

Organizational Legitimacy and CSR in Equal Public Private Joint Ventures in the Mining Industry

The Case of Namdeb

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Vorstellung eines Dissertationsprojektes

1. The Legitimacy of Mining Operations

In southern Africa, especially in the mining industry, companies are addressing social and environmental issues through a range of corporate social responsibility (CSR) initiatives (Hamann/Kapelus 2004) in order to gain/maintain and repair the license to operate. The prominence of CSR in mining can be traced to the industry's potentially significant negative social and environmental impact, and the related criticism aimed at mining companies often by governments and international and local NGOs (MMSD 2002). Some of the negative social impacts include public interference with government and countries' sovereign laws, deepening disparities in wealth, poor labour conditions, transfer pricing, health and safety failure and child labour (Warhurst 1998). Negative environmental impacts include pollution incidents and the destruction and unbalancing of whole ecosystems.¹ In addition, CSR is particularly important in mining because of the inherent finiteness of natural resources and the impacts related to mine closure (Warhurst/Noronha 2000).

Despite the negative effects and risks of the mining industry, a great number of developing country governments continue to address economic and social development challenges through the exploitation of their natural resources. It is therefore of imperative importance that the excavation and trade of these natural resources are managed prudently for the sake of the country's future economic and social development. Thus, it is not surprising that non-renewable natural resources are often exploited by government-owned firms or by public-private joint ventures (PPJVs). The latter seems to be a particular promising arrangement as ideally, a PPJV ensures a just distribution of the profits, an efficient exploitation and a strong bargaining position on the international market (Bult-Spiering/Dewulf 2006). Theoretically it can be expected that the state ownership ensures strong governance in corporations that result from such partnerships. The role of the government would be to represent the interest of its citizens when managing the PPJV. This implies that a company co-owned by a state and a

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¹ <http://padh.gpa.unep.org/page.cfm?theme=2>.

private corporation would exhibit a strong sense of CSR. It would emphasize its contribution to social welfare, including the protection of the natural environment and exhibit a strong sense of accountability and transparency towards the country's citizens in order to legitimize its privileged position.

Regrettably, exploitation of natural resources often fails to adhere to the ideal described above. For example, researchers have found a negative correlation between resource richness and economic development which seems to be moderated by the quality of the countries' governance institutions (Boschini et al. 2007, Shaxson 2007, Heller 2006) and by the inability of governments to implement and monitor their own policies. The apparent paradox is called the "resource curse" (Auty 1994, Karl 1999, Sachs/Warner 2001). Needless to say, frequently in such environments the electorate which is supposed to hold the government accountable and business responsible is often semi-literate and therefore incapable of meaningfully influencing governmental and corporate decisions and practices. In addition, other actors which have the role of keeping the government and business answerable for their actions, such as civil society, are often weak and therefore many governmental and corporate decisions which are detrimental to the economic and social development of the country go forward unchallenged (Packel 2008).

To study the complexity of the factors influencing the CSR strategies of 50/50 joint ventures in the mining industry, and to analyse what type of corporate legitimacy is obtained, Namdeb, the 50/50 JV between the Government of Namibia and De Beers, the main international diamond miner, cutter and trader, is examined. It is of fundamental importance to identify the factors shaping organizational legitimacy so that this type of company can act upon both potential enhancing and opposing factors which might be detrimental to its corporate legitimacy.

2. Understanding Corporate Legitimacy

Brinkerhoff (2005) states that the concept of legitimacy encompasses normative, legal, sociological and cultural meanings. Weber (1947) described legitimacy as a core element in political and governance regimes, dealing with the relationship between societal acceptance of regimes and institutions and their ability to exercise power and authority effectively. However, in this paper, we refer to organizational legitimacy which examines the forces that impact upon organizational actors (Brinkerhoff 2005) and not to legitimacy in the domain of politics and regime types. Suchman (1995: 574) defines legitimacy as "a generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions". In line with this, Deegan (2002) states that organisations are always seeking to ensure that they operate within the bounds and norms of their respective societies, that is, they attempt to ensure that their activities are perceived by outside parties as being legitimate.

However, Milton Friedman (1962) alleged that an organisation's only responsibility is to maximise profits for shareholders, provided that only sound business practises are employed when securing survival on competitive markets. Whereas this sole responsibility was seen as an all-inclusive measure of legitimacy before, there seem to be a shift away from this thinking and authors such as Matthews (1993) show that organisational

legitimacy does not arise from merely making a profit and abiding to legal requirements. In line with this, Khor (2003) states that reference to the prevailing societal norms and values is fundamental in ensuring that an organisation is bestowed legitimacy. The author continues to expand on the ideas of Parsons (1960) who says that organisations are endowed with legitimacy to the extent in which their activities are congruent with the goals of the super-ordinate system. According to Elkington (1997), society's expectations which constitute the super-ordinate system may be said to encompass economic, environmental and social factor relationships.

In accordance with the above, Patel et al. (2005) build on the definition of Suchman (1995) mentioned earlier and explain that institutional theory suggests that organizational survival depends not just on material resources and technical information, but also on the organization's perceived legitimacy as the generalised perception or assumption that the actions of a company are desirable, proper or appropriate within some constructed system of norms, values, beliefs and definitions. Companies therefore need to behave in responsible ways and need to take society's expectations which include accountability and transparency into consideration if they do not want to face sanctions from society or to lose their license to operate.

As mentioned before, this research studies the equally owned PPJV, Namdeb, not only to investigate what type of organizational legitimacy may result from this type of company's CSR strategies, but also to indicate the factors the company must pay attention to in order to maintain and repair it's legitimacy. Suchman (1995) identifies three types of legitimacy:

- (1) moral or normative – organization reflects acceptable and desirable norms, standards and values,
- (2) pragmatic – organization fulfils needs and interests of it's stakeholders, and
- (3) cognitive – organization pursues goals and activities that fit with broad social understandings of what is appropriate, proper and desirable.

This description of legitimacy is employed to illustrate and categorize the type of organizational legitimacy gained and maintained by Namdeb. As said before, identifying the corporate legitimacy of a PPJV can potentially assist the company in the gaining, maintaining and repairing of legitimacy (Suchman 1995) which is essential for its survival. It is also suggested that the examination the PPJV can possibly extend theories of organizational legitimacy since the PPJV raises certain questions about some of the core assumptions of these theories.

3. Defining CSR

The concept of CSR has caused some controversies in business ethics literature. For example, Carroll's often cited definition explains that CSR involves the behaviour of a business so that it is economically profitable, law abiding, ethical and socially supportive. The author continues to say that to be socially responsible means that profitability and obedience to the law are foremost conditions when discussing the firm's ethics and the extent to which it supports the society in which it exists with contributions of money, time and talent (Carroll 1999). However this definition is often criticised as it does not take into consideration the social contract and the responsibility of business

to be accountable for its actions even if these do not fall within legal boundaries. For example, Van der Putten (2005) elaborates on this controversial view of CSR and introduces terms like corporate constitutionalism and integrative social contract. He explains that most authors who have deconstructed the concept of CSR express concern for the local community as a main element. He continues to say that in an international context, this means that wherever the company is active, it plays a responsible role in the community. This argument also puts forward the idea that in developing countries this often means that companies should play a role in improving the local community in terms of environmental and social development, and that 'local' may mean just the community or the whole country.

CSR is also not a universal concept. For example, CSR in the African context, which is a focus of this study, is seen as very different in nature from CSR in Europe or the United States of America (Visser 2005). Visser states that even though Carroll's CSR pyramid may not be the best model for understanding CSR in general, and CSR in Africa especially, it is still a helpful and a durable model for exploring CSR. To explore CSR in Africa, he uses Carroll's CSR pyramid which indicates four levels (economic, legal, ethical and philanthropic) of relative importance. According to Visser's analysis, Africa's CSR pyramid looks substantially different from the American or European CSR pyramid. For example, economic responsibilities are at the bottom of the pyramid followed by philanthropic, legal and ethical responsibilities. Visser explains that economic responsibilities, for example, are at the bottom because Africa suffers from a lack of foreign direct investment and very high unemployment. Business is therefore expected to contribute economically both by government's and communities. Philanthropic responsibilities are relatively important because the socio-economic needs of the African societies are so great that philanthropy is the expected norm. Legal responsibilities, according to Visser (2005), have a lower priority in Africa than in developed countries, not because companies disregard the law, but rather because the legal infrastructure is poorly developed and often lacks independence, resources and administrative efficiency. The least important responsibility in Africa is ethical responsibility and this is reflected in the high levels of corruption on the continent.

This study employs and builds on the definition of the International Standards Organization (ISO) *ISO 26000* draft guidelines which refers to CSR as Social Responsibility because the primary objective of the organisation is to make the guidelines general and therefore applicable to most institutions and not only business. This study will continue using 'CSR' as defined by the ISO Draft Guidelines:

"the responsibility of an organization [to be accountable] for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that contributes to sustainable development, including health and the welfare of the society; takes into account the expectation of the stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the organisation and practised in its relationships." (ISO 2008: 3)²

² 'To be accountable' was added by the researcher because it is argued that the PPJV in the natural resources industry should be automatically accountable to the people of the country in which it

4. Determining Corporate Legitimacy of Namdeb

This is an inductive study meaning that one moves from specific observations to broader generalizations and theories. This paper is based on preliminary data analysis and hypotheses will be formulated regarding the type of corporate legitimacy equal PPJV obtain, maintain and repair in the mining industry in the developing country context. Apart from thorough desk-research, including academic articles, company reports, books and newspaper articles, 33 interviews were conducted with various stakeholders including representatives of Namdeb and De Beers, government officials and representatives, the media, NGOs, industry specialists, academics and other private sector actors. Current data analysis suggests that Namdeb is using CSR strategies to gain, maintain and repair its corporate legitimacy. However, before looking at the factors influencing Namdeb's CSR strategy, background information on Namdeb is provided. This section will conclude with a summary of the types of corporate legitimacy directly resulting from Namdeb's CSR strategy.

As mentioned before, Namdeb is a 50/50 public private joint venture between the Government of Namibia and De Beers. The company was started in 1994, four years after Namibia's independence from South Africa. Prior to the establishment of Namdeb, the country's diamonds were exploited only by De Beers who obtained mining licences from the South African government. Currently Namdeb is the most important Namibian company as its contribution to the economy through revenues generated and partnerships forged resulted in the company being the largest financial contributor to Namibia's economy. Diamonds are an important generator of export earnings, accounting for more than 40 % of export revenue, 7 % of government revenue and more than 10 % of GDP (Boer/Sherbourne 2004). Namdeb is also one of the country's largest employers in a country where unemployment is more than 35 % (Namdeb Annual Report 2006). As these statistics indicate, Namdeb is under great pressure to perform well and to gain, maintain and repair its corporate legitimacy at all times as a survival strategy.

Data analysis thus far shows that Namdeb's CSR strategy is influenced broadly by three sets of factors:

- (1) The three types of conflict arising from Namdeb's business activities: (a) Political (e.g. lobbying for tailored laws and regulations); (b) Socio-Economic (e.g. sustainability of communities built by Namdeb); and (c) Environmental (e.g. the potential destruction of ecosystems especially along the Skeleton Coast and in the Atlantic Ocean).
- (2) The ownership structure of the company: It is observed that the ownership structure of Namdeb – the equal partnership between the Government of Namibia and De Beers – influences the company's CSR strategies because of the government's responsibilities towards society. These responsibilities are encapsulated in Vision 2030, the country's national development goals.

operates for two main reasons: (1) the dual role of the government, that of law and policy maker/implementer/regulator and that of equal business partner and (2) the fact that natural resources belong to all the citizens of the country.

(3) The demands and expectations from society including the communities where the company operates: In Namibia the government is incapable to address many of the social and economic development issues the country face. The expectations of citizens are reinforced by the ownership structure of the company, the fact that diamonds are a national asset and De Beers' exploitative role during Apartheid. An interesting and telling observation is that Namdeb socially invests in small projects all over the country but not much in the communities where it operates. For example, the Karas region, where most of Namdeb's operations take place, is considered one of the poorest regions in the country where little development has taken place since 1990. This is a political issue which has been hotly debated in the country. According to Karas Governor Stephanus Goliath, the region's inhabitants were wallowing in abject poverty instead of meaningfully participating in the mainstream economy. He stated: "Mining giants allocate shares to individuals from other regions while our people live in abject poverty." (Cloete 2008)

Generally, data analysis thus far shows that Namdeb's CSR strategy is often seen as (1) public relations, (2) ineffective and (3) too political. Firstly, on public relations Graham Hopwood, executive director of the Institute of Public Policy Research says: "And as I say their activities are obviously fairly limited and I think that it is part of their branding" (Hopwood 2008: 8). Secondly, regarding the ineffectiveness of the CSR strategy, Albin Jacobs, director of the Centre for Entrepreneurial Development says: "If you look at it, De Beers and other industries are generating a lot of profit, a lot of wealth and if you look at the communities and the society around them, these are the people who live in absolute poverty." (Jacobs 2008: 15) Thirdly, on the perception that Namdeb's CSR is too political, John Grobler, journalist, states that "CSR programs fail when they become intertwined with the politics of a country. And this happens often." (Grobler 2008: 1)

Nevertheless, even if Namdeb's CSR strategy is not ideal or perfect, it still assists the company to gain, maintain and repair legitimacy. In this section examples of the types of legitimacy (normative pragmatic and cognitive), as a result of its CSR strategy, obtained by Namdeb are pointed out. However, the corporate legitimacy types as according to Suchman (1995) is not always clear cut in this context as will be observed. Analysis has shown that Namdeb faces complex issues regarding its corporate legitimacy as some types of legitimacy only cover certain sections of society and excludes others.

4.1 Normative Legitimacy

An organization obtains this type of legitimacy when it reflects acceptable and desirable norms, standards and values (Suchman 1995). At a first glance, Namdeb seems to be gaining substantial normative legitimacy. According to Brinkerhoff (2005) normative legitimacy includes "doing the right things" and when Inge Zaamwani-Kamwi, managing director of Namdeb was asked about CSR she said: "It is not about black mail and it is also not about public relations (PR) or image promotion. Yes, I think some corporates look at their social responsibility purely as a PR tool and again I

don't believe it is purely a PR tool. It is the responsibility you have, the natural thing to do, good neighbourly-hood things to do" (Zaamwani-Kamwi 2008: 3).

Analysis thus far points to three main examples of normative legitimacy at Namdeb:

- (1) Adherence to national policies which specifically address socio-political issues (e.g. Black Economic Empowerment (BEE) and Affirmative Action): Namdeb employs BEE which aims to give Namibians who did not have equal opportunities before independence in 1990, under Apartheid, a chance to also benefit from and contribute to the national economy. For example, Namdeb contracts companies owned by formerly disadvantaged Namibians such as Epia Minerals (The Namibia Economist 2005). The director of Epia Minerals, Prins Shiimi said: "It is indeed a great achievement for the cause of BEE and we hope that other mining companies will emulate the example set by the parties today and thereby broaden the sharing of skills and resources for the benefit of the Namibian people." (The Namibia Economist 2005) However, this example is more complex because it can be argued that BEE caters for some Namibians and excludes others. According to Melber (2006), BEE only benefits a new small black elite. This clearly poses a problem for Namdeb's normative legitimacy because it can be argued that it gains normative legitimacy only from a certain section of society which is the elite, and not necessarily, for example, from the communities where it is operating. In view of this, an argument can also be made to place this example in the pragmatic legitimacy category because Namdeb fulfils the needs and interests (of some) stakeholders. This points to the complexity of legitimacy issues at Namdeb.
- (2) Adherence to national and international health and safety standards: According to Namdeb's 2007 Annual Report, all Namdeb operations adhere to the national safety legislation and work towards best practice safety standards such as the Occupational Health and Safety Safety Policy and Occupational Health and Safety Advisory Service (OHSAS) 18001 and the NOSA Integrated Safety, Health and Environmental System (Namdeb Annual Report 2006).
- (3) Adherence to environmental standards: Namdeb subscribes to ISO 14001 environmental standards and all Namdeb operations hold the five-star platinum NOSCAR status, graded on the NOSA Integrated Safety, Health and Environmental system (Namdeb Annual Report 2006).

4.2 Pragmatic Legitimacy

Taking into consideration that this type of legitimacy is measured in terms of the extent to which the organization can act to serve the needs and interests of its stakeholders and constituents (Brinkerhoff 2005), it was found that Namdeb gains a certain degree of pragmatic legitimacy because it pays attention to mainly four issues:

Firstly, Namdeb is operating in a needy society where the government is incapable to attend to many of the needs of the people of the country. With regards to this, managing director of Namdeb, Zaamwani-Kamwi says:

“So, ideally, where there is proper use of resources and if there is sufficient resources you will expect that government will have enough funds from the taxes they collect to invest in those social areas where it is primarily their responsibility. But we do know that there are limited resources and sometimes they look towards the contribution of the private sector, but it shouldn’t be such that purely public institutions such as schools and hospitals are dependent on donations and contributions from the private sector to run their core programs.” (Zaamwani-Kamwi 2008: 3)

Secondly, the fact that diamonds are a natural resource, a national asset which is mined by a partly private company, places pressure on Namdeb to not only invest in the communities in which it operates, but to invest on a national scale. Tjama Tjivikua, Rector of the Polytechnic of Namibia says:

“It’s important to develop the community. Look, just as every company (...) not only De Beers but every company must be involved, you are actually taking a national asset and you privatize that national asset.” (Tjivikua 2008: 10)

In addition, Zaamwani-Kamwi, managing director of Namdeb states:

“It is the responsibility that corporates have to plough back a portion of their wealth into the communities in which they generate wealth, being by way of capacity building, infrastructural development, or investment in local infrastructure or simply procuring from the communities in which they operate or employment also (...).” (Zaamwani-Kamwi 2008: 3)

Thirdly, the ownership structure of the company (50 % percent ownership of the Government of Namibia) obliges Namdeb to be accountable to the people, for example to involve its stakeholders and to inform them about issues which affects them. As Zaamwani-Kamwi, director of Namdeb points out:

“And also, we have quite regular engagement of stakeholders on our strategy, on what we intend to do on our yearly business plan which under normal circumstances is part of your IP (internal policy), and you don’t share that with the public. So we try to go beyond the normal business company act requirement in a full understanding that 50 % is publicly owned and we owe it to the public to know what is happening.” (Zaamwani-Kamwi 2008: 3)

Fourthly, Namdeb’s profit margin is considered to be very high and Namibians automatically expect to share in these profits. Again Tjivikua says:

“So, in addition to paying taxes, you also have the responsibility to develop the community because your taxation is not really right or enough because you are still continue to make the huge profits. So your profits should be marginal and then in that case you say (...) then you have (...) But the profits are huge, I mean of all these companies. The profits are huge.” (Tjivikua 2008: 10)

The small amounts of money which Namdeb gives to community projects is nothing compared to its profits but the fact that the company is giving in such a needy society where many people are not aware of the profits made, increases Namdeb’s pragmatic legitimacy.

4.3 Cognitive Legitimacy

This type of legitimacy is bestowed upon an organization when it pursues goals and activities that fit with broad social understandings of what is appropriate, proper and desirable. The most important aspect of cognitive legitimacy in the context of this study is “comprehensibility” which Brinkerhoff (2005) describes as instances where societal actors have a cultural framework that allows them to explain the organization as engaged in comprehensible behaviour that produces acceptable and meaningful outputs. In the case of Namdeb, the destruction of the environment through mining operations is something that cannot be avoided. Environmentalist John Pallet says:

“I mean I’m sure there are major impacts on the sea bed and in fact I hate mining just because mining is really rape, you know. But if you try and balance that against the economic good which it brings to the country and so long as that economic good is well (...) is kind of equitably distributed then that’s the price you pay (...).” (Pallet 2009: 8)

5. Preliminary Conclusions

Ultimately it is envisaged that the research will eventually add to existing aspects of legitimacy theory in the mining industry in the developing country context, with special reference to PPJVs. In sum, Namdeb has a divide and conquer strategy which mainly benefits the government and certain sections of society and not necessarily the Namibian nation as a whole. Thus it creates pragmatic legitimacy and fails to produce substantial normative and cognitive legitimacy. However, not only Namdeb as a company is responsible for these shortcomings because its two shareholders, the Government of Namibia and De Beers also play a role in this. This fact raises the question of whether PPJVs are truly the best governance structure for mining activities in developing countries and whether Namdeb’s governance structure needs to be and can be improved in a manner that ensures that the mining endeavour is managed in the best interest of the Namibian people.

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