

# Mining Research

## Briefing 2 : Benefit Sharing Arrangements for Mineral Resources in Ghana

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Mining significantly contributes to the Ghanaian economy, providing almost 50% of the nation's gross merchandise exports each year.<sup>1</sup> Through several legislations, Ghana has established a benefit sharing framework to ensure that benefits from mining are distributed equitably between the state, landowners and fringe communities which host mining activities. The communal ownership of minerals and the devastating environmental impact of exploitation operations necessitates efforts by the state to ensure that mineral production leads to a real improvement in the socio-economic status of mining-affected communities.<sup>2</sup>

## 1. Collection of Mineral Revenue

The State, through the Ghana Revenue Authority (GRA), collects revenue from mineral operations by way of fees, taxes, and royalties. Firstly, an applicant for mineral rights must pay a fee for the application.<sup>3</sup> In addition, holders of mineral rights in Ghana pay annual mineral right fees to the Minerals Commission.<sup>4</sup> A mining lease, restricted mining lease or small-scale mining lease holder is further required to pay royalties to the State, valued at 5% of the total revenue earned from mining operations each year.<sup>5</sup> The fees and royalties due to the State are treated as debts owed to the Republic and are recoverable by court action as a civil debt.<sup>6</sup> Upon the grant of a mineral right that allows the holder to mine or otherwise exploit minerals, the government acquires an automatic 10% free carried interest in the mineral operations, without incurring any financial obligations.<sup>7</sup> The government can elect to further participate in the operations beyond the 10% interest.

All revenue generated from mineral resources is collected into and managed by the Minerals Income Investment Fund (MIIF). The objects of the fund include maximizing the value of the income due the Republic from the mineral wealth of the country for the benefit of its citizens and monetizing revenue from mineral operations accruing to the Republic in a beneficial, responsible, transparent, accountable, and sustainable manner.<sup>8</sup>

The sources of the money for the fund include taxes and royalties from minerals operations, any money paid to the Government on account of equity participation in a mineral operation, and income from investments and moneys raised from the sale of shares, rights or interests of the Fund in a Special Purpose Vehicle or other company, grants and gifts, and moneys approved by Parliament to be paid into the fund.<sup>9</sup> Royalties from minerals which are paid into the MIIF are assessed and collected by the Ghana Revenue Authority (GRA).<sup>10</sup> The GRA also has the power to take actions to enforce the payment of mineral royalties from defaulting companies, by acting in consultation with the MIIF.<sup>11</sup>

The MIIF represents the state's benefit from mining revenue. The money in the fund is managed and invested on behalf of the public interest for the benefit of the nation and distributes twenty percent of its

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<sup>1</sup> The Ghana Chamber Of Mines, "Mining Industry Statistics And Data" (2020), 7 <  
<https://ghanachamberofmines.org/wp-content/uploads/2021/09/2020-Mining-Industry-Statistics-and-Data.pdf> >  
accessed 22 August, 2023.

<sup>2</sup> Vikrant Wankhede, "Benefit Sharing In The Mining Sector In Africa" (2020) Centre for Science and Environment, New Delhi.

<sup>3</sup> Section 22 of Act 703.

<sup>4</sup> Mineral and Mining Act 2003 (Act 703), Section 24

<sup>5</sup> Mineral and Mining Amendments Act, 2015 (Act 900), Section 25

<sup>6</sup> Section 26 of Act 703.

<sup>7</sup> Mineral and Mining Act 2003 (Act 703), Section 43

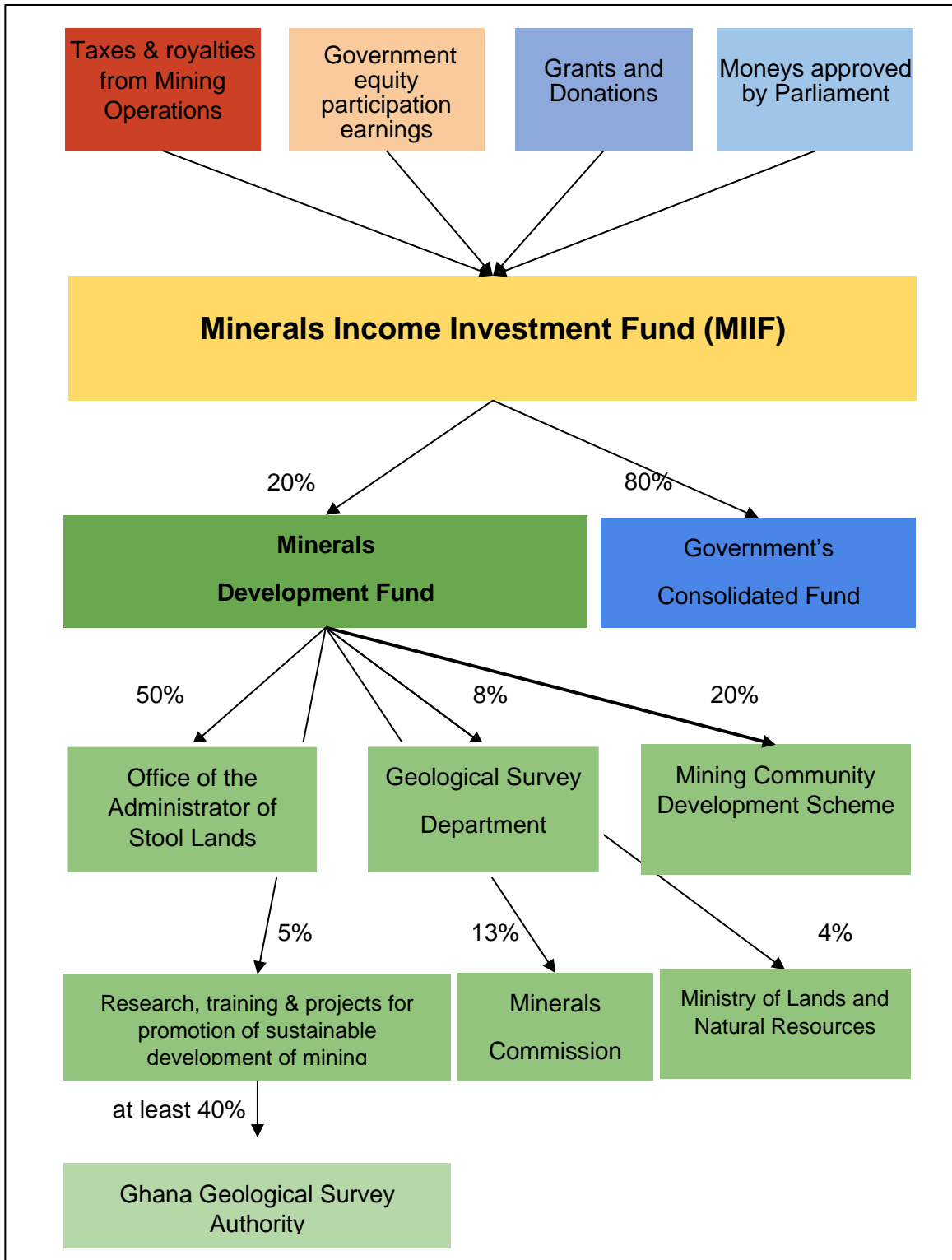
<sup>8</sup> Section 2 of Minerals Income Investment Fund Act, 2018 (Act 928).

<sup>9</sup> Minerals Income Investment Fund Act 2018, (Act 978), Section 27

<sup>10</sup> Minerals Income Investment Fund Act 2018, (Act 978), Section 28

<sup>11</sup> Minerals Income Investment Fund Act 2018, (Act 978), Section 28

total receipts to the Mineral Development Fund.



Collection of Mining Revenue into MIIF and disbursement into MDF

## 2. Distribution of Mineral Revenue within the Mineral Development Fund

The MIIF disburses twenty percent of total receipts to the MIIF into the Mineral Development Fund (MDF).<sup>12</sup> This fund is managed by a governing body which comprises a chairperson, and other members appointed by the President.<sup>13</sup> Besides the proportion of money paid into the MDF by the MIIF, other sources of the MDF include monies that have been approved by Parliament for use by fund, gifts and donations, and investment income from investments undertaken by the MDF Board.<sup>14</sup>

Out of the total sums received by the Mineral Development Fund:

- 50% is directed towards the Office of the Administrator of Stool Lands to be disbursed in accordance with the applicable law,
- 20% is given towards the Mining Community Development Scheme,
- 4% is used to supplement the Mining Operations of the Ministry of Lands and Natural Resources,
- 13% supports the operations of the Minerals Commission,
- 8% goes to supporting the mining operations of the Geological Survey Department, and
- the remaining 5% is allocated for research, training and projects aimed at the promotion of sustainable development through mining of which at least forty (40%) shall be allocated to the Ghana Geological Survey Authority.

The governing body of the MDF is required to establish a Local Management Committee (LMC) for each mining community. The LMC is responsible for local implementation of a Mining Community Development Scheme. The Mining Community Development Scheme was established to promote the socio-economic development of communities impacted by mining operations.<sup>15</sup> It is established in each community affected by mining and targeted solely at socio-economic development. Funds are used for purposes such as providing redress for the harmful effects of mining on affected communities, supporting alternative livelihood projects, undertaking projects aimed at promoting the mining sector and minerals related research.<sup>16</sup>

## 3. Other Benefits of Liaison Groups

Since 2022, Environmental Protection (Mining in Forest Reserves) Regulations, L.I. 2462 requires companies seeking to mine in forest reserves to make payments as environmental commitments to a so-called Liaison Group.<sup>17</sup> These payments usually represent 0.6% of the value of minerals mined.<sup>18</sup> Other sources of funds of the Liaison Group include donations, gifts, endowments, and grants.<sup>19</sup>

The disbursement of these funds are determined based on the following formula:

- 50 percent to develop local communities directly impacted by the mining activities,
- 30 percent for research, capacity building, development, and the restoration of degraded areas,

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<sup>12</sup> Minerals Income Investment Fund Act 2018, (Act 978), Section 4; and Minerals Development Fund Act 2016, (Act 912), Section 1

<sup>13</sup> Minerals Development Fund Act 2016, (Act 912), Section 6

<sup>14</sup> Minerals Development Fund Act 2016, (Act 912), Section 3a

<sup>15</sup> Minerals Development Fund Act 2016, (Act 912), Section 17

<sup>16</sup> Minerals Development Fund Act 2016, (Act 912), Section 4

<sup>17</sup> Environmental Protection (Mining in Forest Reserves) Regulations 2022, L.I. 2462, Regulation 29(1)

<sup>18</sup> Environmental Protection (Mining in Forest Reserves) Regulations 2022, L.I. 2462, Regulation 40

<sup>19</sup> Environmental Protection (Mining in Forest Reserves) Regulations 2022, L.I. 2462, Regulation 40

- 20 percent for impactful and sustainable projects.<sup>20</sup>

In addition to this formula, disbursement of the funds will also be determined based on a formula agreed between the liaison group and the local chiefs in the mining area.<sup>21</sup>

Liaison groups are formed of the following:

- The head of the Department of the Agency responsible for mining,
- Two representatives from the Agency,
- One representative of senior managerial level from the following:
  - The Forestry Commission,
  - The Forest Services Division,
  - The Minerals Commission,
  - The Inspectorate Division of the Minerals Commission,
  - The Water Resources Commission,
  - The Ghana Geological Survey Authority; and
  - The Ministry responsible for Lands and Natural Resources,
- One representative of the Ghana Chamber of Mines; and
- The Technical officer in charge of the Secretariat.

#### 4. Other benefits enjoyed by Landowners

Although all minerals belong to the state, owners of lands on which mineral exploration takes place still have proprietary interest in their land. To protect the landowners' interests, the legal framework includes rules that assure adequate compensation for landowners. There is the requirement for a mineral lease holder to pay annual ground rent to the owner of the land for the use of the land.<sup>22</sup> The current rate amounts to GH¢15 per acre both for Large Scale mining and Small-Scale Mining activities.<sup>23</sup>

Where the land is owned by an individual, the rent is to be paid to the landowner, their successors, or any person to whom an interest in the land has been assigned. Where the land subject to mining activities is a stool land, the lease holder is required to pay ground rent to the Office of the Administrator of Stool Lands (OASL).<sup>24</sup>

Money that is received by the Office of the Administrator of Stool Lands, including the money disbursed from the Mineral Development Fund is applied to several matters in predetermined proportions. The Office of the Administrator of Stool Lands (OASL) Act, 1994 (Act 481) provides how revenue that goes to OASL should be disbursed. Out of such money,

- 10 percent is used to cover administrative expenses of the office,
- 25 percent is given to the stool through the traditional authority for the maintenance of the stool in keeping with its status,
- 20 percent goes to the traditional authority, and

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<sup>20</sup> Environmental Protection (Mining in Forest Reserves) Regulations 2022, L.I. 2462, 4<sup>th</sup> Schedule

<sup>21</sup> Environmental Protection (Mining in Forest Reserves) Regulations 2022, L.I. 2462, Regulation 42

<sup>22</sup> Mineral and Mining Act 2003 (Act 703), Section 23(1)

<sup>23</sup> Minerals and Mining (Ground Rent) Regulations, 2018 (LI 2357)

<sup>24</sup> Mineral and Mining Act 2003 (Act 703), Section 23(2)

- 25 percent goes to the District Assembly within the area of authority in which the Stool Lands are situated.<sup>25</sup>

## 5. Local Content and Participation

The law requires mining lease holders to prioritize Ghanaian participation and the use of Ghanaian-made products in their operations. They must prefer products made in Ghana and opt for service providers based in Ghana, owned by Ghanaian citizens, companies, or partnerships registered under Ghanaian laws, as well as public corporations when procuring, constructing, or installing facilities. When hiring, preference should be given to Ghanaian employees.<sup>26</sup>

In 2020, the Minerals and Mining (Local Content and Participation) Regulations, 2020 (L.I. 2431) was enacted as part of government efforts to boost job creation, enhance the use of local expertise, goods, and services, and strengthen the capabilities and international competitiveness of domestic businesses in the mining industry. This regulation imposes new obligations on license holders and participants in the mining sector.

L.I. 2431 outlines detailed local content requirements. Prospective license holders for reconnaissance or prospecting must submit a localization program to the Minerals Commission for approval, outlining plans for recruiting and training Ghanaians to replace expatriates, maintaining the expatriate-to-senior staff ratio, and promoting gender-inclusive recruitment. They must also submit an annual compliance report by January 31 of the following year. Non-compliance with the approved localization program results in penalties.

The regulation also mandates mineral rights holders seeking to hire expatriates to submit proposals for recruitment, employment, and Ghanaian training. These proposals must detail conditions of service, demonstrate plans for training Ghanaians to replace expatriates, and adhere to specified ratios. Particulars should be submitted every three years, and approval grants the mineral rights holder an immigration quota. The Minerals Commission ensures that no qualified Ghanaian can fill the expatriate's position before granting an immigration quota. Additionally, mineral rights holders must provide a five-year procurement plan to the Minerals Commission, emphasizing Ghanaian content in goods and services procurement. Non-compliance leads to penalties.

## 6. Challenges and Gaps

### a. Linguistic Ambiguity of Clause 267(6) of the 1992 Constitution

The linguistic ambiguity within Clause 267(6) of the Constitution on the prescribed mode for disbursing revenue generated from stool lands has resulted in the misappropriation of the 25 percent mineral royalty designated for traditional councils. Some traditional councils and paramount chiefs have interpreted this ambiguity as permission to use mineral royalties for personal projects and consumption instead of directing them towards community development initiatives. Additionally, it remains unclear to what extent these royalties should be utilized for the development of mining communities.

While there is a long-term need to clarify the Constitution's stance on the utilization of the 25 percent revenue share allocated to traditional authorities "for the maintenance of the stool in keeping with its

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<sup>25</sup> Office of the Administrator of Stool Lands (OASL) Act, 1994 (Act 481), section 8.

<sup>26</sup> Minerals and Mining (Local Content and Local Participation) Regulations 2020, Regulation 5

status," immediate action is required. The Attorney General should promptly define the purposes for which the 25 percent royalty share received by traditional councils from the OASL should be employed. This clarification should be incorporated into a legislative instrument. Moreover, the recently enacted MIIF Act also neglects to address the linguistic ambiguity and deficiencies present in the Constitution. These issues leave the utilization of mineral royalties at the local level vulnerable to misuse. While it's widely acknowledged that the vague language in Section 267(6) of the Ghanaian Constitution contributes to chiefs benefiting from mineral royalties, the Act doesn't offer any clear guidance on how the Constitution's provision of allocating "twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status" should be interpreted. Furthermore, the Act lacks specific provisions on how the mineral royalties transferred to the district assemblies should be expended. Consequently, the MIIF Act and the MDF Act is unlikely to effectively curb the current problems given the discretionary powers that the local authorities wield in the determination of the usage of the mineral royalties allocated to them.

## **b. Inadequacy of Allocations into the Mineral Development Fund**

Another pressing concern revolves around the adequacy of the mineral royalties allocated to the MCDS (Minerals Development Fund Community Development Scheme) to support substantial socio-economic development within mining communities. Even if we were to combine the royalties designated for district assemblies and traditional councils with those for the MCDS scheme, it's highly probable that the funds would still fall short. According to estimates from the Ghana Chamber of Mines, mining communities require a minimum of 30 percent of the total mineral royalties to effectively address their diverse needs.<sup>27</sup> This implies that the entire 20 percent currently allocated to the MDF (Minerals Development Fund) would prove insufficient in tackling the multifaceted challenges and development requirements of these communities.

Furthermore, when compared to other developing countries with extensive mining activities, Ghana's allocation to mining communities appears relatively modest. For instance, Ecuador, which also levies a 5 percent tax on mineral revenues as royalties, channels 60 percent of these funds to local governments, with half of that (equivalent to 30 percent of total mineral royalties) designated for mining community development. In Kenya, mining communities receive 5 percent of total mineral revenues, which matches the entire mineral royalty share in Ghana.

To ensure that mining communities receive the necessary funding for comprehensive socio-economic development, it's imperative to increase the MCDS scheme's share to at least 20 percent of the total mineral royalties paid by mining companies. Currently, the scheme's share stands at a mere 4 percent. Achieving this adjustment could involve raising the royalty share allocated to the MDF from 20 percent to 30 percent and reallocating a portion of the share designated for the OASL (Office of the Administrator of Stool Lands) to the MCDS. This crucial modification would secure more substantial funding for development projects within mining communities and discourage the dispersion of royalties into numerous smaller endeavors.

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<sup>27</sup> The Ghana Chamber Of Mines, "Mining Industry Statistics And Data" (2020), accessed from: <https://ghanachamberofmines.org/wp-content/uploads/2021/09/2020-Mining-Industry-Statistics-and-Data.pdf> > accessed 22 August, 2023.



### c. Transparency and Accountability

Ghana is committed to transparency and accountability in its extractive sector since joining the Extractive Industries Transparency Initiative (EITI) in 2003, earning international recognition. The EITI is an international, multi-stakeholder initiative that promotes transparency and accountability in the oil, gas and mining sectors through the disclosure of government and company data in resource-rich countries. To be EITI-compliant, participating countries must meet a minimum set of standards that deal with the quality of reporting and the multi-stakeholder process used to create reports. The country shares comprehensive information through annual EITI reports, covering production, exports, and payments to the government and leaseholders. Additionally, the 2011 Petroleum Revenue Management Act (PRMA) enforces transparency by requiring quarterly disclosures of petroleum receipts, production volumes, and oil and gas prices. It also established the independent Public Interest and Accountability Committee (PIAC) to oversee PRMA compliance and empower citizens to hold the government accountable for managing petroleum revenues. Ghana successfully integrated key EITI principles into the PRMA Act.

However, it's surprising that the Minerals Development Fund (MDF) Act lacks specific provisions for transparency and accountability. The Act merely instructs the MDF board to ensure accountability through appropriate procedures and requires the Minister responsible for mines, in collaboration with the MDF board, to publish criteria for disbursement and utilization of the funds in a national newspaper. Consequently, there are no embedded mechanisms within the Act that mandate information disclosure regarding royalties collected by the MDF, royalties transferred to other entities, and how these funds are allocated. Furthermore, there is no obligation in law for the Office of the Administrator of Stool Lands (OASL) to audit the district assemblies and traditional authorities that receive mineral royalties. Presently, the OASL is only required to provide the MDF board with a report on mineral royalty disbursement to district assemblies and paramount chiefs. Consequently, the MDF board can only track disbursements made by the OASL to local authorities but not how these royalties are utilized.

There's a clear need and demand for increased transparency in providing information to local community members in Ghana regarding natural resource revenues that accrue to local authorities and other managing institutions. Common citizens currently have limited knowledge of the amount of revenue allocated to their districts and communities and how these funds are expended. Many suspect that their chiefs unfairly benefit from such revenues. Thus, the Act missed an opportunity to establish effective mechanisms and procedures for enhanced transparency and accountability in mineral royalty transfers, MDF operations, OASL activities, spending by traditional authorities and district assemblies, and projects funded by the MCDS (Minerals Development Fund Community Development Scheme).

To bolster transparency and accountability, the MDF should regularly publish information on the mineral royalties it receives, transfers to other institutions, and its own spending, preferably on a bi-annual basis. Additionally, both the MDF and the OASL should annually disclose details about the allocation of royalties to various local authorities and LMCs, how much they've received, and the utilization of these royalties in respective mining communities.

#### **d. Lack of clarity of OASL functioning in benefit sharing arrangements**

There are different types of lands in Ghana, categorized by the person or group of persons who own such lands. There are public lands, which are vested in and managed by the state. Lands may be stool lands (or skin lands), held by a group of people through their local leader who may be a chief. In such a context, the stool (or skin) is a body corporate that holds the land on behalf of and in trust for the people. There may also be family lands, which are held by families through a head of family, in a structure like that which applies to stool lands. It is possible that land may be wholly owned by an individual.

The OASL is constitutionally set up to manage a proportion of income accruing to stool lands only. The constitutional jurisdiction of the OASL does not extend to family lands. The framework established by the MDF allocates 50 percent of all its funds to the OASL, without any regard for the ownership of the land on which the mining activities occur. Thus, issues arise as to the constitutionality of the OASL to collect and disburse money through the MDF, where the money was not sourced from mining operations on stool lands, but family lands.

#### **e. Lack of Social Responsibility Agreements**

There is a glaring lack of social responsibility agreements in the mining sector which would mandate mining operators to provide some benefits to the communities in which they mine. The mandatory requirement of social responsibility agreement exists in the forestry sector. The law mandates a permit applicant to negotiate and agree a social responsibility agreement with the concerned forest fringe community worth at least 5% of the stumpage fee prior to commencing operations. It is recommended that a similar approach be adopted in the management of mineral resources to improve community access to direct benefits of mineral resources.

Our engagement with Civil Society Groups revealed that in practice some mining companies undertake voluntary corporate social responsibility projects. However, there were allegations that the funds for these projects were sometimes diverted for other uses for the government. These funds are included in the cost of production incurred by mining companies in their activities and impacts the amount of taxes paid.

#### **f. Lack of clarity in prescribed and voluntary formulae used in L.I. 2462 for disbursement of funds accruing to the Liaison Group**

L.I. 2462 gives a formula for the disbursement of funds that are collected by the Liaison Group from mining activities within forest reserves. The Liaison Group generates funds through donations, gifts, endowments, and grants as well as through the collection of a 0.6% value of the minerals mined. The percentage is paid as environmental and ecological services commitment by the company undertaking the mining activity.<sup>28</sup> The funds are to be shared between the chiefs within the area of the forest reserve and the Liaison Group based on a percentage given in the Fourth Schedule.<sup>29</sup> However, the precise formula for distribution between the Chiefs and the Liaison Group has not been stated. The percentages stated in the fourth schedule for the disbursement of funds meant to be used by the Liaison Group to fund its functions, aggregates to a 100%, which leaves the question of the percentage to be allocated to the Chiefs in whose jurisdiction the forest reserves are found. There is therefore a lack of clarity in the prescribed formula that would be used in disbursing funds that have been collected by the Liaison Group.

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<sup>28</sup> Regulation 40 of the Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I. 2462)

<sup>29</sup> Regulation 42 of L.I. 2462

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