A Review and Assessment of the Benefit-sharing Arrangements of Large-scale Mining Activities in Wau-Bulolo, Papua New Guinea
A REVIEW AND ASSESSMENT OF THE BENEFIT-SHARING ARRANGEMENTS OF LARGE-SCALE MINING ACTIVITIES IN WAU-BULOLO, PAPUA NEW GUINEA

by

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Andrew Anton Mako
Charles Yala
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<thead>
<tr>
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<th>Description</th>
</tr>
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<tbody>
<tr>
<td>BDO</td>
<td>Business Development Office</td>
</tr>
<tr>
<td>BDP</td>
<td>Business Development Plan</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CRF</td>
<td>Consolidated Revenue Fund</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
</tr>
<tr>
<td>DA</td>
<td>District Administrator</td>
</tr>
<tr>
<td>DLIR</td>
<td>Department of Labour and Industrial Relations</td>
</tr>
<tr>
<td>DMT</td>
<td>District Management Team</td>
</tr>
<tr>
<td>DTI</td>
<td>Department of Trade and Industry</td>
</tr>
<tr>
<td>FIFO</td>
<td>Fly-In-Fly-Out</td>
</tr>
<tr>
<td>FOB</td>
<td>Free On Board</td>
</tr>
<tr>
<td>HVBSA</td>
<td>Hidden Valley Benefits Sharing Agreement</td>
</tr>
<tr>
<td>HVJV</td>
<td>Hidden Valley Joint Venture</td>
</tr>
<tr>
<td>HVSL</td>
<td>Hidden Valley Services Limited</td>
</tr>
<tr>
<td>JDP&amp;BPC</td>
<td>Joint District Planning and Budget Priorities Committee</td>
</tr>
<tr>
<td>KIL</td>
<td>Kuembu Investments Limited</td>
</tr>
<tr>
<td>LLG</td>
<td>Local Level Government</td>
</tr>
<tr>
<td>LLGSIP</td>
<td>Local Level Government Service Improvement Program</td>
</tr>
<tr>
<td>LOA</td>
<td>Landowners Association</td>
</tr>
<tr>
<td>LPIG</td>
<td>Land Physical Infrastructure Grant</td>
</tr>
<tr>
<td>MCG</td>
<td>Morobe Consolidated Goldfields</td>
</tr>
<tr>
<td>ME</td>
<td>Mining Easement</td>
</tr>
<tr>
<td>ML</td>
<td>Mining Lease</td>
</tr>
<tr>
<td>MOA</td>
<td>Memorandum of Agreement</td>
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<tr>
<td>MPCRF</td>
<td>Morobe Provincial Consolidated Revenue Fund</td>
</tr>
<tr>
<td>MPG</td>
<td>Morobe Provincial Government</td>
</tr>
<tr>
<td>MPMU</td>
<td>Morobe Project Management Unit</td>
</tr>
<tr>
<td>MRA</td>
<td>Mineral Resources Authority</td>
</tr>
<tr>
<td>NAKUWI</td>
<td>Nauti Kuembu and Winima</td>
</tr>
<tr>
<td>NCS</td>
<td>National Catering Services</td>
</tr>
<tr>
<td>NIL</td>
<td>Nauti Investments Limited</td>
</tr>
<tr>
<td>NKW</td>
<td>Nauti Kuembu and Winima</td>
</tr>
<tr>
<td>NRI</td>
<td>National Research Institute</td>
</tr>
<tr>
<td>OLPG&amp;LLG</td>
<td>Organic Law on Provincial Governments and Local Level Governments</td>
</tr>
<tr>
<td>PDP</td>
<td>Provincial Development Plan</td>
</tr>
<tr>
<td>PFMA</td>
<td>Public Finance Management Act</td>
</tr>
<tr>
<td>PID</td>
<td>Past Improvement Damages</td>
</tr>
<tr>
<td>PNG</td>
<td>Papua New Guinea</td>
</tr>
<tr>
<td>PPP</td>
<td>Public-Private Partnership</td>
</tr>
<tr>
<td>RLLG</td>
<td>Rural Local Level Government</td>
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<tr>
<td>SSG</td>
<td>Special Support Grant</td>
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<tr>
<td>TCS</td>
<td>Tax Credit Scheme</td>
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<tr>
<td>ULLG</td>
<td>Urban Local Level Government</td>
</tr>
<tr>
<td>VBA</td>
<td>Village Birth Attendant</td>
</tr>
<tr>
<td>VSS</td>
<td>Village Social Services</td>
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<tr>
<td>WIL</td>
<td>Winima Investments Limited</td>
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EXECUTIVE SUMMARY

It is often argued that Papua New Guinea (PNG) is well endowed with natural resources, one of which is minerals. The development of natural resources, if done in the right way and its proceeds managed and utilised prudently, can be the cornerstone for economic and social advancement of the people.

The financial proceeds from mining development flows to the National Government and other stakeholders in PNG, including local workers and their families through wages, local businesses and contractors, provincial governments, local-level governments, district authorities, and local landowner groups. Despite PNG’s large mineral wealth and the huge financial and economic benefits, it remains poor with low social indicators. Of particular concern is the lack of development for people who live in villages and in communities within the vicinity of the mining and petroleum project sites.

It is in the context of concerns about the extent of development brought about by mining that the Bulolo Joint District Planning and Budget Priorities Committee (JDP&BPC) decided to commission the National Research Institute (NRI) to conduct an independent study into how the benefits from the Hidden Valley Gold Project are shared, focusing on the analysis of the 2005 Memorandum of Agreement (MOA).

The key objectives of the study are to:

- critically review and assess all forms of mining proceeds (financial) flowing from the Hidden Valley Gold Mining Project to all the relevant parties to the MOA since the operation of the mine, including mining royalties, compensation payments, taxes, employment, and other spin-off benefits;
- assess and review all the relevant benefit-sharing mechanisms, including the MOAs that are in place, on whether they are efficient mechanisms to fairly distribute the proceeds of the Hidden Valley Gold Mining Project to the relevant parties, as well as the local economy;
- consider, assess and recommend whether and how the current benefit-sharing mechanisms could be improved to fairly distribute the proceeds of the mine to all the relevant stakeholders in order to maximise the impact of the economic and financial flows of the mine on the local communities and economy; and
- broadly review and recommend how lessons learnt from this study can be used to improve and maximise socio-economic impacts of other mining projects in the Bulolo electorate including other parts of PNG.

The study involved a desktop analysis and fieldwork. With the view to make the study objective, the 2005 MOA was made the basis of the analysis. The desktop analysis reviewed and analysed the 2005 MOA and related documents while the fieldwork (by two members of the research team), gathered other data and information from relevant stakeholders including:

- Hidden Valley Joint Venture company (HVJV);
- Morobe Provincial Administration;
- Bulolo District Administration;
- LLGs in the Bulolo District;
- landowner businesses; and
- the affected communities.
The information gathered from the field trip complemented the information generated from the analysis of the 2005 MOA (which focused on analysing the expectations as envisioned in the MOA and the actual flows).

Based on the analysis of the information collected, there are five findings and recommendations, which are summarised as follows:

- **Finding 1:** The financial benefits flows are largely consistent with the MOA framework.
  - **Recommendation 1:** Maintain the consistency between expectations and outcomes of the funds flows, as per the MOA.

- **Finding 2:** Anecdotal evidence suggests that the impact of benefits flows on development within the mine-affected community and the district is minimal. That is, the benefits flows (both financial and development), is not adequately translated into social and economic development.
  - **Recommendation 2:** Participants of the review of the MOA should acknowledge that the benefits flows have not adequately translated into positive developmental outcomes on the lives of the mine-affected landowners and the non-landowning community. The new or revised MOA should aim to ensure that benefits flows are used to advance development for the landowners and the district.

- **Finding 3:** The existing financial flows management system for the landowning community, using NAKUWI Association and NKW Holdings as the main channels is inefficient.
  - **Recommendation 3.1:** All financial flows accruing to the landowning community be pooled into one fund which is divided into three funds — long-term (40%); human capital formation (40% — health insurance, education and improved housing); and cash (20% — direct cash or shopping vouchers).
  - **Recommendation 3.2:** Replace the associations with ILGs incorporated under the ILG Act (Amendment) 1974.

- **Finding 4:** The existing system for managing development funds and expending is inefficient. In fact, they significantly raise coordination, common pool and transaction costs.
  - **Recommendation 4:** Pool all the development funds into one pool whose expenditure is to be managed through a special purpose vehicle with representations from the State, developer, community, and independent donor, whose main task is to plan, procure and invest in infrastructure development.

- **Finding 5:** Unfortunately, the development of the township was not in the MOA therefore detailed analysis is omitted in this study.
  - **Recommendation 5:** An independent study to be commissioned to investigate the viability of the development of a township and the identification of a possible location is incorporated in the next MOA.
ACKNOWLEDGEMENTS

This study is funded and commissioned by the Bulolo Joint District Planning and Budget Priorities Committee (JDP&BPC) under the chairmanship of the Member for Bulolo, Hon. Sam Basil. The National Research Institute (NRI) wishes to acknowledge the support by the Bulolo JDP&BPC. The assistance and guidance provided by Wilson O. Thompson, First Secretary to the Member for Bulolo, is duly acknowledged.

The authors also acknowledge the assistance in terms of provision of information by various representatives of organisations during the research trip (between 22 and 29 January, 2014). For confidentiality purposes, we list only the organisation names, as follows:

- Bulolo District Administration;
- Morobe Provincial Administration;
- Hidden Valley Joint Venture company;
- Watut Rural LLG;
- Wau Rural LLG;
- Nauti Investment Limited; and
- Sambiou village/community.

The District Administrator, our contact point in the district, provided much assistance in terms of both information and logistics. We are grateful for that.

At NRI, we thank Lucy Avei and Jennifer Parina, for secretarial support and editing, respectively, for the project.

Osborne O. Sanida, Andrew A. Mako and Charles Yala
1. INTRODUCTION

This report was commissioned by the Bulolo Joint District Planning and Budget Priorities Committee (JDP&BPC) under the chairmanship of Hon. Sam Basil (Member for Bulolo), with a view to assessing the types of benefits flows from the Hidden Valley Mine; the sharing arrangements for these benefits; and the likely developmental impacts. The Terms of Reference (see Appendix 1) were specific in that the 2005 Memorandum of Agreement (MOA) (see Appendix 2) be reviewed with the view to measure against the expectations and the actuals.

In the broader context, the mining sector (including petroleum) is an important sector of the Papua New Guinea (PNG) economy. The sector contributes significantly to the national budget. According to the PNG Budget documents, the PNG Government received K0.667 billion in taxes and dividends from the mining sector in 2013, and this is estimated to increase to K1.134 billion in 2014 (Department of Treasury, 2014). The financial and economic benefits from the mining sector also flow to other stakeholders in PNG including local workers and their families through wages, local businesses and contractors, provincial governments, local-level governments, district authorities, and local landowner groups. Despite PNG’s large mineral wealth and the huge financial and economic benefits, it remains poor with low social indicators. In particular, the progress of development in villages and communities surrounding the mining and petroleum project sites remains stagnant, despite long years of mining development. This calls for a concerted effort by all the relevant stakeholders so that proceeds from the mining sector, which are paid to the economy, are fairly distributed, properly invested, and effectively translated to create wealth, improve service delivery and enhance the living standards of the people sustainably. This report aims to make a contribution to this expectation.

The Hidden Valley Gold Project is located in the Bulolo electorate of Morobe Province. The gold project which is operated by the Hidden Valley Joint Venture (HVJV), came into operation in 2007 and commenced production in 2010. It is a joint-venture company owned equally by Harmony Gold Mining Company and Newcrest Mining Limited. The joint venture company also operates the Wafi-Golpu Project which is located close to the Hidden Valley Gold Project, but is currently undergoing its pre-feasibility studies. Benefits, especially mining royalties, from the Hidden Valley Gold Mining Project flow to the national government, provincial government, and local-level governments in accordance with a Memorandum of Agreement (MOA) between Hidden Valley Joint Venture (HVJV), local landowners and all levels of the government.

According to an MOA signed on 12 October 2009 between the Morobe Provincial Government (MPG) (see Appendix 3) and the Bulolo Joint District Planning and Budget Priority Committee (JDP&BPC), 50% of the 36% of royalties paid by HVJV to the Morobe Provincial Consolidated Revenue Fund (MPCRF) are to be paid to the Bulolo JDP&BPC while the MPG keeps the 50% balance. However, there are varying views on the ground on the distribution of the royalties. If such varying views are not addressed quickly, they could, among others, cause tensions among stakeholders. This could impede the effective flow of the mining benefits to the relevant stakeholders, which potentially could jeopardise the socio-

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1. 2013 Final Budget Outcomes and 2014 Budget (Department of Treasury).
2. HVJV is also known as Hidden Valley Services Limited (HVSL). HVSL replaced Morobe Consolidated Goldfields (MCG), in May 2008.
3. The 36% of royalties remitted by HVJV to the MPG is based on an MOA in 2005.
economic development of the Bulolo District. Therefore, it is important to conduct a study to review and assess the impacts of the economic and financial proceeds from the mine to the relevant parties to the MOA and the local economy since the commencement of mineral production in 2009. Such a study will assist in charting a way forward so that future financial and economic proceeds from the mine can be fairly distributed to maximise the socio-economic development, help create wealth, and improve the living standards of the people in Bulolo District.

1.1 Aim and Objectives

Aim

The aim of this study is to comprehensively review and assess the current MOAs and other benefit-sharing arrangements of the Hidden Valley Gold Project and the economic and financial flows to the parties to the MOAs and other benefit-sharing arrangements. It will also analyse the governance structures of the mining benefits paid to the relevant parties to the MOA, and propose mechanisms on how the financial benefits can be optimally distributed while taking into account the existing benefit-sharing arrangements. Broadly, this study could also contribute to informing the creation of better MOAs and other benefit-sharing arrangements for mining projects in the Bulolo District as well as in other parts of PNG.

Objectives

The main objectives of this study are to:

- critically review and assess all forms of financial mining proceeds flowing from the Hidden Valley Gold Project to all the relevant parties to the MOA since the operation of the mine, including mining royalties, compensation payments, taxes, employment, and other spin-off benefits;
- assess and review all the relevant benefit-sharing mechanisms, including the MOAs, that are in place, on whether they are efficient mechanisms to fairly distribute the proceeds of the Hidden Valley Gold Project to the relevant parties, as well as the local economy;
- consider, assess and recommend whether and how the current benefit-sharing mechanisms could be improved to fairly distribute the proceeds of the mine to all the relevant stakeholders in order to maximise the impact of the economic and financial flows of the mine on the local communities and economy; and
- broadly review and recommend how lessons learnt from this study can be used to improve and maximise socio-economic impacts of other mining projects in the Bulolo electorate and also in other parts of Papua New Guinea.

1.2 Methods

This study undertook both desk-top study and fieldwork research, and involved interaction, consultation and interview with all the relevant stakeholders of the Hidden Valley Gold Project, including HVJV, Morobe Provincial Government, district authorities (including Bulolo’s JDP&BPC), LLGs, landowners, mine-affected areas, local businesses and local people. An in-depth investigation was carried out on how the financial proceeds from the mine have affected the local economy and population, the district and the province, with the view to improve the existing benefit-sharing arrangements so that future proceeds from the mine can be fairly distributed. All available information sources including the MOAs, other benefit-sharing agreements, key literature on benefit-sharing arrangements used in other mining projects in PNG, and current mining legislation covering how the benefits from mining projects can be shared in PNG had been explored and compiled.
The views of the stakeholders are significant to this study. Interviews were conducted to gauge views from key stakeholders and key parties to the MOA. The interviews were guided by standard questionnaires.

1.3 Scope of the Study

The study focused on the following specific tasks:

(a) Carry out an investigation and assessment of mineral benefit-sharing arrangements in PNG, and then focus specifically on the Hidden-Valley Gold Mine’s benefit-sharing arrangements, in particular the MOAs, by searching the following information sources:

- relevant research articles or other relevant publications on benefit-sharing arrangements and governance of mining projects in PNG;
- relevant MOAs and other benefit-sharing mechanisms of the Hidden Valley Gold Project;
- relevant government policies governing benefit-sharing arrangements in PNG; and
- relevant records of financial flows provided by the Hidden Valley Gold Project to the parties of the MOA, and other key stakeholders, including employees, and other spin-off benefits provided to the local community and the nation.

(b) Interviews with key stakeholders were conducted with the following to seek their views:

- Morobe Provincial Government;
- Hidden Valley Joint Venture company;
- Bulolo District Administration, including its Joint District Planning and Budget Priorities Committee (JDP&BPC);
- LLGs which are party to the MOA;
- local communities; and
- local businesses.

1.4 Policy Relevance

This study is aimed at drawing lessons for policy on how MOAs and other benefit-sharing arrangements in relation to proceeds from mining projects can be improved, particularly from the views of the host districts where mining projects are located. The findings of the study also provide useful policy lessons on how good financial benefit-sharing arrangements can contribute towards improving the socio-economic development of communities and districts in which large-scale mining projects are located.

1.5 Population and Household Background of Bulolo District

A summary of the population and household information on the Bulolo District and the immediate impact areas is provided here. The objective is to provide the context of the number of people being impacted by the mining activity. Table 1.1 shows the relevant statistics. Column 1 lists the Local-level Government (LLG) areas and column 2 lists the number of households in each LLG. Column 3 lists the total number of people in each LLG while columns 4 and 5 show the gender break-up of the population.
Table 1.1: Population and households of Bulolo District, 2011 Census

<table>
<thead>
<tr>
<th>LLG</th>
<th>Households</th>
<th>Persons</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mumeng Rural</td>
<td>4,128</td>
<td>23,656</td>
<td>12,301</td>
<td>11,355</td>
</tr>
<tr>
<td>Waria Rural</td>
<td>2,239</td>
<td>11,381</td>
<td>5,918</td>
<td>5,463</td>
</tr>
<tr>
<td>Watut Rural</td>
<td>3,603</td>
<td>17,480</td>
<td>9,090</td>
<td>8,390</td>
</tr>
<tr>
<td>Wau/Bulolo Urban</td>
<td>2,147</td>
<td>10,598</td>
<td>5,511</td>
<td>5,087</td>
</tr>
<tr>
<td>Wau Rural</td>
<td>6,759</td>
<td>29,253</td>
<td>15,212</td>
<td>14,041</td>
</tr>
<tr>
<td>Buang Rural</td>
<td>1,989</td>
<td>9,200</td>
<td>4,784</td>
<td>4,416</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>20,865</strong></td>
<td><strong>101,568</strong></td>
<td><strong>52,816</strong></td>
<td><strong>48,752</strong></td>
</tr>
</tbody>
</table>

**Source:** 2011 Population Census Final Figures (p.25).

In terms of the population, Bulolo District has a population of 101,568, which is about 15% of Morobe Province’s population of 674,806 (2011 Population Census). Only Lae District is bigger with 148,934 (or 22% of the total population). If we exclude Lae as an urban district, then Bulolo District is the biggest district in Morobe Province in terms of land area and population.

Within the district, the biggest LLG by population is Wau Rural with 29,253 or 29% of the total district population. The smallest LLG is Buang Rural with only 9,200 people or 9% of the total district population. The average sex ratio for the district is 108; that is, 108 males per 100 females.

The LLG areas that are immediately affected by the Hidden Valley gold mining activities are Wau Rural, Watut Rural, and Wau-Bulolo Urban. These three LLGs have a combined population of 57,331 which is 56% of the total Bulolo District population.

In terms of household numbers, Bulolo District has 20,865 households (or 16% of the provincial total of 130,109). Within the district, the Wau Rural LLG has the highest number of households with 6,759 and the Buang Rural LLG has the lowest number of households with only 1,989. In the context of the study, Wau, the LLG area with the highest number of households, lies within the project area.

For the villages within the Hidden Valley gold mining lease area (Nauti, Kuembu and Winima), the demographics are as follows, according to the 2011 Population and Housing Census (National Statistical Office, 2014).^4^ Nauti, which lies in the Watut Rural LLG, has 335 households (9.3% of LLG total) and 1,790 people (10.2% of LLG total). The other two villages lie within the Wau Rural LLG. The Kuembu Village has 302 households (4.5% of LLG total) and a population of 1,447 (4.9% of LLG total). The Winima Village has 135 households (2% of LLG total) and a population of 602 (2% of LLG total).

1.6 Structure of the Report

Following the introduction in Section 1, the rest of the report is organised as follows: Section 2 presents the key features of the 2005 MOA to highlight the key expectations of the benefit-sharing arrangements such as financial benefits; employment and training; business development and income creation; physical infrastructure; community development; and stakeholder cooperation and law and order issues. In Section 3, the discussion focuses on the outcomes of the 2005 MOA; that is, the expectations (intentions) from Section 2 (for each

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aspect) are compared against the actual outcomes and analysed. Section 4 discusses some key structural issues which include: the 2009 MOA between the Morobe Provincial Government (MPG) and the Bulolo Joint District Planning and Budget Priorities Committee (JDP&BPC); compensation payments; landowner organisational structures and operational implications; and views on key issues by key informants during fieldwork by two of the researchers. Section 5 provides the main findings and recommendations based on the analyses in the preceding sections while Section 6 concludes the report.
2. THE MEMORANDUM OF AGREEMENT (MOA), 2005: EXPECTATIONS

The MOA for the Hidden Valley Gold Project was signed on 5 August 2005 (see Appendix 2). The parties to the MOA were:

- The Independent State of Papua New Guinea;
- The Morobe Provincial Government;
- Morobe Consolidated Goldfields (MCG) Limited, now Hidden Valley Joint Venture (HVJV);
- NAKUWI Association Incorporated;
- The Wau Rural Local Level Government;
- The Watut Rural Local Level Government; and
- The Wau/Bulolo Urban Local Level Government.

The MOA has seven parts, each covering certain legal aspects and undertakings for each of the stakeholders to the MOA. The seven parts of the MOA include:

- Part A: General (covering definitions and interpretation);
- Part B: National Government Undertakings;
- Part C: Morobe Provincial Government Undertakings;
- Part D: Local Level Government Undertakings;
- Part E: Morobe Consolidated Goldfields (now HVJV) Undertakings;
- Part F: Landowner Undertakings; and
- Part G: Formal Clauses.

In addition to the seven parts, the MOA has four Annexes, which, respectively, contain further information on the Business Development Plan (Annex A); Training and Localisation Policy (Annex B); Conceptual Mine Closure Plan (Annex C); and Procurement and Supply Plan (Annex D).

This section of the report presents/highlights the key features of the MOA that are relevant to the TOR for the study. That is, it focuses on the intentions of the MOA, particularly in terms of benefit-sharing arrangements; firstly in terms of financial benefits and then the development flows (non-financial benefits such as infrastructure projects). The key objective of the section is to highlight the intentions, which will become the basis or benchmark for assessing the MOA’s impacts/outcomes (in Section 3), Issues arising from the MOA (Section 4) and the relationship with the TOR of the study (Section 5).

The section is organised into six subsections, each discussing key aspects of the MOA:

- Section 2.1: Financial benefits;
- Section 2.2: Employment and training;
- Section 2.3: Business development and income creation;
- Section 2.4: Physical and social infrastructure;
- Section 2.5: Community development; and
- Section 2.6: Stakeholder cooperation, and law and order.

2.1 Financial Benefits

According to the MOA, financial benefits are in five forms: royalties, special support grant (SSG), project equity; financial assistance to landowners, and future generations trust fund. We discuss each in the following subsections.
2.1.1. Royalties

According to the Mining Act 1992 (GoPNG), royalties constitute 2% of the (F.O.B) value of mineral exports. The mining operator (HVJV) gives the funds to the State, which in turn pays the relevant recipients in the agreement.

The key aspects of royalties concern the sharing arrangements and accountability. We discuss each in turn.

**Sharing Arrangements:**

In terms of the sharing arrangements, the shares are contained in Section 3 (Subsection 3.1 and 3.2) of the MOA. Of the total amount of royalties, the State is to pay the royalties according to the following agreed percentage (%) shares:

- Morobe Provincial Government, 42%;
- landowners, 39%;
- immediate impact area LLGs, 14%;
- affected communities, 2.5%; and
- others, 2.5%.

Table 2.1 shows how each of these shares of royalties are further distributed. Column 1 lists the various recipients, while Column 2 lists the percentage shares according to the 2005 MOA. For example, out of the 42% paid to the Morobe Provincial Government, 36% is retained, while the rest is shared among the non-mining area LLGs of the Bulolo District: 3% for Mumeng LLG, 2% for Waria LLG, and 1% for Buang LLG. The last column shows the percentage shares and the share in Column 2 is equated to 100%. For example, if the 42% to the MPG-5-Year PDP is equated to 100%, then if the Provincial Government gets 36%, that would equate to 86% (i.e. 36/42 x 100 = 86%). Similar calculations can be done for the rest of the items.

**Table 2.1: Sharing arrangements for royalties**

<table>
<thead>
<tr>
<th>Share(%) as per MOA</th>
<th>Equated to 100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>MPG 5-Year PDP</td>
<td></td>
</tr>
<tr>
<td>Morobe Provincial Government</td>
<td>42</td>
</tr>
<tr>
<td>Mumeng LLG</td>
<td>36</td>
</tr>
<tr>
<td>Waria LLG</td>
<td>3</td>
</tr>
<tr>
<td>Buang LLG</td>
<td>2</td>
</tr>
<tr>
<td>Immediate Impact Area LLGs</td>
<td></td>
</tr>
<tr>
<td>Wau Rural LLG</td>
<td>5</td>
</tr>
<tr>
<td>Watut Rural LLG</td>
<td>5</td>
</tr>
<tr>
<td>Wau/Bulolo Urban LLG</td>
<td>4</td>
</tr>
<tr>
<td>Affected Communities</td>
<td></td>
</tr>
<tr>
<td>Highway Communities</td>
<td>0.5</td>
</tr>
<tr>
<td>River Communities</td>
<td>0.5</td>
</tr>
<tr>
<td>Subsidiary Landowner Communities</td>
<td>1.5</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Settler Communities</td>
<td>2</td>
</tr>
<tr>
<td>Wafi LOA</td>
<td>0.5</td>
</tr>
</tbody>
</table>
Table 2.1 (cont’d)

<table>
<thead>
<tr>
<th>Landowners</th>
<th>Share(%) as per MOA</th>
<th>Equated to 100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAKUWI Association</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Future Generation Trust</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Payment to people:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nauti people</td>
<td>17.5</td>
<td>17.5</td>
</tr>
<tr>
<td>Kuembu people</td>
<td>8.75</td>
<td>8.75</td>
</tr>
<tr>
<td>Winima people</td>
<td>8.75</td>
<td>8.75</td>
</tr>
</tbody>
</table>

Source: Calculations by authors based on the 2005 MOA

Accounting of Royalties

In terms of accounting for the royalty payments, only the three LLGs in the mine impact area (i.e. Wau Rural LLG, Watut Rural LLG, and Wau/Bulolo Urban LLG), according to the MOA (Section 24) are covered. The other groups mentioned in Table 1 are not included.

The accounting for royalties for the three LLGs (mentioned above) relates to the allocation of their share of royalty monies. That is, once they receive the royalties, these LLGs are to allocate it as follows (Section 24.1):

- a minimum of 50% towards Village Ward Projects; and
- a minimum of 30% towards family Development and Community Sustainable Development Programs.

According to Section 24.2 of the MOA, future royalties to the three LLGs is subject to them distributing the royalties according to the above formula (Section 24.1) and annual audits. If the LLGs fail to allocate the royalties according to Clause 24.1, the monies will be diverted to a Trust Account provided for in Section 3.4 of the MOA.

2.1.2. Special Support Grant (SSG)

The Special Support Grant (SSG) is an annual grant from the National Government to the Provincial Government, which is to be paid from the commencement of production. The SSG is equivalent to 0.5% of the value of f.o.b revenue for the sale of productions from the mine project (s.4.3).

Each annual SSG allocation will be allocated by the Morobe Provincial Government via the Morobe Project Management Unit (MPMU). The beneficiaries of the SSG monies include:

- mine-affected wards or districts;
- provincial projects in the Wau Rural LLG, Wau/Bulolo Urban LLG and Watut Rural LLG; and
- mine-affected areas resulting from the mining operations.

In terms of accountability, the following applies:

- the State will only release the SSG after it has approved a list of projects and programs submitted by the Provincial Government;
- progress and completion reports must be provided every six months (s.4.9);
- audit report must be provided annually (s.4.9); and
- review of the SSG program will take place every 3 years or with the review of the MOA.

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5 F.O.B revenue has the same meaning as provided in Section 173(5) of the Mining Act 1992.
2.1.3. Project Equity

Section 41 (subsections 41.1 to 41.4) of the MOA contains the agreement relating to project equity. The MPG and landowners expressed a desire for a participating equity in the Hidden Valley Gold Project (s.41.1), and the mining company (HVJV) recognises such desire, and should circumstances arise to facilitate an equity interest, the company will consider such a desire (s.41.2).

The participating equity shall be negotiated based on normal commercial and legal conditions (s.41.3). The share of equity shall be limited to 5%.

2.1.4. Financial Assistance to Landowners

Under the MOA, the landowners are to receive financial assistance from the State, MPG and HVJV. The expected financial assistance to the landowners under the MOA by the three stakeholders is as follows:

- **State**: The State’s financial assistance under the MOA is contained in Section 12 of the MOA, which comprises two main components. The first is a one-off payment of K500,000.00 to NKW Holdings during the first quarter of 2006 subject to provision of: company financial reports; company business plan; background information on JV partners and acceptable references; agreed arrangements for prudential management of funds; and a fair NKW shareholding (s.12.1). The second financial assistance (s.12.2) is the payment of K500,000.00 over 5 years to NAKUWI Association, which is to be distributed as follows:
  - K100,000.00 within 6 months of the signing of the MOA (i.e. 5 August 2005 to 5 February 2006);
  - K100,000.00 upon commencement of the mine facilities construction;
  - K100,000.00 upon commencement of mine production; and
  - The remaining K200,000.00 is to be disbursed in installments of K100,000.00 for the next 2 years of mine production.

The payments to the NAKUWI Association is subject to the provision of budget expenditure for each K100,000 allotment as being spent on meeting the NAKUWI Association’s objectives.

- **Provincial Government (MPG)**: Section 19 of the MOA contains two forms of financial assistance to landowners by the MPG. First, the MPG is to give a one-off grant of K150,000.00 to NAKUWI Association to assist in establishing support facilities (s.19.1). The second component is a financial assistance of K500,000.00 to NKW Holdings Ltd to enable it to participate in commercial opportunities arising from the project. This funding was to be paid upon the signing of the MOA (i.e. in 2005).

- **The Company (HVJV)**: Under the MOA (s.29), financial assistance by the HVJV is of three forms. First, MCG (now HVJV) has provided funding for the establishment of the NAKUWI Association (landowner association). Second, the company provided funding for the entire MOA negotiation process. Finally, HVJV is to provide an annual grant of K100,000.00 for the continued maintenance of NAKUWI Association throughout the lifetime of the mine, subject to the existence of the Association as a coherent functioning body.

2.1.5. Future Generations Trust Fund

Under Clause 13 of the MOA, one of the benefits for the affected landowners is the establishment of a Trust Fund for future generations. The key aspects of the fund are as follows:
• **Establishment and purpose:** The fund is to be established by the State consistent with the Public Finance Management Act (PFMA) and it is to be known as NAKUWI Future Generations Trust. The purpose of the fund is to provide funding for the education of the future generations of the concerned landowners.

• **Trust Deeds:** The key aspects of the Trust Deeds are contained in Section 13.2, which captures the guidelines for trustees and accountability of the fund.

• **Trustees:** There are three trustees to the fund: Morobe Provincial Administrator, President of the Landowners Associations, and Morobe Provincial Treasurer.

• **Source of funding:** The Trust Fund will be funded by the royalties earmarked for Future Generations; that is, 2% of the 39% allotted to landowners and any other monies lawfully intended for the Fund (see Table 1.1 and Clause 3.2 (e) of the MOA).

• **Use of funds:** the funds are to be used after 5 years of the first payment of royalties to the state.

2.2 Employment and Training

2.2.1. **State Responsibility**

Under the MOA (Section 11), the State has a responsibility, through the Department of Labour and Industrial Relations (DLIR), to ensure that the HVJV and its contracted companies address employment and training needs arising from the Project. The company’s responsibilities are provided in the next subsection.

2.2.2. **Company Responsibility**

The Company’s responsibilities for employment and training are outlined in Clause 33 of the MOA. These include:

• ensure that the Employment and Training Plan (Annexure B of the MOA) is fully complied with by all parties;

• develop, organise and facilitate suitable training plans for its employees;

• comply with training requirements and implement the DLIR’s approved Training and Localisation Plan;

• provide preference for employment and training (as far as possible) in the following priority order:
  ➢ NAKUWI Landowners;
  ➢ people of Bulolo District;
  ➢ people of Morobe Province;
  ➢ people of PNG;
  ➢ non-citizens of PNG;

• provide an annual report for tabling at a review of:
  ➢ the progress in the compliance and implementation of training and localisation plan;
  ➢ the implementation of a career succession plan;

• consult with landowners to develop secondary and tertiary scholarship programs; and

• provide training for locally based workers (during the construction period).

2.3 Business Development and Income Creation

One of the perceived benefits from the mining project is business development and income creation for the landowners. The key aspects covered in the MOA include: business development plan; landowner businesses; supply and procurement; and agricultural activities. These are discussed in Sections 2.3.1 to 2.3.4.
2.3.1 Business Development Plan

Under the MOA, a Business Development Plan (BDP) was to be developed and implemented in order to develop business opportunities arising from the development of the Project. The key players in terms of the development and implementation of the BDP are the State and the mining company (HVJV).

The State’s responsibilities are stated in Section 9 of the MOA. These responsibilities are summarised as follows:

- via the Department of Trade and Industry (DTI), the State must ensure that the BDP is fully complied with and implemented;
- establish a committee, through DTI, to monitor the implementation of the BDP every six months. The committee was to be chaired by the DTI with membership comprising representatives (1 each) from:
  - Department of Mining;
  - Department of Planning;
  - Department of Treasury;
  - Morobe Provincial Government;
  - LLGs;
  - landowners;
  - HVJV; and
- via the DTI, the State must ensure that, as much as possible, the company (HVJV) provides businesses opportunities using the following order of preference:
  - first, to NKW Holdings Ltd (i.e. landowner company);
  - second, to businesses owned and operated by Bulolo District people;
  - third, to businesses owned and operated by Morobeans;
  - fourth, to businesses owned and operated in PNG;
  - finally, to international companies.

The responsibilities for HVJV for business development are stated in Section 34 of the MOA, which include:

- ensure that the BDP (approved by the DTI) is fully complied with and implemented;
- encourage the development of businesses with spin-off opportunities, and provide opportunities to businesses in the following order of preferences:
  - NKW Holdings (i.e. NAKUWI Landowners);
  - people of Bulolo District;
  - people of Morobe Province;
  - people of PNG;
- establish a Business Development Office (BDO), before commencement of production to oversee the implementation of BDP and supply goods and services in a cost-effective manner, with opportunities for local businesses (especially NKW Holdings Ltd) to participate;
- keep NAKUWI Landowners and their corporate entities informed in accordance with the company policies and procedures; and
- provide a six-monthly report on activities undertaken in the implementation of the BDP.

2.3.2 Landowner Businesses: NKW Holdings Ltd

The MOA (Clause 38) contains issues/agreements relating specifically to the landowner business, especially NKW Holdings Ltd, which was formed by NAKUWI Landowners with the assistance of HVJV. The key features/expectations of NKW Holdings Ltd are as follows:
NKW Holdings is to partake in business spin-offs created from the operation of the mine; the shares shall be fairly distributed among the Nauti, Kuembu and Winima clans and the shares will be non-transferable after issue (except where such a transfer would not affect this arrangement); the funding of the NKW Holdings Ltd (from the State, Provincial Government and HVJV) is subject to the Constitution of the NKW Holdings stipulating that the number of directors for the company shall not exceed six (6), of which three will be independent directors nominated by the State and/or MPG; and ensure that all money received from other stakeholders is accounted for in the agreed manner:

- for the State, in accordance with the Public Finance Management Act (PFMA) 1995;
- for the MPG, on a quarterly basis, in accordance with the PFMA 1995;
- for HVJV, by provision of compliant financial statements within 21 days of the end of each month;
- in the case of any entity incorporated under the Companies Act 1997, by the provision of audited accounts within 60 days of the end of each financial year.

### 2.3.3 Supply and Procurement

Supply and procurement involves the supply (or sourcing) of materials, equipment and services to HVJV by pre-qualified businesses in liaison with NKW Holdings Ltd. The key expectations of the MOA in relation to supply and procurement are as follows:

- the State, via DTI, must ensure that HVJV identifies and invites registration of businesses for supply and procurement, particularly those from Morobe Province (s.10.1);
- the State to ensure that HVJV implements the Procurement and Supply Plan in Annexure D of the MOA (s.10.2);
- where goods and services are procurable for the project through PNG sources, HVJV to ensure that the pre-qualified companies are given every opportunity to participate in the tendering process and to do a joint venture with NKW Holdings Ltd if the following tender conditions are met (s.35.2):
  - meet the specification of the invitation to tender;
  - competitive in cost with international services, taking account of all landed costs;
  - meeting the delivery requirements of the Project; and
- MCG will procure from PNG sources with preferences given in the following order:
  - NAKUWI Landowners;
  - people of Bulolo District;
  - people of Morobe Province;
  - people of PNG;
  - non-citizens of PNG.

### 2.3.4 Agricultural Activities

Engagement in agricultural activities is one way of income creation. Under the MOA (s.16), the MPG is tasked with the promotion of cultivation and to create marketing for commercial

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6 The clan/village “Kuembu” is also spelt “Kwembu” in other literature. For consistency, we use “Kuembu”, which is used in the 2005 MOA.

7 Prequalification and registration does not guarantee that a business will be invited to tender or be awarded any contracts (see s.10.1 and s.35.1 of the MOA)
agricultural produce in the mine-affected areas. The MPG agrees to provide advice in agriculture, agro business development, as may be required for the project in a timely manner. Moreover, the MPG agrees to provide a six-monthly report and return of:

- progress with advancement and of agricultural activities; and
- a plan to address advancement of agriculture development.

2.4 Physical and Social Infrastructure

2.4.1. Infrastructure Projects for Impacted Communities

The 2005 MOA is specific on what roles certain stakeholders of the MOA have agreed on to provide infrastructure projects for impacted communities, which comprise of (i) “immediate impacted area” (Wau Rural, Watut Rural and Wau-Bulolo Urban LLGs); and (ii) “impacted area” which include the immediate impacted area, as well as areas covered by Mumeng, Waria, and Buang Rural LLGs.

(a) State to provide Special Support Grant (SSG) to fund infrastructure projects (Clause 5)

For the impacted communities, the State undertook to provide funds through an annual Special Support Grant (SSG) from the commencement of the mine’s production for infrastructure projects identified under the Morobe Provincial Government’s Five Year plans (Clause 5.1).

The State undertook to allocate to the Provincial Government a SSG or any other equivalent grant (though not specified in the MOA) equivalent to 0.50% of the value of f.o.b. revenue for the sale of products from the Hidden Valley mine. The State was expected to provide the SSG or any other equivalent grant on an annual basis from the commencement of production and the grant calculated on the estimated f.o.b. revenue which is similar to that stated in Section 173(5) of the Mining Act 1992. The SSG from the annual f.o.b. revenue of mine products is required by the MOA to be adjusted yearly against actual revenue.

According to the 2005 MOA, each annual SSG appropriation is expected to be allocated by the Morobe Provincial Government and managed by the Morobe Provincial Management Unit (MPMU) for use on the mine-affected wards or districts or provincial projects in the Wau Rural LLG, Wau-Bulolo Urban LLG, Watut Rural LLG, and urban districts and mine-affected areas resulting from HVJV’s mining operations. Audit reports of the SSG funded infrastructure projects were expected to be due every six months, and the review of the SSG Program was expected to take place either three years after commencement of production at the mine, or with the review of the 2005 MOA.

(b) Morobe Provincial Government (Clause 18)

The Morobe Provincial Government undertook to co-fund roads and bridge maintenance as well as through the Morobe Project Management Unit (MPMU), to ensure proper execution and management of infrastructure projects, funded by SSGs, for the “impacted area”.

The Morobe Provincial Government undertook to establish the MPMU, comprising the Provincial Administrator/nominee, President of NAKUWI Association/nominee, CEO of HVJV/nominee, and a representative from the State. The MPMU was required to direct the management and accounting of funds spent on projects undertaken. The MPMU was to be separate from the normal provincial and district administrative and budgetary procedures for the development of infrastructure projects for the “impacted communities”.

(c) Hidden Valley Joint Venture (HVJV) or MCG

According to the 2005 MOA, the mining company, HVJV (known as MCG, the Morobe Consolidated Goldfields Ltd in the 2005 MOA) undertook to provide, both during the construction period and during the mine’s life, suitable funding as agreed to, during its annual budgeting cycle to contribute to fund physical and social infrastructure. This funding will be dependent on both impacts of mining and social responsibility as well as economic circumstances. The 2005 MOA identifies projects in important social sectors such as education, training, health and agriculture extension programs, provision of water tanks, and also to allocate funds for identified sustainable development programs and projects.

2.4.2. Tax Credit Scheme (TCS)

According to the 2005 MOA (Clause 6), the State through the Department of Planning and Rural Development (Now Department of National Planning and Monitoring) undertook to provide the TCS in accordance with the approved guidelines to the mining project as and when the HVJV (or MCG) is in a taxable position. The rate of 0.75% will apply to general TCS projects. Further, the State is expected to expend the supplementary 1.25% taxable income component of TCS to the maintenance of the Lae-Wau Highway.

2.5 Community Development

2.5.1. Family Development Program

(a) LLGs of “Immediate Impacted Areas”

Wau Rural LLG, Watut Rural LLG and Wau-Bulolo Urban LLG undertook in the 2005 MOA (Clause 25) to provide assistance to establish a Family Development Program (which was to commence when the mine started production) in the mine-affected areas to improve the aims and aspirations of family life, women and youth through life skills training programs, micro-credit programs, and agriculture, health and literacy programs.

(b) Hidden Valley Joint Venture (HVJV)

HVJV/MCG undertook in the 2005 MOA (Clause 30) to collaborate with the LLGs to provide technical assistance to establish the Family Development Program for the mine-affected areas to advance the aims and aspirations of families through various life skills programs, such as in micro-credit, health and literacy programs.

2.5.2. Community Sustainable Development Program

(a) LLGs of “Immediate Impacted Areas”

As per the terms of the 2005 MOA (Clause 26), the LLGs of the “immediate impacted areas”, Wau Rural, Watut Rural, and Wau-Bulolo Urban LLGs, agreed to assist with Sustainable Community Development Planning under the five-year rolling Development Plan for Bulolo District. The LLGs undertook to assist their Council Ward areas with identified projects, especially in the more impacted areas.

2.6 Stakeholder Cooperation and Law and Order

2.6.1. Stakeholder Cooperation

All the parties to the 2005 MOA agreed to cooperate with each other to ensure the effective implementation of the 2005 MOA as well as for the smooth operation of the Hidden Valley Gold Project.
(a) The State
The State (under Clause 15) undertook to work closely in consultation with the Landowners, LLGs, Morobe Provincial Government, and HVJV in the implementation of the provisions of the MOA.

(b) Morobe Provincial Government
The Morobe Provincial Government (under Clause 23) undertook to collaborate with the Project Landowners, the LLGs, the State and HVJV through the establishment of a provincial Division of Mines for the successful implementation of the 2005 MOA.

(c) LLGs of “Immediate Impacted LLGs”
Under Clause 27 of the MOA, the Wau Rural, Watut Rural, and Wau-Bulolo Urban LLGs agreed to work closely in consultation with the Hidden Valley Project Landowners, the State, Morobe Provincial Government, HVJV, the respective Wards and the provincial Division of Mines towards the implementation of the provisions of the MOA.

(d) Hidden Valley Joint Venture (HVJV)
Under Clause 36 of the MOA, HVJV undertook to work closely in consultation with the landowners, LLGs, Morobe Provincial Government, and the State in the implementation of the MOA.

(e) Landowners
The landowners (under Clause 39), undertook to: cooperate with and assist the State, Morobe Provincial Government, LLGs, and HVJV to ensure the smooth operation of the mining project; not to disrupt the operation of the mine in any way; and to refrain from damaging any buildings, or infrastructure installed by the State, Morobe Provincial Government, or HVJV.

2.6.2. Land Dispute Settlement

(a) Morobe Provincial Government
The Morobe Provincial Government (under Clause 20.1) agreed to provide training and materials for Land Mediators and their allowances to attend to land disputes in the mine area.

(b) Landowners
The landowners (under Clause 40.1) undertook to identify and provide land for agreed community infrastructure and services under the project implementation plan. This way, any dispute on the use of land for community projects could be addressed amicably.

(c) The State to Ensure Law and Order
The State (under Clause 14) through the Department of Police, undertook to monitor, maintain, and improve police effectiveness within the Bulolo District to improve the law and order situation.

2.6.3. Village Courts

(a) Morobe Provincial Government
The Morobe Provincial Government (under Clause 21) was expected to provide training and materials for Village Court Magistrates and their allowances to attend to disputes in the mine area.
3. OUTCOMES OF THE 2005 MOA

This section discusses the outcomes of the 2005 MOA. To achieve this, the expectations of the MOA, as provided in the preceding section (Section 2) are measured against the outcomes, based on information gathered during the field trip to Lae, Bulolo and Wau.

3.1 Financial Benefits

For each of the financial benefits listed in Subsections 3.1.1 to 3.1.5, we highlight the expectations and state the outcomes.

3.1.1 Royalties

According to information obtained from the HVJV (during the field trip), the payment of royalties commenced in October 2009. To date (i.e. payments to December 2013), a total of K57.53 million has been paid in royalties. In broad groupings, the following are amounts and shares (%) paid:

- Hidden Valley Landowners: K22.44 million (39%);
- Morobe Provincial Government: K17.7 million (30.8%);
- six Bulolo LLGs: K11.51 million (20%);
- Bulolo District JDP&BPC: K3.01 million (5.2%); and
- non-landowner communities: K2.88 million (5%).

Table 3.1 provides the details of the distribution of the royalties. Columns 1, 2 and 3 are taken from Table 2.1 (see Section 2). Column 4 lists the actual total amount of royalties (K’million) paid to the recipients from the commencement of the MOA (2005) to December 2013, according to data obtained from the HVJV (2014). Column 5 calculates the percentage of the actual royalties (stated in Column 4). Column 6 shows the difference in percentage between Column 5 and Column 3.

The objective of the figures in Column 6 is to show whether or not the actual shares (Column 5) are different from those under the MOA (Column 3). A positive difference indicates that the actual share is greater than those under the MOA while a negative difference shows the opposite (i.e. actual is less than proposed under the MOA). If the difference is zero, it indicates that the actual share is as per the one under the MOA.

Overall, the actual shares are consistent with the MOA given that the differences in Column 6 are zero (i.e. MOA intentions = actuals). The only discrepancy is the payment to the MPG and the Bulolo JDP&BPC. This is explained by the 2009 MOA between the MPG and the Bulolo JDP&BPC. That is, under a 2009 MOA between the two parties, 50% of the 36% (or 18%) paid to the MPG under the 2005 MOA would be paid to the Bulolo JDP&BPC. So between 2009 and December 2013, K3.01 million has been paid to the Bulolo JDP&BPC by the MPG. Given this payment, it can be seen that of the K24.17 million paid to the MPG’s 5-Year Development Plan, 73% has been paid to the MPG while 12% has been paid to the Bulolo JDP&BPC. The remaining 15% has been paid to the non-mining affected Rural LLGs of Buang, Mumeng and Waria.

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8 The agreement to share the royalties between the Morobe Provincial Government and the Bulolo JDP & BPC commenced in 2009 via an MOA. HVJV notes that the 2009 MOA between the Morobe Provincial Government and Bulolo District was not consistently honoured. As a consequence, from November 2012, HVJV pays Bulolo District Treasury direct, rather than via MPG (based on an agreement between the new Governor Kelly Naru and Bulolo MP, Sam Basil).
Table 3.1: Sharing arrangements for royalties: intentions versus outcomes (2005-2013)

<table>
<thead>
<tr>
<th>Recipients</th>
<th>Share (%) as per 2005 MOA</th>
<th>Equated to 100%</th>
<th>Amount paid (K’ million)</th>
<th>% of Total</th>
<th>(%) Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>MPG 5-Year PDP</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provincial Government</td>
<td>36</td>
<td>86</td>
<td>17.7</td>
<td>73</td>
<td>-12</td>
</tr>
<tr>
<td>Bulolo JDP&amp;BPC</td>
<td>0</td>
<td>0</td>
<td>3.01</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Mumeng Rural LLG</td>
<td>7</td>
<td>3</td>
<td>1.73</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Waria Rural LLG</td>
<td>5</td>
<td>2</td>
<td>1.15</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Buang Rural LLG</td>
<td>2</td>
<td>1</td>
<td>0.58</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td><strong>Immediate Impact Area LLGs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wau Rural LLG</td>
<td>5</td>
<td>36</td>
<td>2.88</td>
<td>36</td>
<td>0</td>
</tr>
<tr>
<td>Watut Rural LLG</td>
<td>5</td>
<td>36</td>
<td>2.88</td>
<td>36</td>
<td>0</td>
</tr>
<tr>
<td>Wau/Bulolo Urban LLG</td>
<td>4</td>
<td>29</td>
<td>2.3</td>
<td>29</td>
<td>0</td>
</tr>
<tr>
<td><strong>Affected Communities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Highway communities</td>
<td>0.5</td>
<td>20</td>
<td>0.29</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>River communities</td>
<td>0.5</td>
<td>20</td>
<td>0.29</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Subsidiary landowner communities</td>
<td>1.5</td>
<td>60</td>
<td>0.86</td>
<td>60</td>
<td>0</td>
</tr>
<tr>
<td><strong>Others</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Settler Communities</td>
<td>2</td>
<td>80</td>
<td>1.15</td>
<td>80</td>
<td>0</td>
</tr>
<tr>
<td>Wafi LOA</td>
<td>0.5</td>
<td>20</td>
<td>0.29</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td><strong>Landowners</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NAKUWI Association</td>
<td>2</td>
<td>5</td>
<td>1.15</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Future Generation Trust</td>
<td>2</td>
<td>5</td>
<td>1.15</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Payment to people^9:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nauti people</td>
<td>17.5</td>
<td>50</td>
<td>10.07</td>
<td>50</td>
<td>0</td>
</tr>
<tr>
<td>Kuembu people</td>
<td>8.75</td>
<td>25</td>
<td>5.03</td>
<td>25</td>
<td>0</td>
</tr>
<tr>
<td>Winima people</td>
<td>8.75</td>
<td>25</td>
<td>5.03</td>
<td>25</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td>100</td>
<td>57.54</td>
</tr>
</tbody>
</table>

Source: Calculations by authors based on 2005 MOA and HVJV statistics, 2014.

3.1.2 Special Support Grant (SSG)

Section 2.1.2 (above), stated that SSG is to be an annual grant from the National Government to the Provincial Government, which is to be paid from the commencement of production. The SSG is equivalent to 0.5% of the value of f.o.b revenue for the sale of productions from the mine project (MOA Clause 4.3).^10

Figure 3.1 shows the actual (2010 to 2013) and forecasted (2014 to 2018) payments of SSGs according to HVJV (2014). In terms of the actuals, the first payment was K1.75 million in 2010. The following year it was about K4 million, which was a growth of 128 percent. In the

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^9 The payment share to the people of the three clans was in two phases. What is presented in this table is the current arrangement which was applied from 2008 to now. Before that (i.e. 2006 and 2007), the breakup of the 35% paid to the three clans was as follows: 20% for Nauti and 7.5% each for Kuembu and Winima (2005 MOA).

^10 F.O.B revenue has the same meaning as provided in Section 173(5) of the Mining Act 1992.
third year (2012), the payment was about K3.7 million, a decline of 8%; however, the amount was still higher than the 2010 figure. In 2013, a total of K3.2 million was paid out as SSGs to the MPG. This amount is lower than the previous two years but still higher than the inaugural payment in 2010.

In terms of the forecasted payments, the company is expecting to pay, on average, K4.2 million per annum for the five years from 2014 to 2018, with a peak of K6.1 million in 2015 and a minimum of K4.2 million in 2017.

Since SSGs is meant for infrastructure development, its usage is discussed in Section 3.4 of this report — the section on physical and social infrastructure.

**Figure 3.1: Actual and forecasted payments of SSGs**

![Chart showing actual and forecasted payments of SSGs]

**Source:** HVJV (2014)

### 3.1.3 Project Equity

The intentions of the landowners and MPG for equity participation are discussed in Section 2.1.3 above. This is regarding Clause 41 of the MOA. Given an interest from these two parties, the equity shall be negotiated based on normal commercial and legal terms/conditions, with the equity interest limited to 5 percent.

At the time of this study, the research team was advised by the HVJV team that in practice, there is no equity participation by the landowners and MPG. Instead, in lieu of equity participation, there is a Hidden Valley Benefit Sharing Agreement (HVBSA), which is a guaranteed income for sustainable development initiatives. Therefore, we present the statistics for the HVBSA as provided by HVJV (2014).

Figure 3.2 shows the amount of monies paid by HVJV per annum, both actual (2010 to 2013) as well as forecasted (2014 to 2018) under the HVBSA. In terms of the actuals, it can be seen that between 2010 and 2013, a total of K4.7 million has been paid out, at an annual average of K1.2 million.
In terms of the forecasted payments, under the HVBSA, for the five years from 2014 to 2018, a total of K8.8 million is expected to be paid. This is an average of K1.8 million per annum, with the highest payment of K2 million expected in 2015.

Figure 3.2: Actual and forecasted payments under the HVBSA

Source: HVJV (2014)

The breakdown of the HVBSA for each year is as follows: 50% is for projects; 30% for Future Generation Trust Fund (FGTF); and 20% as administration costs. Table 3.2 shows the actual figures of the breakdown for 2010 to 2012.

Table 3.2: Components of the HVBSA payments (K’million), 2010-2013

<table>
<thead>
<tr>
<th>Allocation</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projects (50%)</td>
<td>0.84</td>
<td>0.79</td>
<td>0.70</td>
<td>2.33</td>
</tr>
<tr>
<td>Future Generations (30%)</td>
<td>0.50</td>
<td>0.48</td>
<td>0.42</td>
<td>1.40</td>
</tr>
<tr>
<td>Administration (20%)</td>
<td>0.34</td>
<td>0.32</td>
<td>0.28</td>
<td>0.93</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1.68</strong></td>
<td><strong>1.58</strong></td>
<td><strong>1.40</strong></td>
<td><strong>4.66</strong></td>
</tr>
</tbody>
</table>

Source: HVJV, 2014

As given by the sharing formula, projects get the biggest slice with 50% followed by FGTF (30%) and the 20% administration cost. In terms of the trends, it can be seen that the amounts had decreased over the 3-year period.

The issue arising from this actual arrangement (i.e. HVBSA) instead of actual equity participation (i.e. 5% equity in the project) as proposed under the MOA, is whether or not the benefits under the equity would have been better? This requires a comparison of the HVBSA
with what would have been the benefits if actual equity was taken. The TOR does not allow us to progress on this question. It is suffice to mention the ownership structure of the Project. That is, currently the Hidden Valley Project is owned equally (i.e. 50% each) by Harmony Gold Mining Company Limited and Newcrest Mining Limited. This implies that the State has not taken the option to acquire shares in the project, hence the HVBSA arrangement.

### 3.1.4 Financial Assistance to Landowners

Table 3.3 shows the different types of financial assistance to be paid to the landowners under the 2005 MOA (Clause 29). Column 1 lists the providers of financial assistance and the names of the different types of assistance. Column 2 lists the amount of funding for each item (in Column 1), where applicable. In Column 3, the actual amounts and/or comments are provided. As shown in Table 3.3, under Clause 29 of the MOA, there were three sources of funds for financial assistance to landowners: State, MPG and HVJV. The State to provide a total of K1 million, paid in installments as stated in Table 3.3. The MPG to pay a total of K650,000, with 77% (K500,000) to be paid to NKW Holdings Ltd and 23% (K150,000) to NAKUWI Association. The company (HVJV), to provide funding for the establishment of NAKUWI Association and its annual maintenance; and funding for the MOA negotiation process.

**Table 3.3: Financial assistance to landowners**

<table>
<thead>
<tr>
<th>Stakeholder/assistance type</th>
<th>2005 MOA (Kina)</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First component (one-off payment)</td>
<td>500,000</td>
<td>No information was available</td>
</tr>
<tr>
<td>Second component (K500,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Within 6 months of MOA signing</td>
<td>100,000</td>
<td>No information was available</td>
</tr>
<tr>
<td>Upon commencement of construction</td>
<td>100,000</td>
<td>No information was available</td>
</tr>
<tr>
<td>Upon commencement of production</td>
<td>100,000</td>
<td>No information was available</td>
</tr>
<tr>
<td>2 installments of K100,000, final 2 years</td>
<td>200,000</td>
<td>No information was available</td>
</tr>
<tr>
<td><strong>Provincial Government (MPG)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>One-off grant NAKUWI Association</td>
<td>150,000</td>
<td>No information was available</td>
</tr>
<tr>
<td>Grant to NKW Holdings Ltd</td>
<td>500,000</td>
<td>No information was available</td>
</tr>
<tr>
<td><strong>Company (HVJV)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund NAKUWI Association start-up</td>
<td>No figures</td>
<td>Association established on 4 Nov. 1999</td>
</tr>
<tr>
<td>Fund the MOA negotiation process</td>
<td>No figures</td>
<td>MOA completed in 2005</td>
</tr>
<tr>
<td>Annual grant for NAKUWI Association</td>
<td>100,000</td>
<td>K163,800 per year (p.56)</td>
</tr>
</tbody>
</table>

**Source:** HVJV, 2014 (for Kina amounts)

In terms of the outcomes, the State and MPG funding components could not be confirmed due to lack of information. However, for HVJV, the funding status is evidenced by the incorporation of the NAKUWI Association in 1999 (4 November) and the signing of the MOA in 2005, implying that the funding was provided. In terms of the annual grant, information provided by HVJV showed that about K163,800 is paid annually to NAKUWI Association, which is 63.8% higher than the K100,000 proposed under the MOA.

Besides those formally stated in the MOA as shown in Table 3.3, the company has also provided financial assistance through community donations since August 2009 (HVJV 2014).
These monies were expended for various community projects such as churches, haus krais, transportation, accommodation, sports, and police. In terms of the trend, Figure 3.3 shows the value of community donations (Kina) from 2006 to 2012. It can be seen that during the seven years, the company has donated a total of K2.1 million, an average of about K300,000 per annum. The highest amount expended was K717,000 in 2008.

**Figure 3.3: Value of community donations, 2006 to 2012 (Kina)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (K)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>220,000</td>
</tr>
<tr>
<td>2007</td>
<td>304,000</td>
</tr>
<tr>
<td>2008</td>
<td>717,000</td>
</tr>
<tr>
<td>2009</td>
<td>258,000</td>
</tr>
<tr>
<td>2010</td>
<td>205,000</td>
</tr>
<tr>
<td>2011</td>
<td>58,000</td>
</tr>
<tr>
<td>2012</td>
<td>200,000</td>
</tr>
</tbody>
</table>

**Source:** HVJV, 2014

Table 3.4 shows the community donations by category; that is, how the K2.1 million has been distributed. The highest recipients are the communities, which received about 52.4% of the total (or K1.1 million) while the lowest amount was for emergency services — K40,000; which represents just 1.9% of total donations.

**Table 3.4: Itemised community donations by HVJV, 2006-2012**

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount (K)</th>
<th>% share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associations/Groups</td>
<td>220,000</td>
<td>10.5</td>
</tr>
<tr>
<td>Communities</td>
<td>1,100,000</td>
<td>52.4</td>
</tr>
<tr>
<td>Education/Training</td>
<td>130,000</td>
<td>6.2</td>
</tr>
<tr>
<td>Emergency Services</td>
<td>40,000</td>
<td>1.9</td>
</tr>
<tr>
<td>Government</td>
<td>220,000</td>
<td>10.5</td>
</tr>
<tr>
<td>Health</td>
<td>180,000</td>
<td>8.6</td>
</tr>
<tr>
<td>Law and Order</td>
<td>100,000</td>
<td>4.8</td>
</tr>
<tr>
<td>Other</td>
<td>110,000</td>
<td>5.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,100,000</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

**Source:** HVJV, 2014

The above analysis concludes that HVJV has given more financial assistance than required under Clause 29 of the MOA. This is a positive contribution by the company, and is consistent with expectations under Corporate Social Responsibility (CSR).

---

11 “Haus Krai” is Tok Pisin for “house of mourning”; a place where people gather to mourn a death and related activities. In this context, the cost would be on any activities related to the Haus Krai and funeral expenses such as, food, transportation, and so on.
3.1.5 Future Generations Trust Fund

The trust fund for future generations is in Clause 13 of the MOA and is summarised in Section 2.1.5 in this report. That is, a Future Generations Trust Fund (FGTF) shall be set up for the future generations of the NAKUWI landowners. The MOA states that the source of funding for the trust account is from: (1) royalties (2% of total); and (2) any other monies legally intended for the Fund.

In terms of the operation of the Fund, a HVJV representative advised that the MPG is responsible for the establishment and management of the FGTF; however, to date it has not been established. As a result, HVJV continues to hold the money until the Trust is established at which point it will be paid.

Figure 3.4 shows the payments earmarked for the FGTF from 2010 to 2012 (according to data from HVJV), which HVJV is holding in Trust. In 2010, K300,000 was paid into the Fund. Following that, amounts of K500,000 and K400,000 were paid for the next two years, respectively.

Figure 3.4: Future generations trust fund payments, 2010-2012 (kina)

![Bar chart showing payments from 2010 to 2012]

Source: HVJV, 2014

In terms of usage, HVJV advised that funds have not yet been used for education. However, until the MPG sorts the establishment of the Trust in order for the funds to be used, HVJV funds student sponsorship separately.

3.2 Employment and Training

As stated in Section 2.2 above, under the 2005 MOA, the State, Company (HVJV), and contractors were expected to adequately address employment and training needs arising from the mine project. The following discussion states the intentions based on the MOA (i.e. those from Section 2.2. above) and the actual situation so far.
3.2.1 Employment

According to information from HVJV (2014), at the end of December 2012, total employment related to the mine’s activities was 2,896. In this subsection, we discuss two aspects of employment: (1) the employment numbers in terms of the five worker tiers identified in Section 2.2; and (2) national employees in supervisory positions.

**Employment by tiers of workers**

The 2,896 employees can be categorised into two categories: (1) those directly employed by the mine (HVJV); and (2) those employed by contractors to the mine. For both categories, the workers are identified according to the five tiers (T) and order of preferences, consistent with the expectations of the MOA (see Section 2.2.2 above):

- T1: NAKUWI landowners;
- T2: people of Bulolo District;
- T3: people of Morobe Province;
- T4: people of PNG; and
- T5: non-citizens of PNG.

In terms of employment in the mining company, Figure 3.5 shows the number of people employed by HVJV by tier group. The ranking of the tiers in terms of numbers (highest to lowest) is as follows:

- T4: 478 employees (41% of total);
- T2: 233 employees (20%);
- T1: 222 employees (19%); and
- T3 and T5, each with 117 employees (or 10% each).

Comparing the actual ranking of employment by tiers to the preferred order of employment in the MOA (see Section 2.2.2), the notable difference is that T1 (NAKUWI landowners) is ranked in third place instead of first place and T4 (PNG) is ranked first, instead of fourth. T3, which represents the people of Bulolo District, maintains its ranking at second place. Finally, given that T3 and T5 are equally ranked at fourth place, we can infer that employment of non-citizens (T5) is consistent with the MOA (lowest rank), while the ranking of the people of Morobe (T3) is lower than under the MOA expectations/intentions.

Having discussed the discrepancies in the ranking between the MOA expectations and the actual situation, it is important to mention two points. First, under the MOA, the preference ordering is subject to the condition of “as far as is reasonably possible”, which implies that the hiring of workers is subject to the supply and demand for different skills required in the labour market. This would have affected recruitment. For example, a company representative stated that HVJV has exceeded the T1 and T2 employment targets set in the MOA, hence the company is restricted by the pool of skilled T1 and T2 workers. However, the mining project continues to identify and train T1 and T2 internal and external candidates to fill positions. HVJV’s overall goal is to have a majority local workforce but there are some difficulties finding the right skills locally.

The other point to note is that despite the discrepancy in the preference ordering (as stated above), employment is provided for all tiers of people under the MOA, which is a positive outcome.
Figure 3.5: Employees of HVJV by tier group

In terms of employment for contractors, figures by HVJV indicate that a total of 1,729 people are employed by contractors. Figure 3.6 presents a pie chart of the percentage share for each of the five tiers, as per the MOA. The ranking of the tiers (highest to lowest) is as follows:

- T4: 50% (or 865);
- T3: 18% (or 311);
- T2: 17% (or 294);
- T5: 8% (or 138); and
- T1: 7% (or 121).

As discussed, for employees of HVJV, we compare the actual versus the intentions of the MOA in terms of the rankings. First, it can be seen that T1 is ranked last, which implies that most employees of contractors are not from the NAKUWI landowners. Second, T4 is ranked first, as was the case with employees of HVJV. This implies that 50% of the workers for the contractors are recruited from other parts of PNG (i.e. outside Morobe Province). The tiers T2 and T3 swap in rankings and finally T5 is ranked 4th which is one place above its expected rank under the MOA.

The implications of the comparison of the rankings suggest that the expectations of the MOA in terms of preferences are not strictly adhered to. For those contractors operating in partnership with NKW Holdings, the onus is on NKW Holdings to ensure that, in their joint-venture/partnership agreements, more locals are employed or provided with on-the-job training to take up employment.

Source: HVJV, 2014 (p.61)
Figure 3.6: Shares of employees (%) for contractors

Source: HVJV, 2014 (p.61)

National employees in supervisory positions

According to data from HVJV, a total of 209 employees are in supervisory positions; that is, about 7% of the 2,896 employees. Figure 3.7 shows the different types of supervisory positions and the percentage share of the 209 supervisory positions. The figure shows that the biggest group is those employed as “supervisors”, which make up 43% (or 90 employees) of those in supervisory positions. At the other end, the lowest number is those employed as Managers, where only three persons are in supervisory positions (or 1% of total). The rest of the positions and percentage shares include: coordinator (19%); foreman (19%); leading hand (13%); and superintendent (5%).

Figure 3.7: Number of training events by tier group, 2005 to 2012

Source: HVJV, 2014 (p.64)
Of particular interest for this study is the share of training events for the different tier groups. Figure 3.9 shows the breakdown of the 49,371 training events that occurred between 2005 and 2012. From the figure, it can be seen that out of the total, 41% (or 20,212 events) are for the T4 group. This is followed by the T1 group, which accounts for 22% (or 11,065 events) of the total events. The next two groups are T2 and T3, which account for 15% (or 7,580 events) and 11% (or 5496 events), respectively. T5 has the lowest number of training events, making only 10% (or 4,998 events) of the total training events. With regards to the ranking of the number of training events by each tier group, it can be seen that only the fifth tier, T5, maintains its ranking from that expected under the MOA. The others are not consistent with the expectations. In particular, T4, which is expected to be fourth, is first, which is a big difference. The training for landowners is only 22% of the total, which may be of concern.
3.3 Business Development and Income Creation

In this section, we highlight the actual outcomes of issues relating to business development and income creation against the expectations, which are derived from Section 2.3 above.

3.3.1 Business Development Plan

Table 3.5 presents the expectations and outcomes of the development of a Business Development Plan (BDP). Column 1 presents the expectations and stakeholder responsible (under the 2005 Agreement) while Column 2 presents the outcomes or status of the expectations at the time of writing. There are two main stakeholders in the development of the BDP: the State through DTI and the company (HVJV).

Table 3.5: Roles relating to business development: expectations versus outcomes

<table>
<thead>
<tr>
<th>Stakeholder and role</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State:</strong></td>
<td></td>
</tr>
<tr>
<td>Via DTI, ensure BDP is complied with.</td>
<td>Information was not available</td>
</tr>
<tr>
<td>Establish Committee for BDP implementation.</td>
<td>Information was not available</td>
</tr>
<tr>
<td>Via DTI, ensure preference order is followed.</td>
<td>Information was not available</td>
</tr>
<tr>
<td><strong>Company (HVJV)</strong></td>
<td></td>
</tr>
<tr>
<td>Ensure BDP is implemented.</td>
<td>Implemented</td>
</tr>
<tr>
<td>Encourage development of business spin-offs.</td>
<td>Implemented</td>
</tr>
<tr>
<td>Implement preference order.</td>
<td>Implemented</td>
</tr>
<tr>
<td>Establish Business Development Office (BDO).</td>
<td>Implemented</td>
</tr>
<tr>
<td>Keep NAKUWI Landowners informed.</td>
<td>Implemented</td>
</tr>
<tr>
<td>Provide 6-monthly report of BDP implementation.</td>
<td>Implemented</td>
</tr>
</tbody>
</table>

Source: HVJV, 2014

At the time of writing, the authors were informed by HVJV that its compliance with the BDP has been fulfilled. Some of the areas were successfully implemented than others. That is one of the main focus areas of the MOA review, on at present. The question is how to improve the implementation of the MOA in this area. Unfortunately, confirming the State’s compliance remains problematic.

3.3.2 Landowner Businesses

As stated in Section 2.3.2 above (and Clause 38 of the MOA), NKW Holdings Ltd is the local landowner company which represents the three villages who own the land on which the mining project is: Nauti, Kuembu and Winima. According to information from HVJV, the landowner company is involved in a number of key mine support contracts, which include:

- catering and cleaning;
- mining construction support;
- freight transport;
- bus service;
- labour hire;
- light vehicle hire;
- construction equipment hire;
- rubbish collection/recycling;
- rock crushing/screening; and
- re-vegetation.
Table 3.6 lists the expectations of the MOA (from Section 2.3.2 above) and outcomes relating to the landowner business.

Table 3.6: Roles relating to landowner business: expectations versus outcomes

<table>
<thead>
<tr>
<th>Stakeholder and role</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ Partake in business spin-offs.</td>
<td>➢ Yes, 10 business activities.</td>
</tr>
<tr>
<td>➢ Fair distribution of shares (NKW).</td>
<td>➢ Information not available.</td>
</tr>
<tr>
<td>➢ Ensure maximum of 6 directors, with 3</td>
<td>➢ Yes, on 6 as per IPA data, but 3 independent directors, not obvious.</td>
</tr>
<tr>
<td>independent directors.</td>
<td></td>
</tr>
<tr>
<td>➢ Accounting of stakeholder funds:</td>
<td></td>
</tr>
<tr>
<td>- HVJV: Provide monthly compliant financial</td>
<td>➢ Information not available.</td>
</tr>
<tr>
<td>statements.</td>
<td></td>
</tr>
<tr>
<td>- Others: provide audited accounts within 60</td>
<td>➢ Information not available.</td>
</tr>
<tr>
<td>days of year’s end.</td>
<td></td>
</tr>
</tbody>
</table>

Source: HVJV, 2014

The company has about 300 (±) employees (HVJV, 2014). Figure 3.10 shows the value of contracts for NKW and its joint ventures. From about K50 million in 2009, the value of contracts had increased to about K152 million in 2012, which is a growth of about 205 percent. The total value of contracts for the four-year period is about K421 million.

Figure 3.10: Value of contracts for NKW (K'million), 2009 to 2012

Source: HVJV, 2014

According to HVJV, NKW Holdings has been a successful company; however, there are certain constraints, which impede the operations and/or further success of the company. These include:

- capacity issues;
• lack of good governance around investment companies (KIL, NIL and WIL) that own shares in NKW Holdings;
• lack of transparency in the appointment of directors of the investment companies; and
• issues with NKW Holdings and stakeholder/shareholder communication.

The above issues are the current focus of the MOA review. Given these issues, HVJV supports a comprehensive review of the business development aspects of the MOA, which includes:
• independent audit of the operations of NKW Holdings and the three investment companies, NIL, KIL and WIL; and
• completion of shareholder structure work with NIL, KIL and WIL so they are truly landowner representative investment companies.

### 3.3.3 Supply and Procurement

The expectations under the MOA for supply and procurement were presented in Section 2.2.3 above and Clause 35 of the MOA. In this Section, we present the total value of HVJV supply and procurement for 2008 to 2012 by source of goods and services. Under the MOA, it was expected that the sourcing of procurement was to be in the following preference order:
• NAKUWI landowners;
• people of Bulolo District;
• people of Morobe Province;
• people of PNG; and
• non-citizens of PNG.

Figure 3.11 shows the percentage of the five supply sources (as per 2005 MOA) for the HVJV supply and procurement (HVJV 2014). From 2008 to 2012, a total K3,969 million (or approximately K4 billion) has been spent by HVJV on supply and procurement. Of this, almost 50% (or K2 billion) was spent on overseas sources. The second main source of supply and procurement was Morobe Province, accounting for 33% (or K1.3 billion) of the total value of supply and procurement. Next is the NKW landowners, who procured a total value of K426.1 million or 11% of total. The last two sources, PNG and Bulolo District, respectively, make up 6% (or K254.6 million) and 0.3% (or K12 million) of HVJV’s supply and procurement.

**Figure 3.11: Share (%) of HVJV supply and procurement, 2008 to 2012**

Source: HVJV, 2014
Relating the actual ranking of the sources to the expected ranking under the MOA, the following can be observed:

- PNG maintained its fourth placing in the actual outcomes ranking from that of the expected one under the MOA;
- overseas sources are the biggest winners going from last place in the MOA to first place under the actual outcomes;
- Bulolo District (i.e. excluding NKW share) appears to be the “biggest loser” in terms of the ranking by falling from second place under the MOA expectations to the last place (i.e. fifth) under the actual outcomes. However, the District inclusive of the NKW share would be third, hence not too bad;\(^\text{12}\)
- Morobe Province improves from third place (MOA expectation) to second place under actual outcome; and
- “NKW landowners” falls in ranking from first place to third place.

These results, relating to the discrepancy in ranking between the MOA expectations and the actual outcomes, suggest that the preference ordering has not been strictly adhered to, in terms of the value of supply and procurement. This could be due to the nature of goods and services required by the mine project, where most of the capital goods/equipment are not available within PNG and had to be sourced from overseas. That is, mining projects are largely capital intensive and require large machinery and equipment for construction and production which are usually sourced from overseas.

Within PNG, the biggest recipient of supply and procurement contracts is Morobe Province. Given that Bulolo District is ranked last, there is a concern that other parts of the Province is benefiting at the expense of the Bulolo District. Finally, although the landowners are ranked third in the actual outcomes, they are getting a good return, given that the K426 million value of supply and procurement is in addition to royalty receipts and compensation payments. The question is whether or not the landowner company (NKW Holdings Ltd) is translating the monetary gains into tangible development for the landowners on the ground.

### 3.3.4 Agriculture Activities

As mentioned earlier in Section 2.3.4 and stated in Clause 16 of the MOA, the expectations in terms of agriculture mainly relate to the role of the Morobe Provincial Government. Table 3.7 lists the expectations and outcomes of the role of MPG in agriculture development.

<table>
<thead>
<tr>
<th>MPG role under MOA</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ Promote cultivation.</td>
<td>➢ Direct information not available.</td>
</tr>
<tr>
<td>➢ Create market for commercial agriculture produce.</td>
<td>➢ Direct information not available.</td>
</tr>
<tr>
<td>➢ Provide agriculture business advice.</td>
<td>➢ Direct information not available.</td>
</tr>
<tr>
<td>➢ Provide 6-monthly report on:</td>
<td></td>
</tr>
<tr>
<td>• Progress of agricultural activities.</td>
<td></td>
</tr>
<tr>
<td>• Plan to advance agriculture development.</td>
<td></td>
</tr>
</tbody>
</table>

Source: HVJV, 2014

\(^{12}\) HVJV also made the point that the Joint Ventures (JV) partners of NKW are also part of Bulolo and that some of the companies such as PNG Forest Products (located in Bulolo) made significant contribution to construction of the mine but perhaps they were counted under Morobe, rather than Bulolo. The researchers used the numbers and distributions provided by HVJV. These are presented in Figure 3.11.
The absence of data has restricted discussions on agricultural activities, as depicted in Table 3.7. However, from general observation on the fieldwork by the researchers, it appears that there is limited agricultural development in the area.

3.4 Physical and Social Infrastructure

The maintenance of existing physical and social infrastructure and the building of new ones is a key component of the commitments of the 2005 MOA. Given the enclave nature of a mining project, it is important that proceeds from such mining activities are invested in enhancing physical and social infrastructure. Such investments will bring about tangible development and improvement of the welfare of those affected by mining activities. Moreover, such investments also add to the capital stock of the district and the national economy for sustained future economic growth and welfare enhancement. The following section discusses the physical and social infrastructure projects delivered by various stakeholders, as per their undertakings in the 2005 MOA.

3.4.1 Infrastructure Projects for Impacted Communities

(a) State-funded infrastructure projects

The State is expected to provide an annual Special Support Grant (SSG) to the mine impacted areas and Bulolo District through the provincial government for infrastructure development. The SSG or its equivalent was to be provided by the State from the commencement of mine production at the Hidden Valley Gold Project as stipulated by the 2005 MOA. The State did not pay the SSG from 2010 and 2012, until in the First Quarter of 2013 when it paid a lump sum of K11.7million for SSGs accumulated for that same period for various infrastructure projects in Bulolo District and the areas impacted by the Hidden Valley Gold Project. Table 3.8 shows the projects or items of expenditure which were identified and approved by the Morobe Project Management Unit (MPMU) to be funded by the K11.7million SSG.

Table 3.8: SSG-funded projects from 2010-2012

<table>
<thead>
<tr>
<th>Name of project</th>
<th>Amount</th>
<th>Status of Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>One vehicle each for Wau Police, Bulolo Mobile Squad Police, and MPMU.</td>
<td>K1million</td>
<td>Three vehicles purchased and delivered in the First Quarter of 2013.</td>
</tr>
<tr>
<td>Wau town road sealing.</td>
<td>K2million</td>
<td>Hasn’t commenced.</td>
</tr>
<tr>
<td>Bulolo town road sealing</td>
<td>K2million</td>
<td>Hasn’t commenced.</td>
</tr>
<tr>
<td>Installation of Kuembu to Winima electricity supply and upgrade of road projects.</td>
<td>K1.5million</td>
<td>Hasn’t commenced.</td>
</tr>
<tr>
<td>Installation of Nauti electricity and upgrade of road projects.</td>
<td>K1.5million</td>
<td>Hasn’t commenced.</td>
</tr>
<tr>
<td>Bulolo District hospital.</td>
<td>K3million</td>
<td>Hasn’t commenced.</td>
</tr>
<tr>
<td>Bulolo hospital (new site).</td>
<td>K0.7million</td>
<td>Hasn’t commenced.</td>
</tr>
<tr>
<td>Police housing.</td>
<td></td>
<td>Hasn’t commenced.</td>
</tr>
</tbody>
</table>

Source: Various (including Media and HVJV (2014))
Contracts for the above projects were awarded and advances were made, but the projects seem to have made very little progress resulting in high level of stakeholder dissatisfaction. More specifically, the State, through the national Department of Planning and Monitoring, allocated K14 million in 2011 to fund the Kumalu River bypass along the Lae-Bulolo Highway. Although separate from its 2005 MOA commitment, this particular road infrastructure project was an important project funded by the State due to the importance of the Lae-Bulolo Highway to the Hidden Valley mining project, as well as the welfare of the people of Bulolo District.

(b) Morobe Provincial Government-funded infrastructure projects

The SSGs from the State, which are managed by the Morobe Provincial Government through the Morobe Project Management Unit (MPMU), is the main mechanism for contribution by the provincial government, as part of its commitment to improve road and bridge maintenance projects in the Bulolo District. According to the 2005 MOA, the Morobe Provincial Government was expected to co-fund road and bridge maintenance in mining impact areas, as well as in Bulolo District. The projects in Table 3.8 are the infrastructure projects executed by the provincial government through the MPMU using the 2010–2012 SSG funds.

(c) HVJV-funded infrastructure projects

Between 2010 and 2012, HVJV has invested over K20 million in community and regional developments. These include social and infrastructure items such as:

- health;
- water supply and sanitation;
- education;
- agriculture/aquaculture;
- community/infrastructure;
- community and LLG capacity building programs; and
- Lae to Bulolo Highway maintenance.

Besides the above, the company also contributed towards the promotion of “safe driving” awareness initiatives, and contributed to the maintenance of the highway and feeder roads. Moreover, the company, through the State, has paid about K12 million in SSG funds from 2010 to 2012 for physical infrastructure projects in the mining impacted areas and other parts of Bulolo District as shown in Table 3.8 above.

3.4.2 Tax Credit Scheme (TCS)

The Tax Credit Scheme (TCS) in relation to the Hidden Valley Gold Project has not commenced because the mining company, HVJV, is not yet in a taxable position.

3.5 Community Development

The LLGs of the immediate impacted areas and HVJV undertook in the 2005 MOA to provide assistance to the surrounding communities of the mine to help provide community development initiatives to improve their welfare. The following highlights these initiatives under the family development program and the community sustainable development program.

3.5.1 Family development program

In the 2005 MOA, the LLGs of the immediate impact areas and HVJV undertook to provide assistance to improve the livelihood of families in the immediate impacted areas.
(a) LLGs of “immediate impact areas”
As per the 2005 MOA, the LLGs of Wau Rural, Watut Rural, and Wau-Bulolo Urban are expected to assist with the establishment of a Family Development Program for the mine-affected areas to advance the aims and aspirations of families through various skills in micro-credit, health, and literacy programs. With the assistance of and in collaboration with HVJV through the company’s 2010 Sustainable Development Plan, these LLGs have delivered various projects in micro-credit, adult literacy, as well as the improvement of health, such as family planning and setting up of village birth attendants. However, for some of the projects, most notably the village birth attendants, there needs to be a more sustainable approach in terms of providing for transfer of knowledge, and provision of better incentives and facilities, and better engagement, coordination, and partnership with various key project stakeholders.

However, capacity, which is a key issue in setting up the Family Development plans, and projects (which are enacted usually on ad hoc basis) to lift the aspirations and aims of families, seems to have not progressed well.

(b) Hidden Valley Joint Venture (HVJV) or MCG
HVJV, through its 2010 Sustainable Development Plan, and in collaboration with LLGs, has tried to assist the families of the immediate impacted areas of the mine to establish a Family Development Plan. However, capacity issues within LLGs seem to be the main hindrance to progress this important aspect of the 2005 MOA. Better coordination and partnership between these key stakeholders seem to be the key in unlocking and addressing capacity issues within the LLGs in order for the LLGs to assist the families.

3.5.2. Community sustainable development program

(a) LLGs of the “immediate impacted areas”
The LLGs of the immediate impacted areas have rolled out several key community development projects in partnership with relevant stakeholders, including the Bulolo District Five Year rolling development plan, as well as part of their LLG development plans. Such development projects include water supply projects, agriculture/aquaculture projects, adult literacy projects, micro-credit projects, and health and sanitation projects.

(b) HVJV
The HVJV initiated its community sustainable development plan in 2010, which is aligned with communities, wards, LLGs and District priorities, where plans exist. Besides this, the HVJV has invested K25 million in community and regional development since 2010 for projects in:

- health (e.g. help establish village birth attendants, and maintain and construct health facilities);
- water supply and sanitation (e.g. provision of water tanks and water supply projects);
- education (e.g. maintenance and construction of school facilities, financial assistance for children’s school fees and assist in adult literacy projects, and setting up of future generations trust fund);
- agriculture/aquaculture (e.g. provide cash crop seedlings and establish fish ponds);
- community infrastructure projects (e.g. build footbridges and community halls); and
- community and LLG capacity building programs (e.g. community training in agriculture).
3.6 Stakeholder Cooperation and Law and Order

Stakeholder cooperation and the maintenance of law and order in Bulolo District are important aspects and undertakings by parties to the 2005 MOA. This is to ensure that the Hidden Valley Mining project runs smoothly and delivers benefits for the communities of the mining impact areas, the district, province, the State, and the owners/shareholders of the mining company. So far, cooperation among all stakeholders has been good, which has resulted in the continuous operation of the mine. Ethnic tensions among the people of Bulolo District as well as with the settlers seem to be the key issue that needs immediate and practical response to put to bed such issues for the good of all involved including the welfare of the people, and to ensure no disruption is caused to the mining project when such tensions escalate.

3.6.1. Stakeholder Cooperation

(a) The State

The State continues to maintain a cordial relationship with the other parties of the 2005 MOA, including visits to the mine, and the Bulolo District by the State Minister for Mining, as well as meeting its 2005 MOA undertakings, including the SSG payments. The State has also addressed the ethnic tensions in Bulolo District by providing extra police personnel (especially the mobile squad). Without such intervention by the State to maintain peace and order in the district, the mining operation could be disrupted and the tensions may escalate into major conflicts involving many ethnic groups. The State has done this especially through the provision of police to quell recent ethnic tensions in the Bulolo District and allowing the use of State land to temporarily accommodate settlers who have been displaced as a result of confrontations over landownership issues in the recent past. However, long-term policing mechanisms should be explored to address and maintain law and order in the district in a sustainable manner.

(b) Morobe Provincial Government

The provincial government has also supported the district and State authorities in maintaining law and order in the district, including through provision of police vehicles through the MPMU for use by the Wau and Bulolo Police, as well as facilitating the 2005 MOA review. Moreover, the District Administrator also acts as a mediator in different instances, where there is potential for conflict. In the current MOA review, the involvement of the district administration could be considered and appropriately addressed given the significant role the district administration plays in maintaining law and order in the district.

(c) LLGs of “immediate impacted areas”

Particular mention should be made of the actions and cooperation of the communities immediately impacted by the mining project in honouring the terms of the 2005 MOA with respect to ensuring law and order, particularly in relation to the smooth operation of the mine. In spite of several confrontations among some communities/ethnic groups within the immediate impacted areas, the properties of the mining project have not been tempered with, and the mining project has continued to operate. The LLGs of the immediate impact areas have thus played an important and significant role in this area, and their constant interaction and cooperation with relevant stakeholders including the district authorities and HVJV to ensure the smooth operation of the mine is positive and should be further enhanced.

(d) Hidden Valley Joint Venture (HVJV) or MCG

HVJV, as per the 2005 MOA, has worked closely in consultation with key stakeholders of the MOA to ensure the smooth operation of the mine, including by maintaining a good working
relationship with the LLGs of the immediate impacted areas, the communities around the mine, the provincial administration, and the State. The fact that the mining project has not faced any disruption, in light of the implementation of the 2005 MOA, implies that there is a good working relationship between HVJV and the concerned parties.

3.6.2. Land Dispute Settlement

Land is an important development issue in Bulolo District, as it is for the country, in general. Land disputes have been the major cause of ethnic tensions in Bulolo District since the start of the Hidden Valley mining project, although such confrontations have not impacted the smooth operation of the mining project to date. This section highlights the actions undertaken by various stakeholders of the 2005 MOA.

(a) Morobe Provincial Government

The Morobe Provincial Government, as per its undertaking in the 2005 MOA, continues to provide training and materials for land mediators and their allowances to attend to land disputes in the mine area.

(b) Landowners

The landowners, as per their 2005 MOA undertaking, provide land for various, agreed community infrastructure and services under the project implementation plan. The fact that there has not been any major issues with constructing community projects by other stakeholders of the 2005 MOA, including the LLGs and HVJV, is a testament of sound landowner cooperation in carrying out important community projects.

3.6.3. Village Courts

The village court system in Bulolo District plays a significant role in ensuring peace and order in the villages. The provincial government, as well as the LLGs, supports the village courts through provision of training and financial allowances. However, deep issues of land ownership, particularly with ethnic groups from other parts of the country, remain a major law and order issue, which needs a sustained and practical attention, including provision of a long-term policing mechanism.
4. STRUCTURAL ISSUES

This section discusses some key structural issues arising from the mining operations in the Bulolo District. They include the 2009 MOA between the MPG and the Bulolo JDP&BPC; compensation payments issues; and landowner structural issues. In addition, we present some issues arising out of a field trip undertaken by the research team to Lae, Bulolo and Wau between 23 and 29 of January 2014.

4.1 The 2009 MOA between MPG and Bulolo JDP&BPC

4.1.1. Summary of the 2009 MOA

On 12 October 2009, an MOA was signed between the Morobe Provincial Government and the Bulolo JDP&BPC (see Appendix 3) with the signatories being the then Morobe Governor, Hon. Luther Wenge and the current Member for Bulolo Open, Hon. Sam Basil. The MOA was in relation to sharing of the portion of royalties paid to the MPG; that is 36% of the total royalties, as per the 2005 MOA (see Section 2.1.1 above and Clause 3.2 (a) (i) of the MOA.

The rationale of the 2009 MOA is the lack of participation/inclusion in the 2005 MOA for the Bulolo JDP&BPC (as explained earlier). Therefore, the 2009 MOA allows the Bulolo JDP&BPC to access some funding from the royalties via the MPG, in order to fund various projects in the district.

In terms of application/execution, the two parties agreed that once the 36% of the royalties is equated to 100%, then 50% of it (or 18%) will be retained by the Morobe Provincial Government while the other 50% (or 18%) is to be deposited directly into the Bulolo District Treasury Operating Account. The Bulolo JDP&BPC will then draw funds from the Operating Account to fund its endorsed projects and programs in the district.

The key conditions of the sharing arrangement are as follows:

- the 50% remittance to the Bulolo District Treasury Operating Account by the Morobe Provincial Government is maintained regardless of changes in the share paid to the CRF and the impact of inflation and deflation on the amount paid into the CRF;
- the MOA is to be valid for the life of the mining project, unless changes caused by the parties to the agreement or premature cessation of the project due to normal risks in the mining industry;
- the Bulolo JDP&BPC is the sole authority to identify, endorse and approve projects that are to be funded by the 50% funding in the MOA; subject to the PFMA and the 1995 Organic Law on Provincial Governments and Local Level Governments (OLPG&LLG);
- any review of the MOA is to be undertaken when the parties desire to and such a review is to be done after the party initiating the review serves a week’s notice; and
- the MOA is to be executed as of the date of the signing of the MOA, which is 12 October 2009.

4.1.2. Implementation of the 2009 MOA

In terms of the implementation of the MOA, we use the amount of royalties as a proxy measure. We discuss both the actual payments made and forecasts based on statistics obtained from the HVJV (2014).
**Actual royalties paid: October 2009 to December 2013**

Table 4.1 presents the statistics of royalties for the purpose of determining the implementation of the sharing arrangement under the 2009 MOA for the period October 2009 to December 2013. Row A is the actual value of aggregate royalties paid by HVJV to all stakeholders under the 2005 MOA. From 2009 to 2013 a total of K57.5 million was paid. Row B indicates the share paid to the MPG (i.e. paid into the CRF), which is 36% of total royalties. From 2009 to 2013, a total of K20.7 million was paid to the MPG. Under the 2009 MOA, 50% of the royalties to the MPG were to be paid to the Bulolo JDP&BPC. This is shown in Row C (i.e. based on our calculations). Therefore, from 2009 and 2013, a total of K10.4 million should have been paid to the Bulolo JDP&BPC.

### Table 4.1: Royalty payments for 2009 MOA (2009-2013), K'million

<table>
<thead>
<tr>
<th>Royalties</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>A: Total royalties (K'million), 2005 MOA</td>
<td>7.1</td>
<td>7.0</td>
<td>16.0</td>
<td>14.7</td>
<td>12.8</td>
</tr>
<tr>
<td>B: MPG share (K'million), 36% of (A)</td>
<td>2.6</td>
<td>2.5</td>
<td>5.7</td>
<td>5.3</td>
<td>4.6</td>
</tr>
<tr>
<td>C: Bulolo JDP&amp;BPC (K’million), 50% of (B)</td>
<td>1.3</td>
<td>1.3</td>
<td>2.9</td>
<td>2.6</td>
<td>2.3</td>
</tr>
</tbody>
</table>

**Source:** Calculated from the statistics obtained from HVJV

The numbers in Rows B and C (Table 4.1) indicate the amounts if the 2009 MOA was implemented consistently. However, the case in reality is different. According to actual information, since the signing of the 2009 MOA and to December 2013, only K3.01 million (instead of K10.4 million) has been paid to the Bulolo JDP&BPC. This indicates that the Bulolo JDP&BPC is still owed K7.3 million from the MPG. This situation poses a number of questions including:

- How enforceable is the 2009 MOA?
- Should the agreement (MOA) continue or perhaps be reviewed?

The above questions need to be addressed for future royalty sharing in relation to the 2009 MOA.

**Forecasted royalty sharing under the 2009 MOA**

In addition to the actuals, the HVJV (2014) also provided forecasts of royalty payments for the years 2014 to 2019, as shown by Table 4.2. Row A shows the expected total (aggregate) royalties to all stakeholders under the 2005 MOA. Row B shows the 36% share, which is to be paid to the MPG, via its CRF while Row C shows the 50% payable to the Bulolo JDP&BPC, via deposits into the Bulolo District Treasury.

For the five-year period (2014–2018), it is expected that a total of K100 million will be paid in royalties to all stakeholders by the HVJV. Of this amount, about K36 million (or 36% of total) is payable to the MPG. Out of the K36 million, K18 million is payable to the Bulolo JDP&BPC under the 2009 MOA. This, however, is subject to the enforcement of the 2009 MOA.

### Table 4.2: Forecasted royalty payments for 2009 MOA (2014-2018), K’million

<table>
<thead>
<tr>
<th>Royalties</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>A: Total royalties (K'million), 2005 MOA</td>
<td>18.5</td>
<td>24.1</td>
<td>22.6</td>
<td>16.6</td>
<td>18.1</td>
</tr>
<tr>
<td>B: MPG share (K'million), 36% of (A)</td>
<td>6.7</td>
<td>8.7</td>
<td>8.1</td>
<td>6.0</td>
<td>6.5</td>
</tr>
<tr>
<td>C: Bulolo JDP&amp;BPC (K’million), 50% of (B)</td>
<td>3.3</td>
<td>4.3</td>
<td>4.1</td>
<td>3.0</td>
<td>3.2</td>
</tr>
</tbody>
</table>

**Source:** Calculated from the statistics obtained from HVJV.
4.2 Compensation Payments

Based on current practice, compensation arrangements and payments are not part of project MOAs, hence in this case, compensation was not part of the 2005 MOA. Instead, the mining company and the landowners have separate compensation agreements. In this subsection, we present the background of the agreements and statistics for compensation payments.

4.2.1. Legal Basis of Compensation Payments for Mining

Compensation payments/agreements arising out of any mining projects are subject to conditions stipulated in the relevant clauses of the Mining Act 1992. In particular, the following clauses apply in the case of compensation:

- Clause 154. Principles of Compensation;
- Clause 155. No Entry Until Compensation Agreed or Determined;
- Clause 156. Compensation Agreements;
- Clause 157. Determination of Compensation by the Warden;
- Clause 158. Appeal from a Warden’s Determination;
- Clause 159. Compensation to be Binding; and
- Clause 160. Compensation in the Case of a Land Dispute.

For the purposes of this study, what is relevant is Clause 154, which presents the Principles of Compensation. The Sub-clauses are as follows:

1. The holder of a tenement is liable to pay compensation, in respect of his entry or occupation of land the subject of the tenement for the purposes of exploration or mining or operations ancillary to mining, to the landholders of the land for all loss or damage suffered or foreseen to be suffered by them from the exploration or mining or ancillary operations.

2. Subject to Subsection (4), the compensation to which landholders are entitled includes compensation for:
   - (a) being deprived of the possession or use of the natural surface of the land; and
   - (b) damage to the natural surface of the land; and
   - (c) severance of land or any part thereof from other land held by the landholder; and
   - (d) any loss or restriction of a right of way easement or other right; and
   - (e) the loss of, or damage to, improvements; and
   - (f) in the case of land under cultivation, loss of earnings; and
   - (g) disruption of agricultural activities on the land; and
   - (h) social disruption.

3. Where applicable, compensation shall be determined with reference to the values for economic trees published by the Valuer-General.

4. No compensation shall be payable and no claim for compensation shall lie, whether under this Act or otherwise:
   - (a) in consideration of permitting entry on to the land for exploration or mining purposes; or
   - (b) in respect of the value of any mineral which is or may be on the land; or
   - (c) by reference to any rent, royalty or other amount assessed in respect of the mining of the mineral, other than as provided for in the Mining (Royalties) Act 1992.

5. A person who pays, or agrees to pay compensation in respect of any of the matters referred to in Subsection (4), is guilty of an offence.

   Penalty: A fine not exceeding K10,000 or imprisonment for a term not exceeding five years, or both.

6. Where any land or improvements, adjoining or in the vicinity of the land the subject of a tenement, is or are injured or depreciated in value by the exploration or mining of the tenement,
the landholders of that land are entitled to compensation for all loss or damage sustained and the amount of such compensation shall be determined as provided in this Part.

Based on the above clauses, each mining company develops a compensation agreement with the landholders/owners of the mining lease or easement areas. According to the HVJV (2014), there are two main compensation agreements: ML 151 and ME 82. These agreements specify compensation payable for damages caused as a result of the operations of the mining project in the areas covered by the ML and ME. The agreements are reviewed every five years. In the next set of discussions we present the actual payments of compensation (values), based on statistics provided by HVJV (2014).

4.2.2. The Compensation Payments (Outcomes)

Figure 4.1 presents the various compensation items and the actual payments for the period 2005 to 2013. The respective shares (percentages) are presented in Figure 4.2. In total, from 2005 to 2013, HVJV has paid about K12.1 million in compensation payments.

Figure 4.1: Total compensation payment receipts by item (2005-2013), thousand Kina

Source: Based on statistics from HVJV
In terms of item by item, the following can be observed. First, it can be seen that compensation payments for issues relating to the Watut River constitutes the highest amount (K4.5 million or 38% of the total). The compensation payments for Watut River are mainly for discharge and sediments.

The second largest item is the ML151, which is payment for damages occurring in the ML151 area. This area covers the land on which the mining lease is situated and it covers the three communities of Nauti, Kuembu and Winima. The population of the ML 151 area was estimated to be around 3,500 (Harmony 2012). The third largest item is payments for damages to past improvements of about K1.3 million (or 11% of the total). The compensation for this item falls under Clause 154 (2) (e) of the Mining Act 1992, since it is a payment for damages to land improvements by the landholders.

The fourth largest item is the ME82, which covers the landowners for the area covered by the access road for the project. This item constitutes about 7.2% of the total (or K871,000).

The next item is compensation for dirty water, which accounts for 6.7% of the total compensation (or K811,000). The second last item is compensation payment for damages in Ayati and Wau of K552,000 (or 4.6% of the total). The areas are within the vicinity of the Hidden Valley pit.

The last group under “others” constitutes 2% of the total compensation payments (or K230,000). According to HVJV, this group is made up of: environmental monitoring stations; EL677/EL497; Gunem Water Supply (Wau); and Kaindi Bypass Improvement Damages.

13 It will be higher now in 2014 (at the time of writing).
4.3 Landowner Organisational Structures and Operational Implications

Landowning communities from the mine are organised in two formal structures — Associations and Companies. In this section, we analyse the structural operations of these organisations, using information gathered from the extracts provided by the Investment Promotion Authority (IPA). The objective is to analyse the landowner organisational structures and operations and their implications for the efficient management of resource flows from the mine.

Company search for landowner companies and associations within the Hidden Valley Mine produced limited results. The search was organised under the names of the parties to, and as stated in the Agreement. The common names were NAKUWI, NKW, Nauti, Kuemba and Winima. Collectively, they represented the mine-affected landowning community directly involved in the Mining Agreement through their umbrella body, the NAKUWI Association Inc.

The data is summarised in Tables 4.3, 4.4 and 4.5. Table 4.3 provides a summary of the main data type available, Table 4.4 provides detailed analysis on the respective companies and associations and Table 4.5 provides a summary of the key features derived from the articles of incorporation.

Table 4.3: Results of IPA’s online company search

<table>
<thead>
<tr>
<th>Name</th>
<th>Quantity</th>
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</thead>
<tbody>
<tr>
<td>NAKUWI Association Incorporation</td>
<td>1</td>
</tr>
<tr>
<td>NKW Holdings Limited</td>
<td>1</td>
</tr>
<tr>
<td>NAUTI Landowners</td>
<td>5</td>
</tr>
<tr>
<td>KUEMBA Landowners</td>
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</tr>
<tr>
<td>WINIMA Landowners</td>
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</tr>
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</table>

Source: Summarised from online company search (dated April, 2014)
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<th>No.</th>
<th>Name</th>
<th>Registration Status</th>
<th>Incorporation/Registration Date</th>
<th>Postal Address</th>
<th>Directors (D)/Owners (O)</th>
<th>Public Officer (PO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>NAKUWI Association Inc.</td>
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<td>4-Nov-99</td>
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<td>Rex MAURI (PO)</td>
<td>PNG 4-Nov-99</td>
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<tr>
<td>2</td>
<td>NKW Holdings Limited</td>
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<td>19-Apr-04</td>
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<td>Taikone GWAKORO</td>
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<td>12 Jona YALASING</td>
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NAUTI Investments

3(i) Limited                    Registered  28-Jun-04  P O Box 2238, LAE, Morobe Province, PNG 1 Nathan KUPA  PNG 28-Jun-04 2 Mtea PAPAINATO  PNG 28-Jun-04
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<td>(ii)</td>
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<td>P O Box 78 Huon Gulf, LAE, Morobe Province, 411, PNG</td>
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<td>24-Sep-04</td>
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<td>Ricky YATAPSA (O)</td>
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**Source:** Authors’ summary from online IPA company search (dated 10 April, 2014)
### Table 4.5: Articles of Incorporation checklist for Landowner Companies and Associations

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<thead>
<tr>
<th>Associations &amp; Companies</th>
<th>Articles of Incorporation - Yes/No</th>
<th>Contents - Documents consisting Articles of Incorporation</th>
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</thead>
<tbody>
<tr>
<td>NAKUWI Association Inc.</td>
<td>Yes — Constitution</td>
<td>7 Articles - Preliminary, Constitution, Membership, Meetings of the Association, Executive Committee, Funds of the Association, and Miscellaneous</td>
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<td>NKW Holdings Limited</td>
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<tr>
<td>NAUTI Investments Limited</td>
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<td>NAUTI Limited</td>
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<tr>
<td>NAUTI Women's Association Inc.</td>
<td>Yes — Constitution</td>
<td>4 — Parts – Preliminary, Membership, The Committee, and General Meeting-</td>
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<td>KUEMBU Investments Limited</td>
<td>No</td>
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<td>WINIMA Investments Limited</td>
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<td>WINIMA Computer Services</td>
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<td>WINIMA Unaio Reliability</td>
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</table>

**Source:** Authors’ summary from online IPA company search (dated 19 May, 2014)

#### 4.3.1. Analysis of Company Extracts

Detailed analysis depicted in Table 4.4, focusing on the extracts demonstrates:

- two associations are listed. NAKUWI Association Inc. is the peak body, representing the customary landowning community, within the MOA. Nauti Women’s Association, in contrast, is a volunteer association incorporated, with no direct role to play in the MOA. Consequently, detailed analysis in the subsequent sections will focus only on NAKUWI Association Inc.;
- except for only one name, identified as the registered official, the rest of the association executives of NAKUWI Association Inc. are not listed on the extracts obtained from IPA;
NKW Holdings Limited, which is the peak landowner company for spin-off businesses, is owned by NAKUWI Association Inc.;

NKW Holdings has three subsidiary companies, reflecting the three customary landowner groups — Nauti Investments Ltd, Kuembu Investments Ltd, and Winima Investments Ltd;

the board of NKW Holdings consists of five (5) members. The current board was appointed on 19 December, 2013. This is not consistent with the MOA which states six (6) directors, three of whom are to be independent;

the present board members of the subsidiary companies were appointed on 5 April, 2004 for Winima Investments Ltd, and 28 June, 2004 for Nauti and Kuembu Investments Ltd;

the other companies with related names appear unrelated to customary landowners as a group and appear to be privately owned companies; and

only one person has dual membership on the NKW Holdings and the Kuembu Investments Ltd boards.

Data analysed from the IPA company and Association registry records depict limited activities. Changes were made to the Board of NKW Holdings Ltd. The boards of the three subsidiary companies have, however, remained unchanged since 2004. Names of the NAKUWI Association Inc. executives are absent. This is a serious anomaly because the association owns NKW Holdings Ltd and is a party to the MOA.

4.3.2. Analysis of Articles of Incorporation

Further investigations aimed at understanding the relationships between the financial flows and the landowning community focused on the Articles of Incorporation for the landowner companies and the associations formally registered with the IPA is summarised in Table 4.5.

While the registered businesses do not have Articles of Incorporation, the two Associations have these documents registered with the IPA. This is not an anomaly because the provision of Articles of Incorporation are voluntary for companies in the PNG context. In contrast, they are mandatory for the Incorporation of Associations.

Because of NAKUWI Association, in contrast to the Nauti Women’s Association, which is not a signatory to the MOA, detailed analysis is restricted to the NAKUWI Association, under various sub-headings: goal, objective, membership, meetings, and executives:

- **Goal** — The Goal of the NAKUWI Association Inc. is to promote an equitable and sustainable social and economic status of the people of Biangai and Watut Areas.

- **Objective** — It has 11 objectives through which the goal could be realised. Objectives (b) to (e) are directly related to the activities of the mine. Objective (b) is to formulate and enter into negotiations and agreements with the developer, the Government (National, Provincial and Local-level Governments) and other organisations on social and economic issues. Objective (c) is to enter into joint venture negotiations and agreements on behalf of the landowner companies in any business opportunities within the mining and Wau/Bulolo towns. Objective (d) is to secure contracts with the developer and disburse them to landowner company(s). Objective (e) is to cooperate and assist the Government (National, Provincial, and Local-level Governments) and other organisations to increase members’ participation in the development of their communities.
Membership — membership to the Association is defined by a qualification and admissions criterion. The membership is open to the indigenous persons from Nauti, Kuembu, and Winima. Those from these groupings living in the local community, other parts of Morobe and the greater PNG are included. But, admission to the membership is through an application process whereby the person who wishes to become a member submits an application in writing or in person to the secretary of the Association. The application will then be considered by the Executive Committee. A successful applicant then has to pay the membership fee, which is updated annually by the Executive Committee.

Executive — The Executive comprises the President, Vice-President, Secretary, and Treasurer. A member of the Executive is prohibited from holding more than one position. The Executive is elected at the Bi-annual General Meeting of the Association. The term of the office is six months. Incumbents are qualified for re-appointment. Disqualification from executive office does not make mention of fraud and related governance issues.

Meetings — Meetings of the Association include an annual general meeting to be held, no later than March, each year. The main business of the general meeting are: (i) adoption and matters arising from minutes; (ii) consideration of executive committee meeting, including the annual statement of accounts; (iii) election of the executive committee (bi-annually); and amendments to the constitution, if required. Election of executives on a bi-annual basis should be a concern, as this would undermine long-term stability of the Association’s operations.

Other meetings — include special general meeting to be called by a third of the members through the secretary. Voting is by either voice or show of hands. At this juncture, Items 19 and 20 of the Association Act and the operating guidelines have been named to be not applicable to NAKUWI Association. The main justification being that the membership consists of simple people from the village, most of whom are illiterate. Finally, the required quorum is simple majority.

Executive meetings — are held at such times and places as the President decides or as fixed by resolution of a meeting of the Executive. In the absence of a quorum, the meeting shall be differed to a future date and place not more than 14 days. In the second attempt, those present in the aborted meeting constitute a quorum. This raises serious governance related issues.

The proceeding analysis depicts structural weaknesses with significant implications for the sustainable management of financial flows to the landowning communities. NAKUWI Association Inc. is a signatory to the MOA. This places NAKUWI Association Inc. in a pivotal position, especially in dealing with the mine-affected communities. Unfortunately, the structural weaknesses noted below could undermine its efficiency:

- Membership is voluntary, by an expression of interest in writing to the executive, and by paying a membership fee which is determined annually by the executive committee. By implication, the NAKUWI Association Inc. cannot claim to represent the broader mine-affected landowning communities. It represents the interests of its membership.

- Election of Executives is bi-annual. This constitutes a significant structural issue with regards to the need to have an efficient operation. Short term of office for executives has the potential to create an environment for opportunistic behaviour. Further, it undermines the ability of the association to have long term plans and strategies.
• Conduct of executive committee meetings is structurally weak. First, the meeting could be called at a time and venue determined by the President. Second, quorum requirements are also weak. Collectively, they raise serious governance related issues.

• Penalties for poor governance are not defined and or included in the Articles of Incorporation.

Overall, the structure of the NAKUWI Association Inc., the peak body representing the interests of the mine-affected landowner communities, has significant deficiencies that undermine its usefulness in pursuing long-term interests. Structurally, this is a defective association with poor governance and accountability mechanisms.

4.3.3. Implications from the Analysis of Landowner Organised Structures

The preceding analysis depicts findings with significant implications for the sustainable management of financial flows accruing to customary landowning communities. The main implications are analysed below:

• The link between the mine and customary landowners is NAKUWI Association Inc. Unfortunately, weak structural features discussed above undermine the efficient operation of the association. Furthermore, the existing systems appear not to be capturing intergenerational equity directly. An alternative mechanism that is not reliant on voluntary membership, admission fees, and provides long-term stable and transparent management is required. One option to be considered is the replacement of the Association, by mandating it to a forum for facilitating broader community issues. However, to drive the long-term interests of the customary landowning communities, the alternative, which is more transparent and accountable, pursuing the interests of the present and future generations, is the incorporation of land groups under the Land Groups Incorporation (Amendment) Act 1974, currently being implemented through the auspices of the National Land Development Program.

• NKW Holdings Ltd, the main landowner owned company needs a constitution to guide its operation. Although, the Companies Act provides for incorporation of companies without the constitution, it seems appropriate, given the nature of ownership structure that NKW Holdings Limited has, that a company constitution should be adopted.

• Company returns appear not to have been submitted since the incorporation. This is a mandatory requirement as per the Companies Act.

• Company tax return has not been investigated. However, it would be prudent for the company to be submitting the annual tax returns. This is one way of improving accountability and transparency in the management of NKW Holdings.

• The ownership of three subsidiary companies — Winima Investment Ltd, Nauni Investment Ltd, and Kuembu Investment Ltd is fracturing, resulting in the loss of scale and wastage of resources, especially financial and human resources. These companies should be wound up with the view to build NKW Holdings Ltd into a well-diversified single company with the scale to mobilise large scale investments. This will require restructuring NKW Holdings Ltd to provide the scale and structure required.

4.4 Views of Key Informants Based on Field Trip

Between 22 and 29 January, 2014, two members of the Consulting Team undertook a field trip to Lae, Bulolo and Wau to gather information for the study. The information included documents and interviews with key informants. Most of the statistical information that was
gathered in document form, which was mainly from the HVJV, has been presented in the discussion on the 2005 MOA outcomes in Section 3 above. This subsection presents views on certain issues from the different key informants/interviews. The key informants and the dates and place of interviews are as follows:

- **Morobe Provincial Administrator (PA):** On the first day of the field work (23 January 2014), the research team had a meeting with the Provincial Administrator at the Provincial Administration Office in Lae;

- **Representatives of the mining company (HVJV):** The research team met with two members of the HVJV at its 9 Mile headquarters outside Lae on the 24 January 2014 (second day of the trip). The HVJV team presented a pre-prepared write-up/information for the NRI team based on the TOR that was sent to them prior to the trip. Most of this information/statistics has been presented in Section three above on the outcomes of the 2005 MOA. What is presented in this section are comments based on other information gathered during the meeting with the HVJV team;

- **A river community (Sambiou Village) representatives:** On Sunday, 26 January, 2014, the research team had a meeting (open discussion) with Sambiou villagers in the Middle Watut area.

- **Bulolo District Administrator (DA):** During the field trip in Bulolo, the DA was the researchers’ host. Information was gathered from him at a formal interview (on Monday 27 January 2014) and during informal conversations during the stay (from 25 to 28 January 2014).

- **Special Duty Officer, Mining (SDOM):** On 28 January 2014, the research team had an interview with the Special Duty Officer, Mining, at the District Administration Office.

- **Watut Rural LLG Manager:** The LLG Manager was interviewed on 27 January 2014 at Bulolo Station.

- **Wau Rural LLG Project Officer:** The Project Officer was interviewed on 28 January 2014 at Wau Station.

- **Nauti Investment Limited (NIL) representatives:** On 27 January 2014, the research team interviewed representatives of one of the three landowner investment companies, Nauti Investment Limited (NIL) at the company’s office in Bulolo.\(^\text{14}\) The NIL is a company representing the Nauti people in Watut Rural LLG, which is one of the LLGs in the immediate impact areas as stipulated by the 2005 MOA. The Nauti people own a larger portion of the land on which the mine operates: 50% of Hidden Valley Pit and 100% of the Hamata Pit.

For each of the informants, the researchers asked their views on certain issues. In reporting the views, we have organised the views into the following parts:

- **Subsection 4.4.1** presents the views on financial flow benefits such as royalties and equity;
- **Subsection 4.4.2** focuses on the views on development funds emanating from the mining activities; that is, those funds earmarked for development rather than direct to landowners. These are SSGs and TCS;

\(^{14}\) The other two landowner investment companies are: Kuembu Investment Limited (KIL) and Winima Investment Limited (WIL)
Subsection 4.4.3 focuses on views on business and economic issues, which are at the cornerstone of sustainable development; Subsection 4.4.4 presents other issues relating to the 2005 MOA; and Subsection 4.4.5 presents other views relating to mining development in the District.

4.4.1. Views on Financial Flow Benefits

Financial flow benefits are financial benefits earmarked for various target groups under the MOA. In this section, we report views on two main financial flow benefits: royalties and equity.

4.4.1.1. Royalties

The interviewees were asked about their views on issues relating to royalty payments and structure. The following presents the views by each informant.

- **Company (HVJV):** During consultations, the representatives from the mining company provided and discussed information on the payments of royalties. These statistics have been presented in the discussion of royalties above (see Section 3.1.1). The numbers (see Table 3.1) indicate that the company has paid the royalty funds, as per the intentions under the MOA.

- **Provincial Administrator (PA):** The PA made a few observations about the royalty payments: distribution, usage and valuation. In terms of distribution, the PA feels that the distribution of royalties among the stakeholders from the Bulolo District under the 2005 MOA is reasonably fair as all the LLGs closer to the mine are covered. Also, other benefit-sharing arrangements on the MOA are reasonably fair. For usage, the PA made the point that the Wau Rural LLG appears to have a good record of use of royalty payments it has received, which can be a good model/lesson for other LLGs. Moreover, the PA suggests that royalties should go beyond LLGs to the community level. For the royalty valuation, there is a concern that basing the royalty payable amount on 2% of f.o.b value of mineral exports is too low. When distributed among the parties to a MOA of a mining project, it is usually insufficient to meet development needs and the aspirations of those impacted by mining projects. The PA strongly suggested that PNG’s Mining Act 1992 be amended to increase the royalty from the current 2% to about 5 10% of the f.o.b export value. The implication of this is that the Mining Act needs to be amended, if there was to be such a change (after consultation with all stakeholders involved).

- **River Community (Sambiou Village):** Under the MOA, river communities and other affected communities receive less royalty payments than the immediate impact areas (see Table 2.1 in Section 2.1.1). The villagers claimed that the 1% earmarked for royalties to highway and river communities under the 2005 MOA have not been paid to them because the money is in a trust account. The villagers also suggested that under the review of the MOA, their share of royalties should be increased.

- **District Administrator (DA):** The DA expressed concern about the disparity in royalty payments. That is, there is a concern that the affected communities (i.e. highway communities, river communities, and subsidiary landowner communities) are not benefiting enough from the mine’s operations. According to the 2005 MOA (as stated in Section 2 of this report), these three types of communities (as a group) are entitled to 2.5% of royalties (with 0.5% for highway communities, 0.5% for river communities, and 1.5% for subsidiary landowner communities). However, it is claimed that these funds have not been paid to the affected communities; instead they have been put in a
trust account. Hence, these communities are missing out on developments to be funded by these monies.

The DA also made the point that the District Administration is not party to the MOA, hence it is not entitled to any royalty payment. However, the District Administration does a lot of work in terms of liaison between different parties to the MOA, especially in the case of conflict. Therefore, it should get funding from royalty payments to conduct such work.

- **Special Duty Officer, Mining (SDOM):** The SDOM expressed concerns about the use and lack of sustainability for royalties to landowners and LLGs. In terms of royalties for landowners, the current practice is that royalties to landowners are paid (directly) to individuals, as per the 2005 MOA. These funds, he feels, are spent quickly on consumer goods and not much on investment. Therefore, he suggests that royalties should be paid to the three investment companies (i.e. NIL, KIL and WIL) and the people then get dividends, which is more sustainable. For the royalties to LLGs, the SDOM’s view is that LLGs must spend it on projects based on their 5-year development plans. Also, proper auditing of the spending is required to determine the success or otherwise of the royalty payments to LLGs.

- **Watut Rural LLG Manager:** The LLG manager said that under the 2005 MOA, the Watut Rural LLG receives 5% of total royalties, which equates to K40,000 to K50,000 per month (or K480,000 to K600,000 per year). However, he said that this money is not enough to meet all the community development obligations of the LLG. The demands of the LLG are high due to the development demands from various groups in the LLG, which include:
  - 12 wards;
  - churches;
  - 2 women’s groups;
  - youth groups;
  - education;
  - sports groups;
  - Village Birth Attendants (VBAs);
  - Village Court officials;
  - health facilities;
  - Reserve Police,
  - LLG employees (3 under national pay and the rest under LLG, including 10 + casuals); and
  - infrastructure projects.

The LLG has a Five-Year Development Plan and royalties are used to fund projects in that plan, which include water supply, classrooms and so on.

- **Wau Rural LLG, Projects Officer:** The Project Officer said that the LLG does get its share of royalties, as per the 2005 MOA and spends it mainly on infrastructure projects.

- **Nauti Investment Limited (NIL):** The representatives from the company say given that 50% of the Hidden Valley Pit is on Nauti land and 100% of Hamata Pit is on Nauti land; the Nauti people should get 50% of royalties paid to landowners of the Hidden Valley Pit and 100% of royalties for the Hamata Pit. However, this is not the case in the 2005 MOA (see analysis in Section 2 and 3 on royalties). One point made was that the outputs of the two pits are mixed; hence, the royalty distribution they suggested above
(i.e. 50% from Hidden Valley Pit and 100% from Hamata Pit) cannot be possible. Because of this, they claim that Nauti people are missing out on “some more royalties” (i.e. if ore is not mixed, they could get 100% of royalties from Hamata Pit). At the time of writing, we are aware that the Nauti landowners have taken the matter (i.e. royalties to be based on ownership) to court by a law firm.

4.4.1.2. Hidden Valley Benefit Sharing Agreement (HVBSA)

The researchers were advised by the company representatives that in lieu of equity, the landowners get benefits under the Hidden Valley Benefits Agreement (HVBSA), which has been discussed above. Having known this information from the mining company representatives, the researchers did not ask the other informants about the equity issue.

4.4.2. Views on Development Fund Flows

The Development Funds Flows refers to funds that are earmarked for development purposes. Under the MOA, the two main development funds are SSG and TCS. The following presents the views of the informants for each of them.

4.4.2.1. Special Support Grants (SSGs)

- **Provincial Administrator (PA):** The PA advised that the Morobe Project Management Unit (MPMU) makes decisions on the use of SSG funds. However, the landowners in the Committee have the bargaining power; hence most funds are used in the mine-affected areas. The PA feels that a portion of the SSGs should be set aside for other districts in the province.

- **Company (HVJV):** The Company pays SSG to the State, which in turn pays the Morobe Provincial Government. It is managed by the provincial administration, via the MPMU. Between 2010 and 2013, a total of K12.7 million (see Table 3.1) has been paid in SSG for several projects but most projects have not commenced or the progress is stalled for various reasons, including capacity constraints within MPMU. Proper management, governance and accountability are required to improve the effectiveness of SSG funds, and their sound implementation. Also, the SSG funds could be better managed and utilised. Given the capacity constraints, the project scoping for SSG funded projects is done by HVJV.

The rest of the informants/respondents mentioned that the SSG is coordinated by the MPG, hence they could not comment on the success or otherwise of the funding.

4.4.2.2. Tax Credit Scheme (TCS)

Under the MOA, the TCS will come into effect once the company is in a taxable position. At the time of the research, the HVJV representatives advised that the TCS is not yet in place as HVJV is not in a taxable position yet.

4.4.3. Views on Business and Economic Issues

One of the issues is the sustainability of benefits from the mining project. Hence, the researchers asked the informants about their views on business and economic activities generated by the mining operation. Below we present views of those who provided a response.

- **HVJV:** The main business issues related to procurement for the operations of the mine. Procurement by HVJV of capital equipment is done offshore because such equipment is not manufactured onshore. Therefore, capital costs are mostly spent offshore. However, as much as possible, HVJV tries to localise its procurement where it can. Vegetables should be sourced locally (Bulolo), but local people are not engaged in large scale
agriculture. HVJV supports local agriculture schemes and rehabilitation of agriculture in the district. NKW Holdings Ltd, which represents 3,000 plus people from the three LLGs where the mine is located is engaged by HVJV for labour hire, catering and other contracts where required, for the operation of the mine. NKW Holdings is the main local contractor to the mine, providing business opportunities for itself and its subsidiaries.

- **District Administrator (DA):** The DA’s main concern in terms of business issues is the awarding of contracts. Most contractors engaged by HVJV are not locally based/owned but ‘outsiders’. Contracts should also be awarded to affected communities, such as the river communities and the highway communities, as the distribution of spin-off benefits seems unfair. It appears that the “rich are getting richer” and the “poor are getting poorer”. In terms of subcontracting by NKW, the DA stated that NKW Holdings should not partner with outside companies for contracts in the mine but sub-contracts should be awarded to local companies. Currently, there is a concern that most of the subcontracting is given to outsiders; hence the locals are not benefitting fully from the contracts. That is, more contracts should be given to the three landowner investment companies (NIL, KIL and WIL), not just the annual grants from NKW, which are understood to be dividends.

- **Special Duty Officer, Mining (SDOM):** The landowner investment companies (NIL, KIL and WIL) are not getting enough contracts, either from the mother company (NKW Holdings Ltd) or the mining company (HVJV). This needs to be addressed.

- **Nauti Investment Limited (NIL):** The NIL is one of the three landowner investment companies. NKW gives annual grants to each of the three investment companies: NIL, KIL and WIL. During the consultation with the company representatives, the researchers were advised that NIL has received the following from NKW Holdings Ltd:
  - K100,000 in 2009;
  - K200,000 in 2010;
  - None in 2011;
  - K300,000 in 2012; and
  - K1 million in 2013.

The informants said that the grants are paid in installments, rather than in lump sum. These funds are then invested in business opportunities outside the District, especially in Lae and Port Moresby.

In terms of contracts, the NIL currently has a 3-year contract from NKW Holdings, relating to rehabilitation work with DEC worth K2.3 million. The project commenced in 2012. A concern was raised that the landowner investment companies do not get enough contract work from their mother company, NKW Holdings. Hence, it would be good if HVJV gave contracts directly to the three landowner investment companies.

Another concern was that the hourly pay rate for workers is unfair for locals. That is, nonlocals are paid K40 per hour while the locals are only paid K7 per hour. This is a disincentive and discrimination against the locals. This is probably a contributing factor to the low employment of locals, because they are discouraged by the low rate.

- **River Community (Sambiou Village):** The villagers feel that business opportunities are been taken up by outsiders and not enough for the locals in the area. They also claimed that even the Mining Lease (ML) area landowner company, NKW Holdings

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15 This is the same arrangement used for the other two landowner investment companies: KIL and WIL.
Ltd is controlled by “outsiders”. The other concern raised was related to catering. The villagers claim that the National Catering Services (NCS), the company that provides catering service to the HVJV, should buy vegetables and livestock from locals, and should not be involved in acquiring land for farming in the district, as is the case with its hydroponic farm at Wau Station. The villagers suggest that the relevant stakeholders to the 2005 MOA should encourage and promote locals to produce agricultural produce which NCS should buy from and supply the mine.

The villagers acknowledged that the NCS used to buy vegetables from locals before; now that it (NCS) is making its own gardens for its vegetables, the locals are missing out on the opportunity to earn incomes from the sale of vegetables to NCS. One other economic opportunity concerns alluvial mining, which has been affected by the sedimentation from the Hidden Valley operations. The people along Watut River used to depend on the sales of gold from alluvial mining as a source of income. However, their income level from alluvial mining has decreased because of the low level and quality of gold (“dust gold”). This, they claim is due to sedimentation from the Hidden Valley Project up the river.

4.4.4. Views on Other Aspects of the 2005 MOA

This subsection presents other issues or concerns about the 2005 MOA, which the informants put forward during the interviews:

- **Non-representation of District Administration in the MOA:** The DA highlighted that the District Administration was not a party to the 2005 MOA. This is legally the case, as under the *Mining Act 1992*, District Administrations are not included in project MOAs. However, the DA stated that the District Administration should be included in the MOA because the District Office does a lot of liaison work on the ground for the mining company and the government. The implication of this is that the *Mining Act 1992* should be amended to include District Administrations. The HVJV team noted the concerns about the exclusion of the District Administration in the MOA. However, as mentioned above, this is according to the current law (*Mining Act 1992*); hence a change of the relevant clauses in the *Mining Act* is required if districts are to be included in the MOA of mining projects.

- **Preferences in the 2005 MOA:** The DA expressed concern that the order of preferences, as stipulated under the MOA, has not been followed. In particular, there is a concern that contracts are dominated by outsiders and only small jobs are given to locals. This should be addressed by the relevant stakeholders. If it is due to lack of capacity of locals to undertake the projects; there is a need to strengthen local capacity.

- **Review of the MOA:** The HVJV team mentioned that the 2005 MOA is currently under review. The review is not a negotiation (e.g. to increase royalties as in the original MOA), but to improve the process of sharing benefits. The review should look at what works and what is not working and suggest ways to improve the process.

- **Infrastructure development:** The Sambio villagers acknowledged HVJV’s support in terms of infrastructure development such as water supply, classrooms, footbridge, teachers’ houses, and village birth attendants. However, more support is needed for infrastructure development; for example, the village’s aid post building.

- **MOA failures:** One of the LLG managers stated that there is a lack of consultation for some of the issues. The lack of consultation has resulted in non-optimal service
delivery in some instances; for example, two water supply projects failed due to the lack of consultation with the Watut Rural LLG.

- **2009 MOA between the MPG and Bulolo JDP&BPC:** This MOA came about as a result of the District Administration not being a party to the 2005 MOA. This Agreement was to share the Provincial Government’s share of the 36% royalties paid into its Consolidated Revenue Fund. Under the 2009 MOA between the MPG and the Bulolo JDP&BPC, 50% of the 36% royalties is paid into the Bulolo District Treasury Operating Account for use by the Bulolo JDP&BPC on projects in the District.

### 4.4.5. Views on Other Mining-related Issues

During the consultations the informants also provided views on other development issues that are related to mining development. The following presents these views by the informants.

#### 4.4.5.1. Views on Mining Township

One of the issues that concerns mining development in the country is the Mining Township; that is, the need for it and its location. This issue is not related to the 2005 MOA, as it was not included in it. However, since it is an issue that also affects the benefits from mining, the researchers asked the informants about their views on the need for a Mining Township, its location and benefits. The following presents the views:

- **Views by the PA:** According to the PA, the sustainability of a mining township should be an important consideration given the demise of Wau Township after the cessation of the gold rush of the pre-Independence years. People will flock into towns, so building a township closer to a major city (Lae) would be sustainable so that the mining township can be utilised and not left to decay after the mine closes. However, the PA acknowledged that benefits of the mining in Bulolo are being enjoyed by Lae City, not by Bulolo District, as the mining township is located at 9 Mile, in close proximity to Lae.

- **Views by HVJV:** The company representatives’ views on the issue concern location of its employees. That is, historically in PNG, there is no such thing as a sustainable mining township (given the enclave nature of mining projects). If Bulolo and Wau were secure and the government provided good health and education services, then the HVJV employees would most likely want to reside closer to their work place but since the services are not available they choose to live elsewhere.

- **Views by the DA:** There should be a Mining Township and preferably, it should be in Bulolo. For sustainability issues, all relevant stakeholders should work together in generating economic activities in other sectors to sustain the economy to support the township after closure of the mine. Agriculture can sustain the township after the closure of the mine if the sector is carefully developed and nurtured and if all stakeholders are involved in promoting and growing the sector.

- **Views by the SDOM:** The mining township should be in Wau or Bulolo, not in Lae, so people from the District can benefit.

- **Views by Watut Rural LLG Manager:** The mining township should be near the mining project, either in Bulolo or in Wau. There was a lack of consultation as to where the township should be located.

- **Views by Wau Rural LLG, Projects Officer:** The Township should be near the mining area in Wau or Bulolo.
• **Views by the NIL representatives:** The company representatives were of the view that the mining township should be built near the mine area (preferably Bulolo). This will assist in the growth of the District via the cashflow generated by the township and business spin-offs. Besides this, the representatives expressed concern about the FIFO arrangement used by HVJV, which is also taking away the opportunity for monies to be spent by the workers in the District.

• **Views by a river community (Sambiou Village):** The villagers were of the view that a Mining Township should be near Bulolo Town so that it will stimulate the local economy via jobs and demand for local produce for workers of the mine.

### 4.4.5.2. Views on Compensation Payments

Compensation payment is a benefit in terms of cash income for certain damages. These compensation payments are paid directly to affected parties. The amount of monies paid has been discussed above in Section 4.2. In this section, we present general views by the informants relating to compensation.

• **Views by the PA:** People should be properly compensated; that is, both the land and what is under the land (minerals).

• **Views by HVJV representatives:** HVJV has paid compensation payment according to compensation agreements (as discussed in Section 4.2 above).

• **Views by the DA:** The DA was concerned that the prices set by the Valuer-General (as stipulated under Clause 154(3) of the *Mining Act 1992*) are not strictly used for compensation payments. This may result in underpayment of compensation.

• **Views by the SDOM:** No comments.

• **Views by the Watut Rural LLG Manager:** The mining company is using current laws (*Mining Act 1992, Clause 154*) to pay compensation. Hence, damaged land is not compensated, only surface things like trees. The law needs to reflect the damage done to the land and proper compensation should be paid for such damage. Currently, the compensation paid by HVJV for destruction of land and river systems due to its mining activities is not sufficient and the rates used are not satisfactory.

• **Views by Wau Rural LLG Projects Officer:** No comments.

• **Views by the NIL representatives:** No comments.

• **River Community (Sambiou Village):** The villagers acknowledged that the Company had paid compensation for river pollution based on a Compensation Agreement signed between the river communities and HVJV in 2010. However, there are some issues that need to be noted and addressed by the Mine and/or relevant authorities. These include:
  
  ➢ People are constrained from claiming more compensation because of a clause in the Compensation Agreement, which states that “say no more after compensation payments” (paraphrased). Education is required for people to understand the different clauses of the compensation agreement.
  
  ➢ An issue which affects compensation payments is the definition of “affected community”. Under the MOA, “affected communities” include Highway Communities, River Communities and Subsidiary Landowner Communities.\(^\text{16}\) The

\(^\text{16}\) Highway Communities means established villages (at the time of signing the MOA) located between the Mine and Potsi. Subsidiary Communities means the communities identified within ME 82.
concern by the Sambiou villagers was the definition of a River Community (which applies to them being along the Watut River), that is, under the MOA, “River Communities” covers the established villages (at the time of signing the MOA) from the mine site along Watut River downstream to Golden Pine (up the river from Sambiou Village). The reasoning is that damages beyond Golden Pine are attributed to “natural causes” rather than from the mine’s operations. However, the Sambiou villagers argue that since sedimentation does not stop at Golden Pine, but all the way down the river, the “River Communities” definition should also cover the villages down the river. One villager suggested that Sambiou Village be the cut-off point for “River Communities”, since it is the last Watut village down the river. Compensation payments would then reflect the damage done down the river, rather than just the currently defined “River Communities”.

- Sedimentation along the Watut River is a big problem but according to the villagers, this has not been adequately addressed by the compensation agreement because they feel that the compensation paid to affected communities is not sufficient.

- A concern was also raised about the results of mercury testing that has not been communicated back to the people.

- Finally, a claim was made that compensation is only made for plants but not the soil, which is not fair.

4.4.5.3. Other Views by the Informants

In addition to mining township and compensation payments, the informants also expressed their views on certain issues that are related to mining development in the District and in general. The following presents the views on issues by each of the informants:

- **Views by the PA**

  - *Views on Development Paradigms:* The distribution of national wealth has historically been unfair as not much was reaching the people at the village levels. However, there are current improvements, where the national government is allocating funds to sub-national levels via the national budget, including to the LLGs. But resource allocation should go one step further; that is, encourage Ward Councillors to engage with the people directly on how the devolved funds should be used to fund community development projects. The distribution of national wealth/proceeds from economic growth should ensure that the people climb up at least to the first rung of the development ladder.

  The shift from subsistence to the cash economy is not easy. In fact, the pressure to shift to the cash economy is faster than people can get to participate in the cash economy. The current trend of development is about rushing from subsistence to cash society; but why the rush? The minerals will be there. The view that towns and villages must have the same level of development is a misconception; that is, for village people to become like those in town without cash; is a misconception.

  - *Improving future MOAs:* The PA also gave two views about how future MOAs could be improved. These include:

    ✓ The current law that anything below 6 feet belongs to the State is wrong and needs to be changed. Currently, because of this law, the landowners are only compensated for the surface of the land. Instead, the whole land should belong to the people and in the event of any development on the land, proper compensation must be paid to the landowners, not just what is on top of the land. One option is
to buy the land where mining is occurring off from the LOs. When the land is bought from the landowners or adequately compensated for, the negotiations and operation of the mine run more smoothly.

✓ The royalties paid to the provincial government is put into the Provincial Consolidated Revenue Fund (CRF) account. But the PA suggests that some portions of the royalties should be set aside for provincial infrastructure/development projects.

- **Views by HVJV**
  
  ➢ *Model of effective service delivery in the District:* Public-private partnership (PPP) should be explored because it appears that community projects delivered under PPP arrangements have resulted in better results, including increased stakeholder participation, collaboration, and ownership. HVJV, local governments, including LLGs and District Administration (via JDP&BPC) could partner to build local infrastructure (community impact projects) where there is no capacity in the LLGs/districts. For example, HVJV has worked with the Department of Works to build bridges at much lower costs and delivered on time.

- **Views by Special Duty Officer, Mining**
  
  ➢ *Sustainability:* For the landowners, there is little investment but large consumption spending; hence incomes are not sustainable in the long run. People need to be more organised and spend money more wisely.
  
  ➢ *Management and leadership:* Good management and leadership are required for managing the benefits and other effects of the mining project.

- **Views by Watut Rural LLG Manager**
  
  ➢ *Financing outside MOA by HVJV (Watut Rural LLG):* The HVJV assists in addition to its obligations outside the MOA. For the LLG, the HVJV assisted in funding classrooms. However, as the impact area (Watut), the money is not enough.

- **Views by Wau Rural LLG Project Officer**
  
  ➢ *Other funding sources:* There were other funding sources besides those from the mining company. These include:
    
    ✓ Land Physical Infrastructure Grant (LPIG) of which K48,000 was given to the LLG in 2013. This fund is mainly for water supply and education infrastructure.
    
    ✓ Village Social Services (VSS) grant of about K63,000 per annum. This funding is given by National Government to LLGs.
    
    ✓ Local-level Government Service Improvement Program (LLGSIP) of about K200,000.
    
  ➢ *Allowance for workers in Wau (Wau Rural LLG):* Under an agreement with the mine, there was supposed to be a mining allowance for public servants in Wau to compensate them for the price increase due to the mining activities. However, this has not occurred.

- **Views by River Community:**
  
  ➢ *Non-locals:* A villager raised concern that when workers employed by the Mine are sacked from their jobs, they tend to hang around the place, which could cause social
problems. They suggested that such workers should be repatriated by the company to their provinces or districts of origin.

➢ **Education and training:** The villagers expressed concern that locals who are trained at the Bulolo Technical College rarely get employed by HVJV. The villagers claim that based on an agreement between JDP&BPC and HVJV, students who were funded by JDP&BPC at Bulolo Technical College should be employed by HVJV after completion of their training but HVJV does not employ these graduates. One other issue is that HVJV used to pay for students’ fees before but no longer does because of the Government’s Free Education Policy. The villagers suggest that HVJV should pay for the project fees.

➢ **Partnership with churches:** The Church can be used as a partner in development; that is to deliver basic social services like health and education. Therefore, other stakeholders need to work together with the church for the betterment of the communities.

➢ **Support for women:** Women should be supported and provided equal opportunities for development.

➢ **Communication infrastructure:** As a rural community, the river and highway people need communication facilities. Either B’Mobile or Digicel should set up a tower in the area. The government and HVJV should initiate process to set up communications infrastructure with one of the mobile phone companies.

➢ **Delivery of services:** Partnership with private organisations and NGOs such as faith-based organisations to deliver services should be encouraged.

➢ **General views on mining:** A woman leader raised a concern that mining has been in Bulolo for generations but the community has nothing much to show for such a long period of mining development in the area. She quoted the old adage that “the rich are getting richer” while the “poor are getting poorer”. Given the current concerns, the villagers made the point that the MOA for the proposed Wafi-Golpu Mine has to be a better one.

### 4.5 Summary of Key Structural Issues

The key structural issues discussed in this section are depicted in Figure 4.3 — the financial and development benefits flow from the Hidden Valley Mine to the various beneficiaries.

At the top is Hidden Valley, generating the benefits flows in terms of Financial, Development, and Compensation. Different state agencies, Hidden Valley Mine, and combined State and developer facilitate the benefits flows. The main channel through which financial benefits flow to the landowning communities are through the associations and the landowner companies. Development benefits flow through the Provincial and District/Local-level Government and developer facilitated/administered development. Compensation payments are events-specific and are paid as and when the events occur to the aggrieved party directly. The various beneficiaries are shown at the bottom of Figure 4.3.
Figure 4.3: Benefits — financial and development - flows from the Hidden Valley Mine

Source: Authors’ depiction based on information gathered

Note that landowning communities and the Wau-Bulolo community have many arrows pointing at them, signifying that they are the major beneficiaries. Unfortunately, the field trip report depicted minimal impacts. The explanations could be provided by the following structural issues:

- Financial Flows are channeled through the Associations and the landowner companies which have structural weaknesses discussed in Section 4.3. These weaknesses are significant enough to divert financial flows into wastage; and
- Development flows are channeled through various National State Agencies, Provincial Government, and Local-level Government. This is in addition to the development flows facilitated/administered by the developer. This increases coordination and transaction costs thereby undermining development impacts.

Going forward, the structural weaknesses in the customary landowning organisational setup and the poorly coordinated structure of state (all three levels) and the developer need to be streamlined.
5. MAIN FINDINGS AND RECOMMENDATIONS

This section discusses the main findings and recommendations from the review of the MOA drawn from the preceding analysis. The findings are discussed and recommendations suggested in themes.

5.1. MOA Expectations and Outcomes are Consistent for Financial Flows

The expected financial flows (royalties, FGTF, financial assistance to NAKUWI Association, and business spin-offs to NKW) from the MOA were as assessed against the actual. The analysis shows that expectations in the 2005 MOA were largely consistent with the outcomes.

**Finding 1:** The financial benefits flows are largely consistent with the MOA framework.

**Recommendation 1:** Maintain the consistency between expectations and outcomes of the funds flows, as per the MOA.

5.2. Minimal Impact on Development

The data gathered from the field trip, as discussed in Section 4.4 depicts that the impact of the mine on the welfare and or development within the mine impacted region are minimal. This is despite K501.34 million being spent between 2005 and 2013 (see Table 5.1) in the mining area. Of this, K19.5 million was for development, largely infrastructure and K481.84 was financial.

Table 5.1: Summary of financial and development flows

<table>
<thead>
<tr>
<th></th>
<th>Amount (K’million)</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial flows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Royalties</td>
<td>57.53</td>
<td>2005–2013</td>
</tr>
<tr>
<td>NAKUWI Association</td>
<td>1.75</td>
<td>Since 2005</td>
</tr>
<tr>
<td>Business spin-offs (NKW)</td>
<td>421.36</td>
<td>2009–2012</td>
</tr>
<tr>
<td>FGTF</td>
<td>1.20</td>
<td>2010–2012</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>481.84</strong></td>
<td></td>
</tr>
<tr>
<td>Development flows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SSGs</td>
<td>12.70</td>
<td>2010 2013</td>
</tr>
<tr>
<td>Equity</td>
<td>4.70</td>
<td>2010–2013</td>
</tr>
<tr>
<td>Donations (infrastructure)</td>
<td>2.10</td>
<td>2006–2012</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>19.50</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total flows</strong></td>
<td><strong>501.34</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Source:** Summarised from earlier information in the report.

---

17 The financial values stated here are based on the information that the researchers gathered during the field trip, hence the accuracy is subject to the information gathered. The information in Table 5.1 is a summary of information presented earlier in the report.
This finding is instructive — the flow of benefits, both financial and development, failing to impact on the lives of the project impacted customary landowning community is not a good story for all who are parties to the MOA.

**Finding 2:** Anecdotal evidence suggests that the impact of benefits flow on development within the mine-affected community and the district is minimal. That is, the benefits flow (both financial and development) is not adequately translated into social and economic development.

**Recommendation 2:** Participants of the review of the MOA should acknowledge that the benefits flow has not adequately translated into positive developmental outcomes on the lives of the mine-affected landowners and the non-landowning community. The new or revised MOA should aim to ensure that benefits flows are used to advance development for the landowners and the District.

### 5.3. Structural weaknesses in the management and distribution of benefits flow

Structural weaknesses in the organisational structure of benefits flow are undermining the effective management of the benefits flow. This was depicted in Figure 4.3 where the Association linking landowners to the mine was defective in its structure and operations. The same was the case for the landowner owned companies. With respect to the state agencies, there are many players at the National, Provincial and District levels. Collectively, they raise coordination related transactions costs. Further, no one takes responsibility thus raising a typical common pool problem.

With the view to improving this issue, a new structure is proposed as depicted in Figure 5.1 below. This pools financial flows (royalties, business spin-offs and Hidden Valley Mine benefits) into one pool which can be divided into three funds — long-term (40%), human capital formation (40%), and cash (20%). The institutional basis is the Incorporated Land Group (ILG) incorporated under the *Land Groups Incorporation (Amendment) Act* (1974). The ILG is a better institutional structure considering its management and governance structure then the voluntary based association.

Regarding the development flows, the proposal is to have all development funds pooled into one and used for development by a special purpose vehicle that has four distinct institutions: the State, Developer, Community and an Independent Development financier). The State should have one person representing the national, provincial and local-level government interests. A community representative should represent the interests of all the mine-affected communities, including customary landowners. The Independent Development financier should represent other funding agencies such as donors who have an interest in supporting development in such communities.

The special purposes vehicle should provide oversight and planning and disbursement of all the development funds. The closest example is the Gazelle Restoration Authority which is effectively driving infrastructure development for the development of the Kokopo Township.

**Finding 3:** The existing financial flows management system for the landowning community, using NAKUWI Association and NKW Holdings as the main channels is inefficient.

**Recommendation 3.1:** All financial flows accruing to the landowning community be pooled into one fund which is divided into three funds — long-term (40%); human capital formation (40% — health insurance, education and improved housing); and cash (20% — direct cash or shopping vouchers).**

**Recommendation 3.2:** Replace the Associations with ILGs incorporated under the ILG Act (Amendment) 1974.
Figure 5.1: Proposed benefits flow arrangements

Source: Authors’ proposal

**Finding 4:** The existing system for managing development funds and expending is inefficient. In fact, they significantly raise coordination, common pool and transaction costs.

**Recommendation 4:** Pool all the development funds into one pool whose expenditure is to be managed through a special purpose vehicle with representations from the State, developer, community, and independent donor, whose main task is to plan, procure and invest in infrastructure development.

**5.4. Township Development**

The issue of township development arose in many of the discussions. The main sticky issue was the future viability of a township, if developed within the mining region. On the other hand, the need to use the mine to kick-start the development of a viable town, which will drive development after the mine closure was raised.

**Finding 5:** Unfortunately, the development of the township was not in the MOA therefore detailed analysis is omitted in this study.

**Recommendation 5:** An independent study to be commissioned to investigate the viability of the development of a township and the identification of a possible location is incorporated in the next MOA.
6. CONCLUSION

The MOA for the Hidden Valley Mine (based in the Bulolo District of Morobe Province) was signed in 2005 and the mine commenced production in 2009. In 2009, another MOA was signed between the Morobe Provincial Government (MPG) and the Bulolo JDP&BPC to equally share the 36% of the royalties going to the MPG (under the 2005 MOA).

In this report (commissioned by the Bulolo JDP&BPC under the chairmanship of the Member for Bulolo, Hon. Sam Basil), the main MOA (i.e. the 2005 Project MOA) was reviewed with the view to analyse the expectations as envisioned in the MOA and the actual flows of the different streams of benefits. This analysis of the MOA was complemented with a field trip undertaken by two members of the team to Lae, Bulolo and Wau to gather information from key informants.

The review revealed, that by and large, benefits flows, both financial and development remained consistent with the MOA expectations. Based on data gathered between 2005 and 2012, a total of K501.34 million was disbursed as financial and development benefits/flows as a result of the mining operations. However, development outcomes on the ground within the mining impact areas do not reflect the impact of these funds. Consequently, the principle finding being that, the development impact of these funds is minimal.

Detailed analysis revealed serious deficiencies in the structural set up of the MOA and the parties to the agreement. The main ones being that:

- The parties to the agreement do not have a vested interest. Except for the developer, the rest are represented by politicians, public servants who are ex-officios, and landowner representatives elected bi-annually.
- The landowning Associations and companies suffer from structural weaknesses in their setup and operations which undermine their effectiveness in managing the financial flows sustainably.
- The management of the financial and development flows, which combine to constitute the benefits flow suffer from coordination, leading to high transactions cost of operations. Consequently, the funds are thinly spread and the impacts being minimal.

Informed by the key findings listed above, the main recommendations are:

- Improving the development outcomes on the lives of the mine-affected community to be the basis for the next MOA review.
- Pool the financial flows into one pool that will be divided into three funds — long-term (40%), human capital formation (40%), and cash or vouchers (20%).
- Pool the development flows into one pool to be managed through a special purpose vehicle. The governing body of the special purpose vehicle to comprise representatives of the State, developers, community, and independent financial sponsors.
- Incorporated Land Groups (ILGs) should be used as the basis for the mobilisation of landowning communities. This will replace the Associations, which are based on voluntary memberships.

Finally, the question of township has been raised by different stakeholders. Unfortunately, this was not part of the MOA; therefore, a detailed analysis was omitted in this review. However, undertaking a research into the viability of a township should either be commissioned separately before the next review or be included in the new MOA.
LIST OF DOCUMENTS CONSULTED


______, 2014. *Online Registry for Landowner companies and Associations*, accessed on 19 May 2014.


APPENDICES

Appendix 1: Terms of Reference

Project Title: A review and assessment of the financial benefit-sharing arrangements of large-scale mining activities in Wau-Bulolo, Papua New Guinea.

Background

The mining (including petroleum) sector is an important sector of the economy of Papua New Guinea (PNG). The sector contributes significantly to the national budget. Apart from other proceeds from the mining sector such as royalties and compensation payments, the PNG government received K1.103 billion in taxes and dividends in 2012 and this is estimated to increase to K1.35 billion in 2013. The financial and economic benefits from the mining sector also flow to other stakeholders in PNG including local workers and their families through wages, local businesses and contractors, provincial governments, local-level governments, district authorities, and local landowner groups. Despite PNG’s large mineral wealth and the huge financial and economic benefits, it remains poor with low social indicators. Even a lot of people who live in villages and in communities surrounding the mining and petroleum project sites are poor. This calls for a concerted effort by all the relevant stakeholders so proceeds from the mining sector which are paid to the economy are fairly distributed, properly invested, and effectively translated to create wealth, improve service delivery and enhance living standards of the people.

The Hidden Valley gold project is located in the Bulolo electorate of Morobe Province. The gold project, which is operated by the Hidden Valley Joint Venture (HVJV), came into operation in 2007 and commenced production in 2010. It is a joint-venture company owned equally (i.e. 50% each) by Harmony Gold Mining Company and Newcrest Mining Limited. The joint venture company also operates Wafi-Golpu project which is located close to the Hidden Valley gold project, but is currently undergoing its pre-feasibility studies. Benefits, especially mining royalties, from the Hidden Valley Gold Mining Project flow to the national government, provincial government, and local level governments in accordance with a Memorandum of Agreement (MoA) between Hidden Valley Joint Venture (HVJV), local landowners and all levels of government.

According to an MOA signed (on 12 October 2009) between the Morobe Provincial Government (MPG) and the Bulolo Joint District Planning and Budget Priority Committee (JDP&BPC), 50% of the (36% of) royalties paid (by HVJV) to the Morobe Provincial Consolidated Revenue Fund (PCRF) are to be paid to the Bulolo JDP&BPC while the MPG keeps the 50% balance. However, there are varying views on the ground on the distribution of the royalties. If such varying views are not sorted out quickly, they could, among others, cause tensions among stakeholders and this could impede the effective flow of mining benefits to the relevant stakeholders, which potentially could jeopardise the socio-economic development of the Bulolo District. Therefore, it is important to conduct a study to review and assess the impacts of the economic and financial proceeds (from the mine) to the relevant parties to the MoA and the local economy since the commencement of mineral production in 2009. Such a study will assist in charting a way forward so that future financial and economic proceeds from the mine can be fairly distributed to maximise the socio-economic

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18 The 36% of royalties remitted by HVJV to the MPG is based on an MOA in 2005.
development, help create wealth, and improve the living standards of people in Bulolo District.

**Aim**

The aim of this study is to comprehensively review and assess the current MOAs and other benefit-sharing arrangements of the Hidden Valley Gold Project and the economic and financial flows to the parties to the MOAs and other benefit-sharing arrangements. It will also analyse the governance structures of the mining benefits paid to the relevant parties to the MoA, and propose mechanisms as to how the financial benefits can be optimally distributed while taking into account the existing benefit-sharing arrangements. Broadly, this study could also contribute to informing the creation of better MOAs and other benefit-sharing arrangements for mining projects in Wau-Bulolo as well as in other parts of PNG.

**Objectives**

The main objectives of this study are to:

- critically review and assess all forms of mining proceeds (financial) flowing from Hidden Valley Gold project to all the relevant parties to the MoA since the operation of the mine, including mining royalties, compensation payments, taxes, employment, and other spin-off benefits;

- assess and review all the relevant benefit-sharing mechanisms, including the MOAs, in place on whether they are efficient mechanisms to fairly distribute the proceeds of the Hidden Valley Gold Mining Project to the relevant parties, as well as the local economy;

- consider, assess and recommend whether and how the current benefit-sharing mechanisms could be improved to fairly distribute the proceeds of the mine to all the relevant stakeholders in order to maximize the impact of the economic and financial flows of the mine on the local communities and economy; and

- broadly review and recommend how lessons learnt from this study can be used to improve and maximize socio-economic impacts of other mining projects in Bulolo electorate and in other parts of PNG.

**Methods**

This study will require both desk-top study and fieldwork research, and will involve interaction and consultation/interview with all the relevant stakeholders of the Hidden Valley gold project, including, HVJV, Morobe Provincial Government, district authorities (including Bulolo’s JDP&BPC), LLGs, landowners, mine-affected areas, local businesses and local people. An in-depth investigation is to be carried out in relation to how the financial proceeds from the mine have affected the local economy and population, the district and the province, in order to improve the existing benefit-sharing arrangements so future proceeds from the mine can be fairly distributed. All available information sources (including the MoAs, other benefit-sharing agreements, key literature on benefit-sharing arrangements used in other mining projects in PNG, and current mining legislation covering how the benefits from mineral projects can be shared in PNG) will be explored to compile information from a comprehensive source.

The views of the stakeholders are significant to this study and if required, a detailed report could be made available for a public workshop for views before finalising the report.
Interviews will be conducted to gauge views from key stakeholders and key parties to the MoA. The interviews could be guided by standard questionnaires, if required.

Scope of Study

The study shall focus on the following specific tasks:

(a) Carry out an investigation and assessment of mining benefit-sharing arrangement in PNG broadly, and then focus specifically on Hidden-Valley gold mine’s benefit-sharing arrangements, especially the MOAs, by searching the following information sources:

- Relevant research articles or other relevant publications on benefit-sharing arrangements/governance of mining projects in PNG;
- Relevant MoAs and other benefit-sharing mechanisms of Hidden Valley gold project;
- Relevant government policies governing benefit-sharing arrangements in PNG; and
- Relevant records of financial flows provided by Hidden Valley gold project to the parties of the MoA, and other key stakeholders, including employees, and other spin-off benefits provided to the local community and the nation.

(b) If required, interviews with key stakeholders should be conducted with the following to seek their views:

- Mineral Resources Authority;
- Department of Finance and Department of Treasury;
- Morobe Provincial Government;
- HVJV;
- Bulolo District Administration, including its Joint District Planning and Budget Priorities Committee (JDP&BPC);
- LLGs which are party to the MoA;
- Local communities; and
- Local businesses.

Policy Relevance

This study is aimed at drawing lessons for policy on how MOAs and other benefit-sharing arrangements in relation to proceeds from mining projects can be improved, particularly from the viewpoint of the host Districts where mining projects are located. The findings of the study can also provide useful policy lessons on how good financial benefit-sharing arrangements can contribute towards improving the socio-economic development of communities and districts in which large-scale mining projects are located.

During this study, a general observation on the situation with regards to the construction of a “mining township” outside of the District should be noted, and recommendations made on an approach to assess and monitor how the construction and development of a mining township impacts upon socio-economic development.
MEMORANDUM OF AGREEMENT RELATING TO
THE HIDDEN VALLEY GOLD PROJECT
BETWEEN
THE INDEPENDENT STATE OF PAPUA NEW GUINEA;
AND
THE MOROBE PROVINCIAL GOVERNMENT;
AND
MOROBE CONSOLIDATED GOLDFIELDS LIMITED;
AND
NAKUWI ASSOCIATION INC.;
AND
THE WAU RURAL LOCAL LEVEL GOVERNMENT;
AND
THE WATUT RURAL LOCAL LEVEL GOVERNMENT;
AND
WAU BULOLE URBAN LOCAL LEVEL GOVERNMENT.

GEORGE MINJIHAU
ACTING STATE SOLICITOR
OFFICE OF THE STATE SOLICITOR
DEPARTMENT OF ATTORNEY GENERAL
P.O. BOX 591, WAIGANI
NATIONAL CAPITAL DISTRICT
DATED: 05 May 2005.
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Annex A  Business Development Plan
Annex B  Training and Localisation Policy
Annex C  Conceptual Mine Closure Plan
Annex D  Procurement and Supply Plan
THIS AGREEMENT is made on the......................day of AUGUST........2005

BETWEEN: THE INDEPENDENT STATE OF PAPUA NEW GUINEA
(hereinafter called the “State”) of the first part;

AND: THE MOROBE PROVINCIAL GOVERNMENT
(hereinafter called the “Provincial Government”) of the second part;

AND: THE MOROBE CONSOLIDATED GOLDFIELDS LIMITED, A company
duly incorporated in Papua New Guinea, 3rd Floor, Pacific Place, corner of
Musgrave and Champion Parade, PORT MORESBY (hereinafter called
the”MCG”) of the third part;

AND: THE NAKUWI ASSOCIATION INC. of the fourth part;

AND: THE WAU RURAL LOCAL LEVEL GOVERNMENT of the fifth part;

AND: THE WATUT RURAL LOCAL LEVEL GOVERNMENT of the sixth part;

AND: THE WAU BULOLO URBAN LOCAL LEVEL GOVERNMENT of the
seventh part.

WHEREAS

A. The State has granted a Mining Lease 151 to MOROBE CONSOLIDATED
GOLDFIELDS LIMITED, dated 4th day of April, 2005 pursuant to which a
mining operation will be carried out in the Upper Wau/Bulolo area of the
Morobe Province to produce gold and silver within ML 151.

B. It is recognised that the Hidden Valley Project should proceed for the
common benefit of the people of Papua New Guinea, and in particular, the
people of Morobe Province, Bulolo District and the Hidden Valley Project
Landowners.

C. The parties to this agreement acknowledge and recognise the needs,
aspirations and desires of all stakeholders to receive a fair and equitable
share of benefits from this mining operation.

D. The State, the Provincial Government, the Local Level Governments, the
Landowners and MCG have therefore conducted discussions and
negotiations and have agreed on a number of matters relating to the
development of the Hidden Valley Project.

E. The Parties hereto have therefore resolved to have the agreed decisions
emanating from their discussions and negotiations made into an enduring
Agreement.

[Page 3]
IT IS HEREBY AGREED between the Parties as follows:-

PART A – GENERAL

1. DEFINITIONS

In this Agreement, unless the context otherwise require:

“Affected Communities” includes Highway communities, River communities and Subsidiary Landowner communities.

“Business Development Programme” means a plan under which MCG will support the Landowners and the local communities to be involved in business, which is annexed hereto as Annexure A and forms part of this Agreement.

“Department” means the Department of Mining or any other Government entity that has the functions of mining bestowed on it for the time being, unless otherwise specifically indicated herein.

“Employment and Training Plan” means the Employment and Training Plan submitted to the Department responsible for Labour and Employment matters as specified in Annexure C and forms part of this agreement.

“Future Generations” mean all children who are the children of the beneficiaries as defined under the Future Generation Trust as per Section 13.

“Hidden Valley Project Landowners” are the identified landowners within the Mining Lease ML 151; Lease for Mining Purpose LMP 80; and Mining Easement ME 82.

“Highway Communities” means established villages (at the time of the signing of this agreement) located along the highway from the Mine to Potsi.

“Infrastructure” shall include facilities including but not limited to roads, health, agriculture, electric power, water supplies, communications, and education.

“Immediate Impacted Area” refers to the tenements and to areas adjacent to the tenements covered by Wau Rural, Watut and Wau Bulolo Urban Local Level Governments.

“Impacted Area” includes the immediate impacted area, and areas covered by the Mumeng, Waria Local and Buang Local Level Governments and as determined by the Morobe Provincial Government.

“Landholders” are holders of title to a lease granted by the State within ML 151.

“Landowners” are the people from Nauti, Kuembu and Winima villages owning land within ML 151 and LMP 80 as per the PLC decision of 1987

[Page 4]
"Lease for Mining Purposes" (LMP) means Lease for Mining Purposes No. 80 granted in accordance with the Mining Act 1992 to Morobe Consolidated Goldfields Limited for the Project.

"Local Communities" means all communities in the areas covered by the Wau Rural, Watut and Wau/Bulolo Urban LLG's other than Hidden Valley Project landowners as defined above.

"Local Level Government" (LLG) means the Wau Rural Local Level Government, the Wau/Bulolo Urban Local Level Government, the Watut Local Level Government.

"Memorandum of Agreement" means this document.

"Mining Easement" (ME) means Mining Easement No. 82 granted in accordance with the Mining Act 1992 to Morobe Consolidated Goldfields Limited for the Project.

"Mining Lease" (ML) means Mining Lease No. 151 granted in accordance with the Mining Act 1992 to Morobe Consolidated Goldfields Limited for the Project.

"Monitoring & Review Committee" means a committee established by the State to review components of the project every six months from the date of execution of this MOA.

"Morobe Consolidated Goldfields" (MCG) means a wholly owned subsidiary of Harmony Gold Mining Company Limited and includes any permitted assigns or successors of the rights and obligations of Morobe Consolidated Goldfields Limited.

"Morobe Project Management Unit" (MPMU) means the team of National Government, Morobe Provincial Government, Landowner and Developer representatives which manages the implementation of infrastructure projects for impacted communities.

"NAKUWI Association Inc" means the Association of the people of Nauti, Kuembu and Winima villages.

"NKW Holdings Ltd" means a company whose shares are owned for the benefit of the Landowners and formed for the purposes of Clause 35.

"Parties" or "Party" means the Parties to this Agreement.

"Project" means the Hidden Valley Project approved by the Minister for Mining over which the Mining Lease 151, Lease for Mining Purposes 80 and Mining Easement 82 has been granted pursuant to the Mining Act 1992.
“Provincial Government” means the Morobe Provincial Government or any
government entity or body assuming the roles and functions of the Morobe
Provincial Government for the time being.

“River Communities” means those established villages (at the time of the
signing of this agreement) located along the Watut River from the mine site
downstream to Golden Pine.

“Royalty” means the royalty paid pursuant to Section 173 (5) of the Mining Act
1992, or any amendments to, or provisions succeeding or substituted for that
provision.

“Settlers” are individuals or groups of people that have been granted permissive
occupancy by the landowners to occupy and use land within the tenements prior
to the commencement of this Agreement.

“State” shall mean the Independent State of Papua New Guinea.

“Subsidiary Landowners” are the communities identified within ME 82.

“Tenements” refers to Mining Easement No. 82, Lease for Mining Purposes No.
80 and the Mining Lease No. 151 granted pursuant to the Mining Act 1992.

“Wafi LOA” refers to the Yanta Development Association and Hengambu
Landowner Association.

2 INTERPRETATION

In this Agreement, unless the context otherwise requires:

(a) The headings herein do not affect the interpretation or the construction of
this Agreement;

(b) A reference to any legislation includes the amendments to that legislation
and also covers any Act passed in substitution thereof and any
regulations, for the time being in force thereunder;

(c) Words importing the singular include the plural and vice-versa;

(d) Words importing any gender include the other gender; and

(e) The recitals form part of the Agreement.

(f) A word denoting person includes a natural person as well as a corporate
entity;
(g) A reference to any party to this Agreement includes that party's successors and permitted assigns.

(h) A reference to any Department, of the State includes that Department or any successor Department under whatever name it is so called at the given time.

(i) The commencement date for this Agreement will be the execution date of the MOA.

PART B – STATE UNDERTAKINGS

3 ROYALTIES

3.1 The State undertakes, pursuant to the Mining Act, 1992, and, in line with current sustainable development planning goals, to pay royalties from the Project to the Provincial Government, Mining Lease Landowners, and the LLG’s as follows:

| (a) | Provincial Government | 42 % |
| (b) | Immediate Impact Area LLG’s | 14% |
| (c) | Affected Communities | 2.5% |
| (d) | Others | 2.5% |
| (e) | Landowners | 39% |

3.2 The State agrees that the distribution of the total royalties received by the recipients of royalties in Clause 3.1 above shall be as follows:

a) PROVINCIAL GOVERNMENT

MPG - Five-Year Provincial Development Plan | 42 %

| (i) | Provincial Government | 36 % |
| (ii) | Mumeng LLG | 3 % |
| (iii) | Waria LLG | 2% |
| (iv) | Buang LLG | 1% |

b) IMMEDIATE IMPACT AREA LOCAL LEVEL GOVERNMENTS | 14%

| (i) | Wau/ Rural LLG | 5 % |
| (ii) | Watut LLG | 5 % |
| (iii) | Wau/Bulolo Urban LLG | 4 % |
(c) AFFECTED COMMUNITIES

(i) Highway Communities 0.5%
(ii) River Communities 0.5%
(iii) Subsidiary Landowner Communities 1.5%

(d) OTHERS

(i) Settler Communities (Claims) 2.0%
(ii) Wafi LOA 0.5%

(e) LANDOWNERS

(i) NAKUWI Association 2%
(ii) Future Generation Trust 2%

First two (2) years of Operation:

(i) Nauti People 20%
(ii) Kuembu People 7.5%
(iii) Winima People 7.5%

After first two (2) years of Operation:

(i) Nauti People 17.5%
(ii) Kuembu People 8.75%
(iii) Winima People 8.75%

3.3 The royalties shall be paid in the following manner:

(a) In the case of the "Provincial Government" into the Morobe Provincial Government Consolidated Revenue Account.
(b) In the case of the Local Level Governments into their respective operating accounts.
(c) In the case of the affected communities funds will be managed by Nakwi Association Inc. and distribution to be determined by subsidiary landowners in consultation with other project stakeholders.
(d) In the case of Settler Communities, a trust shall be set up and maintained by MCG to cater for payments in a separate Trust Deed. In the case of Wafi Landowner Association representing YDA and HLA will be deposited into the Wafi Landowner Association operating account.
(e) In the case of NAKUWI Association Inc. into the NAKUWI Association Inc. operating account.
(f) In the case of the Future Generation Trust into the Future Generation Trust Account.
3.4 In the case of a dispute arising between parties the State pursuant to
the Public Finance Management Act 1995 will establish and administer
a Trust Account for the affected royalties.

4 SPECIAL SUPPORT GRANT (SSG)

4.1 The State shall use its best endeavours to appropriate to the Provincial
Government and make available in each financial year a grant to be
known as the "Special Support Grant", or such other alternative grant
agreed and approved between the State and the Parties.

4.2 Each annual SSG appropriation will be allocated by the Provincial
Government and managed by the MPMU (Morobe Project
Management Unit) for use on mine affected wards or Districts or
Provincial projects in the Wau Rural LLG, Wau Bulolo Urban LLG,
Watut LLG and Urban Districts and mining affected areas resulting
from MCG's Mining operations.

4.3 The State will provide to the Provincial Government a Special Support
Grant or any other alternative grant equivalent to 0.50% of the value of
fob revenue for the sale of mine products from the Project which will be
utilised annually.

4.4 The SSG will be paid from the commencement of production and will
be calculated as set out in Clause 4.5 herein.

4.5 For the purpose of this Clause, f.o.b. revenue shall have the same
meaning as provided in Section 173 (5) of the Mining Act 1992.

4.6 The SSG will be calculated on the estimated annual f.o.b. revenue
from the sale of mine products, such of which shall be adjusted
annually against the actual revenue.

4.7 The SSG will only be released after the State has approved a list of
projects and programmes submitted by the Provincial Government.

4.8 Progress and completion reports must also be provided six monthly.

4.9 An audit report must be carried out on annual basis.

4.10 The SSG will be expendable in the mining affected areas and other
areas covered by the Local Level Government(s) and only in
accordance with the approved guidelines.

4.11 Review of the SSG Program will take place three (3) years after the
production commences or with the review of this agreement.

5 INFRASTRUCTURE PROJECTS FOR IMPACTED COMMUNITIES

5.1 That the State undertakes to provide funds through the Special Support
Grant for infrastructure projects identified under the Provincial
Government's 5 year plans.
6 TAX CREDIT SCHEME

6.1 The State through the Department of National Planning & Rural Development undertakes to extend the Tax Credit Scheme in accordance with the approved guidelines to the project as and when MCG is in a taxable position. The rate of 0.75% will apply to general Tax Credit Scheme Projects.

6.2 The State undertakes to extend the supplementary 1.25% taxable income component of TCS to the maintenance of the Lae-Wau Highway.

7 MINE CLOSURE / REHABILITATION PLAN (SUSTAINABLE DEVELOPMENT)

7.1 The State through the Department of Mining shall use best endeavours to ensure the Conceptual Mine Closure Plan submitted pursuant to Annexure C is fully complied with and implemented by all parties.

7.2 The State undertakes to establish through the Department of Mining and the Department of Environment and Conservation, a professionally led mine closure task force, in order to have ongoing consultation with MCG in reviewing and finalising the plan for mine closure.

8 ENVIRONMENT

8.1 The State, through the Department of Environment and Conservation, shall ensure that MCG develops the Project in a manner that minimises the environmental impact of the project and ensures MCG fully complies with the Environmental Permit conditions that have been approved by the State for the development of the Project in accordance with the Environment Act 2000.

8.2 Pursuant to Clause 8.1 and consistent with the Company’s commitments under the Environmental Permit conditions, the State undertakes to have MCG provide regular briefs on all environmental aspects of the project in accordance with the mine’s Environment Management Plan.

8.3 The State undertakes to have:

(a) Officers of the Department of Environment and Conservation make regular inspections to review the environmental impact of the Project during and after the mine life.

(b) The reports submitted from such inspections shall be distributed to relevant Government Departments and Agencies, the Hidden Valley Project Landowners, the Bulolo District Administration, the Provincial Government and MCG.
8.4 The State undertakes in carrying out 8.3:

(a) To assess impacts downstream of the mine beyond the mixing zone boundary.

(b) To provide an independent assessment of the Project's impacts whenever necessary.

8.5 The State through the National Forest Authority shall provide assistance and advice on the establishment of an Agro-Forestry integrated conservation program.

8.6 The State shall initiate and assess environmental impacts (existing and residual effects) from the mine workings at Edie Creek, Kaindi and Kuranga tenements and report on this by 01 April 2007. The costs for this study shall be shared equally between the State, Provincial Government, the Landowners and MCG.

8.7 The State through the Department of Environment and Conservation shall ensure that mine rehabilitation shall be complied with based on the Mine Closure Plan and stipulations of the Environment Act 2000.

9 BUSINESS DEVELOPMENT PLAN

9.1 The State through the Department of Trade and Industry shall use best endeavours to ensure the Business Development Plan submitted pursuant to Annexure A is fully complied with and implemented.

9.2 The State through the Department of Trade and Industry will establish a committee to monitor the implementation of the Business Development Plan and will meet on a six (6) monthly basis. The committee will be chaired by the Department of Trade & Industry, and membership of the committee will comprise one representative from each of the Departments of Mining, Planning and Treasury; representatives from the Provincial Government, LLG's, Landowners and MCG.

9.3 The State through the Department of Trade and Industry, undertakes to ensure that the Business Development Plan includes provisions whereby preference is given by the Company, on terms generally available and subject to proven expertise, firstly, to NKW Holdings Limited, secondly, to businesses owned and operated by the people of Bulolo District and, thirdly, to businesses owned and operated by people of Morobe Province, fourthly to businesses owned and operated in Papua New Guinea and fifthly to international companies.
10 SUPPLY AND PROCUREMENT

10.1 The State through the Department of Trade and Industry undertakes to use its best endeavours to have MCG identify and invite registration of businesses in Papua New Guinea, particularly in the Morobe Province, which are capable of supplying materials, equipment and services to the project in liaison with NKW Holdings Limited but pre-qualification and registration does not provide assurance to a business that they will be invited to tender or be awarded any contracts.

10.2 The State through the Department of Trade and Industry shall use its best endeavours to have MCG implement the agreed Procurement and Supply Plan in Annexure D.

11 EMPLOYMENT AND TRAINING

11.1 The State through the Department of Labour and Industrial Relations shall use its best endeavours to ensure that MCG and Company Contractors or sub-contractors:

(a) Develop, organise and facilitate suitable employee training plans for approval by the Department of Labour & Industrial Relations.

(b) Comply with the requirements and implement the approved Training and Localisation Plan as per Annexure B.

(c) Give preference as far as is reasonably possible in training and employment opportunities during the construction and operation of the project, in the following order of priority to the -

(i) NAKUWI Landowners;
(ii) People of Bulolo District;
(iii) People of the Morobe Province;
(iv) People of Papua New Guinea;
(v) Non citizens of Papua New Guinea.

(d) Provide a six-monthly report for tabling at a review of -

(i) The progress in the compliance and implementation of the approved training and localisation plan; and
(ii) The implementation of a career succession plan.

12 FINANCIAL ASSISTANCE TO THE LANDOWNERS

12.1 The State shall extend financial assistance to the Landowners as follows:

(a) to NKW Holdings Limited a once only grant of K500,000.00 during the first financial quarter of 2006 subject to provision of a
(i) the company financial reports
(ii) the company business plan
(iii) provision of background information on joint venture partners and acceptable references;
(iv) agreed arrangements for prudential management of the funds
(v) NKW shareholding held fairly

to enable NKW Holdings Ltd to participate in commercial opportunities which may arise from the project.

12.2 The State shall, through the Department, provide an amount of K500,000.00 over a period of 5 years to NAKUWI Association Inc to be disbursed as follows:

(a) K100,000.00 within one month following signing of this Memorandum of Agreement
(b) K100,000.00 upon commencement of the mine facilities construction
(c) K100,000.00 upon commencement of the mine production
(d) The remaining K200,000.00 will be disbursed in instalments of K100,000.00 over each of the next two anniversaries of commencement of production.

The payments subject to the provision of a budget of expenditures for each payment of K100,000.00 which shows the funds provided being spent for purposes of facilitating the Nakuwi Associations approved objectives.

13 FUTURE GENERATIONS TRUST FUNDS

13.1 Upon execution and coming into effect of this Agreement the State shall establish a Trust Account pursuant to the Public Finance Management Act 1995 to be known as the NAKUWI Future Generations Trust the purposes of which are to provide for the education of the future generations of the respective landowners.

13.2 The trust deeds shall among other things make provision for:

(a) The trustee or trustees as decided by the respective Landowner Associations and the Provincial Government; and
(b) The persons to be the signatories to the trust account; and
(c) The circumstances under or the purpose for which any monies in the trust fund may be utilised or expended; and
(d) The procedure for the accountability of the monies of the trust fund; and
(e) Any other matters which are relevant or convenient for the proper and efficient management of the trust fund.

13.3 The trustees to the Future Generation Trust Fund shall in accordance with Clause 13.2(a) be the persons or their nominees holding the following positions:

(a) Morobe Provincial Administrator
(b) President of the Landowners Associations
(c) Provincial Treasurer of Morobe

13.4 The monies to be paid into the trust funds are the royalties intended for the benefit of the Future Generations and distributed by the State in accordance with this Agreement; and any other monies that are lawfully intended for the purpose of the fund.

13.5 The eligibility period for the utilization or expenditure of the Trust Funds shall commence after five (5) years from the date of the first payment of royalties to the State.

14 LAW AND ORDER

The State through the Department of Police undertakes to monitor, maintain and improve Police effectiveness within the Bulolo District to improve the law and order situation.

15 STATE TO CO-OPERATE AND ASSIST

The State shall work closely in consultation with the Landowners, Local Level Governments, Provincial Government and MCG in the implementation of the provisions of this Agreement.

PART C – MOROBE PROVINCIAL GOVERNMENT UNDERTAKINGS

16 AGRICULTURAL ACTIVITIES

16.1 The Provincial Government shall use its best endeavours to promote cultivation and create marketing of commercial agricultural produce in the mine affected areas.

16.2 The Provincial Government agrees to provide advice in the field of Agriculture, and Agro Business Development as maybe required for the project in a timely manner.
16.3 The Provincial Government agrees to provide a six-monthly report and return of:

(a) Progress with advancement and of agricultural activities
(b) A plan to address advancement of agricultural development

17 ROADS
17.1 The Provincial Government agrees to provide annual funding for road and bridge maintenance within the Impacted Area.

18 INFRASTRUCTURE
18.1 The Provincial Government recognises and acknowledges the fact that under the organic law on Provincial and Local level Government it will be receiving various administration grants from the State therefore it agrees to provide and co-fund the maintenance of public infrastructure stipulated under this agreement.

18.2 There shall be a team of four key people to direct the management and accounting of funds spent on projects undertaken. The team shall be known as the Morobe Project Management Unit (MPMU).

18.3 The MPMU shall have representation as follows:

(i) Morobe Provincial Administrator or nominee;
(ii) President of NAKUWI Association or nominee;
(iii) Chief Executive Officer of MCG or nominee; and
(iv) A National Government representative

18.4 The MPMU shall account for all funds and submit annual reports to National Government, Provincial Government, MCG and NAKUWI Association.

18.4 The MPMU is an arrangement for efficient project implementation while the mining project is ongoing. The Developer plays a key role in ensuring the success of implementing projects for impacted communities. At the end of mining operations, the MPMU will be wound down and phased out in line with the Mine Closure Plan.

18.5 The normal Provincial and District administrative and budgetary procedures for the development of projects in Morobe Province will be separate from the MPMU arrangement. The MPMU is specific for the Hidden Valley project and is aimed at improving the welfare of communities impacted by the Hidden Valley project.
19  **FINANCIAL ASSISTANCE TO LANDOWNERS**

19.1 The Provincial Government shall give a one off grant of K 150,000.00 to NAKUWI Association to assist in establishing support facilities.

19.2 The Provincial Government shall extend financial assistance to NKW Holdings Ltd as follows:

(a) Subject to NKW Holdings Ltd satisfying the Provincial Government's requirements for prudential management, a once only grant of K500,000.00 to enable NKW Holdings Ltd to participate in commercial opportunities arising from the project.

(b) This grant is payable upon the signing of this agreement.

20  **LAND**

20.1 The Provincial Government will provide training and materials for Land Mediators and their allowances to attend to land disputes in the mine area.

21  **VILLAGE COURTS**

21.1 The Provincial Government will provide training and materials for Village Court Magistrates and their allowances to attend to disputes in the mine area.

22  **ENVIRONMENT**

22.1 Morobe Provincial Government through the Division of Mines, Natural Resources and Environment shall work with Department of Environment and Conservation to ensure that Morobe Consolidated Goldfields develops the project within the conditions of the Environment Permit that was granted to the company in accordance with the Environment Act 2000.

That Morobe Provincial Government undertakes to have:

a) Officers of the Division of Mines, Natural Resources and Environment and/or its consultants shall work with the Department of Environment and Conservation to conduct regular inspections to review environmental impact of the project during and after the mine life on all aspects of the physical and/or natural environment including monitoring of the river system from Hidden Valley project site to the Markham delta.
b) The reports emanating from such inspections shall be distributed to relevant Government Department and Agencies, Hidden Valley Project Landowners, National Government and Morobe Consolidated Goldfields.

23 PROVINCIAL GOVERNMENT TO CO-OPERATE AND ASSIST

23.1 The Provincial Government will work closely in consultation with the Project Landowners, the Local Level Government, the State and MCG through the establishment of a Provincial Division of Mines in the implementation of the provisions of this Agreement.

PART D – THE WAU RURAL LLG; THE WATUT LLG; THE WAU/BULOLO URBAN LLG UNDERTAKING

24 ACCOUNTING OF ROYALTIES

24.1 The Wau Rural LLG, Wau Bulolo Urban LLG and Watut LLG undertake to allocate royalties derived from The Hidden Valley Project in the following manner:

(a) a minimum of 50% towards Village Ward Projects
(b) a minimum of 30% towards Family Development and Community Sustainable Development Programs

24.2 The Local Level Governments of Wau Rural, Wau Bulolo Urban, and Watut accept that their ongoing right to the royalty allocation set out under Clause 3 is conditional upon their compliance with Clause 23.1 and will be subject to annual audits.

24.3 Where auditors determine that a local level government has not allocated royalties to the agreed purpose prescribed in Clause 23.1, royalties will be diverted to the Trust Fund referred to in Clause 3.4.

25 FAMILY DEVELOPMENT PROGRAM

25.1 The Wau/Bulolo Urban, Wau Rural and Watut Local Level Governments undertake to provide assistance to establish a Family Development Program in the mine affected areas to further advance the aims and aspirations of family life, women and youth through life skills training programs, micro-credit programs, and agriculture, health and literacy programs.

25.2 The Family Development Program will commence with the commencement of the mine production.
26 COMMUNITY SUSTAINABLE DEVELOPMENT PROGRAM
26.1 The Local Level Government’s agrees to assist with Sustainable Community Development Planning under the 5 year rolling District Development Plan.

26.2 The Local Level Government agrees to assist their Council ward areas with identified projects; especially in the more impacted areas.

27 LOCAL LEVEL GOVERNMENT’S TO CO-OPERATE AND ASSIST
27.1 The Local Level Government’s will work closely in consultation with the Hidden Valley Project Landowners, the State, the Provincial Government, MCG, the respective Ward’s and the Provincial Division of Mines in the implementation of the provisions of this Agreement.

PART E – THE UNDERTAKINGS BY MCG

28 CONTRIBUTION TO PHYSICAL AND SOCIAL INFRASTRUCTURE
28.1 MCG shall provide, during the mine construction period, and during mine life suitable funding as agreed upon during its annual budgeting cycle. The funding will be dependent on both impacts of mining and social responsibility as well as economic circumstances. Projects will include: education, training, health and agriculture extension programmes, alcohol and drug HIV/AIDS awareness and educational programmes, water tanks, and identified sustainable development programmes and projects.

29 FINANCIAL ASSISTANCE TO LANDOWNERS ✓
29.1 MCG has provided sufficient funding for the establishment of NAKUWI Association.

29.2 MCG has provided sufficient funding for the entire MOA negotiation process.

29.3 MCG shall also provide annual grants of up to K100, 000.00 for the continued maintenance of NAKUWI Association throughout the life of the project providing that Nakuwi Association continues functioning as a coherent functioning body in its undertakings.

30 FAMILY DEVELOPMENT PROGRAM
30.1 MCG will work with the LLG’s to provide technical assistance to establish the Family Development Program’s referred to in Clause 24 above, for the mine affected areas to advance the aims and aspirations of families
through life skills training programs, micro credit programs, agriculture, health and literacy programs.

31 ENVIRONMENT

31.1 MCG will ensure the Project is developed in a manner that is in accordance with the approved Environmental Permit conditions as governed by the Environment Act 2000.

31.2 MCG agrees that in the event of any claims for environmental damages or any other losses associated with the environment suffered as a result of the Company’s mining operations, then these will be referred to the Department of Environment and Conservation for further investigation.

3.3 MCG shall facilitate an independent assessment of the environmental impact of the mine in compliance with the approved environmental plan.

32 MINE CLOSURE PLAN

32.1 MCG shall use best endeavours to ensure that the conceptual Mine Closure Plan Annexure C is updated regularly and that this is finalised as mine closure plan.

32.2 MCG shall use best endeavours to comply with the mine closure plan.

33 EMPLOYMENT AND TRAINING

33.1 MCG through the Department of Labour and Industrial Relations shall use best endeavours to ensure the Employment and Training Plan submitted pursuant to Annexure B is fully complied with and implemented by all parties.

33.2 MCG shall develop, organize and facilitate suitable training plans for its employees.

33.3 MCG shall comply with training requirements and implement the Department of Labour and Industrial Relations approved Training and Localisation Plan.

33.4 MCG shall give preference as far as is reasonably possible in training and employment opportunities in the construction and operation of the project in the following order of priority –

(a) To the NAKUWI Landowners,

(b) To the people of Bulolo District.

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(c) To the people of the Morobe Province,
(d) To the people of Papua New Guinea and
(e) To non citizens of Papua New Guinea.

33.5 MCG shall provide an annual report for tabling at a review of:

(a) The progress in the compliance and implementation of training and localisation plan; and
(b) The implementation of a career succession plan.

33.6 MCG will consult with the Landowners to develop secondary and tertiary scholarship programs.

33.7 MCG shall during the construction period use its best endeavours to provide training for locally based workers.

34 BUSINESS DEVELOPMENT PLAN

34.1 MCG shall use its best endeavours to ensure the Business Development Plan submitted pursuant to Annexure A and approved by the Department of Trade and Industry is fully complied with and implemented.

34.2 MCG shall encourage the development of businesses with spin off opportunities from the Project and in doing so will give preference on terms generally available and subject to proven expertise to businesses owned and operated by firstly; the NAKUW1 Landowners under NKW Holdings Limited; secondly, the people of Bulolo District; thirdly, the Morobe Province; and fourthly, to the people of Papua New Guinea.

34.3 MCG will establish and ensure prior to commencement of production that:

(a) There is a Business Development Office (BDO) responsible for the implementation of the Business Development Plan in consultation with directors of the NKW Holding Ltd., the Wau/Bulolo District Business Development Office and the Provincial Division of Commerce.

(b) The BDO will where it can be demonstrated supply goods and services in a cost effective manner:

(i) liaise with the project management for the provision of contracts for the NKW Holdings Ltd.; and
(ii) ensure that, where feasible, contracts for the provision of goods and / or services to the Project during the construction
period are structured so as to enable locally owned business ventures to be positioned to bid for and undertake those contracts; and

(iii) the NKW Holdings Ltd. to establish joint ventures with successful external contractors or suppliers to the Project;

34.4 MCG has assisted with the establishment of the NKW Holdings Ltd.

34.5 MCG will keep the NAKUWI Landowners and their corporate identities informed in accordance with Harmony’s policies and procedures:

(a) The probable types of business opportunities and the approximate values of contracts through the contract consultative group to ensure the NAKUWI Landowners and their NKW Holdings Ltd. to be prepared in advance.

(b) Contracts that will qualify for NKW Holdings Ltd. involvement through the provision of goods and services:

(i) during the construction period of the mine;

(ii) during the operational phase of the mine.

(c) The estimated value each of the local business contracts

(d) The proposed award date and estimated duration of each local business contract.

34.6 MCG will provide a six monthly report for a six monthly review on activities undertaken in the implementation of the BDP.

35 SUPPLY AND PROCUREMENT

35.1 MCG undertakes to use its best endeavours to identify and invite registered businesses in Papua New Guinea, particularly in the Morobe Province which are capable of supplying materials, equipment and services to the project in liaison with NKW Holdings Limited but pre-qualification and registration does not provide assurance to a business that they will be invited to tender or be awarded any contracts.

35.2 MCG will ensure that where goods and services are procurable for the project through PNG sources MCG will provide those pre-qualified companies every opportunity to participate in the tendering process and if such tender:

(a) Meets the specifications of the invitation to tender, and

(b) is competitive in cost with international services, taking full account of all landed costs; and
(c) Meets delivery requirements of the Project, then the successful tenderer will be directed where appropriate to enter into a joint venture arrangement with NKW Holdings Limited to provide the contracted goods and services.

35.3 MCG will procure from PNG sources with preference given in the following order to those from:

(a) the NAKUWI Landowners,
(b) the people of Bulolo District,
(c) the people of the Morobe Province,
(d) the people of Papua New Guinea and
(e) non citizens of Papua New Guinea

35.4 MCG shall use its best endeavours to ensure the Procurement and Supply Plan submitted pursuant to Annexure D is fully complied with and implemented.

36 MCG TO CO-OPERATE AND ASSIST

36.1 MCG will work closely in consultation with the Landowners, the Local Level Governments, the Provincial Government and the State in the implementation of the provisions of this Agreement.

PART F – LANDOWNERS UNDERTAKINGS

37 NAKUWI ASSOCIATION INC.

The NAKUWI Association Inc. hereby undertake to:

37.1 Work in full consultation with the State, the Local level Government, the Provincial Government, and MCG and associated entities to ensure the smooth and efficient operation of the mine.

37.2 Ensure timely compliance with the association’s statutory obligations.

37.3 Provide a mechanism of alternative dispute resolution which will attempt in the first instance to solve disputes between themselves or disputes between themselves and other parties to the Agreement that may impact on the mine operations.

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37.4 Provide a six monthly report for a six monthly review of the mine operations covering mine impacts and changes in their socio-economic conditions.

37.5 Ensure that all money received from other stakeholders is accounted for in the agreed manner:

(a) In the case of the State, in accordance with the Public Finance Management Act 1995

(b) In the case of the Morobe Provincial Government on a quarterly basis, in accordance with the Public Finance Management Act 1995.

(c) In the case of MCG, by the provision of compliant financial statements within 21 days of the end of each month; and in the case of any entity incorporated under the Companies Act, 1997, by the provision of audited accounts within 60 days of the end of each financial year.

38 NKW HOLDINGS LTD.

38.1 The NAKUWI Landowners have formed an umbrella company known as NKW Holdings Limited for the purposes of partaking in business spin-offs created as a result of the project and furthering their long-term business interests.

38.2 The NAKUWI Landowners agree that the shareholding arrangement under the NKW Holdings Ltd. shall be fairly distributed amongst Nauti, Kuembu and Winima Clans and shares will be non-transferable after issue except where such a transfer would not affect this arrangement.

38.3 The NAKUWI Landowners agree that the payment of grants from the State and the Provincial Government and any financial assistance from MCG to NKW Holdings Ltd will be contingent upon the constitution of NKW Holdings Ltd stipulating that the number of the directors of NKW Holdings Ltd will not exceed six (6) of which three will be independent directors, nominated by the State and/or the Provincial Government.

38.4 Ensure that all money received from other stakeholders is accounted for in the agreed manner:

(a) In the case of the State in accordance with the Public Finance Management Act 1995

(b) In the case of the Morobe Provincial Government on a quarterly basis in accordance with the Public Finance Management Act 1995.

(c) In the case of MCG, by the provision of compliant financial statements within 21 days of the end of each month; and in the case of any entity incorporated under the Companies Act, 1997, by
the provision of audited accounts within 60 days of the end of each financial year.

39 LANDOWNERS TO CO-OPERATE AND ASSIST

The Landowners hereby give the following undertakings:

39.1 To co-operate with and assist the State, the Provincial Government, the Local Level Government’s and MCG to ensure the smooth and efficient operation of the Project.

39.2 Not to disrupt the operation of the Project at any time during the lifetime of the Project should any problems arise which are connected with the Project.

39.3 Not to interfere with or otherwise change any electrical, infrastructural, roads or water installation installed by the State, the Provincial Government or MCG.

39.4 Not to damage any buildings, facilities or projects installed by the State, the Provincial Government or MCG.

40 LAND FOR SUSTAINABLE DEVELOPMENT PROJECTS

40.1 The Landowners undertake to identify and provide land for agreed community infrastructure and services under the project implementation plan.

41 PROJECT EQUITY

41.1 The Provincial Government and the Landowners have requested a desire for a participating equity in the Hidden Valley Project.

41.2 MCG recognises such a desire and should circumstances arise to facilitate an equity interest then MCG will consider the stated desire.

41.3 A participating interest shall be negotiated subject to normal commercial and legal conditions.

41.4 The equity purchase by the Parties in Clause 40.1 would be limited to a maximum of 5%.

PART G – FORMAL CLAUSES

42 LAW APPLICABLE

42.1 This Agreement shall be governed by and construed in accordance with the laws of the Independent State of Papua New Guinea.
43 FORCE MAJEURE

43.1 For the purposes of this Agreement, Force Majeure shall include war, insurrection, civil disturbances, blockades, riot, embargoes, strikes, lockouts and other labour conflicts and disputes, epidemics, volcanic eruptions, earthquakes, cyclones, floods, tidal waves, explosions, fires, lightning, governmental restrictions or unavailability of material or equipment and any other event which the party claiming force majeure could not reasonably be expected to prevent or control.

43.2 Any failure on the part of a Party to comply with any of the terms, conditions and provisions of this Agreement (except any obligations of a Party to make payment of money owed to the other Party) shall not constitute grounds for termination or shall not give the other Party any claim for damages if such failure arises from Force Majeure, and provided the first-mentioned Party:

(a) Has taken all appropriate precautions, due care and reasonable alternative measures either with the objective of avoiding such failure and/or of carrying out its obligations under this Agreement; and

(b) Has given notice to the other Party of the occurrence of Force Majeure upon becoming aware of same.

43.3 The first-mentioned Party shall take all reasonable measures to overcome the Force Majeure and to fulfil the terms and conditions of this Agreement with the minimum of delay (except that no Party has an obligation to settle a labour dispute or to test the validity of any legislation) and shall give notice to the other Party upon the restoration of normal conditions.

44 TERMINATION / REVIEW

44.1 This Agreement shall terminate on the expiration of the Mining Lease or upon its earlier revocation or surrender.

44.2 The Parties shall hold a full review of this Agreement after 3 years from the date of commencement of production as verified in writing by the Department of Mining and every two years thereafter.

45 RESOLUTION OF DISPUTES

45.1 Where a dispute arises between the Parties as to the interpretation or implementation of this Agreement, they shall genuinely consult with each other with a view to resolving same. All such matters shall be treated as confidential and not for release to the press or to other persons except by written authorization from these parties.
45.2 Where a party fails to genuinely consult and complies with other parties causing disruption and financial loss then those parties may be deemed to be responsible and liable for costs.

46 ARBITRATION
46.1 Where a dispute referred to in Clause 44 is not resolved within sixty (60) days from the day on which the Parties first formally meet for the purpose, the Parties shall submit the dispute to a single arbitrator in Papua New Guinea as agreed to by the Parties for resolution of disputes in accordance with the provisions of the Arbitration Act (Chapter 46).

47 WAIVER
47.1 The failure of any Party to implement at any time, any of the provisions of this Agreement shall in no way be construed to be a waiver of the provisions or any part thereof of this Agreement or the right of any Party thereafter to enforce each and every part of the provision in respect of any subsequent default or breach.

48 SEVERABILITY
48.1 The provisions of this Agreement shall be separate and severable each from the other to the extent that if any portion or any one provision or portion is deemed to be inoperative then the remainder of the Agreement shall remain binding upon and enforceable by the Parties hereto.

49 FURTHER ACTS
49.1 The Parties shall execute such documents and do and perform such acts that lie within their power and are necessary to give full effect to this Agreement.

50 IMPLEMENTATION
50.1 Each Party shall use its best endeavours to comply with conditions and obligations under this Agreement.

51 REPRESENTATIONS AND WARRANTIES
51.1 Except as expressly stated in this Agreement, no representation, inducement or warranty given or made by one of the Parties hereto with the intention of inducing the other Party to enter into this Agreement, and any representation which may be construed as inducements or warranties that may have been so given are hereby denied and negated.
52  NO DEVOLUTION
52.1 All undertakings given by any one party under the MOA shall not be
devolved or transferred to another party except as reasonably agreed to
by all parties to this MOA.

53  COMMUNICATIONS
53.1 Any formal communication by the Parties concerning this Agreement shall
be deemed to have been made:
   a) In the case of the State, if signed by the Minister or the Secretary of
      the Department of Mining, as their responsibilities require; and
   b) In the case of the NAKUWI Landowners, if signed by the NAKUWI
      Association President and Executives; and
   c) In the case of the Provincial Government if signed by the Governor,
      or the Provincial Administrator; as their responsibilities require and
   d) In the case of MCG if signed by the Chief Executive Officer of MCG
      or his authorised deputy.

53.2 Any formal communication shall be in writing and may be delivered either
personally, or transmitted by facsimile or electronic mail to the person, or
persons referred to in Clause 52.1 herein.

53.3 Any formal communication shall be deemed to have reached the other
Party:
   (a) in the case of personal delivery, when received by the relevant
       person referred to in Clause 52.1 herein; and
   (b) in the case of facsimile or electronic mail as soon as the
       transmission is confirmed.

54  CONSULTATION
54.1 The Parties agree to meet on a quarterly basis to review activities of the
mine operations and obligations under this Agreement.

54.2 A project review will be held every six (6) months from the signing of this
Agreement, or as determined by the Parties to this Agreement.

55  EXECUTION
55.1 This document is legally binding on all parties to the MOA upon its
execution by the duly authorized representative or representatives for
each stakeholder who is a party to this MOA.
55.2 The execution shall not be affected by any future land ownership title determination.

55.3 Any such new determination of landownership shall be deemed to have been fairly represented by the signatories to this MOA.

56 COMMENCEMENT DATE OF THIS AGREEMENT

56.1 The commencement date for this Agreement will be the date of execution of the MOA.
In WITNESS WHEREOF of this Agreement has been duly executed in Papua New Guinea on the 5th day of August 2005.

SIGNED for and on behalf of the
Independent State of Papua New Guinea
acting with and in accordance with the advice of the National Executive Council
by the Minister for Treasury

Witness

SIGNED for and on behalf of the
Morobe Provincial Government
acting with and in accordance with the advice of the Provincial Executive Council of the Morobe Provincial Province
by the Governor

Witness

SIGNED for and on behalf of the
Wau/Bulolo Urban/Local Level Government
by the President

Witness

SIGNED for and on behalf of the
Wau Rural Local Level Government
by the President

Witness

SIGNED for and on behalf of the
Watut Rural Local Level Government
by the President

Witness

SIGNED for and on behalf of the
Morobe Consolidated Goldfields Ltd
By the Executive Officer

Hon. Bart Philemon, MP

Mr. Abihe Tanize

Mr. Sopa Mon

Mr. Bani Isaac

MOROBE CONSOLIDATED GOLDFIELDS LIMITED
P.O. BOX 102
WAU

PHONE: 474 6208
FAX: 474 6344
Witness

Signed for and on behalf of the Mining Lease Landowners

By the chairman of Nakuwi Landowners Association

WITNESSED for and on behalf of the Hidden Valley Mining Lease Landowners - by:

<table>
<thead>
<tr>
<th>NAME OF VILLAGE</th>
<th>VILLAGE REP.</th>
<th>SIGN</th>
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<tbody>
<tr>
<td>1. Nakuwi Deputy President (Nauti)</td>
<td>Peter Askai</td>
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<tr>
<td>2. Nakuwi Treasurer (Kwembu)</td>
<td>Ilau Wara</td>
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<tr>
<td>3. Nakuwi Secretary (Nauti)</td>
<td>Ben Joseph</td>
<td></td>
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<tr>
<td>4. Nakuwi Committee (Kwembu)</td>
<td>Stevie Nandang</td>
<td></td>
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<tr>
<td>5. Nakuwi Committee (Nauti)</td>
<td>Kepas Angitau</td>
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<td>6. Nakuwi Committee (Winima)</td>
<td>Kawen Waia</td>
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<td>7. Nakuwi Committee (Nauti)</td>
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<td>8. Nakuwi Committee (Winima)</td>
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<td>9. Nakuwi Committee (Nauti)</td>
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<td>10. Nakuwi Committee (Winima)</td>
<td>Joel Awi</td>
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<td>11. Nakuwi Committee (Nauti)</td>
<td>Henry Kondreas</td>
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<td>12. Nakuwi Committee (Kwembu)</td>
<td>Waekis Kawena</td>
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<td>14. Nakuwi Women’s Rep (Kwembu)</td>
<td>Kawi Kawa</td>
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<td>15. Nauti (Yatavo)</td>
<td>Max Kepas</td>
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<td>16. Nauti (Yatavo)</td>
<td>Koi Ngamalo</td>
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<td>17. Nakuwi (Kavaingo)</td>
<td>Kondias Kipamano</td>
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<td>18. Nakuwi (Yandiamango)</td>
<td>Andrew Mera</td>
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<td>19. Kwembu</td>
<td>Levi Inani</td>
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<td>20. Kwembu</td>
<td>Wayang Kawa</td>
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<tr>
<td>21. Winima</td>
<td>Samson Kawa</td>
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<tr>
<td>22. Winima</td>
<td>Henry Kiari</td>
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Appendix 3: 2009 MOA between MPG and Bulolo JDP&BPC

MEMORANDUM OF AGREEMENT

RELATING TO PORTIONS OF ROYALTY PAYMENT FROM HIDDEN VALLEY GOLD PROJECT

BETWEEN

MOROBE PROVINCIAL GOVERNMENT

AND

BULOLO JOINT DISTRICT PLANNING & BUDGET PRIORITY COMMITTEE

Morobe Provincial Government
P O Box 1834
LAE City C.B.C
Morobe Province
Papua New Guinea

Telephone: 4731652/4731650
Facsimile: 4724745
MEMORANDUM OF AGREEMENT

RELATING TO PORTIONS OF ROYALTY PAYMENT FROM HIDDEN VALLEY GOLD PROJECT

A MEMORANDUM OF AGREEMENT made this ___ day of ___ 2009.

BETWEEN: MOROBE PROVINCIAL GOVERNMENT, P O Box 1834, LAE, Morobe Province, hereinafter called “PROVINCIAL GOVERNMENT” (of one part).

AND: BULOLO JOINT DISTRICT PLANNING & BUDGET PRIORITY COMMITTEE, P O Box 178, BULOLO, Morobe Province, hereinafter is abbreviated as: BJDJP & BPC “JOINT DISTRICT PLANNING & BUDGET PRIORITY COMMITTEE” (of the other part).

WHEREAS:

A. The Provincial Government pursuant to the Memorandum of Agreement entered into between State, itself and others in 2005, has agreed to accept 36% of royalty payment as Pursuant to Clause 3(2)(a) of the Agreement with Harmony Gold Ltd and the State.

B. The share of the Royalty payment for the Provincial Government is remitted through its Consolidated Revenue Fund (CFR) through the Provincial Treasury.

C. The Joint District Planning and Budget Priority Committee JDP & BPC) acknowledges and recognizes the needs, expectation and desire of its Committee, its people in the District/Electorate therefore desires a fair and equitable share of its benefits from the mining operation to improve the lives of the people through various planned projects.

D. The parties wholly agreed that whatever in the percentage of royalty as allotted for each LLG impact area or in the surrounding areas and electorate as per the Memorandum of 2005, the concern LLGs has power to utilize it accordingly.

E. The JDP & BPC desires that the First Party equitably remits its share of royalty from the Consolidated Revenue Funds direct to Bulolo District Treasury Operating Account to fund the Joint District Planning and Budget Priority Committee endorsed programmes.
THE FIRST PARTY HEREBY AGREES THAT:

1. The Morobe Mining Joint Ventures (previously known as Harmony Gold Mining Project) will remit thirty six percent (36%) of the Royalty payment to the Provincial Consolidated Revenue Fund (PCRF) as per the Memorandum of Agreement in 2005.

When that thirty six percent (36%) is equated to One hundred percent 100%, the Morobe Provincial Government is to receive fifty percent (50%) and Bulolo Joint District Planning and Budget Priority Committee shall receive fifty percent (50%).

2. The Provincial Government shall continue to remit the said percentage of royalty pursuant to the Five Year Provincial Development Plan which begins at 2009 and thereafter.

3. The Provincial Government shall remit the royalty payments into the Treasury Operating Account of the Bulolo District.

4. The Provincial Government shall ensure that fifty percent (50%) percentage of royalty to the Bulolo Joint District Planning and Budget Priority Committee is maintained regardless of any variations in the royalty remittance to the Consolidated Revenue Fund, and all Inflation and deflation that may effect the monetary values of the price or other encumbrances met in the developmental stages of the project.

THE JDP & BPC AGREES AS FOLLOWS:

1. The Bulolo Joint District Planning and Budget Priority Committee shall receive a eighteen percent (18%) of the Royalty payment from the Provincial Government’s Revenue Consolidated Fund.

This Memorandum of Agreement (MOA) is valid and will be in force during the life span of the mine, unless invalid or nullified by the reason of changes caused by the parties in this Memorandum and or by reason of premature cessation caused by the obvious risks rife in Mining scenes and subject to periodic review.
First Schedule:

**SCHEDULE OF ROYALTY SHARING**

Morobe Mining Joint Ventures

Remits 36% of Royalties

TO

Morobe Provincial Consolidated Revenue Fund

36% when Equated to One Hundred percent

REMTS

50% 50%

Morobe Provincial Government (MPG) Bulolo Joint District Planning & Budget Priority Committee (JDP & BPC)

4. The Bulolo Joint District Planning and Budget Priority Committee under this Agreement shall be a sole authority to identify, endorse and approve all the infrastructure projects that are to be funded entirely through the royalty payments in the Wau-Bulolo Urban Local Government Councils and other LLG’s in Bulolo District, subject to the Public Finance Management Act 1995 and the Organic Law on Provincial and Local Level Government 1995

5. Bulolo Joint District Planning and Budget Priority Committee shall endures to ascertain that all the projects approved must be funded and completed within the work schedule.

**BOTH PARTIES AGREE THAT:**

1. The parties agree to the allocation of percentage of royalty payment as shown on the First Schedule.

2. The undertakings in this Memorandum of Agreement be done in pursuant to Clause 3 of the Memorandum of Agreement between, Harmony/Gold, State and its entities plus the Landowners.
3. The parties shall execute such documents and responsibilities and do and perform such acts that lie within their power and necessitate the execution of the Agreement.

4. The parties shall use its best endeavors to implement and or comply with the condition and undertakings under this Agreement.

5. Any review conference, consultation regarding the obligations, conditions or other related issues must be staged as and when the parties desire to and such is done after the party desiring has to serve a week’s notice in writing.

6. The commencement date of this Agreement will be the date of execution of the Memorandum of Agreement.
IN WITNESS WHEREOF this Agreement has been duly executed in Papua New Guinea.

On the 12th day of October 2009.

SIGNED for and on Behalf of the
MOROBE PROVINCIAL GOVERNMENT
Acting with and in accordance with
the advice

HON. LUTHER WENGE, MP
GOVERNOR FOR MOROBE

Of the PROVINCIAL EXECUTIVE
COUNCIL OF THE MOROBE
PROVINCIAL GOVERNMENT
BY THE GOVERNOR.

WITNESS (signature)

SIGNED for and on behalf of the
BULOLO JOINT DISTRICT
PLANNING & BUDGET
PRIORITY COMMITTEE.
BY THE CHAIRMAN

HON. SAM BASIL, MP
MEMBER FOR BULOLO OPEN

WITNESS (signature)