



Earth Materials: Mineral Extraction and Communities

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1. Introduction

1. Introduction

- Mining is one of Africa's most important industries:
 - Africa hosts 30% of the earth's mineral reserves and a significant share of the global production of economically important minerals and metals – about 40% of gold, 60% of cobalt, 70% of platinum deposits, 28% of palladium and 16% of bauxite.
 - Significant contribution toward local employment, foreign exchange earnings and national GDP.
- Mineral extraction is associated with both opportunities and challenges.
 - It presents African communities with opportunities for social and economic development, but also devastating impacts on human health, systems, social structures, production systems, cultural traditions, physical displacement, demographic shifts, and dependency.
- Mining has historically been conducted in ways that perpetuate the “resource curse”, too often resulting in increased corruption, income inequality, civil unrest and environmental damage.



2. Social Justice and sustainability: The challenge of social acceptance and license in Africa

2.1 Challenge of social acceptance and license in Africa

- Local acceptability and recognition of the right to operate – the social licence to mine - has become more and more important in mining related discussions in Africa, a major factor for sustainable investment.
- Most mines in Africa located in peripheral areas historically suffering from under-development.
- It is increasingly evident that obtaining a formal licence from governments to operate in such areas and meeting regulatory requirements is no longer enough.
- Various instances of protests and company-community conflict in these regions, show that communities expect mining companies to contribute more to the improvement of their living conditions.
- One often-mentioned aim is that after mining activities have ceased, there should be as few footprints as possible in nature and the landscape and in the life of the people living in the areas.
- Yet this aim is complicated by an equally common wish that some footprints should nevertheless remain, namely a useful infrastructure and a thriving community.
- Achieving community acceptance and approval is at times frustrating and challenging.

2.2 Concept of Social Licence to Operate (SLO)

- SLO is not clearly defined.
- SLO simply refers to the “community acceptance of mining”
- From an African perspective, SLO is dynamic with broad representation as one of its pillars - requiring that the community is part of the process from the beginning
- However, many times, companies view SLO as a pragmatic calculation of what is required to minimize business risk - to avoid delay or disruption to company operations;
 - ❖ Thus, focus of CSR in Africa has largely been from an industry perspective, and the approach is typically company-driven;
 - ❖ with some framing SLO as a code phrase for more hand-outs or extortion due to the pervasiveness of corruption in many countries in Africa.
 - ❖ Application of SLO is more about reducing overt opposition to industry than it is about engagement for long-term development.

2.3 Failing to obtain a SLO

- Failing to obtain a SLO can be risky both to companies and governments.
- And it has resulted in civil unrest initiated by communities in many countries in Africa, leading to temporary or permanent work stoppage, delays in mining production, injury or death, negative press coverage, and reputational risks to investors, developers, host governments and the mining sector as a whole.
- Africa has the second highest number of mining conflicts in the world, behind Latin America, largely due to the inadequate consideration of SLO issues. e.g.,
 - ✓ **Kenya**
 - A USD 3.5 Billion coal project has not commenced 6 years after licensing in 2013, due to community resistance.
 - Kwale titanium project experienced conflicts between local communities and Tiomin (renamed Vaaldiam) Resources before the operations were acquired by Base Titanium in 2010. Various CSR activities by Tiomin reportedly fell below the expectations of the local communities, when compared with the assets they had lost.
 - In the Kenya oil sector, Tullow Oil was initially unable to proceed with operations under the Early Oil Pilot Scheme in 2018 due to community push-back. The company suspended operations for a few weeks and suffered significant losses in both time and money.
 - ✓ **Uganda** - Commercial production of oil has not commenced almost 15 years post commercial discovery largely due to conflicts between the investor group and the communities surrounding the developments evidenced by demonstrations and judicial activism.

2.3 Failing to obtain a SLO

✓ Tanzania –

- Community discontent with respect to the construction of a gas supply pipeline from Mtwara region to Dar es Salaam led to violent protests resulting in loss of life and extensive infrastructure damage.
- Community development and SLO issues in mining were among the issues considered in sweeping reforms that started in 2017.
- In early 2019, the Tanzanian government amended the mining law to specifically legislate for SLO and corporate social responsibility (CSR).

✓ South Africa

- The Xolobeni community in the Eastern Cape and the Government, has been opposing the establishment of a titanium mine in their area since 2007.
- In 2014, the Lonmin Mine, the source of nearly eighty percent of global Platinum Group Metal (PGM) resources, experienced a widespread strike that led to a forty-three percent drop in production at Lonmin.
- The eastern limb of the platinum belt has been hit by over 400 incidents of social unrest impacting mining operations since 2016 – allegedly over unresolved promises.

✓ **Ghana**, where the indigenous *galamsey* (local term given to “illegal” artisan miners) mining group were in conflict with Bogoso Gold Limited over mining concessions.

✓ **Zimbabwe** – April 2018, villagers in Zimbabwe’s Marange diamond fields took to the streets to protest the looting of diamond revenue

2.4 Special challenges in the “granting” of a SLO

Broadly, these tensions have been driven by:

□ Demands for “rights”

- ❖ Land issues (access, resettlement and compensation), i.e.,
 - ✓ The divide in the customary interpretation of land and mineral rights lead to trust deficits, and heighten tensions in communities.
 - ✓ Forced evictions without adequate compensation.
 - ✓ Communities attach various meanings to land arising from the ethno-ecological use that they put to it. At the centre of this is the feeling of not benefiting from the mining activities, which is often hinged on some feeling of “ownership,” which in this case, is the feeling among the community that they are the “true” owners of the land (and the minerals) on which the mining process is taking place. This then gives them that natural tendency to expect returns from what is “theirs” - Thus breeding conflict with government over ownership.
- ❖ Disrespect of culture and heritage of communities –especially pastoralist communities
- ❖ Issues of water access and quality
- ❖ Abuse of human rights (in the process of mining activities) – include intimidation and violence
- ❖ Clean and safe environment - massive environmental impacts; communities lacking a basic understanding of potential impacts of mining on the environment and livelihoods

2.4 Special challenges in the “granting” of a SLO

□ Demands for “rights”

- ❖ Procedural fairness - problems of public participation, access to information and access to justice (transparency), i.e.,
 - Information asymmetry – misinformation or lack of information to negotiate from a point of knowledge and power.
 - Neglect of the community voice ab initio - and the right of the community to continued free prior and informed consent (FPIC).
 - Community engagement is not tailored to their context-specific reality, to reflect their genuine challenges.
 - No formal guidelines for engagement - existing structures instead lead to marginalization of vulnerable communities.
 - Leadership legitimacy - local representation issues, and the limited ability of communities to assert their needs.
 - Company-centric approach, often engaging with stakeholders of their choice, complicating the mine-community relations - CSR written from a company perspective.



2.4 Special challenges in the “granting” of a SLO

- **Demands for “services,”** which arise as a consequence of disputes over:
 - ❖ The distribution of benefits and use of revenues derived from mineral extraction - Royalty share to communities, Local employment, Local business opportunities for communities, Local infrastructure development, Social services e.g. education and health
 - ❖ Companies not doing much in terms of real CSR activities that transcend mere window dressing – CSR programs crafted by mining companies not meeting community needs and expectations.
 - ❖ False and unfulfilled promises caused by superficial consultations and misinformation/lack of information on key
 - ❖ Communities not having an active role in issues that have traditionally been relegated to government policy and administration.
 - ❖ Security of mines vis-à-vis that of the community
- **Other challenges:**
 - ❖ Power differentials that leave a sense of helplessness when communities confront the potential for change induced by mining operations.
 - ❖ The perception that government is not listening to affected communities.
 - ❖ The belief that government lacks capacity to regulate the mining activities to prevent negative impacts and ensure sustainable development.

3. The importance of governance: Regulation and oversight of mining operations

3.1 Regulation and oversight of mining operations

- Effective domestic regulation and governance of mining operations can play a role in ensuring sustainable corporate practices and initiatives, leading to a positive impact on the lives of people living in local mining communities.
- Responsible corporate practices must go hand in hand with good governance: strategic medium-term planning, sound resource management, and effective partnerships.
- At each stage, planning, transparency and cooperation in the process are critical for realizing the mutual benefits for both companies and governments.
- However, in Africa governance gaps are still quite large and bedeviling commitments by both companies and governments.

3.1 Regulation and oversight of mining operations – governance gaps

- The major obstacle to the implementation of these initiatives have been:
 - Weak governance framework – regulatory and institutional
 - Lack of transparency and accountability
 - Capacity challenges
 - Delayed or deferred follow-ups and monitoring
 - Lack of political will
 - Interference from outside during policy formulation processes
 - Corruption - mining companies as accomplices to corrupt officials – it is a matter of corrupt governance more that weak governance
 - Armed conflict

3.2 The shift towards legislated SLO in Africa

- Due to the voluntary nature of CSR and associated difficulties in institutionalizing community participation, community concerns have continued to be treated as peripheral - and any contributions as charity.
- There has been an apparent lack of robust frameworks in many African countries mandating CSR - compelling mining companies to do this.
- In an attempt to further enforce SLO, some African countries have adopted new, or amended existing, mining laws, to mandate community development requirements.
- This represents a move toward higher regulatory standards that place a higher burden on companies and states for public goods provision.
- This includes [fair compensation, a share of royalties to local communities](#), establishment of [community trust funds, local content provisions](#), undertaking [environmental and social impact assessments](#), as well as a requirement for companies to enter into formal, legally binding agreements with local communities, also known as [Community Development Agreements \(CDAs\)](#).
- In most environmental legislation, EIA studies are required to include aspects of social impact assessment as well as public participation by affected stakeholders.

3.2 The shift towards legislated SLO in Africa.....

Examples:

- ❖ **Kenya** – Mining Act 2016: Holders of a mining license have to sign a CDA in accordance with prescribed regulations (s. 109(i)). Section 47 also provides additional requirements where the mine is a large-scale operation; these include carrying out “social[ly] responsible investment for the local communities” (s. 47(2)(f)). Also 10% of revenue share to the community where the mining operations occur. CDA Regulations 2017 provide a framework for regulating the way mining companies engage with communities likely to be impacted by their operations.
- ❖ **Tanzania** - amended its mining law in early 2019 to specifically legislate for SLO and CSR.
- ❖ **Guinea** - Law 2011/006 (Mining Code of 2011) Mining Operation Title holders must conclude a Local Development Agreement (LDA) with the local community. Titleholders must contribute between 0.5% to 1% of their turnover to the Local Development Fund. Also Decree D/2014/014/PRG/SGG (Decree on the adoption of a directive to perform an environmental and social impact assessment of mining operations, 2014).
- ❖ **Mali** - Law No. 2012-015 of February 27, 2012 (Mining Code): Mining firms must file a community development plan with their mining license applications (Art. 63 & 150), developed in consultation with local communities and local authorities.
- ❖ **Mozambique** - Mining Law (Law no. 20/2014): Companies must pay families or communities established at mine areas “fair and transparent compensation,” the value of which is determined in a memorandum of understanding between the government, the company and the community.

3.2 The shift towards legislated SLO in Africa.....

□ Examples:

- ❖ **Nigeria** - Minerals and Mining Act (2007): Prior to commencing operations, the holder of a mining/quarry lease has to enter into a CDA with the host community. Minerals and Mining Regulations (2011): The holder of a mining/quarry lease shall hold consultations with the host communities in implementing the CDA and shall submit a community development action plan to the Mines Environmental Compliance Department.
- ❖ **Zambia** - Mines and Minerals Development Act, 2015 (No. 11 of 2015, amended in 2016): One of the principles that shall apply to the mining and development of minerals is “development of local communities in areas surrounding the mining area based on prioritisation of community needs, health and safety” (Art. 4).
- ❖ **South Africa** - Mineral and Petroleum Resources Development Act (“MPRDA”) (Act No. 28 of 2002, amended in 2005 and in 2008 (No. 49 of 2008)): Applicants for mining rights must provide a “social and labour plan” (s. 23(1)(e)). The Government can put in place conditions to further the community’s rights and interests and can impose a requirement that the community participate (s. 23 as amended by Act No. 49 of 2008).
- ❖ **Sierra Leone** - Mines and Minerals Act (2009): Both small and large-scale mining license holders have to promote sustainable development of local communities and respect their rights, customs and traditions (s. 138). All license holders must have a CDA with the primary host community

3.2 The shift towards legislated SLO in Africa.....

- By engaging in a collaborative process with communities to develop CDAs tailored to their specific local contexts, companies can ensure local communities benefit from mineral extraction in Africa.
- Challenge is insufficient enforcement caused by governance issues and insufficient resources in many African countries.
- As such, there has been increasing SLO pressure on companies and African governments from NGOs international organizations and private sector membership organizations.
- Despite the CSR of many mining firms formally covering governance and ethics, employment, occupational health and safety, community and environment, a sample of African countries shows a preponderant interest and focus of the state, civil society organizations and the public on the environment and community issues, such as livelihoods and human rights abuses. Despite the widespread casualization of work and the employment of contract labour in Africa's mines, there is substantially lower focus by the state and public on the working conditions of mine workers.

4. Case studies and Best Practices

4.1 CSI - A new approach to providing benefits to communities

- Despite the large amounts of money that companies allegedly spend on CSR activities, there are high levels of dissatisfaction among communities and the general populace that these efforts are not enough.
- Major mining companies like Base Titanium have countered the CSR narrative by investing strategically in long-term sustainable programs including training local people, promoting and providing skills on micro-business, aquaculture, crop cultivation, animal rearing, textile production, etc.
- This new approach is referred to as Corporate Social Investment (CSI) and is increasingly gaining prominence as a sustainable business model that propagates shared value in place of quasi-philanthropic CSR efforts which seem more of 'favours'.

4.2 Case Study 1: Base Titanium-Kenya

Company Profile:

- ❑ Base Titanium (“Base”) is the operator of Kenya’s first large-scale modern mining project, the Kwale Mine. It represents 65% of Kenya’s total mineral output value.
- ❑ Base through the Kwale Mineral Sands Project began operations in October 2013 and is Kenya’s first large-scale modern mining project extracting large volumes of Ilmenite, Rutile and Zircon.
- ❑ The company acts as a global benchmark and a representation of the first major, foreign direct investment in Kenya’s mining sector.
- ❑ Exports to international markets began in February 2014.



4.2 Case Study 1: Base Titanium-Kenya

Base's wholistic and dynamic approach to SLO

- Base acquired the Kwale Mineral Sands Project in 2010 from Vaaldiam Mining Inc and Tiomin Resources, which had struggled for more than a decade to move the Kwale mines on the back of a push and pull with locals, lobby groups and Government agencies.
- Base commenced with a feasibility study which was completed in 2011. This enabled the company to establish a robust SLO strategy for a better relationship with local communities.
- Base ensures its compliance with globally accepted standards in transparency, governance, safety, environmental management and community investment while transparency in governance and its management with an open-door policy that ensures an improved performance in operation.
- Base's Community Policy provides for empowerment of local communities through culturally appropriate and gender balanced capability building programmes that maximise the sustainable economic benefits from our operations without creating dependency.

4.2 Case Study 1: Base Titanium-Kenya

Base's wholistic and dynamic approach to SLO....

- **Transparency / Access to Information** – open-door policy that ensures transparency and improved performance in operation. Base's policies and strategies are publicly available on its website.
- **Community Engagement** - A number of committees have been established to act as an interface between Base Titanium and affected communities in various locations associated with the mine and port. This is an important tool for addressing concerns and establishes a mechanism for achieving more participatory and inclusive solutions. These committees also play a major role in identifying their own community development priorities.

Through engagement with these committees, community development priorities have been identified and are centered on the four key pillars:

1. Community Infrastructure
2. Livelihood Programs
3. Community Health
4. Education



4.2 Case Study 1: Base Titanium-Kenya

Base's wholistic and dynamic approach to SLO....

1. Community infrastructure

- ❑ Base employs a collaborative process with county and national governments and communities to identify physical infrastructure that will improve living standards such as health facilities, boreholes to improve access to clean water, and the construction of new primary and secondary schools.
- ❑ The Company has invested heavily in a health centre, dispensaries, a blood bank and medical surgery facilities, as well as upgrading work to improve service delivery at the Kenya Medical Training College at Msambweni.
- ❑ Base has built and refurbished several schools in Kwale and Mombasa counties to create a better learning environment for students, as well as improving educational facilities for special needs children in both areas.



4.2 Case Study 1: Base Titanium-Kenya

Base's wholistic and dynamic approach to SLO....

2. Livelihood Programs

- Base supports numerous agricultural based livelihood programs – like the Kwale Cotton Project, sorghum and potato farming, poultry and beekeeping, etc.
- Base also plays a significant role in educating and training the community as well as the farmers around encouraging them to form their own co-operatives to create a self-help group for farmers in the area, an initial step to growth of the agribusiness sector.



- Base engages Business for Development (B4D), to explore ways of improving agricultural productivity and diversity in Kwale, as well as linking farmers to commercial, sustainable markets. B4D has an extensive track record of implementing similar programs in a number of countries.
- Working with local NGOs and community-based organizations in the area of enterprise development, such as Village Savings and Loans Association schemes for volunteer community health workers and enterprise development for youth and women's groups



4.2 Case Study 1: Base Titanium-Kenya

Base's wholistic and dynamic approach to SLO....

3. Community Health

- ❑ Partnership with communities, governments and NGO's to improve access to health services.
- ❑ Base now supports 9 Community Health Units with 261 Community Health Volunteers covering 52 villages from the host site, mine site and the Likoni port facility areas.
- ❑ Base recently won the 2020 AAMEG Africa award for Best Innovation in Corporate Social Development for their COVID-19 Community Support Programs in Kenya and Madagascar.
- ❑ Base developed a wide range of programs to support government and local communities manage the effects of COVID-19 based around education, hygiene infrastructure, medical equipment and food distribution.



4.2 Case Study 1: Base Titanium-Kenya

Base's wholistic and dynamic approach to SLO....

4. Education

- A scholarship programme with input from local committees and NGOs e.g. Hatua Likoni, Friends for Life, Aga Khan Academy, etc. This programme is managed to ensure fairness and transparency and is aligned with existing programmes to allow for a coordinated approach to achieving maximum benefits for local communities. Around 400 scholarships are issued each year covering secondary and tertiary students.
- Base's Training and Development (T&D) programme is designed to maximise opportunities and project benefits to local communities and enhance the employability of young Kenyans.
- Apprenticeship Programme is targeted at youth and is structured to link practical industry needs with theoretical training.
- Base Titanium is recognised as a benchmark organization for good practice through the apprenticeship programme.
- A collaborative approach with National Industrial Training Authority, Technical University of Mombasa, county government of Kwale, Kenya Red cross, ICDL Africa, Kenya Youth Employment & Opportunities Project (KYEOP), Strathmore university, and AWIEK to implement the programme

4.2 Case Study 1: Base Titanium-Kenya

Base's wholistic and dynamic approach to SLO....

- Minimising environmental and safety Impacts - Base Titanium is committed to minimising environmental impacts, while protecting and conserving biodiversity and driving environmentally responsible behavior in our operation, and in our communities.
- Key programs:
 - Base's investment in safety training and rigorous enforcement of systems is paying dividends and has resulted in an enviable safety record.
 - Biodiversity and Conservation Program - indigenous tree nursery and arboretum
 - Wetland Restoration Program.
 - Waste Recycling
 - Land Rehabilitation
 - Environmental Education - Flora and Fauna, Water, Tree growing, butterfly and bee farming.



4.3 Case Study 2: Tullow Kenya B.V. (TKBV)

- Tullow Kenya B.V. (TKBV) is the main operator of the Kenya Oil Project in Northern Kenya (Turkana), a region with the highest levels of poverty in Kenya (about 94% according to Kenya Bureau of Statistics).
- Other joint venture partners: Africa Oil Kenya B.V., and Total S.A.
- First commercial oil discovery was made in 2012.
- Early Oil Pilot Scheme (EOPS) commenced in June 2018 to establish enabling infrastructure for Full Field Development (FFD) of the petroleum resources, ended in June 2020.
- Kenya shipped the first ever cargo of oil under EOPS to the international market on 26 August 2019 with 1.48 billion (\$13,400,913) revenue received (Tullow Oil plc, 2020).
- The project is soon moving to the Final Investment Decision (FID), with First Oil expected in First Oil expected in 2021/2022.



4.3 Case Study 2 – TKBV’s SLO Policies

- Tullow’s own Human Rights Policy (2016) stipulates requirements for obtaining ‘broad community support’ and ‘the informed agreement’ of communities affected by projects.
- Tullow’s sustainability strategy in Kenya includes a shared prosperity approach with three broad elements:
 - a) Optimising local content and developing supplier capacity – few beneficiaries, e.g. Bentworth Investments Ltd (a Kenyan oil and gas service company), Ekosowan Security Express Services (ESES) Limited, Kapese Transporters, the Akiberan Aberu Women’s Group (a group of individual grocery providers supplying food to Tullow), Morutena Contractors (which leases vehicles to Tullow), and Lopii Contractors, etc.
 - b) Building local skills and developing people - e.g. Since 2017, Tullow Kenya has worked with TechnoServe, an international not-for-profit partner, to provide a three-month business and entrepreneurship course to local business owners at its local Enterprise Development Centre.
 - c) Driving socio-economic investment that enhances local economies and local communities – Focus has largely been in enhancing water infrastructure in Kenya.
- Company has slowed down on giving jobs to local people and local suppliers.

4.3 Case Study 2 – TKBV’s Rough Experience in Kenya

- ❑ Company has experienced a series of community protests since the beginning of oil operations, e.g.,

Year	Protest Against Oil Operations
October 2013	Over 2000 residents protest against the oil company for missing out on jobs and tenders, leading to suspension of operations for two weeks.
Aug. 2014	August 2014: Another protest is staged at one of the oil company’s rig. Workers complain over inconsistencies in wages among the different sub-contractors.
2015	4-day road block and the oil company camp closed over protests from locals for jobs, business opportunities, CSR.
Nov. 2016	Locals block trucks from transporting crude oil from the area as part of the pilot trucking testing demanding land acquisition and access to compensation.
June 2018	Locals stage protests following the launch of the EOPS raising claims over land compensation, insecurity, more jobs, and a share of the oil revenues.
June 2018	June 2018 - Hazardous waste holding plant causes tensions in the community.



4.3 Case Study 2 – TKBV using a wrong approach to securing SLO

- Inadequate community engagement and feelings of exclusion
 - Community has largely been engaged after decisions are made rather than integrating them into the decision-making process.
 - In the beginning, the oil company was more interested in asset protection than a relationship with the community.
 - Tullow lacked a stakeholder engagement framework during the intense Exploration and Appraisal period of 2012-2015 during which its activities were characterised by ‘transactional’ operations-focused engagements and reactive responses to community grievances.
- **Transparency/ access to information** - Local communities consider themselves to have been inadequately informed or consulted on matters that affect them, or provided with biased information.
 - *Leadership Legitimacy* - the role of elders has been compromised by their employment as community liaison officers (CLOs) and village socialisation officers by the company, and community members view them as serving the interests of the company.



4.3 Case Study 2 – TKBV using a wrong approach to securing SLO....

- Unfulfilled Social investment/CSR promises.
 - There is a general mistrust between the community and the oil company, which is seen as a liar with empty promises.
 - Tullow accused of doing little for the local community - focus has largely been on water and sanitation (drilling boreholes).
 - Scarce opportunities for jobs and tenders - this has been at the core of protests from the beginning of oil exploration.
 - Political rivalry and rent-seeking around company efforts to promote local benefits such as through the provision of water, the building of schools and health facilities, or awarding of school bursaries.
- **Managing community expectations**– Managing people expectations around what the oil revenues will really look like and the revenue splits (75:20:5), with community demanding a direct allocation of their revenue share (5%).
- **Managing environmental impacts** - inadequate consultation in the EIAs, poor waste disposal, and disruption of pastoral livelihoods – community claims oil company has cut off some of the traditional migratory routes, which is a significant concern to communities.

4.3 Case Study 2 – TKBV using a wrong approach to securing SLO....

- **Addressing security concerns** –The oil company’s security program only covers the oil sites, not the local communities which continue to grapple with insecurity especially with the neighboring communities. Also mistrust between local communities and the security personnel, and the community perception that police intervention is only available when money changes hands.
- **Tensions around land acquisition and compensation** – due to lack of or inadequate community input.
- **Grievance Management** – company’s grievance management system is inadequate evidenced by unresolved community concerns. following the launch of the EOPS in June 2018 and the subsequent violent protests by the local community in Turkana, the National Government established the Turkana Grievance Management Committee, vide Gazette Notice No. 8046 of 7th August, 2018, to provide the local community and the oil company with avenues for addressing any emerging issues and concerns.



4.4 Case Study Lessons

- Experiences from Kenya's Sands Project and Oil Project raise important lessons around the need to engage with and reinforce emergent local structures and programmes that insist on benefits, rights, transparency and accountability.



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