeholders on the appropriate form and purpose of the FTF model (figure 4.8). The engagement process was conducted over a two-year period and involved building an understanding of how the foundation would function within the community. Shortly before the ALAC was to be launched, opposition to the community foundation

Figure 4.8: Asociación Los Andes de Cajamarca



approach emerged from within a small group of stakeholders. As a result, the ALAC changed its model to that of a corporate foundation but kept its highly participative approach.

The development of the ALAC was seen as an addition to the community relations projects being undertaken by Yanacocha, and the continuation of those projects reduced the inevitable pressure on the ALAC to begin implementing development projects immediately. The continuation of existing programs afforded the ALAC the time and space to develop its approach in a consultative, and time-consuming, manner.

The participative approach that shaped the ALAC in its design phase has been maintained. It is clearly apparent in the governance structure for the foundation. The board of trustees comprises seven members, three of whom are from civil society, and the ALAC plans to shift the balance of power from Yanacocha’s owners (Newmont, Buenaventura, and the International Finance Corporation) to civil society by changing the board’s composition as the date of the mine’s closure approaches. The board receives guidance from an advisory panel comprising 10 representatives from civil society.

Strong Governance

A strong governing body can provide clarity of vision and mission for an FTF and ensure that all processes are undertaken in accordance with the principles of the FTF. In contrast, weak governance can fatally compromise an FTF.

The concept of governance for an FTF covers a range of considerations—among them clarity of decision making, fiduciary responsibilities, and administrative efficiency. FTFs, whether they are grant-making or operational, are required to make regular decisions on project selection

and the level of financing they will provide. The clearer the description of how those decisions are made and the greater the transparency that surrounds them, the more likely it is that they will be accepted by interested stakeholders. The principles guiding decision making are often captured in the charter or trust deeds drawn up when the FTF is formed. Leading practice requires that these principles should be developed in greater detail to guide both management staff and the governing body when making specific decisions. Specific exclusions for funding are often included in this guidance, such as the decision not to fund individuals, or not to support projects with a political or religious agenda.

FTFs are often staffed by community development specialists who may lack the accounting and financial skills needed to manage the funds dedicated to the project. The responsibility for managing funds associated with the FTF rests not only with the management team but also with the governing body, through its fiduciary duties. Those duties should also require the members of the governing body to support only those projects that meet the overall goals of the FTF and that benefit groups previously identified as the FTF's beneficiaries.

The evolution of a governance structure: Ok Tedi Mining, Ltd., New Guinea

The Ok Tedi Mine, located in the Western Province of Papua New Guinea, has had significant environmental effects on communities living downstream from its activities because of the practice of dumping tailings and waste into the Fly River. As understanding of the environmental impacts of the riverine damage grew, in 2001 OTML entered into community mine continuation agreements (CMCAs) that predicate continued operations on community consent. The CMCAs also commit Ok Tedi Mining, Ltd. (OTML) to make investment and development payments through eight trusts and six "mine" villages. The payments are to benefit all of the 152 villages affected by the mine. Each of the eight trusts covers a different geographical area; to date each has managed its compensation payments independently.

In 2002 OTML registered the Ok Tedi Development Foundation (OTDF) as a not-for-profit company to support community development and future generations by administering the CMCA trust funds. The Ok Tedi Fly River Development Program (OTFRDP), established as a subsidiary of the OTDF, is charged with managing the trust funds on behalf of the beneficiary communities. The administrative functions needed to manage the trust funds had been supplied by the OTML for many years, but

in response to community unease about access to the funds, the OTFRDP now covers all of the costs associated with trust management. A detailed business plan has been developed by the OTFRDP to achieve financial independence, and management fees are being charged to trust beneficiaries for each development project that the OTFRDP implements on their behalf.

The trust funds hold approximately US\$250 million, which is to be managed by the OTFRDP until the mine closes in 2013. Using trust funds, the OTFRDP plans to increase the number of development projects it implements over the next few years, reaching an annual plateau of about US\$72 million. The need to source all administrative costs internally has made the OTFRDP extremely conscious of its administrative efficiency and was a factor in a major restructuring and staff reduction. The OTFRDP now has 60 employees. An administrative budget of approximately US\$5 million per year is planned, representing less than 10 percent of the development expense.

Managing trust funds intended for 152 villages affected by the environmental damage caused by the mine places a significant responsibility on the governing body of the OTFRDP. The organization is divided into four ordinary shares that are to be transferred from the OTML to reputable development organizations in the country before the mine closes. Each shareholder will nominate a director to the OTFRDP's governing body. In this organization the level of participation of beneficiary communities is critical, and whose concerns are heard through four associate directors who come from the affected areas. While the associate directors do not have voting rights, their voices are given considerable power in the decisions taken by the governing body. To further enhance the contextual understanding of the governing body and improve participation, the associate directors are guided by an 18-member advisory committee drawn predominantly from the affected communities (figure 4.9).

Sustainability beyond Mine Closure

The single greatest challenge facing benefit-sharing arrangements from mineral resources is the finite period of the benefit. Governments have tried to manage that challenge through the establishment of mineral resource stabilization funds (as in Papua New Guinea in the 1970s) and various taxation arrangements. Companies often try to address the sustainability challenge by transitioning responsibility for community development projects to other parties in advance of their departure. FTF models can be an excellent way to improve the sustainability of benefit-sharing approaches, both through the relative ease of changing

Figure 4.9: Ok Tedi Mining, Ltd.



governance structures to increase community, government, and other donor participation over time and through their capacity to establish funding mechanisms that can be sustained without company support.

As indicated earlier, high levels of participation from multiple stakeholders in governing bodies are considered leading practice. Experience would also suggest that participation should be gradually increased over time to allow capacity to be built and to effect a transfer of power from the mine owner to the host community or beneficiaries. Companies have typically found that it is simpler to increase participation over time than to take back control if the structure proves too unwieldy. Running an FTF requires considerable experience. To maximize its sustainability, any changes to the ownership and governing structure should be made well in advance of the closure of the mine or the end of support from a company or government.

The usual limiting factor in the sustainability of community development activities surrounding mining projects is financing. Upon the conclusion of mining activity, the primary contributor typically fades away. FTF structures can provide two opportunities to address this situation: (1) endowed funds; and (2) a larger pool of donors. The establishment of an endowment fund using an FTF structure early on in the life of a mineral project provides an excellent basis from which to transition from sole financing by a company or government and can also protect the community development budget of the FTF during the booms and busts of mining. The independence of a well-run FTF structure, transparency of decision making, and strength of governance structures can also improve the chances of raising funds from other donors, thereby reducing dependency on a single mining operation.

Preparing for a long future: The Rössing Foundation, Namibia

Established in 1978, the Rössing Foundation is Namibia’s largest and oldest mining foundation. Established to implement and facilitate the

corporate social responsibility activities of Rio Tinto Rössing Uranium Limited (RUL), which commenced operations in 1976, the Foundation has always had a strong focus on education, with the goal of developing greater economic opportunities for Namibians.

The Rössing Foundation was set up to be as independent as possible, maintaining its own offices and bank accounts independent of RUL (figure 4.10). It was to be supported by an annual contribution from RUL equivalent to 2 percent of all dividends distributed to shareholders after tax. Over the past three decades, this contribution has been placed in jeopardy and significantly reduced (even stopped at times) owing to the changing fortunes of RUL, which prompted the Rössing Foundation to focus on finding external financing. The quality of development projects, independence, and integrity of the financial administration systems established by the Foundation have attracted donations from and partnerships with numerous external groups and NGOs to implement development projects in Namibia.

For many years, a portion of the annual contribution provided by RUL has been placed in a trust fund. The interest generated by the fund has sustained the administrative costs of the Foundation during lean years for the uranium sector and ensured that activities have continued during those periods.

A board of ten members, only three of whom are connected to RUL, governs the Rössing Foundation. Even the chairmanship is held by an independent board member. The Rössing Foundation is in an excellent position to continue its activity after the closure of RUL's mining activities because it combines key attributes: a largely independent FTF governance structure; a proven track record in delivering development projects across the country; capacity for raising external financing; and an endowed fund capable of covering administrative expenses.

Figure 4.10: Rössing Foundation



Conclusion

Foundations, trusts, and funds (FTFs) are playing an important role in sharing the benefits of mining activities. The use of FTFs as vehicles for benefit sharing has so far tended to be voluntary, with companies and governments recognizing the advantages presented by independent, sustainable institutions with shared governance. In countries where momentum gathers around the concept of community development agreements in mining regions, consideration, if not adoption, of an FTF may become less of a choice and more of an expectation. That momentum has been boosted by the use of FTFs to implement agreements between mining companies and indigenous peoples in developed countries.

From experiences with corporate philanthropy using FTFs in the United States in the 1930s to the modification of taxation arrangements through FTF structures in Peru in 2007, the mining industry has used FTFs to achieve various goals and to share benefits through royalty payments to governments, compensation payments to affected individuals and communities, and community investment programs. To fully absorb the lessons of the past 80 years of experience with FTFs, however, one must compare experiences of many companies dealing with many minerals in different countries and communities—in short, in many different contexts. The legal definitions of FTFs provide little assistance in this comparison because they are so varied. To facilitate meaningful comparisons, six criteria have been identified against which FTFs can be evaluated: programming approach; financing structure; geographic focus; community participation in governance; the influence of the mining company; and the influence of government.

While it remains difficult to compare the success of different FTFs, given their different goals and mandates, the critical condition for success of all FTFs is evident: adaptation to the local context. In order to meet that condition, the complexity of the FTF model used in a given context should be relative to the level of financing and capacity available locally. Furthermore, the FTF's vision, beneficiaries, and projects must be identified on the basis of social assessment, and the FTF's activities must be integrated into existing local and regional development plans. Moreover,

from the research reported here, it is clear that highly participative, financially sustainable, and well-managed FTFs are defining leading practice in this field. In the end, the success of an FTF is best measured through a participative monitoring and evaluation program which feeds insights back into the future operational plans of the organization.

With more than 60 mining FTFs operating in the developing world, there is a vast breadth of experience in using these structures to share the benefits of mining. This publication has sought to expand the knowledge base around the use of FTFs in the mining sector. It is clear that demand exists for additional knowledge sharing and collection of expertise in this field.

Appendix 1: Mining Foundations, Trusts, and Funds

Name	Associated Company	Country
1. Alcoa Foundation	Alcoa	Global
2. Anglo American Chairman's Fund	Anglo American	South Africa
3. Anglo American Epoch and Optima Trusts	Anglo American	South Africa
4. Anglo American Group Foundation	Anglo American	Global
5. Anglo Chile EMERGE Program	Anglo American	Chile
6. AngloGold Ashanti Fund and Trust	AngloGold Ashanti	South Africa
7. Antamina Mining Fund (Fondo Minero Antamina)	Antamina S.A.	Peru
8. Anum Lio Foundation	PT Kelian Indonesia (Rio Tinto)	Indonesia
9. ARM CSI Trust and Chairman's Fund	African Rainbow Minerals	South Africa
10. Asociación Ancash	Antamina S.A.	Peru
11. Asociación los Andes de Cajamarca	Newmont Mining	Peru
12. BHP Billiton Development Trust	BHP Billiton	South Africa
13. BHP Billiton SEWA India Development Foundation	BHP Billiton	India
14. The Cerrejon Coal Foundations (Water, Indigenous Development, Progress, Institutional Strengthening)	Cerrejon Coal	Colombia
15. Clermont Aboriginal Community Development Fund	Rio Tinto Coal Australia	Australia
16. DeBeers Fund	DeBeers	Southern Africa
17. Debswana Diamond Trust	Debswana & DeBeers	Botswana
18. Escondida Foundation	BHP Billiton	Chile
19. Fondo de Inversión Social	CODELCO	Chile

(continued)

Name	Associated Company	Country
20. Freeport Partnership Fund for Community Development	Freeport McMoran	Indonesia
21. Fundación Falcondo	Xstrata	Dominican Republic
22. Fundación San Isidro	BHP Billiton	Colombia
23. Fundación Sierra Madre	Goldcorp	Guatemala
24. Gelganyem and Kilkayi Trusts	Rio Tinto	Australia
25. Goldfields Ghana Foundation	Gold Fields	Ghana
26. Greater Rustenburg Community Foundation	-	South Africa
27. Hail Creek Wiri Yuwiburra Community Benefits Trust	Rio Tinto Coal Australia	Australia
28. Impala Bafokeng Trust	Impala Platinum	South Africa
29. Impala Community Development Trust	Impala Platinum	South Africa
30. Inti Raymi Foundation	Newmont Mining	Bolivia
31. Kashansi Foundation	First Quantum Minerals	Zambia
32. Kestrel Aboriginal Community Development Fund	Rio Tinto Coal Australia	Australia
33. Kupol Foundation	Kinross Gold Corporation	Russia
34. Las Bambas Mining Project Social Contribution trust	Xstrata	Peru
35. Lihir Sustainable Development Plan Trust	Lihir Gold	Papua New Guinea
36. Lonmin Community Development Trust	Lonmin	South Africa
37. Mineral Foundation of Goa	Various	India
38. Montelibano Educational Foundation	BHP Billiton	Colombia
39. Mozal Community Development Trust	BHP Billiton	Mozambique
40. Musselwhite Fund	Goldcorp	Canada
41. Namdeb Social Fund	Namdeb	Namibia
42. Newmont Ahafo Development Foundation	Newmont Mining	Ghana
43. Northern Territory Aboriginal Benefits Account	Government	Australia
44. Palabora Foundation	Rio Tinto	South Africa
45. Phelps Dodge Foundation	Phelps Dodge	No longer in operation

Name	Associated Company	Country
46. PNG Sustainable Development Program	OTML	Papua New Guinea
47. PT Freeport Indonesia Trust Funds	Freeport McMoran	Indonesia
48. Raglan Fund	Xstrata	Canada
49. Rio Tinto Aboriginal Foundation	Rio Tinto	Australia
50. Rio Tinto Foundation Zimbabwe	Rio Tinto	Zimbabwe
51. Rio Tinto Western Australia Future Fund	Rio Tinto	Australia
52. Rössing Foundation	Rio Tinto	Namibia
53. Sadiola Hill & Yaleta Gold Mines Community Development Fund	AngloGold Ashanti	Mali
54. Sorowako Educational Foundation (Yasan Pendidikan Sorowako)	PT Inco Indonesia	Indonesia
55. Tahltan Heritage Trust Fund	NovaGold	Canada
56. Tampakan Community Foundations	Xstrata	Philippines
57. Tintaya Foundation	BHP Billiton	Peru
58. Vale Foundation	VALE	Brazil
59. Vale Social Trust	VALE	Peru
60. Western Shoshone Educational Legacy Fund	Barrick Gold Corporation	United States

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The World Bank Oil, Gas, and Mining Unit

The World Bank Group's role in the oil, gas, and mining sectors focuses on ensuring that its current interventions facilitate the extractive industries' contribution to poverty alleviation and economic growth through the promotion of good governance and sustainable development.

The Oil, Gas, and Mining Unit serves as the Bank's global sector management unit on extractive industries and related issues for all the regions of the world. It is part of the Bank's Sustainable Energy Department.

Through loans, technical assistance, policy dialogue, and analytical work, the Unit leads a work program with multiple sector activities in more than 70 countries, of which almost half are in Sub-Saharan Africa. More specifically, the Oil, Gas, and Mining Unit:

- Advises governments on legal, fiscal, and contractual issues and on institutional arrangements as they relate to natural resources, as well as on good governance practices.
- Assists governments in setting up environmental and social safeguards in projects in order to promote the sustainable development of extractive industries.
- Helps governments formulate policies that promote private sector growth and foreign direct investments.
- Advises governments on how to increase the access of the poor to clean commercial energy and assess options for protecting the poor from high fuel prices.

In essence, the Oil, Gas, and Mining Unit serves as a global technical advisor that supports sustainable development by building capacity and providing extractive industry sector-related advisory services to resource-rich governments. The Unit also carries out an advocacy role through the management of the following global programs:

- The Extractive Industries Transparency Initiative (EITI) Implementation Support Facility, which supports countries implementing EITI programs
- The Global Gas Flaring Reduction (GGFR) Public-Private Partnership, which brings governments and oil companies together to reduce gas flaring
- The Communities and Small-Scale Mining (CASM) Partnership, which promotes an integrated approach to addressing issues faced by artisanal and small-scale miners
- The Women and Extractive Industries Program, which addresses gender issues in extractive industries
- The Petroleum Governance Initiative (PGI), which promotes good governance.
- The Extractive Industries Technical Advisory Facility (EI-TAF), which facilitates "rapid-response" advisory services on a demand-driven basis to build capacity for extractive industry resource policy frameworks and transactions.

