BRIDGING THE GAP BETWEEN THE GOLD MINING INDUSTRY AND ENVIRONMENTAL AND SOCIETAL DEGRADATION THROUGH REGULATION

A qualitative study for identifying contractual elements for a hypothetical regulation of the South African gold mining industry

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This Master's Thesis is carried out as a part of the education at the University of Agder and is therefore approved as a part of this education. However, this does not imply that the University answers for the methods that are used or the conclusions that are drawn.

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ABSTRACT

This paper provides an identification and analysis of the contractual elements, i.e. requirements, for a hypothetical regulation of the South African gold mining industry. The identification of contractual elements is based on their probability in contributing in reversing trends of environmental and societal degradation deriving from gold mining. Second, this thesis explores the potential for such a regulation to achieve these objectives in South Africa.

Except from a few initiatives of variable qualities, the gold mining industry at large is unregulated, and it is as such very much similar to the diamond industry prior to 2003. In clear contrast to other segments of the extractive industry sector such as the relatively similar diamond industry, a holistic juridical framework for the gold mining industry does not exist. The outcome is a gold mining industry where environmental and societal degradation frequently occurs, and where internationally accepted human rights laws are being repeatedly violated. Despite a set of World Bank-, United Nations- and NGO-reports, awareness concerning the issue is low. The study has found that regulation of the gold mining industry is feasible, and that such a regulation is likely to contribute in reversing the unsustainable trend of degradation.

Furthermore, the research conclude that the regulatory body of the regulation should consist of the UN, the World Bank, the World Gold Council, the gold mining industry, respective governments and NGOs such as Save the Children and the WWF so that the wide range of its stakeholders are represented. A set of ten contractual elements, i.e. requirements, have been identified based on findings from the interviews, the analysis of existing alternative regulatory agreements and two participant observations. The contractual elements and the regulatory body have been summarised in a document named *The Clean Gold Regulation*; a document acting as a summary of the study's findings presented at the end of the analyses in chapter five.

Finally, the Clean Gold Regulation has been evaluated regarding its feasibility in South Africa. Whereas civil society's support of the proposed regulation is high, the latent support and awareness from the political South African environment is weak. Political instability may question the creation and feasibility of such an agreement in South Africa, and local barriers such as poor border control, smuggling and the existence of the black market may jeopardise the potential for a feasible South African regulation.

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All errors remain my own.

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LIST OF ABBREVIATIONS

CSR: Corporate Social Responsibility

DDII: Diamond Development Initiative

EI: Extractive Industries

FFS: Fair-trade and Fair-mined Standard for Artisanal and Small-Scale Miners

FI: Foreign Investments

CGR: Clean Gold Regulation

GG: Global Governance

HDI: Human Development Index

ILO: International Labour Organisation

JSE: Johannesburg Stock Exchange

KP: The Kimberley Process

KPCS: The Kimberley Process Certification Scheme

MDG: Millennium Development Goals

NGO: Non-governmental organisation

REPORT: The King Report on Governance for South Africa

RUF: Revolutionary United Front

S.A.: South Africa

STANDARD: World Gold Council Standard - Conflict-free Gold

UN: United Nations

UNDP: United Nations Development Programme

UNEP: United Nations Environmental Programme

UNESC: United Nations Economic and Social Council

UNIDO: United Nations Industrial Developmental Organisation

WDC: World Diamond Council

WGC: World Gold Council

CHAPTER 1: BACKGROUND

(Source: Robin Hammond / National Geographic 2011)

1.1 Introduction

The last decade has largely been characterised by global challenges related to climate changes and their devastating environmental and societal consequences. Whilst a number of earlier Human Development Reports have found a general rising standard of living in developing countries, this development is now being repudiated in the 2011 Human Development Report which states that as environmental exploitation worsens, social inequalities deepen:

"*a disturbing reversal of those trends if environmental deterioration and social inequalities continue two intensify, with the Least Developed Countries diverging downwards from global patterns of progress by 2050*" (HDR 2011).

Mining operations are largely conducted in developing nations; South Africa is one of the world's most prominent gold producers (US Geological Survey 2012:66). Even though there is recognition that mining in many cases is the main provider of income and employment (World Bank and the International Financial Corporation 2002: 1), the environmental and societal impacts of mining activities question the consequences of gold mining.

Mining may contribute in increasing economic development, but there is recognition that the costs of mining in terms of social and environmental degradation are often left for the local communities to bear (Hamann 2003). Mr Ian Smillie, chairman of the Diamond Development Initiative (DDII) and one of the founders of the world's most prominent regulatory agreement in the extractive industry sector, noted in our interview that:

"And as we look forward to the role that extractive industries play and can play in Africa, it's a cautionary tale; a tale filled with good intentions that have been thwarted by wrong turns, vested interests and incompetence" (Smillie 24.09.2011).

This research is about the role of the gold mining industry as contributors to environmental and societal degradation. The need for regulation of the industry is the main argument that is being espoused and the study aims at identifying contractual elements, i.e. requirements, for a hypothetical regulation of the South African gold mining industry. A great deal of generality may increase the applicability of the proposed regulation to other countries than South Africa, but it is emphasised that the case of South Africa speaks only for itself. Thus, the transferability of the study is questioned. It is argued that even though the South African gold mining industry is assessed, it is the responsibility of the *international* gold mining industry represented particularly by the World Gold Council to address the challenges referred to in the forthcoming sections. The reason for this is that even though the local gold mining company is responsible for its actions which have ethical as well as juridical implications, the international gold mining industry and its consumers are indirectly participants of the same actions. Awareness and participation from the whole industry is seen as a precondition for creating a successful regulatory framework as participants of the industry are interlinked in a web where the actions of one section influences the outcome of a second.

It seems evident that the focus on developmental implications of the gold mining industry is largely neglected by vast groups of society; politicians, customers, the gold mining industry and civil society included. The actuality of environmental challenges particularly evident in developing nations speaks in favour of a rapid change in the ways of conducting gold mining. As such, the study is important because it has the potential to contribute towards ending the gold mining industry's environmental and social exploitation if one can redirect the gold mining industry into conducting their business in accordance with the proposed Clean Gold Regulation presented in chapter 5.5.

Why regulation should apply for the gold mining industry

Regulation as posited in this research is defined as "*A rule of order having the force of law, prescribed by a superior or competent authority, relating to the actions of those under the authority's control*" (Legal Dictionary 2011). Regulation of the gold mining industry is not a pioneering proposal; various local variations of regulation exist. The Draft Mining Act (Smith 2012) in southern Sudan is one example; a similar contract is found in Mali (Les Journées 2011). Nonetheless, there is a lack of an international holistic regulatory framework which addresses the environmental and societal challenges of the industry in spite of such local initiatives.

There are two prominent reasons for why regulation should be promoted as the way of addressing the challenges related to the gold mining industry. These are largely based on the reason for why regulation of diamonds was promoted in 2000 where the decision makers noted that a regulation "*based on national laws and practices and meeting internationally agreed minimum standards, will be <u>the most effective system</u> by which the problem of conflict diamonds could be addressed"* (KPCS 2003: 2). First, the developmental implications of the industry suggest that the practices of the gold mining industry need to be strongly regulated and regularly audited. In order to transform the S.A. gold mining industry's conduct of behaviour, a regulatory framework is posited as it shifts the focus from local law enforcement to local *and* global law enforcement as will be evident when assessing the regulatory body of the regulation in section 5.3. Second, the gold mining industry is globally oriented. By this, I denote that gold may be produced in South Africa, transformed into jewellery in India, shipped to ports in the Netherlands, handled by various public and private companies such as customs and agents, before sent to its final destination which may be a local jeweller in Milano. It would prove challenging to promote any other framework than a holistic international regulation, as various current mining legislations have proven their partial inefficiency as issues of degradation are still valid challenges for the gold mining industry.

The gold mining industry of South Africa

The environmental and societal implications of the South African gold mining industry are related to the relative size of the international gold market. The greater the production is, the greater are the implications. Therefore, a presentation of the gold industry's magnitude, complexity and value is presented before addressing the actual implications in the forthcoming section.

The following presentation also explains the driver mechanisms for gold supply and demand, and predicts the future for the South African gold mining industry, which currently is the world's fifth biggest gold producer (US Geological Survey 2012: 66). There has been a decade-long decline in South Africa gold production (US Geological Survey 2012: 66. In 2001, South African gold production counted for some 394 metric tonnes, equivalent to a 15% share of the world's gold production. In 2010, the numbers declined to 190 tonnes, and a market share of approximately 7% (Chamber of Mines 2011: 22). Some 96% of South Africa's 190 tonnes of gold production were exported (Chamber of Mines 2011: 4). This also confirms the previous notion concerning the internationality of South African gold mining.

There are three sectors that represent the international demand for gold; jewellery, technology and investment (WGC 2012:7-20). The investment sector consisting of global funds and private investors was the main driver of growth in 2011 and is the second biggest actor in gold trade after the global jewellery industry which represents approximately 50% of the demand of gold. Out of the total demand in 2011 of 4 067, 1 tonnes, the jewellery industry represents the demand of 1962, 9 tonnes, worth some US$99, 2 billion. Supply was 3, 994 tonnes (WGC 2012: 23). The South African gold mining industry accounts for 190 tonnes, ranking on fifth place after Russia (200 tonnes), United States (237 tonnes), Australia (270 tonnes) and China (355 tonnes) (US Geological Survey 2012: 67).

Moreover, there are two main sources of gold supply; mine production and recycled gold. Highly correlated with increasing gold prices, previous inactive gold mines were activated in 2011, resulting in an overall 4% increase of gold supply deriving from mining activities which counts for a total of 2 809, 5 tonnes (WGC 2012: 7-20). This increase was barely noted in South Africa where gold production increased with a mere 0, 5% from 2010 to 2011 (US Geological Survey 2012: 67).

Expectations for the gold mining industry in 2012

There is a great deal of complexity when assessing the expected economic development of the highly volatile and international gold trade. The expectations of the investment sector as a strong actor in the gold trade in 2012 remains, but as illustrated with the quotation below it becomes obvious that there is a variety of elements to take into consideration when assessing the actual stakes of the investment sector:

"During 2012, the investment sector should continue to draw strength from, on the one hand, continued very low (and in many cases negative) real interest rates and, on the other hand, inflationary pressures, whether real or perceived." (WGC 2012: 2)

The World Gold Council, an organisation representing some 60% of the international gold mining companies including the South African, emphasises that low interest rates worldwide and expectations of the interest rates being stable; "*provide a continued pillar of support to gold demand around the globe"* (WGC 2012: 2). In countries struggling with high interest rates and inflation, gold is also perceived as a safe haven for investors where the role of gold as an inflation hedge is pointed out as crucial. Finally, the World Gold Council emphasises on the role of central banks as a major source of growth in 2012. They particularly point out increased gold reserves for banks in South Africa and elsewhere as an explanation of the 500 tonnes increase over the last two years (WGC 2012: 3). As seen in the graph below, the annual value of gold demand in 2011 was worth some US$ 205, 5 billion, displaying a value increase of some 29 % compared to 2010. In quantity terms, the weight of the gold demand in 2011 was 4 067, 1 tonnes, only slightly ahead of 2010 with some 0, 4 %. The value increase being relatively higher than the increase in tonnes is explained by an increase in the gold price for 2011.

Figure I: Gold Demand in tonnes and US$ for 2010-2011

Tonnes	2010	2011[2]	Q1'10	Q2'10	Q3'10	Q4'10	Q1'11	Q2'11	Q3'11	Q4'11[2]	Q4'11 vs Q4'10 % chg	4-quarter % chg[3]
Jewellery	2,016.8	1,962.9	520.5	416.1	518.2	562.0	552.5	469.1	464.7	476.5	-15.21	-3
Technology	466.4	463.5	114.3	116.1	120.0	116.1	114.5	116.9	119.8	112.3	-3	-1
Electronics	326.8	330.4	79.0	80.4	86.1	81.3	79.9	82.9	86.7	80.9	0	1
Other Industrial	90.9	89.3	22.4	23.3	22.0	23.2	22.8	23.1	22.4	21.0	-9	-2
Dentistry	48.7	43.8	12.8	12.4	11.8	11.6	11.8	10.9	10.7	10.4	-10	-10
Investment	1,567.5	1,640.7	254.5	593.0	358.9	361.0	335.8	383.0	493.7	428.2	19	5
Total bar and coin demand	1,199.8	1,486.7	249.8	301.4	309.8	338.8	397.9	331.3	416.1	341.3	1	24
Physical Bar demand	898.9	1,159.1	182.0	216.7	228.9	271.4	312.7	256.1	321.4	269.0	-1	29
Official Coin	212.5	239.7	45.3	68.8	56.6	41.9	60.5	50.2	74.6	54.3	30	13
Medals/Imitation Coin	88.3	87.8	22.5	16.0	24.3	25.5	24.7	25.0	20.0	18.1	-29	-1
ETFs & similar products[4]	367.7	154.0	4.7	291.6	49.1	22.3	-62.1	51.7	77.6	86.8	290	-58
Gold demand	4,050.7	4,067.1	889.3	1,125.2	997.0	1,039.1	1,002.9	969.0	1,078.2	1,017.0	-2	0
London pm fix, $/oz	1,224.5	1,571.5	1,109.1	1,196.7	1,226.8	1,366.8	1,386.3	1,506.1	1,702.1	1,688.0	24	28

$Mn	2010	2011[2]	Q1'10	Q2'10	Q3'10	Q4'10	Q1'11	Q2'11	Q3'11	Q4'11[2]	Q4'11 vs Q4'10 % chg	4-quarter % chg[3]
Jewellery	79,399	99,175	18,561	16,010	20,437	24,695	24,626	22,717	25,430	25,860	5	24
Technology	18,363	23,419	4,075	4,466	4,732	5,102	5,102	5,659	6,558	6,096	19	27
Electronics	12,867	16,696	2,818	3,094	3,397	3,572	3,562	4,013	4,747	4,392	23	30
Other Industrial	3,579	4,513	799	896	869	1,020	1,014	1,119	1,228	1,140	12	26
Dentistry	1,916	2,211	458	477	467	510	526	528	583	564	11	15
Investment	61,710	82,897	9,077	22,817	14,155	15,865	14,968	18,547	27,015	23,237	46	35
Total bar and coin demand	47,234	75,114	8,907	11,598	12,218	14,886	17,735	16,045	22,768	18,524	24	58
Physical Bar demand	35,390	58,567	6,490	8,337	9,026	11,925	13,936	12,400	17,590	14,598	22	64
Official Coin	8,367	12,112	1,614	2,646	2,233	1,842	2,698	2,433	4,085	2,947	60	46
Medals/Imitation Coin	3,477	4,436	804	615	959	1,120	1,102	1,212	1,094	980	-13	25
ETFs & similar products[4]	14,476	7,783	169	11,219	1,937	978	-2,767	2,502	4,247	4,712	382	-39
Gold demand	159,472	205,491	31,713	43,294	39,324	45,661	44,697	46,923	59,004	55,193	21	29

(Source: World Gold Council)

Why is gold attractive?

It is important to understand the reasons for why gold is a desirable commodity in order to understand the driving forces for gold demand. This is also important because it indicates the driving forces behind gold production, and thus the increase in environmental and societal impacts. The WGC points out the driving forces behind investments in gold as follows:

"Continued growth in already sizeable foreign reserves; the wish to diversify such reserves, protecting against a reliance on one or two foreign currencies; a restoration of the prior balance in the composition of reserves (between gold and foreign currency); and finally to capitalise on gold's role as a means of preserving national wealth and promoting market stability." (WCG 2012: 3)

This, with the addition of expected consumer demand in China and India and a continued financial instability in the EU region speaks in favour of a gold mining industry making 2012 another notable year. As a result, the gold price is on a historically high level on an annual 2011 average of US$ 1 572, 52 / oz.

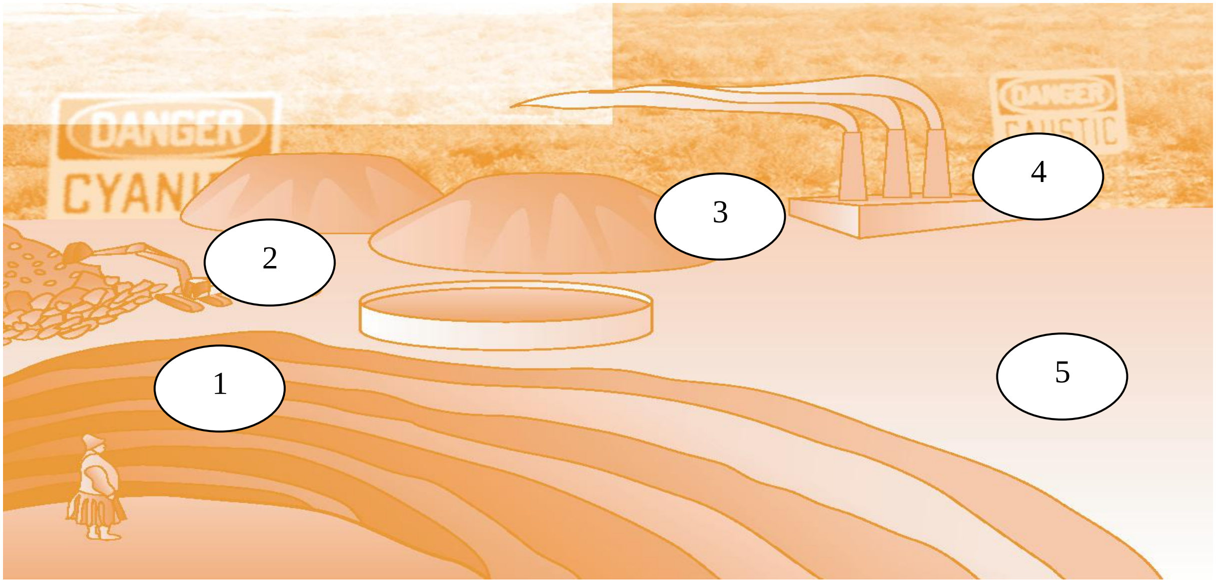
This is also good news for the South African economy as the nation has the world's second biggest gold reserves of 6 000 tonnes, ranking on second place after Australia with some 7 400 tonnes (US Geological Survey 2012: 67).

<u>Figure II: Spot gold price in US$</u>

The gap between the South African gold mining industry and developmental sustainability

The gap between the gold mining industry and developmental sustainability is based on the notion that the gold mining industry is a prominent contributor to environmental and societal degradation. Its unsustainable ways of gold exploration is the main contributor to the challenges. This shows the need for regulation and is exemplified by the following figure which shows how gold is being explored and handled in an open pit mine. Comments on the respective challenges are identified accordingly.

<u>Figure III: An illustration of gold exploration in an open pit mine</u>



(Source: No Dirty Gold 2004)

1. Extraction: About 33% of all gold in use or storage today comes from newly mined sites. Some 66% of this derives from open pit mines where craters may reach a size so big that they can be seen from outer space (No Dirty Gold 2004). It is emphasised that the focus of this study concerns the impacts of mining, and thus focuses on newly mined gold and gold yet to be mined.

2. Waste rock: "*An open pit mine generates huge piles of waste rock, which leach toxic metals and acid. Mine waste has turned groundwater thousands of times more acidic than battery acid"* (No Dirty Gold 2004). The waste generated from mining activities is an environmental challenge that represents harm to its surroundings, and it is claimed that a simple gold ring leaves some 20 tonnes of mine waste (No Dirty Gold 2004).

Additionally, the area of the mine site must be cleared in the process before an open pit mine can be opened, and deforestation often occurs. During the time period 2000-2010, some 13 million hectares of land worldwide were converted annually into other purposes such as agriculture or the declaration of mine sites. According to the UN, "*the impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas, deterioration of the quality of life and reduction of the options for development* " (Agenda21 1992). This also confirms the link between environmental and societal deprivation.

3. Cyanide leaching: "*Once extracted, the ore is crushed, piled into huge heaps and sprayed with cyanide, which causes the gold to leach out of the ore. Some mines use several tons of cyanide per day. A rice-grain sized dose of cyanide can be fatal for humans. The cyanide-contaminated waste ore is usually just abandoned"* (NoDirtyGold 2004).

This has serious developmental implications as drinking water becomes intoxicated, which has particular relevance for the S.A. gold mining industry and will be analysed comprehensively in chapter five. Closure of mines that are no longer profitable may result in adverse health effects for those living in and around the abandoned mine. An average major gold mine uses 1900 tons of cyanide a year (Mudd 2007). Cyanide is extremely dangerous, and a dose the size of a rice grain is life threatening to humans (Da Rosa *et al.* 1997). It also adds to the problem of water scarcity recognised by the United Nations Educational, Scientific and Cultural Organisation as a major challenge (UNESCO 2003).

4. Smelting & refining: "*The separated gold is then shipped to a smelter, where remaining impurities are removed under intense heat. The metals smelting industry (of which gold is but a small part) is a major consumer of energy and a major air polluter"* (NoDirtyGold 2004).

5. Trade: After purification, the gold can be traded.

In addition to the examples of environmental degradation, challenges concerning the societal implications of the South African gold mining industry are interlinked. First, there are vast challenges related to labour rights in the gold mining industry, and child labour in particular. According to the International Labour Organisation (ILO), there are tens of thousands of children working under extreme harsh conditions in mines worldwide. The gold mining industry is predominantly responsible for this, and the ILO expresses that within the mining business, *"children are particularly vulnerable to exposure to dust and chemicals because their systems are still developing"* (ILO 2006).

The issue of child labour in S.A. gold mines will be analysed accordingly with findings from various interviews with Save the Children and the ILO in chapter five. However, it should also be mentioned that the South African gold mining industry offers some positive contributions to society as well. The Chamber of Mines in South Africa estimate that some 92% of revenues deriving from mining are seized in South Africa (Chamber of Mines 2011: 3). This has additional important consequences regarding the creation of jobs and domestic investments. Other fiscal impacts of the South African gold mining industry's contribution to society are that they paid their 140 000 employees some R15 560 million in salaries, wages and allowances (Chamber of Mines 2011: 25), thus contributing to the economic development of South Africa in terms of particularly increased tax income.

1.2 Research objectives

The general objective of this study is to identify contractual elements for a potential regulation of the gold mining industry of South Africa. The elements assessed should contribute in reversing trends of environmental and societal degradation deriving from gold mining. Specifically, the study will aim to;

- Identify the context of the South African gold mining industry
- Identify the framework in which the proposed regulation may take form
- Assess the level of awareness and probability for a potential regulation of the gold mining industry to be feasible in South Africa
- To suggest possible recommendations for the World Gold Council in order to create a holistic regulation of the South African gold mining industry

1.3 Research questions

In order to achieve the objectives, the study will investigate the following five research questions;

1. What is the context of the gold mining industry and how can it influence on the potential regulation?
2. What options are available to regulate the gold mining industry?
3. How should a regulatory body be set up?
4. Could regulation bring about a more sustainable gold mining industry?
5. Is the Clean Gold Regulation in line with principles of CSR for developing nations?

1.4 The outline of the thesis

Chapter 1 presents the background and relevance for the research. The main focus is on the challenges of the gold mining industry which justifies why a regulation is needed.

Chapter 2 introduces South Africa as the main study area. As South Africa illustrates potential support and obstacles for regulation, it is important to have a clear understanding of valid parts of its history which may explain status quo of South Africa. As such, a brief overview of relevant parts of its history combined with an overview of the current political and economic situation is presented.

Chapter 3 links the thesis to law, economics, politics and civil society, and an extensive literature review is conducted before presenting the theoretical framework.

Chapter 4 presents the methodology of this study and does this by justifying the chosen design, methodology, data collection and data analysis methods.

Chapter 5 identifies, analyses and summarises the study's findings accordingly in a document named The Clean Gold Regulation, before assessing the final research question number five with regard to the proposed Clean Gold Regulation's expected feasibility in South Africa.

Chapter 6 provides concluding remarks and recommendations for the gold mining industry and the World Gold Council in particular.

1.5 Limitations of the study

The work with this master thesis has been interesting, challenging and time consuming. Due to the sensitivity of many of the matters addressed, it has been challenging to require information. This is exemplified for instance by the lack of response from South African political parties contacted for this research. In addition, several of the interviewees requested to be anonymous. The reasons for this may be based on fear of sanctions due to their position in companies, organisations and other arenas because of their critique against the current political situation in South Africa. This may be perceived as a weakness towards the quality of the data. However, all data are valid regardless of the anonymity of the interview objects, and the respondents have all been competent in their subject as posited in chapter four.

Another challenge of has been related to the qualitative research methods and the vast amount of data retrieved by following such an approach. This was overcome by implying a strict selection of which data to utilise. Moreover, some of this study's informative parts such as the section concerning the degradation deriving from gold mining are not based specifically on the case of mining in South Africa. Rather it illustrates challenges of great generality to the international gold mining industry. However, the thesis is backed up by various findings confirming the environmental and societal degradation in South African gold mining.

There is a great deal of 'qualified guessing' in this research, meaning that the interviewees have discussed a proposed regulation which was not designed at the time of the interviews. This is challenging, and has been pointed out by some of the interviewees. However, this was overcome by focusing vastly on the generality of the proposed regulation in terms of the S.A. gold mining sector's challenges and the ways of combating these. Moreover, there was also a distinct notion in the interviews that the questions concerning the design of contractual elements focused on the interviewee's own recommendations.

The final limitation is related to the scope of the study. South Africa is the country where the fieldwork was conducted, and it has been stated earlier that there is a great deal of generality concerning many of the study's findings. However, even though the country exemplifies strengths and weaknesses regarding a "typical" environment in which the proposed regulation potentially could be launched, one should be careful when generalising. The case of South Africa speaks only for itself. A potential regulation of the gold mining industry at large implies that *all* nations involved with the gold mining should be addressed. Such an approach is not feasible in a master thesis based on cost-efficiency evaluations, and one should bear this limitation in mind.

CHAPTER 2: CONTEXTUAL BACKGROUND

2.1 Presentation of study area

"Life must be understood backward, but it must be lived forward"

- Søren Kierkegaard (1813-1855) -

South Africa has a pioneering and prominent role in gold mining. Ever since gold was discovered in Witwatersrand in 1866, the country has been a front figure in mining. It also had a pioneering role in the development of the regulatory agreement of the diamond industry known as the Kimberley Process presented in the literature review in chapter three. It is emphasised that the political involvement of the South African government regarding the Kimberley Process expressed the country's pioneering role and stake in the process of promoting responsibility and transparency in the extractive industry sector, and is hence of importance to the potential South African political involvement when assessing the feasibility of the proposed regulation in South Africa as seen in the chapters 5.4 and 5.5. The nation is a front-figure in corporate social responsibility which is considered a driving factor for the creation of a regulation aimed at addressing the *environmental* and *societal* implications of the gold mining industry. Finally, South Africa serves as a valid example of a developing nation very much involved with gold mining, and illustrates furthermore how local conditions may interfere with the feasibility of the proposed regulation.

Figure V: Map of South Africa

(Source: CIA 2012)

The Republic of South Africa is located on the southern tip of Africa and has a population of some 50 million people. It is a vast country consisting of approximately 1 220 000 square kilometres, and shares borders with Namibia, Botswana, Zimbabwe, Mozambique, Swaziland and Lesotho. The capital city and the administrative capital is Pretoria, whereas the economic centre of the country is located in Johannesburg. President Jacob Zuma is the current president of the country. He is the chairman of the African National Congress (ANC) which is in alliance with the South African Communist Party.

In 2011, South Africa scored 4, 1 on Transparency International's Corruption Index (Transparency International 2011), which is an improvement from 2010 when their score was 4, 5 (Transparency International 2010). This places them in the midst of the table, but better than countries such as Italy (3, 9) and Brazil (3, 8) (Transparency International 2011). In addition to show that corruption is not necessarily a problem for developing countries alone; the corruption index also shows that South Africa is far from worst, even though corruption is prominent. The country produces a third of Africa's GDP (south of the Sahara), and is one of the most significant economic forces on the African continent. Accordingly, the UNDP ranks South Africa number 123 out of 187 countries in their Human Development Report (UNDP 2011). Thus, the nation is categorised as a medium human development country.

Quick facts:

- The ethnic groups are divided as follows: Black African: 79%, White: 9, 6% Coloured: 8, 9% , Indian/Asian: 2, 5%
- There are 11 official languages in South Africa. English is the fifth biggest, spoken daily by a mere 8, 2% of the population.
- Life expectancy at birth is on average 49, 41 years.
- The rate of HIV/AIDS is 17, 8%.
- South Africa is categorised by the CIA as a middle-income emerging market, even though unemployment rates are high (23, 9% on average). This is in comparison approximately the same unemployment level as Spain.
- GDP per capita: US$ 11 000,-

(All statistics and map from CIA 2012)

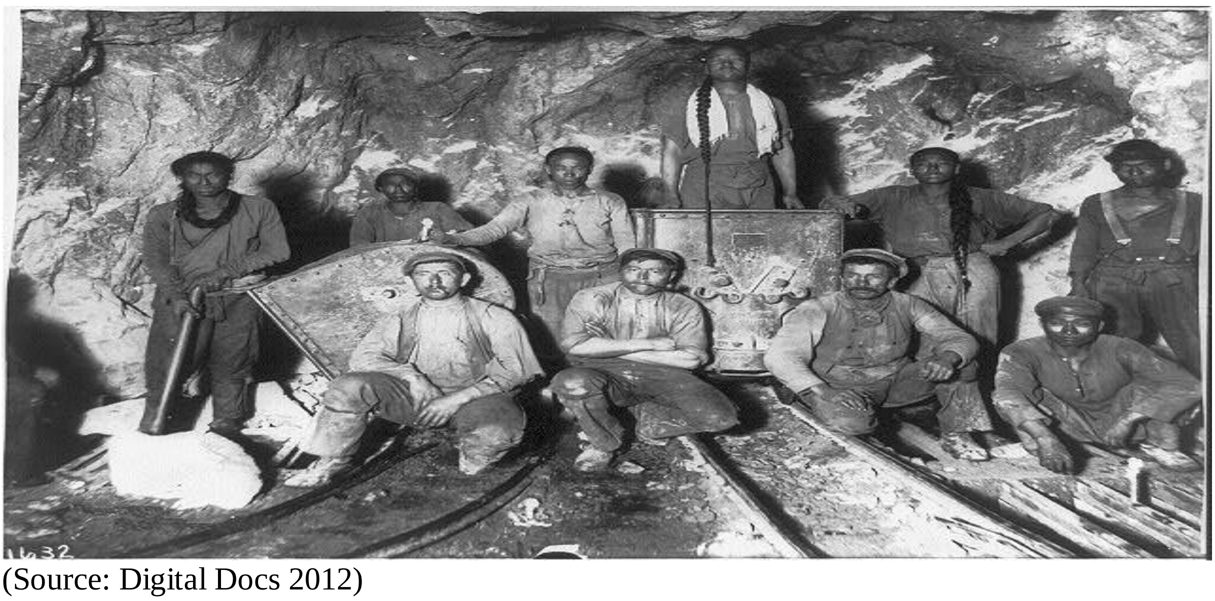
2.2 Relevant aspects of the history of South Africa

The first colonialists arrived in South Africa in the 1700s from the Netherlands. Afrikaans quickly became the official language of the white population, and segregation emerged between blacks and whites (Editors 2010: 21). In the south eastern parts of South Africa, the Xhosa tribe fought against the colonialists, and the first of a series of wars between various racial groups began in 1779. The Cape fell under British rule in 1775, but already in 1803 the government was back in the hands of the Dutch (Editors 2010: 21). As a result of the unrest between the British and the Dutch in the Eastern Cape, the Dutch-dominated South African government started to invite vast groups of settlers of Dutch descent into the interior. These became known as Boers or Afrikaans (Editors 2010: 22). It is worth noting not only the early unstable relationship between the colonialists and the various black African groups, but also between the two groups of colonisers. This instability was to last for centuries and is still apparent in some parts of South Africa today. Further battles between the British and the Dutch continued, while the Boers settled down even further east towards Port Natal which now is known as Durban. In the short period from 1838 to 1843, the Dutch colonial government Natalia emerged, but in 1843 it turned into a British run government.

Prior to this, there was a massive immigration of Afrikaners in 1834 known as The Great Trek. People of Dutch descent moved from the southern and eastern parts of South Africa to the north. This was one of several attempts to achieve separation between Englishmen (so-called Uitlanders), and Boers.

However, this proved to be challenging because the Zulu tribe dominated parts of the area where the Boers were resettling. As a result, a number of devastating wars took place between Boers and Zulus. Ultimately, the Boers were given permission by the British government to create the Oranje Free State which today is known as Free State, and Transvaal which today is known as Gauteng. Free State and Gauteng consists of the important cities of Johannesburg and Pretoria, and are still considered to be Afrikaans-dominated areas. In 1866, gold was discovered in Witwatersrand, and diamonds were discovered in Kimberley the following year. Due to the jobs that were created through mining, Johannesburg quickly became home to several ethnic groups who came to seek jobs. The picture on page 23 shows black, Asian and white miners in a South African gold mine.

A well-known aspect of the South African history is apartheid. The National Party was the political party gathering votes from white South Africans who sought to retain and cultivate South African nationalism. They came to power in 1948, and apartheid was the resultant policy. A massive resistance to apartheid came in the form of a number of African political parties. Most famous of these is the Umkhonto weSizwe; the military arm of the African National Congress (ANC). Based on their active resistance, Nelson Mandela amongst other members was arrested. A number of clashes took place between whites and blacks from 1948 until 1992 when Mandela was released from prison. The Republic of South Africa is still a nation consisting of a number of tribes, languages, religions and ethnicities from various parts of Africa, Asia and Europe. Beside the white population mainly originating from England or the Netherlands, a high degree of illegal refugees from countries like Nigeria, Zambia and Zimbabwe move to South Africa in hopes for a better life.



(Source: Digital Docs 2012)

CHAPTER 3: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The aim of this literature review is to identify and summarise previous research's conclusions, and to identify areas of controversies in the literature selection. The elements of relevance have also influenced the choice of the theoretical framework applied in this study. Three elements have been identified based on their relevance to the main objective of the research. These are issues concerning law, economics and politics. Within their respective sphere, various documents have been identified and analysed. Each section is then finalised by a conclusion.

3.1 The role of law in the extractive industry sector

In order to ensure sustainability in the gold mining industry, law is an imperative factor as it has the potential to direct, enable and prohibits actions. The objective of this section is to look into what has been published regarding the complex processes of achieving regulation in the extractive industry sector, the importance of ensuring legal status for a feasible regulation and to identify existing laws that provides elements of a juridical framework for the S.A. gold mining industry. It is also emphasised that the debates and controversies in the literature selection has a great deal of generality which thus adds to the relevance of the documents assessed. For instance, the debate concerning KPCS' legal status is relevant in that it also discusses how legal status can be obtained on a general level.

The Kimberley Process

The diamond industry is a pioneer in promoting regulation as a mean to combat challenges related to valuable commodities, and the initial bureaucratic process surrounding the completion of the Kimberley Process Certification Scheme (KPCS) may act as an initiative to either amend the KPCS, or serves as an example on what to expect when decision-makers potentially evaluate the need for regulation of the gold mining industry.

Much like the gold mining industry, the diamond industry was long associated with a number of issues that threatened peace and sustainability, most prominent in local African communities. This can be illustrated by the Sierra Leone Civil war made extreme by the Revolutionary United Front (RUF) in the period of 1991-2002 (Britannica Academic Edition 2011).

The devastating civil war was a war partially concerning ownership of diamonds, and it took the lives of at least fifty thousand civilians, left hundreds of thousands of traumatised and displaced two and a half million people (GlobalSecurity 2011). Nonetheless, it attracted the world's attention to the quite unregulated diamond industry where the existence of the black market was nourishing off a lack of authoritative sanctions. Thus, the civil war illustrated the possible outcome of weak governmental regulation in the extractive industry sector. The Kimberley Process (KP) emerged out of the awareness of the subject of the diamond industry's contribution to such degradation, and in 2000 South Africa initiated a meeting in Kimberley to discuss the problem, hence the name; the Kimberley Process. The meeting was held on May 2000, and the participants included representatives from various nations, the diamond industry and representatives of the civil society. The issue on how to end conflict diamonds was the subject for discussion, and the need for more regulation of the diamond industry was emphasised by the participants (Global Witness 2011). The KP received support from the United Nations General Assembly which adopted the Resolution A/RES/55/56 on the 1. December 2000 (South Africa 2011).

The Kimberley Process Certification Scheme

There is recognition that the KP and the Kimberley Process Certification Scheme presented in is an interesting example of globalisation and one which focuses on political, economic and social developments (Schram 2007: 5). This shows the complexity of the KP and illustrates the various aspects that needed to be balanced in order to reach consensus on how regulation of a major actor of the extractive industry sector should be ensured.

The Kimberley Process Certification Scheme (KPCS) was the outcome of the KP. This is an international agreement now ratified by 74 countries including the European Union. Through *The Interlaken Declaration of the Kimberley Process Certification Scheme for Rough Diamonds* adopted on the 5 November of 2002, the European Union and 35 nations agreed on launching the KPCS, beginning on the 1 January 2003. Through the UN Resolution 1459 passed in January 2003, the KPCS received additional support by the UN.

The KPCS regulates almost the full trade in diamonds, and the regulation is implemented into national legislation (Curtis 2007: 27). The KPCS has designated Observers whose role is to ensure local compliance with the KPCS. The World Diamond Council established by the diamond industry in 2000 in order to address the issue of conflict diamonds has a pertinent stake in the KPCS as they were initiators as well as part of the Working Group which are working on revising and improving the KPCS (WDC 2006: 11). The chair of the KCPS is renewed annually. For 2011, the Democratic Republic of Congo held the position. This year, the United States are serving as the KP Chair before handing over the responsibility to South Africa in 2013 (WDC 2011). The KPCS is globally managed by the KP Office in Canada which has been interviewed for this research, and it is an international trade agreement in which ensuring legitimacy in the trade with rough diamonds is emphasised as its main focus.

The main purpose of the KPCS is

"*A certification scheme for rough diamonds designed to exclude conflict diamonds from the legitimate trade"* (KPCS 2003: 1).

Conflict diamonds are defined by the UN as "*diamonds that originate from areas controlled by forces or factions opposed to legitimate and internationally recognised governments, and are used to fund military action in opposition to those governments or in contravention of the decisions of the Security Council"* (UN 2000). The legitimate trade is the part of the trade which does not buy or sell conflict diamonds. The KPCS uses the following definition of a rough diamond: "*diamonds that are unworked or simply sawn, cleaved or bruted"* (KPCS 2003: 4).

The way that rough diamonds can enter the KPCS' member countries is based on *Community Authorities* (CA), and the intention of the system is to prevent diamonds regarded as conflict diamonds to enter into the legitimate trade (Schram 2007: 16). The member countries are obliged to import and export rough diamonds through a designated CA which checks that the rough diamonds are followed by a KPCS certificate which is to adhere to all shipments of rough diamonds entering the member states. As such, the CA's become entry ports in which rough diamonds must pass before entering the legitimate diamond trade (Schram 2007: 16).

Research question number two is concerned with the quality of existing regulations for the gold mining industry. A sub question to this concerns the potential for amending gold into the KPCS, and the findings from various interviews and a document analysis are presented and analysed in chapter five. The potential for such implementation is thus dependent on the wording and/or objectives of the KPCS.

"Recognizing that the trade in conflict <u>diamonds</u> can be directly linked to the fuel processing of armed conflict ..." (KPCS 2003: 1).

"...devastating impact of conflicts fuelled by the trade in conflict <u>diamonds</u>" (KPCS 2003: 1).

"Recalling that the Kimberley Process which was established to find a solution to the international problem of conflict <u>diamonds</u>, was inclusive of concerned stakeholders, namely producing, exporting and importing states, the <u>diamond</u> industry and civil society" (KPCS 2003: 2).

"Recognizing that the trade (in conflict diamonds)…which can be directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons" (KPCS 2003: 1).

"Further recognizing the devastations impact of conflicts (fuelled by the trade in conflict diamonds) on the <u>peace, safety and security of people</u> in affected countries and the systematic and <u>gross human rights violation</u> that have been perpetrated in such conflicts " (KPCS 2003: 1).

It seems that the listed first four paragraphs strongly indicate a focus merely on diamonds. Nor does the regulation address environmental and societal challenges apart from those naturally deriving as a result from ending the trade in conflict diamonds. Therefore there are reasons to believe that the KPCS may not be a feasible regulation in which to amend gold. However, this may be disputed as the focus tends to shift to societal concerns for the diamond industry. The latter paragraph reflects on the actual purpose of KPCS by addressing *impacts* of conflicts; limiting the illegal trading of diamonds may be perceived merely as a way of reducing conflicts.

In conclusion, the KPCS presents an interesting case of the bureaucracy and challenges when designing, implementing and evaluating a regulatory agreement. The relationship between the KPCS and vast environmental and societal challenges linked to the diamond industry is not evident. This is an important element when addressing the applicability of the KPCS with regard to the S.A. gold mining industry.

The background and objectives of the KP clearly differs from the objectives of this research. The focus with regard to the regulation of the diamond industry was on combating *conflicts* related to diamonds, whereas the focus related to a potential regulation of the South African gold mining industry is based on the industry's negative contributions to environmental and societal degradation. Thus, amending the KPCS is so far likely to prove challenging. However, support of amending the contract may be justified by analysing the interest of the KP Office's decision makers, and this discussion will be taken further in chapter 5.2 where a set of interviews contributes in determining the KPCS' applicability for this research.

But is it law?

As the preceding discussions have shown, it is uncertain whether the KPCS may serve as more than a mere framework regarding this thesis' proposed regulation. A valid point of interest in this discussion is whether regulations, in this case the KPCS, is dependent on a legal status. This has relevance regarding the contractual elements of the proposed regulation as the juridical identity of such a document may strengthen the regulation's efficiency in achieving its main objectives by ensuring that non-compliance with the proposed regulation will imply sanctions. It is also of interest to look into the debates concerning how such a status may be obtained.

Kimberly Curtis is the author of the second report that has been subject to extensive review in this research. She is a lawyer, working particularly with human rights issues. Regarding the juridical status of the KPCS, Curtis argues that the regulation is not legally binding, but that it still commits the diamond industry (Curtis 2007: 2). It seems obvious that Curtis is of the opinion that the legal status of the KPCS in terms of its potential to bind the member nations is non-existent. Related to this is Curtis' notion that the KPCS is a voluntary and non-binding regulation largely based on collective participation (Curtis 2007: 10). It seems evident that Curtis' arguments are based on a certainty that the KPCS does not entail juridical status. Hence, she questions the importance of a legal status which has relevance regarding both the formation of contractual elements and the proposed regulation's need of a juridical identity. However, Curtis also notes that such 'soft law' may be binding over time (Curtis 2007: 15). This is an important point to take note of as it defines the criteria for the proposed regulatory agreement being subject to achieving legal status, and highlights how a potential regulation of the gold mining industry may gain such identity.

The legal aspects of the Kimberley Process

A second notable document concerning the juridical identity of the KPCS, and by implication the juridical identity of a regulation of the S.A. gold mining business, is written by Frans Schram who works for the International Peace Information Service in Belgium. Schram addresses the potential for including additional commodities such as gold into the KPCS, and his notions refer as such explicitly to research question number two.

In his report, Schram argues that the KP approach towards addressing an industry's actions with commodities of disputable reputation, *"presents an interesting example of political, economic and social developments in a globalizing world"* (Schram 2007: 5). This can be perceived as an identification of important stakeholder groups of the extractive industry sector which the S.A. gold mining industry is part of, and it provides guidance to the structure of the study in terms of its divide between law, economics, politics and civil society. Second, Schram notes the importance of similarities between diamonds and for this case gold is a precondition for the effectiveness of similar future agreements such as the proposed regulation identified as the Clean Gold regulation in chapter 5.5 (Schram 2007: 5).

Much in line with Curtis, Schram argues that due to the 'soft' wording of the contract exemplified by the use of less imperative phrases such as 'participants recommend', 'are encouraged' and 'should ensure', the informality of the KCPS indicate that it is not a proper treaty (Schram 2007: 7). Concerning this study's focus on identifying contractual elements for a regulatory agreement for the South African gold mining industry, these notions are important to pay attention to. The wording of the regulation itself may strengthen or weaken the proposed regulation's juridical legitimacy. However, Schram adds to the discussion that *"the participating countries have implemented the agreement in their domestic law and have hereby demonstrated consent to be bound"* (Schram 2007: 9). Related to this, he adds that "*law does not only develop out of the formal sources of its authority, but also to a great extent out of the activity that sustains it"* (Schram 2007: 11) which is in adherence with the statements of Curtis. This indicates that the KPCS in fact is a juridical document or a treaty, and highlights how a regulation may obtain legal status either through implementation of the regulation in the respective local jurisdictions of the member countries, or by a government/industry's practice of compliance over time.

Another issue worth taking note of is related to the potential of a commodity regulation violating additional international laws such as EU conventions regarding the free flow of goods (Schram 2007: 21-31). Schram highlights this by stating that "*subjecting European trade in rough diamonds to a certification scheme concerns both the free movement of goods and the common commercial policy"* (Schram 2007: 14). This indicates another element of consideration when assessing the elements of a successful regulation. The aspect of trade is not a part of this research as the main objective of this study focuses on environmental and societal impacts in South Africa.

However, the following paragraph indicates on a general level how one can ensure that a regulation's committed parties does not violate existing laws when complying with the regulation *"Further recognising that the international certification scheme for rough diamonds must be consistent with international law governing international trade"* (KPCS 2003: 2).

The International Labour Organisation Conventions

The International Labour Organisation (ILO) was founded in 1919 and became a tripartite United Nations agency in 1946. It consists of representatives from 183 countries as well as representatives of the gold mining industry of South Africa (ILO 2011). With its 183 member countries, almost every nation involved with gold mining is committed by the various ILO Conventions. In order to clarify the latent relationship between the listed ILO conventions and this research, I conducted an interview with Mr Hasse Berntsen who is one of the managers for ILO's department of information. First he told me that the conventions are part of public international law and that they are implemented into the domestic jurisdiction of the member country, in this case South Africa. This implies that the conventions act as laws governing many aspects of labour rights and human rights (Berntsen 07.05.2012). It was also emphasised that it is through ratification of the conventions that they become mandatory for the governments, and that the respective member countries are also subject to international auditing through ILO's control system. Ratification means that the respective committed governments must ensure a review of their own jurisdictions in order to ensure this compliance.

The main aim of the ILO is:

"*To promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity"*

- Juan Somavia, ILO Director-General - (ILO 2011)

It is important to highlight that the South African gold mining industry is obliged by the ILO conventions. However, the conventions listed below are repeatedly violated. Therefore, the proposed regulation may act as a reminder of those conventions, and one that specifically commits the South African gold mining industry. By doing so, the generality of the goals may be broken down into contractual elements likely to be respected by the gold mining industry with greater ease.

C155 Occupational Safety and Health Convention (1981)

The C155 addresses health and safety with regards to working conditions, and states that:

"The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment" (ILO 1981).

Remembering the previously described implications from gold mining, it seems that the C155 has particular relevance for the South African gold mining industry as it commits the industry to prevent and thus reverse its patterns of degradation concerning causes of hazards in the working environment, i.e. the gold mine. This should be seen in relationship with the *C176 Safety and Health in Mines Convention (1995)*. This convention is explicitly concerned with the mining sector, and its main objective is expressed as "*...recognizing that it is desirable to prevent any fatalities, injuries or ill health affecting workers or members of the public, or damage to the environment arising from mining operations"* (ILO 1995). In the second section of the C176, it is stated that the convention applies for all mines (ILO 1995). As such, there is little room for ambiguity in that is so clearly commits the S.A. gold mining industry. It provides a detailed framework on preventive and protective measures at the mine site, and divides this into the employer's responsibilities and the employers' rights. Of particular interest are the workers' rights to report hazards at the mine site, and that such safety and health matters should be monitored.

C182 Worst Forms of Child Labour (1999)

Child labour has particular relevance to gold mining where it has been stated that *"children are particularly vulnerable to exposure to dust and chemicals because their systems are still developing"* (ILO 2006). This indicates that the regulation should consider including addressing child labour in mines in order to bridge the gap between the gold mining industry and particularly societal degradation. This notion will be justified in chapter 5.4.1 where I present findings from my interview with Save the Children.

In conclusion, there is a set of considerations concerning the juridical environment of the extractive industry sector. Legal status *may* be a requirement for a feasible regulatory framework, and it is argued that juridical status may emerge over time. Moreover, there are great uncertainties concerning whether the KPCS could and should be amended.

Finally, the South African government and thus the South African gold mining industry are committed by the ILO Conventions, many of which have particular relevance for this research. Consequently, there is a need to take into consideration existing human right laws when assessing the contractual elements for the proposed regulation.

3.2 Corporate social responsibility in South Africa

This chapter presents literature in the context of the globalised market economy (globalisation). The main focus is to point out the role of globalisation and ethics in business, largely expressed through the case of corporate social responsibility (CSR), and to identify the hypothetical relationship between CSR and the objectives of my research. Their actual relationship will be subject to analysis in the PESTEL analysis presented in chapter five.

The reason for emphasising on CSR is because S.A. is a front figure in promoting CSR, and this will be shown with the case of the King III Report in the forthcoming section where it will be documented that the majority of the S.A. gold mining companies are committed to conduct a CSR approach. Official South African CSR requirements highlight the need for the proposed regulation to be defined as an act of CSR in order to be efficient in S.A.

Globalisation can be defined as an "*increasing integration of internationally dispersed economic activities*" (Boddy 2008: 691). However, in the context of this research the definition seems narrow as it does not address elements other than economic activities. In "The Oxford Handbook of Corporate Social Responsibility", the following definition is used, and is applicable for this research:

"*Globalisation is the process of intensification of cross-area and cross-border social relations between actors from very distant locations and of growing transnational interdependence of economic and social activities*" (Crane *et al.* 2008: 415).

Crane et.al argues that social and environmental challenges emerge in a globalised setting which the S.A. gold mining industry is part of due to the before mentioned international identity of gold. Actors of the civil society gain political influence accordingly (Crane *et al.* 2008: 415). Gold as a commodity is handled at various international arenas and is as such a commodity which very well reflects the essence of globalisation.

The concept of CSR has gone through great development since the 1950s when the scholarly literature started to address the subject (Crane *et al.* 2008: 3). Nonetheless, there has been a long tradition of ethical considerations in business. Already in the 19th century, Robert Owen protested against employing children less than ten years of age in mines and mills in Britain (Boddy 2008: 147), and demonstrated thus that ethical considerations may very well play a role in business. Moreover, the famous economist Milton Friedman argued in an article written to the New York Times Magazine in 1970 that "*the main responsibility of the firm is to increase its profits*" (Friedman 2011). Profits are argued to be the main responsibility of the company. However, the issue of CSR does not necessarily question the *main* responsibility of the firm; rather it may open up for a set of responsibilities in addition to the profit motive. This will be justified by the use of the model presented as figure VI in the theoretical framework.

Finding a definition of CSR is complicated as multiple definitions occur and they seem to differ greatly. For this research, the following EU Commission definition is applicable as it clearly indicates that globalisation and CSR are coherent elements by addressing social and environmental concerns;

"CSR is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" (EU Commission 2001: 6).

The basic questions behind CSR are concerned with the main purpose of business, and the type of contribution that a business is offering to society (Crane *et al.* 2008: 4). It can therefore be argued that the discussion concerning the role of CSR is somewhat philosophical as it addresses which role businesses such as the South African gold mining industry should and could play in society. There is recognition that environmental reporting which will be shown in the forthcoming review of the King III Report may be an act of CSR, thus having a positive effect on firm valuation (Connelly *et al.* 2004: 486). This further implies that if regulation of the S.A. gold mining industry is CSR, then a regulation may also be an investment incentive for investors.

The King Report on Governance for South Africa

According to Mr Stein Inge Nesvaag who at the time of our interview was the first secretary of the Royal Norwegian Embassy in Pretoria, South Africa is a pioneer in CSR (Nesvaag 04.02.2011). His statement is justified by the extensive use of the King Report on Governance for South Africa. This report, also known as the King III Report (Report) is the third of three comprehensive King reports on CSR in South Africa. The publisher is the King Committee of Corporate Governance which consists of board members largely from the fields of business and law.

The Report presents a set of standards for sustainable corporate governance / CSR. Compliance with the Report is a requirement for being listed on the Johannesburg Stock Exchange (JSE) and the listed companies must present information that identifies their compliance with the report in their annual financial statements. Additionally, they must present a sustainability report in which the environmental and societal impacts of the company are identified (Nesvaag 04.02.2011). This has particular relevance to this research as the mining sector is a major component of the JSE and accounts for some 43% of the value of JSE. Furthermore, the 43% reflects investments for about R1, 9-trillion (Chamber of Mines 2011). It is thus emphasised that the proposed regulatory framework must be consistent with principles of CSR in order to become feasible, implying that a regulation of the gold mining sector of South Africa cannot promote principles of sustainability less rigid than those presented in the Report. This is because such a regulation then would be inconsistent with the Report.

The justification of the Report can be identified in the following King III statement: *"Sustainability is the moral and economic imperative of the 21st century. Nature, society and business are interconnected in complex ways that should be understood by decision-makers"* (King III 2009: 8). Sustainability is particularly emphasised in the Report's guidance on how companies should conduct their business, and the previous statement summarises the interlinked environmental and societal factors that the proposed regulation addresses. As such there are coherent purposes between the Report and this research, indicating that the contractual elements should take into consideration ensuring compliance with the Report.

As was the case with the KPCS, the legal status of the Report has also been questioned. This is related to the voluntarily requirements of the Report expressed as an "apply or explain" approach rather than "comply or else" (King III 2009: 4-5). Whereas the "comply or else" approach refers to documents which through their legal status can address non-compliance with adhering sanctions, the "apply or explain" approach defines a document without the same legal status and hence without the ability to address non-compliance. Nonetheless, the Report justifies its stand in this aspect, saying that *"the "comply or else" regime is a one size fits all approach that cannot logically be suitable because the types of business carried out by companies vary to such a large degree"* (King III 2009: 4). This is also supported by the UN, stating that the one size fits all approach in terms of CSR has proven to be inefficient (UN 2007: 2). Therefore, the before mentioned debates concerning the need of a legal status may prove to be of inferior importance for this research.

A final point is found in the following statement where the King III Committee highlights how legal status can emerge out of a CSR policy; *"The more established certain governance practices become, the more likely a court would regard conduct that conforms with these practices as meeting the required standard of care"* (King III 2009: 5). This is in accordance with Curtis and Schram presented in the literature review, and it may be likely that a regulation offers a change in practice which over time will become law.

CSR in developing nations

There is also a need to look into the reasons why the proposed regulation based on principles of CSR would be of interest in South Africa. The answer to this is based on a set of factors, all of which are applicable for this study (Crane *et al.* 2008: 474). First, it is argued that developing countries represent emerging markets.

This is true for South Africa which in spite of its decline in gold production is expected to have reversed this decline for 2012 (US Geological Survey 2012: 66). Second, Crane et al. argues that developing nations represent nations where current global crises, be it environmental or societal, have the most influence. The environmental and societal impacts from the S.A. gold mining industry have already been covered in chapter one, and it is evident that the consequences of such degradation are devastating. This is in accordance with point three where The World Bank recognises such countries as where business has the most dramatic social and environmental impacts.

Finally, developing countries represent a new set of challenges related to the developing world, in comparison with those of the so-called "developed world".

In conclusion, South Africa has a particular emphasis on CSR, suggesting that the contractual elements of the proposed regulation should ensure that CSR is obtained through compliance with the regulation. It is also indicated that such an approach is likely to be feasible in a developing nation such as South Africa.

3.3 Politics and sustainable development

This section is concerned with how politics and politicians may influence on the the proposed regulation. The focus is directed towards international politics largely referred to as global governance, as well as on local South African political aspects that exemplify how local politics may intervene with the creation of the regulation.

In the previous chapter, globalisation was highlighted as the context of the 21st century, and relates to the connection between cross-border economic and social relations. Within the sphere of globalisation, politics has arguably become an important aspect traditionally referred to as global governance (GG). The United Nations Economic and Social Council (UNESC) apply the following definition of the term 'global governance' which is of relevance as it indicates an element of the S.A. gold mining industry's political environment.

"*the complex of formal and informal institutions, mechanisms, relationships and processes between and among States, markets, citizens and organisations, both inter- and non-governmental, through which collective interests on the global plane are articulated, rights and obligations are established, and differences are mediated*" (UNESC 2006: 4).

The Millennium Development Goals

When assessing the impacts that politics may have on sustainable development and thus on the proposed regulation, one cannot ignore The Millennium Development Goals (MDGs). They are a set eight goals initiated by the UN as achievements for the UN member states with the target date of 2015, and illustrate examples of global governance. With its 189 member countries, almost every nation involved with gold mining is encouraged to commit to the various MDGs, South Africa and its gold mining industry included. In September 2000, leaders for 189 countries gathering in a summit named the UN Millennium Summit. Here they agreed on the following vision that led up to the MDGs:

"*a world with less poverty, hunger and disease, greater survival prospects for mothers and their infants, better educated children, equal opportunities for women, and a healthier environment; a world in which developed and developing countries worked in partnership for the betterment of all"* (UN 2011).

The MDGs represent features of the political context of the South African gold mining industry, and they may act as elements noteworthy for the potential identification of contractual elements as they encourage participation in the achievements of goals likely to be in line with the objectives of the proposed regulation. In the proceeding section is highlighted a number of those goals, and an indication on how the respective goals may contribute in providing guidance and identifying contractual elements for the proposed regulation is presented.

Goal 6: Combat HIV/AIDS, malaria and other diseases

Bearing in mind the presentation of the S.A. gold mining industry's implications, polluted water in polluted waste from mines poses a serious threat to health and safety risk to miners (DDII 2011). Malaria and other water-borne diseases are thus likely to occur amongst the mine labour force and affected communities, and exemplify the interaction between environmental and societal degradation. As seen in chapter two, the challenges of HIV/AIDS are particularly prominent in South Africa where some 17, 8% are affected, rating them number four on the unattractive statistics of countries with the highest ratio of HIV/AIDS (CIA 2012). The World Bank additionally states that there is a clear link between the developments of HIV/AIDS affected people and mining (World Bank and International Financial Corporation 2002: 14).

The causalities between mining and diseases exemplify one type of environmental and societal degradation which the later proposed regulatory framework should take into account when identifying its contractual elements.

Goal 7: Environmental Sustainability.

There are four subsections concerning the MDG number seven, two of which are applicable for this research as they explicitly address the issue of encouraging the gold mining industry into becoming more environmentally concerned. Goal 7 A: *"Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources"*.

Through goal seven A, the UN highlights the importance of implementing principles of sustainable development into official policies, and to actively prevent the loss of environmental resources. The objectives of this research are in accordance with MDG seven A. Sustainability is at the core of this study, and the identification and implementation of such principles into a regulatory agreement is the study's main objective. Compliance with the planned regulation may also be perceived as an act that contributes in reversing the loss of environmental resources. The actual formulation of the contractual elements will be analysed in chapter five, but it is emphasised that it should be done in accordance with MDG no. 7 A.

Goal 7 C: *"Halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation"*.

Issues concerning the quality of South African groundwater are recognised by the Central Intelligence Agency which notes that the current major environmental issues in South Africa include "*pollution of rivers from agricultural runoff and urban discharge; air pollution resulting in acid rain, soil erosion and desertification*" (CIA 2012). This will be analysed thoroughly in chapter five concerning the PESTEL analysis. In conclusion, global governance expressed by various MDGs encourages the South African gold mining industry into achieving goals with coherent purposes as those of my study.

3.4 Theoretical framework

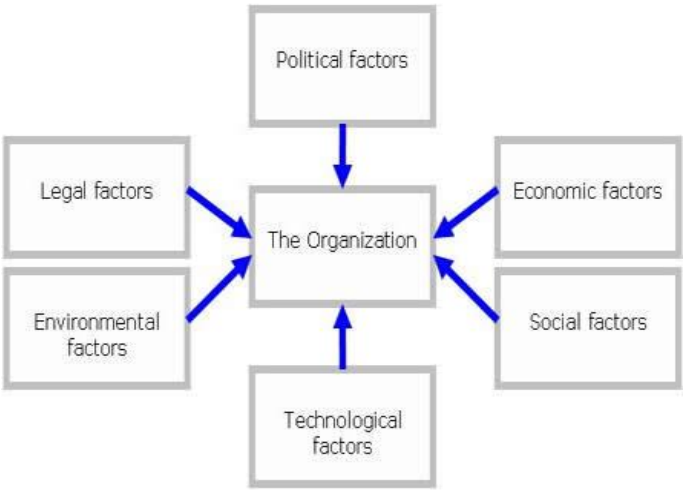
The link between theory and research is important as it justifies the choice of research strategy, and it may contribute to ensure the credibility of the study. Care is therefore taken when selecting which theories to utilise. The chapter is concerned with the main objective of the research, and by utilising a set of relevant theories it is likely that answers to the research questions will be structured and analysed in a reliable manner. The theoretical framework supports the notion that qualitative research methods should be applied, and the selected models are based on the objectives of my research and related findings from the literature review.

3.4.1 PESTEL analysis

Having presented a set of considerations of legal, political and economic character, this section seeks to take the discussions further by adapting a tool for identifying the environment / external factors of the S.A. gold mining industry. This is important because the contextual factors represent potential sources of influence with regard to how a regulation of the South African gold mining industry should come about.

A tool for identifying such influences is known as a PESTEL analysis. PESTEL stands for political, economic, social, technological, environmental and legal factors, and it aims at identifying and analysing the listed factors in order to identify factors that may intervene with the proposed regulation.

Figure V: PESTEL analysis



(Businessmate 2012)

3.4.2 Criteria of corporate social performance

When proposing 'regulation' as a mean towards bridging the gap between the South African gold mining industry and sustainability, it is important to define whether compliance with the proposed regulation is an ethical act. The findings of this analysis will accordingly be presented in chapter five. In the literature review it was emphasised that the debates concerning CSR are somewhat philosophical as they reflect over the main purpose of the business. In a social research such as this, it is of importance to define the rationality behind the study's proposed regulation. Therefore, the focus of attention is directed towards the criteria of CSR.

Philosophers recognise four general principles that may be applied in terms of justifying actions (Boddy 2008: 149-150), useful when assessing the actual proposed Clean Gold regulation presented in chapter five's part V.

Moral principles determine whether the action is in line with the generally accepted morals of society.

Utilitarianism determines whether the outcome of the action has an effect on the well-being of humankind.

Human rights are based on the belief that all human are entitled to fundamental rights and liberties, and that the action must be in accordance with these.

Individualism puts the individual in the centre of what is right or wrong.

Furthermore, the importance of corporate social responsibility in S.A. and the potential positive fiscal consequences of ethical considerations in business have been identified as relevant in the literature review. Of particular interest is the notion that regulation of the gold mining industry should be regarded as conducting business within the sphere of CSR in order to ensure its efficiency. Therefore one must identify the elements of CSR expressed by the following model as corporate social performance (CSP). The model utilised in chapter five concerning research question number five helps determine whether compliance with the Clean Gold regulation in fact is CSR (Boddy 2008: 155).

Figure VI: Criteria of corporate social performance

Criteria of corporate social performance

Economic responsibility	Legal responsibility	Ethical responsibility	Discretionary responsibility
(Make a profit)	(Obey the law)	(Do what is right)	(Contribute to community)

3.4.3 Drivers of CSR in developing countries

Finally, as the gold exploration assessed in this study is conducted in South Africa, there is a need to understand the drivers of CSR in developing and to identify if and how a regulation of the gold mining industry is likely to fit into the context of CSR in a developing nation such as South Africa. The following model will be applicable as it may identify the potential driver mechanisms for the proposed regulation, and has relevance to research question number one and four.

Figure VII: Drivers of CSR in developing countries

INTERNAL DRIVERS

Political reform   Crisis response

Cultural tradition   Socio-economic priorities   Governance gaps   Market access

International standardisation   Supply chain

Investment incentives   Stakeholder activism

EXTERNAL DRIVERS

(Crane *et al.* 2008: 481)

CHAPTER 4: METHODOLOGY

The aim of this chapter is to outline the methods used in the research. The need to set this thesis in a theoretical methodological framework is essential as it may open up for later comparison with previous and similar research. The research methods employed provide credible and reliable answers to the research questions presented in chapter 1.4. A research method is a technique for collecting data and can be defined as either deductive or inductive (Bryman 2008: 31). A deductive approach uses quantitative methods, whereas the inductive approach refers to qualitative research methods (Bryman 2008: 22, 366). This is a fairly narrow methodological outlook and it is possible that the two approaches can be combined (Ali *et al.* 1998: 1).

4.1 Research design

The research design of this study ensures a structure for the collection and analysis of data. The study is based on an understanding of the significance of the developmental implications related to gold mining in South Africa, and on the importance of the development of a regulation ensuring a larger degree of sustainability in the S.A. gold mining industry. This was substantiated through a case study design exploring the nature of, and assessing the need for a regulation. A case study design can be explained as such:

"The basic case study entails the detailed and intensive analysis of a single case....., and is concerned with the complexity and particular nature of the case in question" and that *"the emphasis tends to be upon an intensive examination of the setting"* (Bryman 2008: 52, 53)

The case; the South African gold mining industry, can be defined as a *representative* or *exemplifying* case. This implies that the case was chosen because it has the potential to epitomise a broader category of cases, and it provides a proper context ensuring that the research questions will be answered (Bryman 2008: 56). Even though explicitly addressing the role of regulation related to the South African gold mining industry, it has been mentioned that the case of gold mining *may* also prove to be representative for other sectors of the extractive industries. However, it is emphasised that the transferability of this study is questionable. Though there are great similarities between industries such as gold mining and diamond mining, my study is largely based on findings from the fieldwork in South Africa, and the vast majority of this report concerns South Africa. Thus, it cannot illustrate how regulation of another industry in another country can overcome their specific challenges.

4.2 Qualitative research methodology

A qualitative approach was chosen for this research based on the study's main objective and the research questions. Qualitative research methods can be defined as *"A research strategy that usually emphasizes words rather than quantification in the collection and analysis of data"* (Bryman 2008: 366). This definition highlights solely the issue of words versus numbers as the element which distinguishes between qualitative and quantitative research strategies. This means that the latter strategy is often known for applying measurements on the social life, whereas the qualitative research method is more concerned with using words as explanations of the analyses (Bryman 2008: 393). This research is qualitative, and justifies this with the objectives of the study which would be challenging to identify when conducting quantitative methods. This is because the objectives require in-depth studies of documents, interviews and observations of matters of qualitative nature. An example is for instance the document analyses of juridical documents, where my interpretations are central.

There are two major concerns in qualitative research; reliability and validity. Reliability is divided into two groups: external and internal reliability. External reliability is concerned about whether this study can be replicated or not, and this form of reliability is a major focus in this thesis as the main focus is on South Africa but at the same time an analysis of a potential agreement with prominent elements of 'international character' (Bryman 2008: 376-377). Because of this, certain factors may prove to be replicated or generalised such as the industry's challenges and ways of combating them, while other factors such as local political interest or lack of such cannot. This is also recognised by Lecompte and Goetz (1982) who points out that a social setting like the South African gold mining industry is not necessarily similar in other companies or in other countries.

Internal reliability is of inferior importance to this research but refers to *"the degree of which the indicators that make up a scale are consistent*". Scale is a quantitative technique that provides a composite score for the interviewee's response. (Bryman 2008: 694, 698). Validity is divided into external and internal validity. External validity is concerned with the findings of the research and whether they can be generalised in contexts other than the context of this research. Internal validity refers to whether the findings which identifies a causal relationship between variables is sound (Bryman 2008: 694), and is maintained in this research as a result of the competent sampling representatives presented in the following figure VIII.

4.3 Qualitative data collection

There were three ways in which the data were collected in this study: interviews, participant observations and document analysis. The majority of the interviews and the two participant observations took place primarily during a six week long stay in South Africa, January and February 2011, whereas a set of interviews and document analyses were conducted in Norway throughout 2011. During the fieldwork I spent many days amongst South Africans of various cultures, I was engaged in observations regarding gold and diamond smuggling and I spent a great deal of time interacting with locals from all levels of society. A presentation of the data gathering methods will be explained in the forthcoming sections before presenting the framework in which the data were analysed known as grounded theory.

Sampling procedure refers to the selected segment of the population that are subject to investigation (Bryman 2008: 168). The aim of the selection of interviewees, i.e. the sampling procedure, was based on identifying a representative sample that would ensure a high degree of quality of the data retrieved from the interviewees. Prior to this, the various subjects were selected based on their relationship to the main objective and the research questions. Thus, a purposive sampling technique was conducted (Bryman 2008: 458).

4.3.1 Interviews

Common in case study designs such as this, the collection of data was primarily collected through interviews. My initial plan was to use structured interviews, but as the research developed I found that such a 'fixed' approach would not be suitable for my thesis. Therefore, and because of great variations between the interviewees, a semi-structured interview approach was conducted (Bryman 2008: 438). I operated with an interview guide and/or a set of questions, but the interviewees were fairly free in their way of responding. This ensured a set of fixed questions so that the main objective remained prominent while maintaining the flexibility to ask additional questions or receive additional replies that would clarify the research questions further.

The ways that the interviews were conducted differed depending on who the interviewees were. For instance; a meeting was booked in advance when I interviewed the First Secretary of the Royal Norwegian Embassy in Pretoria. Additionally, some interviews were conducted via email and telephone because various stakeholders were positioned in various parts of the world, demonstrating the international nature of the South African gold mining industry. Finally, some interviews were based on informal and to some extent random meetings.

Due to the sensitivity on many of the issues at hand, informal meetings ensured me greater access to sensitive data than what would have been obtained in a more rigid setting. Below is an alphabetically organised figure over the interviewees and their background, followed by a short presentation of the interviewees. Findings from five anonymous interviewees were also utilised in this thesis and they will be presented as N.N.1 – N.N.5.

Figure VIII: List of interviewees

Name	Organisation/background
African Christian Democratic Party	African Christian Democratic Party
African National Congress	African National Congress
Afrikaner Weerstandsbeweging	Afrikaner Weerstandsbeweging
Alfsen, Ingebjørg	Norwegian Gold Jewellers Association & Inspectin Body for KP in Norway
Azanian People Organisation	Azanian People Organisation
Berntsen, Hasse	The International Labour Organisation
Cartwright, Gemma	The Fairtrade Foundation, England
Hagvåg Monsen, Bjørn-Richard	Save the Children, Norway
Müller, Marie	Bonn International Centre for Conversion
Nesvåg, Stein Inge	The Royal Norwegian Embassy in Pretoria
N.N. 1	De Beers, Kimberley
N.N. 2	Hotel owner and manager, Pretoria
N.N. 3	Banker, Cape Town
N.N. 4	Gold smuggler, Pretoria
N.N. 5	Diamond smuggler, Cape Town
Reid, XX	Student, entrepreneur, Cape Town
Rose, Nina	World Wildlife Fund
Smillie, Ian	Diamond Development Initiative & KPCS
Trevino, Teresa	KP Office, Canada
Toby, XX	Freelance musician
United Democratic Movement	United Democratic Movement
Valverde, Pablo	The Norwegian Government Pension Fund Global's Council on Ethics
Van Bommelhoven, Jan De Klerk	South African Foreign Affairs
Vryheidsfront Plus	Vryheidsfront Plus
24	**20**

Interview subjects or groups

African Christian Democratic Party (ACDP) was formed in 1993, and can be defined as a Christian conservative oppositional party. The interview was conducted via email correspondence.

African National Congress (ANC) is the major political party in South Africa, and governs South Africa today. The interview was conducted via email correspondence.

Afrikaner Weerstandsbeweging is a far right wing separatist political party which aims at restoring Afrikaner societies in South Africa. The interview was conducted via email correspondence.

Azanian People's Organisation (APO) aims at representing the black population of South Africa, and its main objective is to "*organise, mobilise and lead the oppressed people of Azania towards the elimination of neo-colonialism, capitalism, imperialism and all other forms of oppression in our country*" (APO 2011). The interview was conducted via email correspondence.

Alfsen, Ingebjørg is the Inspection Body for Norway in the KP, and the CEO for the Norwegian Gold Jewellers Association (Norges Gullsmedforbund). The interviews were conducted through various email correspondences in the time period of January 2011 to September 2011.

Berntsen, Hasse is the manager for ILO's department of information in Norway. The interview was conducted via telephone and email correspondence in the time period of 24.04 – 07.05.2012.

Hagvåg Monsen, Bjørn-Richard is the Regional Coordinator for Save the Children Norway, department Latin-America. The interview was conducted by email on the 06.09.2011.

Cartwright, Gemma is the New Product and Development Manager at the Fairtrade Foundation in England. Cartwright has also been very much involved with the launch and development of the Fairtrade and Fairmined Gold Standard which has been analysed in chapter 5.2. The interview was conducted by a set of emails in the time period of 08-21.05.2012.

Müller, Marie is a Research Assistant at the Bonn International Center for Conversion. The interview was conducted via email on the 15.09.2011.

Nesvåg, Stein Inge was the First Secretary at the Royal Norwegian Embassy in Pretoria when the fieldwork of this research was conducted. He is now the Embassy Counsellor at the Royal Norwegian Embassy in Warszawa. The interview took place at the Embassy on the 04.02.2011.

N.N.1 is a manager of De Beers in South Africa. Our interview was conducted in a hotel in a anonymous place, on the 02.02.2011.

N.N.2 is a South African white hotel owner and manager from Johannesburg. A set of interviews took place in February 2011, and they took place in the owner's hotel.

N.N.3 is a manager of a local South African bank based in Cape Town. The interview was conducted in Cape Town on the 10.02.2011.

N.N.4 is a South African gold smuggler from Cape Town, involved with the gold smuggling trade between Zimbabwe and South Africa. The case took place in Pretoria.

N.N.5 is a diamond smuggler, mainly involved with Angolan diamonds. His stationary locations are unknown, but the case study was conducted in central Cape Town.

Reid, XX is a student and representative for the young coloured population of South Africa. Various interviews were conducted on various locations in South Africa in the time period of January to February 2011.

Rose, Nina is a WWF advisor for international developmental politics. The interview was conducted via email on the 15.09.2011.

Smillie, Ian is the present Chairman of the Board of Directors of the Diamond Development Initiative (DDII) and a founder-participant of the KPCS. The interview was based on a set of email correspondences in September 2011.

Trevino, Teresa is the manager of the Kimberley Process Office located in Ontario, Canada. The interview was conducted via email correspondence on the 30.08.2011.

Toby XX is a member of the Zulu tribe and a freelance musician who has served as a representative for young black South Africans trying to make a living out of street art. Various interviews were conducted on various locations in South Africa in the time period of January to February 2011.

United Democratic Movement was formed in 1997 as an opposition to the governing ANC. Their main objective is found in their constitution of 2001, stating that "*The Party shall strive to unite South Africans form all communities in a new political home, built on the foundation of the principles and ideals of our National Constitution* (UDM 2001). The interview was conducted via email correspondence.

Valverde, Pablo is an Advisor for the Norwegian Government Pension Fund Global's Council on Ethics. The interviews were conducted through various email correspondences in the time period of 01.09.2011 to the 07.09.2011.

Van Bommelhoven, Jan De Klerk is the head of the South African Foreign Affairs EU Section, and is located in Pretoria and Brussels, Belgium. We conducted a set of interviews, formal and informal, throughout the period of January to February 2011.

Vryheidsfront Plus / Freedom Front Plus is right wing political party which aims at modifying the constitution closer to what they refer to as "Afrikaner ideals" (VP 2007).

4.3.2 Participant observation

The second data collection method I conducted is participant observation. The main aim for this type of observation is to observe the behaviour of the interviewees and to transfer the consequences of their behaviour to the wider society (Bryman 2008: 257). It is thus a way for the researcher to see "through the eyes of the interviewees (Bryman 2008: 465). The reason for conducting participant observation in addition to interviews is because the two data gathering methods together are complementary. For instance, whereas the semi-structured interviews allows explicit questions covering relevant aspects of this study, the observations are likely to generate additional findings which emerged out of my wider perception of the observation.

For this research, two cases of participant observation occurred. The first observation occurred in the surroundings of Pretoria where the first two weeks of my fieldwork was conducted. In the city centre I met up with a South African gold smuggler.

This incident and our interaction will be thoroughly analysed in chapter 5.4.2 with regard to how local factors such as the existence of a black commodity market may intervene with reaching regulation for the S.A. gold branch.

The second participant observation took place in Cape Town and concerned smuggled Angolan diamonds. Both observations allowed me to participate to some extent in the same activities as the smugglers, and provided me with sensitive information of the black market in South Africa.

4.3.3 Document analysis

Document analysis has a prominent role in qualitative research (Bryman 2008: 515), and has been of importance to this study as well. Whereas the literature review in chapter three aimed at identifying areas of general controversies, the document analysis aims at analysing specific documents of particular relevance for the research and its related research questions.

The documents analysed are existing agreements aimed at regulation of the extractive industry sector. Their feasibility have been analysed with regard to their role as either opportunities or threats towards the creation of a regulatory agreement for the gold mining industry, and the findings from the analyses also serve as exemplifications of important contractual elements. The documents assessed have not been produced for the purpose of this research or on my request, they have been preserved and available for analysis and they are relevant for the study (Bryman 2008: 515). Some of the private documents such as the assessed World Gold Council Standard was a draft at the time of this study, and will be addressed as such.

In accordance with Bryman (2008: 516), the documents have been evaluated by the use of the following four criteria; authenticity, credibility, representativeness and meaning. The authenticity of the documents is confirmed by their authors which are international prominent NGOs. Regarding the credibility of the documents, it should be noted that the majority of the documents assessed in the document analysis are biased. They are written by NGOs with their own objectives/agendas, meaning that the documents are created for a specific purpose. Therefore, the credibility and representativeness of the documents will be questioned. This has also implications regarding the credibility of the documents as some tend to be written in a populist manner. By this I denote that they are created in order to achieve wide publicity, sometimes at the expense of content.

This was particularly pertinent concerning the No Dirty Gold document. However, in order to obtain their credibility and representativeness, findings from the document analysis were analysed and compared with additional sources such as findings from interviews and participant observations.

4.4 Data analysis

By employing a qualitative research methodology, the data analysis involved transcribing and analysing the interviewees' responses. These emerged largely from interviews and field notes. The two main approaches to data analysis are analytic induction and grounded theory (Bryman 2008: 538). Analytic induction starts out by defining the research questions, explains the problem and then starts to retrieve data. Modification of the hypothesis is based on the findings (Bryman 2008: 539). Grounded theory, however, has been applied in this research and is arguably the most common structure for analysing data retrieved from qualitative research methods (Bryman 2008: 541). It can be defined as a method where theory is developed from the examined data (Lazarides 2010), and it is argued that method, data collection, analysis and theory stand in relationship to one another (Bryman 2008: 541), which for instance can be illustrated by the use of the theoretical framework repeatedly referred to throughout chapter five. Another example is that findings are presented and analysed accordingly in chapter five, independent of the data gathering methods applied.

Central in grounded theory is coding which aims at analysing the retrieved data by breaking it down to component parts (Bryman 2008: 542). The coding conducted in this research may be defined as open coding, referring to "*the process of breaking down, examining, comparing, conceptualizing and categorizing data; it yields concepts which are later to be grouped and turned into categories"* (Bryman 2008: 542). This is particularly evident when assessing the five documents in chapter five, but also concerning this research's participant observations where I break down and conceptualise my findings to the wider society, i.e. the black market's potential impacts on the proposed regulation of the S.A. gold mining industry.

The data analysis concerning the documents differ some from grounded theory. Bryman (2008: 528-533) argues that there are three possible ways in which documents can be analysed; qualitative content analysis, semiotics and hermeneutics. The data analysis approach conducted for this research is clearly hermeneutics. This implies that I seek to bring out the main purpose/intention of a text from the author's perspective (Bryman 2008: 534).

CHAPTER 5: EMPIRICAL FINDINGS AND ANALYSIS

The aim of this chapter is to present the findings from the research related to the five research question, and to study them accordingly in the light of the literature review and the theoretical framework presented in chapter three. This chapter has been divided into five parts where the first four parts aim at providing answers to one or more of the five respective research questions. However, the sections are largely referring to the research questions in the order that they are presented in chapter 1.3. Every section is then concluded with a summarisation of the main findings. The study's main objective of identifying contractual elements for a feasible regulatory framework is prominent throughout chapter five.

Part I is focused on findings answers to research question one. This is done by assessing the PESTEL model presented in chapter three, and using it accordingly with the findings from various interviews and documents in order to identify the context of the South African gold mining industry. Part II deals with status quo of regulation in the gold mining industry. Specifically, research question two is addressed by analysing four existing regulatory frameworks and by addressing the potential for amending the KPCS with regard to gold. Part III is concerned with the elements of the regulatory body of the proposed regulation. Benchmarking of existing successful regulations is central, and is thus somewhat interlinked with part II.

Part IV relates to research question number four and explores the probability of regulation bringing about a more sustainable approach for the S.A. gold mining industry. The study provides answers to this question by splitting part IV into two parts: First, by analysing the level of awareness of such a regulation. Second, by analysing how local conditions may interfere with the hypothetical regulation. The participant observations are central in the latter part.

Part V is concerned with the Clean Gold regulation, i.e. the document in which the contractual elements for the proposed regulation are summarised, and its expected feasibility as a potential act of CSR in South Africa is then analysed by the use of the two models presented in the theoretical framework as figure VI and figure VII. The section is thus linked to research question number five.

5.1 PART I: The context of the South African gold mining industry

The first research question raised in this study concerns the external environment of the South African gold mining industry and how this context may influence on the creation of a regulation. The document analysis, various interviews and background data of the gold mining industry serves as the base for this analysis which indicates that the environment of the S.A. gold mining industry consists of numerous elements likely to interfere with the proposed regulation and its feasibility in various ways. Moreover, the industry has little or none influence over most of the contextual features.

A PESTEL analysis was conducted for this section, and is largely a static approach for analysing the external environment of an industry, company etc. It is of importance to bear this in mind when assessing the model to this research. The current context of the South African gold mining industry also serves as an example of what the context *may* look like for a developing nation involved with gold mining, but I refer to the previously mentioned notion that carefulness should be applied when comparing the case of South Africa with other gold producing countries.

5.1.1 Political

Through the extensive literature review it became evident that the political environment includes national and international political actions, and that a proposed new regulation of the gold mining industry will need to adapt to both. The focus on national politics is based on the notion that a feasible regulation of the gold mining industry will have to acknowledge the S.A. government as an important stakeholder to the proposed regulation in order for it to gain legal status, and thus having the authority to act on cases on non-compliance. Moreover, the proposed regulation will also need to adapt to existing international politics expressed as global governance. The South African political factors concern privatisation policies and issues of governmental instability and civil society's mistrust in S.A. politics and politicians.

The Nationalisation of Mines proposal

The reasons for why the Nationalisation of Mines plan (NM) is analysed in this research is to identify whether governmental ownership of mines has relevance for the potential creation of a regulation of the gold mining industry, to analyse whether one can formulate contractual elements which may jeopardise the potential threat that the NM may present, and to evaluate how political actions may engage the population in ways that may interfere with feasibility of the proposed regulation.

There has been recent speculation that South Africa may introduce a plan for nationalising the mines. Julius Malema, the former leader of the ANC Youth League (ANCYL), is largely responsible for promoting the nationalisation plan. The Nationalisation of Mines proposal (NM) may be of concern to a regulation of the gold mining industry because it may question the future of the industry. This is also recognised by the of Mines in South Africa which says that *"The sector has been fortunate in that thus far, and despite the heated debate over nationalisation, international investors have not changed local mining houses' valuations. However, there is nothing to suggest that this will not change at any given time"* (Chamber of Mines 2010: 2). The NM proposed and supported by the ANCYL advocates that at least 60% of the mines should be owned by the South African government. The reason for this, according to ANCYL, is that it will ensure social ownership and control over the South African economy (ANCYL 2011). This study found that the nationalisation plan proposed by the ANCYL is a sensitive matter and one that may reflect elements of uncertainties in relation to the latent establishment of a regulatory agreement of the gold mining industry.

According to First Secretary Mr Stein Inge Nesvaag, all of the land is actually owned by South Africa according to the Constitution of the Republic of South Africa (Nesvaag 04.02.2011). This may be a promoting aspect with regard to the NM, but chances are that the proposed expropriation may be perceived as a hostile attack on mine owners, and their trust in the State will decline. If this happens, it may prove challenging to promote a regulation which requires cooperation between state and industry. The South African gold industry presented by the Chamber of Mines have also expressed this concern, saying that the State should not be player and referee in the game concerning mining rights (Chamber of Mines 2010: 3). On the other hand, ownership over the gold mines may prove to be of inferior relevance for a regulation. As seen with the Kimberley Process, governments and the industry were important contributors to the creation of the KPCS regulation. The issue of actual ownership of the mines were to my knowledge not on the agenda. However, my study found that the proposed NM has contributed in increasing South African's scepticism towards the ANC, Zuma and Malema in particular.

In order to find out whether there is political instability in South Africa and thus a potential threat towards the feasibility of the proposed regulatory agreement, I conducted a set of interviews. One of my interviewees announced that *"the ANC Youth League and Julius Malema are idiots. He is good for sale for the news publishers, and has strong connections to Zuma and the government, but he is only in it for the cash"* (Reid XX 04.02.2011).

Other interviewees noted that *"Julius Malema is worrying us. He is only in it for the cash; he will never be the next president and when people are thinking radical in South Africa, you should get worried"* (N.N.2 12.02.2011). Finally, Mr Smillie notes that South Africa *"coddles dictators, actively blocks progress and is blind to human rights abuse"* (Smillie 24.09.2011). The last statement particularly refers to South Africa's stand concerning the KPCS regulation of the current diamond industry. Nonetheless, it clearly indicates a high level of scepticism towards the current South African government. Remembering the presentation of my interviewees in figure VIII, these findings confirm that different South African nationalities are united in their mistrust in the leading politicians, and that the feasibility of a regulation may be questioned due to this political mistrust. Therefore, it is likely to become difficult to achieve political consensus concerning a regulation for the gold mining industry as quite a few South Africans question the competence and authority of the politicians in charge.

Additional findings also indicate that President Zuma's role is disputed. One of my white South African sources argued that the government were acting with a "reverse apartheid" approach. He accused president Zuma for firing white South Africans and giving the jobs to the blacks, without regard to required skills (N.N.3 15.02.2011). My source also accused him of expropriation of land from white farmers, and giving it to others who are not legally entitled to it. On my questions regarding South African politics, he replied that *"The ANC and Zuma are idiots. Only intellectual people should be allowed to vote. Today, the vote of an engineer is worth as much as a poor man`s vote"* (N.N.3 15.02.2011).

The Millennium Development Goals

In the literature review, a set of MDGs were assessed. Here, issues of health and safety in mining were addressed together with emphasis on ensuring access to safe drinking water and basic sanitation. The MDGs relevance as part of global governance and the political context of the South African gold mining industry has also been debated by some of my interviewees.

This study found that the importance of safety and health procedures in the gold mining industry was emphasised and widely accepted by prominent civil society organisations. In the interview with Mrs Alfsen, she noted that *"in poor countries with poor governance, poor people are working without protection and knowledge of health and safety issues. It is of importance to emphasise on such issues all the time"* (Alfsen 19.09.2011).

Not only does this finding serve as a contractual element concerning the importance of highlighting requirements concerning health and safety issues, it also shows that the KP as well as branches of the gold jewellery industry acknowledge the importance of emphasising on the crucial issues noted by Alfsen.

Scarcity of water is another great concern to South Africa. Pollution of drinking water through cyanide leaching is a major problem with gold mining, and one that enlarges the before mentioned problem of water scarcity. The UN indirectly highlights the importance of efficient water usage with regard to mining activities, seen with the MDGs number six and seven. This has particular relevance to the case of the South African gold mining industry where acid mine drainage in relation with rain has become a major challenge for the quality of the groundwater in Johannesburg, having vast impacts on water systems, food crops, eco-systems and human health (Greenpeace 2011). As such there is a need to highlight the responsibilities of the government of S.A. and the gold mining industry in the regulation, in order to combat the challenges.

5.1.2 Economic

The role of CSR in South Africa is now presented with a special emphasis on the South African CSR initiative presented in the literature review as the King III Report (Report). I additionally identify findings that may serve as contractual elements for a feasible regulation. As such, the economic environment of the South African gold mining industry provides information to the PESTEL analysis and research question number one.

As seen in the presentation of the S.A. gold industry, banks were highlighted as one of the main driving forces for gold demand. For the purpose of this study an interview was conducted with the world`s second largest sovereign fund; the Norwegian Government Pension Fund Global, which has a current value of some US$ 600 billion worth of foreign stocks (NBIM 2011). The fund has an investment portfolio on the Johannesburg Stock Exchange worth approximately R 12 bn (Nesvaag, 04.02.2011). Being a governmental fund, there are strict guidelines in terms of ethical demands when investing, which illustrates the increased importance of CSR and foreign public investments. In order to comply with the ethical demands, the fund has appointed the Council on Ethics. Mr Pablo Valverde is an advisor for the Council, and revealed that the Council on Ethics gives advices to the Norwegian Bank Investment Management (NBIM) which are in charge of influencing companies so that they act in accordance with the fund`s guidelines (Valverde, 07.09.2011).

As this example proves to show, the demand for CSR is vast, and prominent foreign investors have the power to direct the companies into conducting CSR.

The King III Report

As seen in the literature review, the Report offers a set of important contributions towards achieving sustainable development in the South African gold mining sector, and does this by ensuring that the JSE listed gold mining companies present an annual sustainability report. An important determinant for the outcome of the Report is that the JSE listed companies actually comply with the requirements of the Report. This has proven challenging, as recognised by the King III Committee (King III 2009: 4). Findings from my study confirms the notion that mining company's compliance with the Report is questionable, which disputes the role of CSR in South Africa and thus questions the proposed regulation's need of being perceived as an act of CSR in order to be feasible in South Africa.

During my fieldwork I conducted an interview with one of the managers of DeBeers in South Africa, the world`s leading diamond producer. What he told me was not in compliance with the Report, nor with the reviewed MDGs or the ILO Conventions assessed in the study. First he said that the working conditions in the mines were harsh. The temperature in the mines exceeded 50-70 degrees, and the miners were subject to repeatedly tests such as x-ray and lie detector tests on a daily basis. Furthermore he stated that *"I think they (De Beers) buy all the diamonds from the black market and controls the supply. That means that they don`t own all the mines, but they buy their diamonds in order to control the supply"* (N.N.I 02.02.2011). He also claimed that *"They run it like Nazis even though they are Jews, but it is your choice to work for them and as long as they pay your salary, you don`t care about the immorality"* (N.N.1 02.02.2011). He told me that the way that DeBeers was ensuring their managers' "careless" attitudes was by offering houses and salaries for the mangers. Should issues of resigning occur, then DeBeers would improve their manager's benefits.

This proves to show that the before mentioned apply or explain" approach of the King III Report may prove inefficient when ensuring compliance from its members (N.N.1 02.02.2011), and that the South African gold mining industry's compliance regarding the proposed regulation must be ensured. The ways of ensuring this are identified in part IV. However, it should also be mentioned that De Beers are members of the KPCS, and hence documents that all their diamonds are ethically sourced and responsibly crafted (De Beers 2011).

The interviewed manager also emphasised on the social programs that De Beers are running, such as combating AIDS and promoting education (N.N.1 02.02.2011). Nonetheless, findings from our interview show that the conduct of business behaviour may very well not be consistent with the requirements of the Report, and illustrates that a regulation may be worthless if the mining companies do not change their ways of conducting gold mining, i.e. respects the regulatory framework to which they may be committed.

Additional artefacts of the economic context

In spite of South Africa's pioneering role in promoting CSR work, there are major economic challenges well suited to harm the feasibility of the proposed regulation. Mr Stein Inge Nesvaag pointed out that there are additional major challenges. Whereas South Africa consists of some 50 million people, only 5-6 million of them pay taxes (Nesvaag 04.02.2011). Not only does it reflect a society where the minority (tax-payers) are funding the majority (non-tax payers), but also that the willingness to and the basis for solidarity is fairly weak compared to other nations (Nesvaag 04.02.2011). This may partially explain the scepticism between population and politicians as discussed in previous sections.

The Embassy further argues that one of the major challenges is not actually lack of tax payers but lack of efficient utilisation of the money that the state governs. As much as 30 % of the country`s revenue is not being spent (Nesvaag 04.02.2011). This has serious implications in a developing nation such as South Africa. The governmental waste of resources may contribute in increasing the level of civil society's mistrust towards ruling politicians, and thus posing harm to the proposed regulation as governmental support of the regulation then may harm the regulation rather than strengthen it. This is particularly relevant in 2012 where South African public awareness concerning the proposed regulation of the mines may be perceived as an element of their own Nationalisation of Mines proposal.

Additionally, Nina Rose at the WWF emphasised on another interesting artefact concerning the fiscal and societal challenges of the S.A. gold mining industry by noting that foreign mining companies do not pay enough taxes to the country in which they are mining. Revenues are invested in their domestic country rather than in the area of the mine (Nina Rose 19.09.2011). With regard to potential contractual elements I also asked her about her solution on how to challenge the degradation deriving from the gold mining industry. She pointed out that companies must be held responsible, and it is largely governments that may regulate how businesses are conducting their behaviour.

Governments should oblige companies into conducting corporate social responsibility, instead of letting CSR be optional. She further said that if one is to get in place a certification system for responsible gold mining, then consumers would be prepared to take enlightened decisions (Nina Rose 19.09.2011). Despite highlighting numerous tips for the contractual elements of the proposed regulation such as the emphasis on a certification system for the newly mined S.A. gold, Nina Rose also points out the shared responsibilities between companies and governments. There is as such a need to distinguish between the two, and the contractual requirements should adapt this notion.

5.1.3 Social

The social factors of the South African gold mining industry are also considered to be an important feature of its context. South Africa with its numerous tribes, languages, cultures and various levels of education presented in chapter two represent great challenges in terms of political governance, the management of gold mines and the great differences between the people of S.A, i.e. the beneficiaries of the proposed regulation. This was also confirmed in my interview with Toby, a member of the Zulu tribe, who told me that South Africa consists of *"many tribes and many fences"* (Toby 04.02.2011). Concerning the social environment, he also replied that the multitude of languages was a big hinder. As seen in chapter two, English is the mother tongue by a mere 8% of the population. The diversity is what makes a sense of 'brotherhood-feeling' in South Africa utopian (Toby 04.02.2011). These assertions seem to imply that the socio-cultural mix has its drawbacks regarding the sense of a wider 'community-feeling', which may have implications regarding the feasibility of the proposed regulation. This is because the interviewee's comments above reflect a challenge when promoting a national holistic regulation where parts of the beneficiaries are very much fragmented.

There are thus great uncertainties when assessing the actual need for the individual beneficiaries, and the contractual elements of the proposed regulation should therefore take into account requirements that favour the majority of the South African population's needs. It is argued, however, that reversing trends of environmental and societal degradation will benefit the S.A. population at large, independent of culture, income, and social status as seen in the literature review. However, it is envisaged that it is the vulnerable groups; those with money- and health-issues and a great dependency on natural resources such as food crops and water which will benefit the most, justified by notion that mining may contribute to development if conducted in sustainable manners (World Bank and the International Financial Corporation 2002: 1).

5.1.4 Technological

It is envisaged that the technological environment of the S.A. gold mining industry is of inferior importance to the proposed regulation and its contractual elements as this study is largely concerned with a regulation which emphasises on the environmental and societal aspects of mining. Nonetheless, technology development is perceived as an important tool for improving unsustainable ways of gold exploration. As will be evident in section 5.5, the Clean Gold regulation does not aim for technological improvements as the effects then would have been dependent on the fiscal situation of the local mine company rather than on the willingness and possibilities of every actor in the gold mining industry to comply with the regulation.

Nevertheless, governmental expenditure on research and development is identified as a technological factor of interest. The South African government has an announced target of investing one per cent of the country`s gross domestic product (South Africa 2012). The latest official publications concerning the value of the expenditures dates back to 2010, and shows that approximately R21 billion were spent in 2008/2009, representing some 0.92% of GDP, close to the target (South African Government Information 2010). This is in line with great emerging economies' expenditures such as China and India, and indicates that the S.A. gold mining industry may expect a volume increase in the future, an assumption which is also academically justified (US Geological Survey 2012: 66). This has implications regarding this thesis in that the importance of the proposed regulation may increase accordingly with the increased gold production.

5.1.5 Environmental

The environmental impacts deriving from gold mining have been counted for in chapter one. The gold mining industry of South Africa is no exception from contributing to vast environmental and societal challenges. I also refer to the before mentioned case concerning the contamination of groundwater in Johannesburg. The environmental context of this study was also emphasised in my interview with the World Wide Fund for Nature (WWF), and Nina Rose noted that there are vast environmental implications from gold mining, and their impacts on the nature in forms of detoxification of groundwater are immense.

This may lead to health damages for people as well as animals, and may jeopardise ecosystems (Nina Rose 19.09.2011). Thus, the contractual elements should be designed so that they actively change the S.A. gold mining industry's ways of conducting mining.

5.1.6 Legal

Bearing in mind the definition of regulation presented in chapter one, it is emphasised that a proposed regulation of the South African gold mining industry is closely linked to juridical concerns. Therefore, a set of laws must be taken into consideration when analysing the legal context of the gold mining industry. In order for the regulation to be feasible, one must ensure that its contractual elements guarantee that compliance with the regulation does not violate additional laws such as the internationally accepted ILO conventions which have particular relevance to how the contractual elements of the regulation should be formulated.

Associated International Labour Organisation Conventions

I asked Mr Berntsen about the ILO convention's role with regard to the S.A gold sector who replied that companies are bound by the implementation of the Conventions in public law. Those who do not conduct their behaviour in accordance with the conventions may be reported to the ILO via national labour unions or governments (Berntsen 07.05.2012). As such, it is undisputed that the S.A gold mining companies are already obliged by the listed conventions. Regardless, violations of the ILO conventions still occur, as seen in the presentation in chapter one. Other interviewees indicated that labour conditions were poor, and that the mine workers who in some cases even put their lives on the risk were left with almost nothing (Nina Rose 19.09.2011). Such statements indicate an industry in contrast to the *freedom, equity, security and human dignity* that the ILO is aspiring to achieve.

(Source: Daily Maverick 2009)

C155 Occupational Safety and Health Convention (1981) & C176 Safety and Health in Mines Convention (1995)

The C155 is applicable to the gold mining industry because hazards in South African mines in many cases are apparent, confirmed by Rose's previous notion. Therefore, a contractual element in accordance with C155 will be to formulate a paragraph concerning how to combat such hazards. This was challenging as the ways of conducting mining activities differ with regard to capacities in terms of technology, science, finances and staff. However, by highlighting the C155 in the proposed regulation, it may be that awareness about mine health and safety issues increase.

In the preceding chapter 5.1.1 I presented a finding from the interview with Mrs Alfsen where it was noted that the KP recognises the importance of health and safety issues in the gold mining industry, and that such measures are often weak. This finding indicates a violation of C155 and C176. I asked Mr Berntsen about the consequences of violating a convention. He told me that the ILO's General Conference has the power to *encourage* member governments to stop their ways of conducting business in violation of the conventions.

Practically, this is taken care of by highlighting such issues in public at the annual conference, and as such ensuring transparency of such challenges (Berntsen 07.05.2012). This implies that the ILO has no other ways of encountering such challenges, nor do they have the ability to impose sanctions towards governments and industries violating the conventions. As such, it seems that non-compliance with ILO conventions is largely dependent on local law enforcement rather than on the ILO. If non-compliance is met with no sanctions, chances are that the South African gold mining industry may continue with their unsustainable ways of conducting business. This, however, can be overcome with responsible governments holding actor's such as the gold mining industry responsible for their violations and potentially by highlighting ILOs requirements in the proposed Clean Gold Regulation. Mr Berntsen also noted that the discomfort with getting acts of non-compliance displayed in public implies a great pressure towards ensuring government's compliance (Berntsen 07.05.2012). As such, a contractual element should be designed so that compliance with C155 and C176 are met with sanctions through the proposed regulatory agreement.

Additionally, with the S.A. *Mine Health and Safety Act of 1996*, the South African government has expressed their concern for safety and health issues in the gold mining industry. The act aims at promoting a culture of health and safety in the respective mine, and the enforcement of health and safety measures are in line with the C176 which interestingly was published the year before the mine act of 1996 (Mine Health and Safety Act 1996: 1). In the document it becomes clear that it is the *mine owner's* main responsibility to ensure that health and safety are prioritised concerns, but there are also responsibilities of the managers as well as those of the labour force (Mine Health and Safety Act 1996: 3-24). This also confirms that the C176 is part of South African law, implying that violation of the C176 is a violation of the 1996 act.

C182 Worst Forms of Child Labour (1999)

In order to analyse the societal impacts from child labour in S.A. gold mining, I interviewed Save the Children represented by Bjørn-Richard Hagvaag Monsen, one of Save the Children's regional coordinators. In our interview, Mr Monsen stated that Save the Children are working with children`s rights as a tool. They do see developmental implications with child labour in general which implicates that children are not being able to go to school because of their work (Monsen, 06.09.2011).

ILO further pointed out that they want to ensure that children are able to be educated while working, that Save the Children are not against child labour, but against harmful child labour and that they cooperate with local education departments as well as companies that have child labour (Monsen 06.09.2011). Save the Children distinguishes between child labour in general, and harmful child labour. However, within a gold mining context, child labour is arguably a dangerous occupation for a child as highlighted by the ILO with the C182. Hence, another contractual element is identified.

Summary of the contextual factors of the South African gold mining industry

In conclusion; the context of the South African gold mining industry is diverse and includes a variety of contextual features of which the gold mining industry has little or none impact over. Some of the contextual elements represent strengths towards the expected support over such a regulatory framework as promoted by this study, and this is most prominent concerning South Africa's particular emphasis on CSR. However, the study has also found that there is a great deal of uncertainty and opposition towards the current S.A. political environment. An interesting notion is that scepticism towards politics and politicians seem to derive from the white, black and coloured population regardless of income status and society level (lower class, middle class, high class). This is of concern to the research as political mistrust and instability may jeopardise the feasibility of the proposed regulatory framework, which would have to include the South African government as an important stakeholder. As such, this is the outcome of the PESTEL analysis with regard to the South African gold mining industry's environment:

<u>Political factors:</u>

- MDG no. 6, 7a, 7c
- Nationalisation of Mines proposal
- Political mistrust

<u>Economic factors:</u>

- King III Report
- CSR
- Inefficient usage of tax income
- Expected positive economic development

<u>Social factors:</u>

- Tribes
- Cultures
- Languages
- Harmful diversity

<u>Technological factors:</u>

- Governmental expenditure on research on research is high, but lower than budgeted .

Environmental factors:

- Contaminated groundwater
- Deforestation
- Poor waste rock management
- Conflicts

Legal factors:

- ILO Conventions no. 155, 176, 182
- The Mine Health and Safety Amendment Bill

5.2 PART II: Existing regulations for the gold mining industry

This section is a descriptive and analytical evaluation of five regulations, and they are assessed primarily in the light of research question number two. However, findings concerning research question number three and four may occasionally be identified. Subsequently I analyse the potential of amending the KPCS with regard to gold as this also concerns research question number two. The section is then concluded with a brief summary of the findings concerned.

5.2.1 Fair-trade & Fair-mined Standard for Gold from Artisanal & Small-Scale Mining

Created by the Alliance for Responsible Mining (ARM) and the Fairtrade Labelling Organizations International (FLO), the Fair-trade and Fair-Mined Standard (FFS) was launched in March 2010. This is a document which provides a standard on how artisanal and small-scale miners should conduct their mining business, and is a pioneering proposal in the extractive industry sector.

The FFS is structured into two sections; Section A refers to the general requirements of the FFS and is linked to social-, economic- and environmental development, section B is concerned with FFS's role in the trade and process of gold exploration. The main objective of the FFS is found in Section A where they announce that "*The FFS is aimed at creating opportunities for economically disadvantaged artisanal miners and their communities*" (FFS 2011: 4). It is of importance to highlight that the FFS is concerned with artisanal miners, whereas the approach for this research is a regulation that regulates the S.A. gold mining industry. Therefore, comparison between the two may prove challenging.

Following a document analysis of the FFS, it was revealed that the objectives of the FFS Standard are numerous, complex, and largely complementary;

"*To promote the formalisation of the ASM sector, bringing with it improved working conditions for producers, strengthened producer organizations with the capacity to lobby for legislation and public policies that promote a responsible ASM sector, improved environmental management (including mitigation of the use of mercury and ecological restoration), gender equality, progressive elimination of child labour in mining, fairer market access, benefits to local communities in mineral rich ecosystems, and improved governance to this sector"* (FFS 2011: 4).

The comprehensiveness of the agreement is impressive and ensures that the regulation addresses variable important factors in order to ensure empowerment for the economically disadvantaged. However, the areas of concern for the FFS are many, interlinked and thus complex. Though likely to be linked with the main objective of empowerment, it does seem practically challenging for a regulation to address working conditions, strengthened producer organisations, lobbyism for legislation, environmental management, gender equality, market access and improved governance in a holistic and feasible manner. Thus, chances are that the complexity of its objectives will prove to be too wide in their covering.

I conducted an interview with Gemma Cartwright at the Fairtrade Foundation in the United Kingdom. Besides being the manager for Fairtrade's department of New Product and Development, she is also one of the FFS Standard's founders. She disputed my notion that the objectives of the FFS seems to be overly complex, but admitted that their ambition is big and that they have encountered challenges along the way. She also pointed out that if a gold mining company fails to comply with the requirements, then the company will be suspended from the FFS until the issues are resolved. Moreover, the companies are regularly audited in order to ensure compliance (Cartwright 21.05.2012). This is in line with Mr Smillie's notion that third party auditing and penalties in cases on non-compliance are crucial elements for a feasible regulation (Smillie 24.09.2011). As such, the likelihood that the FFS will reach its objectives is increased.

A final question concerns the FFS' applicability in achieving the main objective of this thesis. It has been stated that this will prove challenging as the FFS is focused solely on artisanal small-scale miners. I therefore asked Cartwright about the possibilities of the Fairtrade Foundation would be interested in expanding their regulation. The response was that they had no plans of doing so. Thus, the applicability of the FFS regarding this study is weak.

5.2.2 The Golden Rules

The second document analysed for this research is the Golden Rules; a set of 11 rules/standards aimed at regulating the international gold mining industry. Launched in 2007 by the NGOs EarthWorks and Oxfam America as part of their No Dirty Gold Campaign, it aims to ensure that the mining industry "*respects human rights and environmental standards at gold and metals mining operations* "(GoldenRules 2007). It can be argued that the Golden Rules are relatively successful as some 100 000 individuals and 25 jewellery companies have joined the campaign (GoldenRules 2007: 2).

The rules are concerned with basic human rights, labour conditions, avoidance of gold becoming a conflict asset, pollution and sensitivity towards ecosystems and issues of cost-covering when mines are closed. In order for the proposed regulation to bridge the gap between environmental and societal degradation, the rules seem to be valid points of interest for the design of the contractual elements. Furthermore, the Golden Rules publish critique concerning companies that actively violate the standards. This is an interesting artefact with a potential positive outcome as such unwanted publicity attempts to achieve accountability in the gold mining industry. This is also in line with Mr Berntsen's notion that the discomfort of published acts of non-compliance is likely to motivate people into conducting business in more morally accepted manners (Berntsen 07.05.2012).

The wording and aims of the Golden Rules represent an increased simplification and focus compared to the FFS, and it has a broadened approach compared to the FFS which is solely focusing on economically disadvantaged artisanal miners. Nevertheless, there seems to be some obvious weaknesses with the Golden Rules. Unlike the FFS, the Golden Rules does not offer a framework, a contract or guidance on how the actual implementation of its standards should be conducted. As such, the outcome is largely dependent on the mining companies' ability and willingness to adapt to the standards. Moreover, it is likely that due to the informality of the Golden Rules, it lacks the important aspect of legal status, hence achieving its outcome may prove challenging as the Rules have no ways of enforcing its rules. Nor does it have the possibility of proposing sanctions towards acts of non-compliance, which according to Mr Smillie is a necessity for a regulation to be efficient in the extractive industry sector (Smillie 24.09.2011).

5.2.3 The EITI Standard

EITI stands for the Extractive Industries Transparency Initiative, and is an organisation initiated in 2002 at the World Summit for Sustainable Development in Johannesburg, South Africa. The international secretariat is located in Oslo, Norway, and the organisation consists of 30 candidate countries; countries that must prove their compliance with the EITI standard for a period of two and a half year. The EITI Standard has also attracted a number of supportive countries including the US, Italy, Germany and France. The International Council on Mining and Metals is a sponsoring organisation of the EITI together with a broad range of institutional investors such as the South African Element Investment Managers, the Goldman Sachs Asset Management International, the JPMorgan Asset Management as well as the Norges Bank Investment Management (NBIM) interviewed for this research.

The EITI Standard is an EITI initiative where the aim is to set a global standard for transparency in oil, gas and mining. Their main objective is to: *"strengthen governance by improving transparency and accountability in the extractives sector"* (EITI 2012). It is guided by 12 principles, the most prominent one stating that

"*We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts"* (EITI 2012).

In order to achieve the desired outcome of sustainable development, the EITI has identified six criteria through which they aim at directing the actions of their members. Transparency is at the very core of the EITI Standard, and all the criteria are concerned with this. The participants must ensure that they regularly publish all oil, gas and mining payments by companies to governments, and vice versa. The publication shall also be publicly accessible and comprehensive. Accordingly, the participants must ensure that they follow internationally accepted auditing standards. Consequently, a number of contractual elements for the hypothetical regulation are identified.

The EITI have also recognised their particular role in the EITI Standard, saying that *"Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate"* and they say this about the role of the governments: *"A public, financially sustainable work plan.....is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints"* (EITI 2012).

Though not explicitly concerned with combating environmental and societal implications deriving from the gold mining industry, the EITI Standard does highlight the importance of transparency and accountability. Moreover, it also identifies the importance of including civil society and governments as stakeholders of the proposed regulation.

However, it is argued that transparency and auditing is not enough to ensure the sustainable development of the gold mining industry. The EITI Standard does not seem to address how the environmental degradation deriving from gold mining should be addressed in order to ensure sustainability in the gold mining sector. Nor does the regulation emphasise on how to ensure compliance with additional obligatory environmental and societal laws such as the before mentioned ILO Conventions. In conclusion, the EITI highlights the importance of transparency in the gold mining sector, but neglect a variety of equally important elements aimed at contributing in reaching the main objective of this thesis.

5.2.4 The World Gold Council Standard – Conflict-Free Gold

The World Gold Council is the initiator behind the WGC Standard (Standard), and the first draft was launched on the 16th of June 2011. The highly comprehensive Standard yet not enforced is based on the following recognition:

"We believe that, responsibly undertaken, mining and related activities can play a crucial role in achieving sustainable development and alleviating poverty in developing countries" (WGC 2011: 4).

The main purpose of the Standard is to ensure that:

" *companies producing, transporting and refining gold which meets the standards set out are able to claim their product is conflict-free gold"* (WGC 2011: 6).

The WGC regulation is detailed, and is presented in the following summary of its structure and main features.

a) Conflict Assessment
   (*"the context in which a company's operations are set"* WGC 2011: 11)
- Check for international sanctions (WGC 2011: 12)
- Use the specific WGC recognised definitions of the term "Conflict" (WGC 2011: 14)

b) Company Assessment

(*"the Company's willingness and ability to operate in areas recognized as conflict or high-risk"* WGC 2011: 18)

- Ensure transparency (WGC 2011: 19)
- Check performance in accordance with the standard(WGC 2011: 21)
- Security in the mines must not promote conflicts (WGC 2011: 23)
- Operations and Community must be interlinked and related to the Standard (WGC 2011: 25)

c) Commodity Assessment

- Mine handling (WGC 2011: 30)
- Transport (WGC 2011: 32)
- Refinery (WGC 2011: 35)

Knowing the WGC's purpose of stimulating gold demand, it is interesting that they have come up with a contract which obviously addresses important issues of sustainable development and conflict eradication. It may thus be appropriate to perceive the Standard as an element in the WGCs strategy for 'stimulating and sustaining demand for gold' which may indicate that the reasons for why the WGC emphasises on CSR are largely based on evaluations of CSR's potential positive fiscal consequences. It should also be noted that the Standard is the outcome of the WGC; the counterpart to the World Diamond Council which was highly involved in the creation of regulation for the diamond industry. As such, an alternative regulation to the Standard may prove challenging as its most prominent potential stakeholder, the WGC, is now concerned with the implementation of the Standard.

On the 29th of March 2012, the WGC introduced a second draft named the Exposure Draft. This differs from the original Standard analysed above in that it includes inputs from a range of stakeholders including NGOs, governments, investors, media and academics. It also includes inputs from Global Witness and Partnership Africa Canada known for their work with regarding conflict diamonds as seen in the KPCS presentation, the South African government and the Fair Trade Foundation (WGC 2012). The draft still allows for additional input. The aim of the 2012 Standard is to *"provide a mechanism by which gold producers can assess the risk that their operations may contribute to armed conflict and associated serious human* *rights abuses"* (WGC 2012: 2). This differs from the 2011 Standard in that the WGC to a greater extent emphasises on the aspect of human rights abuses.

This is also evident as the Standard now announces that the committed parties must *"publicly commit to respecting human rights"* (WGC 2012: 2) which is in line with the objective of this thesis.

There are two more modifications from the 2011 Standard, and they concern the structure of the document which was divided into the previous three segments Conflict, Company and Commodity assessment. The 2012 Standard has included two more segments with related requirements;

d) External Sources of Gold Assessment

- Participants must ensure that a due diligence takes place before a company/individual enquires gold, with regard to the before mentioned requirements of the Standard, in line with OECD Guidance (WCG 2012: 4-6)

e) Statements of Conformance Documentation

- *"Where the company has demonstrated conformance to part a-d, an appropriate statement needs to be provided"* (WGC 2012: 4)

First, bearing in mind the objectives from both the original 2011 Standard as well as the modified 2012 Standard, environmental considerations seem to be neglected. Hence, the Standard does not seem to cover all the aspects promoted by this research. Apart from that, the Standard recognises the importance of committing the gold mining industry to human rights laws, though without identifying the ILO as contributors or stakeholders. Transparency is also emphasised in the Standard, and is likely to be a crucial element in holding the gold mining industry`s actors accountable.

In conclusion, the Standard is without doubt the most comprehensive initiative for a regulation of the gold mining industry. Being largely initiated by the WGC, chances are that we will see the Standard implemented very soon. Even though it fails to cover or identify the environmental challenges deriving from the industry, it highlights requirements that will contribute in reversing the trend of societal degradation, thus contributing to sustainable development for the gold mining industry in S.A and elsewhere.

5.2.5 Amending the KPCS

Research question number two is also concerned with the possibilities of amending gold into an existing regulatory agreement. As shown in previous analyses, there are weaknesses with utilising existing regulations due to their diverging purposes compared to this study's main objective. For instance, the WGC Standard is explicitly addressed to the gold mining industry. However, their regulatory framework does not address environmental degradation, it is yet a draft and thus it cannot serve as a feasible contract for the gold mining industry until launched. The KPCS however, can, and the contract's wording, objectives and decision makers' willingness to amend the KPCS has been subject for analysis.

Why amending the KPCS?

It is a clear understanding in the literature review that the KPCS is the most prominent existing regulation in the extractive industry sector, and that the regulation *may* open up for implementation of additional commodities such as gold. This was also justified by Mrs Alfsen who in our interview said that the framework and methodology from the KPCS was very likely to fit this research's main objective (Alfsen, 19.09.2011). Of interest to this section and thus of importance to research question number two is the notion that most stakeholder would be interested in this (Alfsen 12.09.2011). There is thus recognition from the KP that the stakeholders of the gold mining industry may be willing to accept a regulation like the one proposed in this research. Bearing this in mind, the most important passages of the KPCS are presented, analysed and compared with findings from my interviews. Accordingly, I hypothesise about how the passages are likely to amend gold in their makeup. This will inform the hypothetical required modification of the KPCS to include gold, and is based upon the precondition that there are strong similarities between the two commodities and their related challenges.

The reason for amending gold into the KPCS is based on several criteria, the cost-efficiency rate of the KPCS being the superior one. It has proven to be a successful regulation as it now regulates 99% of the diamond industry (Smillie 24.09.2011). Moreover, many of the member countries of the KPCS are also involved with the exploration and/or trade with gold and as such it seems reasonable to utilise an existing agreement with slight adjustments.

How to amend the KPCS

A regulation based on the KPCS is the KPCS with the *addition of gold*, aiming at addressing both the diamond- and the S.A. gold mining business. This implies that the KPCS document will only have to be modified by changing its wording of the term “diamonds” into “diamonds and gold”. Hence, it will not represent any changes for its *existent* stakeholders in terms of its involvement in the chain of supply for rough diamonds. It will, however, change the existing main objective of the KPCS to the following: ‘A certification scheme for rough diamonds and gold, designed to exclude conflict diamonds and gold from the legitimate trade’.

Based on the listed paragraphs seen in the literature review, it seems that the focus of the existing KPCS is addressed towards the element of trade, rather than on extraction, waste rock management and refining/polishing where the environmental degradation often derives from, as seen in figure III. This may prove to be a threat towards the potential for and the developmental outcome of a modified KPCS as the KPCS is unlikely to achieve the objects of reversing trends of environmental degradation because the regulation does not explicitly address such issues in its wording. Another challenge when assessing the probability of implementing gold into the KPCS is that the wording of the regulation does not mention gold; rather it focuses solely on rough diamonds as seen in the literature review. This indicates that implementation of gold is not within the sphere of the KPCS.

However, even though a restrictive interpretation of the wording of the KPCS may seem to limit the potential for direct implementation of gold, it could be possible to amend the KPCS based on its objectives. In chapter three, a paragraph indicating ambiguity related to the main purpose of the KPCS was presented. Here it was argued that gold implementation may be possible due to the similarities between the two commodities and their respective challenges. The reason for this is that the listed paragraphs tend to focus on the impacts of conflicts, whereas diamonds serve only as a mean of addressing such problems.

As seen in the literature review concerning the KPCS, it was identified that an important element when assessing the transferability of the KPCS towards the gold mining industry will be dependent on the relationship between diamonds and gold. Kimberly Curtis says this about the artefacts of diamonds:

"Diamonds are the most concentrated form of wealth on the planet, and their nature makes them especially attractive to smugglers. Highly valuable, small in size, easy to hide….and difficult though not impossible to trade, diamonds allow major financial returns with very little effort" (Curtis 2007: 8).

The similarities between diamonds and gold are striking. Both are concentrated forms of wealth, attractive to smugglers, valuable, they may be small in size and easy to hide. This is also confirmed in the forthcoming chapter 5.5 where I present two participant observations concerning smuggled gold and diamonds.

Even though the ambiguity indicates that the KPCS may be amended, it is of importance to assess the KP management's willingness to do so. Therefore, I interviewed the manager of the KP Office in Canada, Mrs Teresa Trevino. On my question whether the KP had interest in expanding the regulation with regard to gold, her response was that *"Our office is not aware of any plans to expand the KPCS and has not conducted any analysis it this area"* (Trevino 30.08.2011). The statement shows that one cannot rely on support from KP themselves, nor is it on the KP Office's agenda. Consequently, the likelihood of implementation of gold into the KPCS seems utopia. Other interviewees also argued that there are weaknesses concerning the feasibility of amending the KPCS regarding gold. Ms. Marie Müller at Bonn International Centre for Conversion replied that *"within the Kimberley Process, we are currently actually looking for other processes to improve the diamond supply chain……..i.e. the other way around"* (Müller 15.09.2011).

Other interviewees pointed out additional obstacles with amending the KPCS. First, such a modification requires consensus from all the member countries. Second, the 'new' potential member countries that are concerned with gold import/export need to accept the criteria for KPCS membership. (Alfsen 19.09.2011) I also asked Mrs Alfsen whether or not it would be *feasible* to implement gold in the KPCS. Her reply was that she was unsure about the efficiency of doing so, because the KPCS is *"a heavy system"*, but she promoted the idea that the same framework and methods used in the KPCS could be applied in the making of a contract that would address gold and sustainable development (Alfsen 19.9.2011).

Additionally, the findings from my study also indicate that the KPCS has been subject to much critique. It has been pointed out by numerous interviewees such as Mr Smillie and the Bonn International Centre for Conversion that the KPCS it not efficient in reaching its objectives anymore.

Thus, a set of improvements for its feasibility was identified by Mr Smillie. Based on the similarities between the diamond- and gold-industry, it is likely that they represent noteworthy considerations concerning the contractual elements of the proposed regulation:

"Rules need to be clear and fair, and they must be enforceable and enforced, with meaningful penalties for noncompliance; there is no substitute for independent third party monitoring; there must be a mechanism for adaptation and change, and a decision-making process that works" (Smillie 24.09.2011).

Summary of the analysis of existing alternative regulations for the gold mining industry

In conclusion, a variety of alternatives to the proposed regulation exists. Most prominent are the initiatives from the EITI and the WGC which both have created regulations that address a multitude of complementary sustainability issues such as the need for transparency and accountability in the gold mining industry. However, the study found that the assessed five regulations do not emphasise on the environmental aspects of gold mining in a holistic manner. This was also confirmed in the analysis of the KPCS where it became evident that support of amending the contract was unlikely. Moreover, the KP Office's lack of interest concerning the potential of amending the KPCS clearly indicates that such a regulation is utopian. As statements from the KP, the Norwegian Gold jewellers Association, Bonn International Centre for Conversion and Mr Ian Smillie question the probability and feasibility of amending the existing agreement, they additionally confirm the need for a new regulation as proposed with this study.

5.3 PART III: The regulation's regulatory body

Research question number three refers to the regulatory body of the hypothetical regulation and concerns the composition of the parties who should draft the regulation as well as its management and structure which will be presented in the presentation of the Clean Gold document in part V. For the regulation to become feasible there is a need to identify the administration of the regulation. Using the example of the relative successful KPCS, I refer to the interview held with Alfsen who pointed out that the creation of the KPCS needed to be done in cooperation with the industry itself, NGOs and the respective governments (Alfsen 12.09.2011). I additionally asked Nina Rose at the WWF the same question, and she replied that *"a framework should be governed by the United Nations, and NGO's are often the driving forces behind such processes. However, governments will have to make 'the final call'* (Nina Rose 19.09.2011).

Mr Smillie also confirms the importance of including industry, NGOs and governments, and emphasised in our interview that the respective governments, for this research South Africa, should have an equally strong voice as those from NGOs and industry. The South African gold mining industry knows what can work, but as Smillie noted; NGOs hold the trump card as they have the ear of the media (Smillie 24.09.2011).

It is evident that the South African gold mining industry, NGOs such as Save the Children and the World Wide Fund for Nature and the government of South Africa are likely to contribute to a feasible regulatory agreement for the S.A. gold mining industry, even though this is unlikely to happen based on this study's findings concerning S.A. politician's lack of interest in the matters addressed, as presented in the following section 5.4.1. In addition, the World Diamond Council has previously been identified as a key stakeholder in the creation of the KPCS. Its counterpart, the World Gold Council could entail the same position with regard to the proposed regulation. Knowing that the WGC represents some 60 % of the gold mining industry, this is likely to strengthen the credibility of the regulation due to their potential in engaging the majority of the sector. However, the research found that they are concerned with 'their own' Standard and it is therefore not likely to expect support from them as the proposed regulation may be perceived as 'competitive'.

One should not underestimate the role of the UN in the making of the KPCS. In chapter one it became evident that the UN is equally concerned with challenges concerning the gold mining sector. They should therefore be included in the creation of the proposed regulation. Finally, ILO has a significant stake in the South African gold mining industry as it is responsible of creating a set of conventions obligatory for the S.A gold mining sector. The ILO pointed out that the general conference of ILO is the regulatory body where issues of non-compliance may be addressed (Berntsen 07.05.2012). As such, the ILO seem to be a great contribution to the composition of the regulatory body of the proposed regulation as they have the ability to hold governments such as the South African responsible for violation of the listed ILO conventions.

This study thus found that participation of beneficiaries is of crucial importance for the feasibility of the proposed regulation, and that by ensuring such participation in the design, implementation and execution of the regulation one enables the regulatory body representatives to play an active role in decisions which have vast impacts on their organisational life.

Based on the findings, it seems reasonable to include the UN, the ILO, representatives from the South African gold mining industry (the WGC), the S.A. and NGOs such as Save the Children and the WWF.

5.4 PART IV: The feasibility of a regulated gold mining industry

Research question number four concerns the probability of the proposed regulation actually achieving a desired reverse in environmental and societal degradation. It should be noted that this is challenging if not impossible to answer as the proposed regulation is yet to be designed and launched. However, based on an analysis of the awareness of the need for the proposed regulation as well as an analysis of S.A. obstacles concerning the likelihood and feasibility of the proposed regulation, it should be possible to analyse the likelihood of a regulation leading to a more sustainable gold mining industry in South Africa.

5.4.1 The level of awareness of the need for a regulated gold mining industry

It has previously been noted that the government of South Africa has a potential role as promoter and supporter of such a regulation, with clear allusions to their active stance regarding the KPCS. According to Mr Van Bommelhoven, there is an important relationship between S.A. politics and the gold mining industry. In South Africa, a mining company needs to obtain two sets of licensees before a gold mine can be opened. The first licensee addresses the official requirements of the company; hence not any company can start with gold mining. The second licensee deals with the requirements of the specific mining site, and this is where politics often play a role, particularly in South Africa (Van Bommelhoven 15.02.2011). Therefore, politicians clearly have the ability to influence the gold mining industry. However, the political awareness and/or support for such a regulation in South Africa have proven to be inadequate.

I contacted the six most prominent political parties in South Africa presented in figure VIII. Disappointingly, none of the parties were prepared to answer questions regarding the need to regulate the gold industry. Their lack of feedback may be due to a variety of conditions including cultural factors or the sensitivity of the issue at hand. Other reasons why feedback did not materialise may be that the subject raised is not on their current political agenda. However, it is surprising that none of the parties were able or interested in discussing the future of the important S.A. gold mining sector. Whether their lack of response can be categorised as a neglect of the challenges faced by the industry is difficult to fathom.

Nonetheless, there is a definite lack of response which questions the political involvement for a regulation becoming a reality in South Africa, as a lack of political interest for this thesis' proposal is identified.

I also interviewed a set of NGOs in the search for assessing the level of awareness for the regulation. The World Wide Fund for Nature (WWF) did not have any official engagement in the mining sector. However, Nina Rose noted that they were working on a policy on mining (Rose, 15.9.2011). Therefore, the following quotations do not reflect the opinions of WWF, but act as the personal opinions of Nina Rose.

"Does the WWF recognise the need for a regulation of the gold industry?"

"Yes, I would absolutely believe so. The WWF are currently working on a mining policy."

"Which elements do you believe should be included in such an agreement?"

"There must be clear demands in terms of environmental responsibility. The "polluter must pay"-principle must be the rule. Human rights and labour rights in accordance with ILO must be obeyed, and mine workers must be paid fairly. Transparency must also be obtained with regard to cash flows."

"Would the WWF support a regulation of the gold mining industry?"

"The WWF has initiated certification systems for sustainable use of natural resources regarding forests and the maritime sector, and will most likely support such a regulation".

The WWF not only acknowledge the proposed regulation, but also notes that such a regulation must be consistent with existing human rights laws. This also confirms this research's focus on the MDGs and the ILO conventions. Other interviewees also acknowledged the need for this study's proposed regulation. Mrs Alfsen noted that *"Not only do we acknowledge the need; we see it as a necessity"*.

I also asked her more explicitly whether the Norwegian Gold Jewellers Association would support a regulation as proposed in this study. Her reply was; *"Undoubtly"* (Alfsen, 19.09.2011). Additionally, Hasse Berntsen at the ILO Office in Norway replied that the gold mining industry at least should respect the minimum requirements of the ILO, but that his knowledge concerning ILO's role in a regulation for the gold mining industry was scarce (Berntsen 07.05.2012).

The awareness of the need for regulation of the gold mining industry was also confirmed by the Fairtrade Foundation which noted that they acknowledged that there are huge environmental- and labour-related challenges in gold mining (Cartwright, 21.05.2012). The Fairtrade Foundation also emphasised on the importance of going through a holistic and participatory process to ensure that the contractual elements created take local realities into account. Mr Monsen from Save the Children, however, pointed out that the question concerning their support of the proposed regulation would be difficult to answer as one does not now the content of such an agreement (Monsen 06.09.2011). The fact that I am assessing the level of awareness and support for a regulation still not designed is identified as a shortcoming of the thesis. Additional challenges concerning the awareness of the need for a regulation was confirmed by additional interviewees who noted that it may prove difficult to join efforts at once (Alfsen 19.09.2011).

The final interviewee with regard to research question number four is Mr Pablo Valverde. On my question regarding their acknowledgement of a need for the proposed regulation, Mr Valverde replied that The Council bases its investment recommendations on guidelines from the Minister of Finance. For the purpose of a risk analyses, the Council emphasises on whether the company's business activities are inconsistent with the industry's 'best practise', international standards and so on, but only if these options are available (Valverde 02.09.2011). This implies that the Council does not have any particular view on the need for regulation, nor does it create its own guidelines. Interestingly, Mr Valverde points out that they only emphasise on ethical business if the options are available, which may indicate an increased importance of the promoted regulation in order to cover areas where such loopholes exist.

5.4.2 Interfering conditions regarding the feasibility of the proposed regulation

In order to exemplify possible interventions of a proposed regulation, findings from my two participant observations are emphasised. The two observations question the probability of a regulated S.A. gold mining industry as they illustrate how local challenges may have international causes and thus also international solutions. Two observations within the time period of one week is a fairly high number, demonstrating that the magnitude of smuggling may be greater than expected. Moreover, there is a threat that the black market with its attractive margins may jeopardise the proposed regulation as the informal and illegitimate ways of trading gold may promote a gold mining industry without transparency and thus without the potential for checking the gold mine's actual contributions to society.

Observation I: Smuggled gold from Zimbabwe

The first observation occurred in the surroundings of Pretoria where the first two weeks of my fieldwork was conducted. In the outskirts of the city centre I met up with a South African who offered me rough gold smuggled across the border between South Africa and Zimbabwe. My contact, N.N.4, could seemingly raise unlimited amounts of it with great ease. On my question on how this was arranged, he told me that it was taken care of through a small network of his Zimbabwean and South African acquaintances.

Though not a case of great controversy due to its small-scale volume, it illustrates challenges associated with politics in South Africa and Zimbabwe. It further illustrates that in order to regulate the S.A. gold mining sector, one should recognise the impacts from the black market and its international stakeholders. Gold is apparently going through numerous stages in the process from extraction to trade, independent of national boundaries. This further illustrates the need to structure the trade in gold at a holistic level and to promote effective barriers against smuggling between countries like Zimbabwe and South Africa. One can thus argue that a regulatory agreement is no better than what border control allows it to be. Whether stricter border control alone solves the problem of smuggling, is uncertain. For the sake of efficiency, the mine company should ensure that gold follows that chain of supply which at any given time is accepted by law and other international trade agreements, and violation of this should be prosecuted by local authorities. The contractual elements of the regulation must bear this in mind in order to ensure the feasibility of the regulation.

Moreover, this study has not been involved with the political relationship between South Africa and Zimbabwe. However, it is envisaged that the responsibility of ensuring and promoting the legitimate trade at the expense of the illegitimate is shared between the respective governments and the industry faced with the challenge of smuggling.

Observation II: Smuggled diamonds from Angola

Parts of the fieldwork were also conducted in Cape Town. Here I met up with a South African who offered me smuggled Angolan diamonds. The seller, N.N.5 approached me without knowledge of the reason for my stay. The asking price for a 1.2 carat polished diamond was R6 000, - (just over US$ 1 000, -). The estimated market price for similar stones under "normal conditions" in a European market will be about US$ 6 000-10 000 depending on its cut, clarity, colour and carat (Ajediam, 2010).

One should be aware that this isolated incident is not a generalisation of diamond smuggling. However, it does illustrate implications concerning the illegitimate diamond trade rather than gold. Nonetheless, the great similarities between the two have previously been stated, and this together with case I confirm the potential threat posited by the black commodity market. The illegitimate trade represents alternative routes for valuable commodities' chain of supply, and these routes are practically independent of any existing laws and regulations. As such, the black market is suited to boost a trade where there are great uncertainties concerning the traded commodities' environmental and societal impacts.

There is a second noteworthy finding concerning the price of the offered diamond. The asking price for the offered diamond would have yielded a profit of between US$ 5 000 - 9 000 for the buyer; the profit for the smuggler is unknown. It is likely that the fairly low price of smuggled commodities such as gold and diamonds is a reason why this scourge has yet to be curtailed. This helps to explain why the black market exists, which has to maintain fairly low prices compared to the market price in order to sell their products. Great profits for the seller combined with a nonchalant attitude from authorities result in a well suited environment for smuggling, and one which the regulation of the S.A. gold mining industry should acknowledge.

Summary of the analysis of feasibility of a regulated gold mining industry

In conclusion, there is a fairly high level of awareness concerning the need for a regulation of the S.A. gold mining industry. However, whereas NGOs and representatives of the KP seem to support the proposed regulation, the South African political parties did not take stand in the urgent matter. As such, the expected feasibility of this study's proposed regulatory framework may be jeopardised by an unexpected lack of political involvement. This, however, may be overcome by increasing the awareness of the subjects at hand.

Moreover, the existence of the black market expressed by smuggling, high profits and poor border control may also be perceived as a threat towards the outcome of the proposed regulation presented in the following section. This, in accordance with South African's mistrust towards the government as seen in the PESTEL analysis, indicates that the feasibility of the proposed Clean Gold regulation may be questioned.

5.5 PART V: The proposed Clean Gold Regulation

Based on findings from my research through the PESTEL analysis, the extensive use of interviews and the document analysis, the following document provide answers to the main objective of identifying possible contractual elements for a potential regulatory agreement for the gold mining industry. As such, the Clean Gold Regulation also acts as a summary of the study's main findings.

I first present the *Clean Gold Regulation* before systematically summarising the main findings that have contributed in identifying the contractual elements for a potential regulatory framework for the S.A. gold mining industry. It is emphasised that the Clean Gold Regulation does not offer an exhaustive list over the contractual elements ideal for regulating the South African gold mining industry in a feasible manner; rather they add to the list of important requirements as seen in the document analyses in chapter 5.2.

5.5.1 The Clean Gold Regulation document

§ 1 The Clean Gold Regulation shall be based on the following recognitions;

There is recognition that gold mining has serious impacts on environmental and societal degradation, and that this is a matter of serious international concern which can be directly linked to human rights abuses, deforestation, water scarcity and water pollution which poses harm to the biodiversity of South Africa.

It is noted that such negative impacts impose serious threats particularly for developing nations such as South Africa, and that urgent international action is needed.

We highlight the recommendations posited by the Millennium Development Goals.

We are recalling all of the relevant ILO Conventions and additional human right laws to which the gold mining industry of South Africa is committed

We are convinced that trends of environmental and societal degradation can be reversed by compliance with this regulation's clear, fair and enforceable rules.

§ 2 The Objective of the Clean Gold Regulation

The Objective of the Clean Gold Regulation is to reverse trends of environmental and societal degradation deriving from gold mining activities in South Africa.

§ 3 The Committed Parties

The requirements of the Clean Gold Regulation apply for all South African gold mining companies. It is furthermore recommended that this document is implemented into South African jurisdiction, implying that the Government of the Republic of South Africa is an additional Committed Party.

§ 4 Community Authority (CA)

The Chair of the Clean Gold Regulation will ensure that import of South African newly mined gold is handled through a designated Community Authority which is responsible for checking the Clean Gold Certificate as seen in § 7-1.

§ 5 The Chair

The following parties are recognised as members of the Clean Gold Regulation's Chair:

Chairman: The United Nations

Chair members: The International Labour Organisation, The Extractive Industry Transparency Initiative, The World Wide Fund for Nature, Save the Children, the government of the Republic of South Africa, The World Gold Council.

The Chairman is elected on an annual basis.

§ 6 Auditors

The government of the Republic of South Africa is required to ensure an annual auditing of the Committed Parties' environmental status. The auditing shall be in accordance with internationally accepted auditing principles. The auditor's report shall be presented for the Chairman once a year.

§ 7 Requirements

It is the responsibility of the Government of South Africa to ensure compliance with the following requirements:

§ 7.1 The Committed Parties must ensure that a Clean Gold Certificate (CGC) accompanies each shipment of gold. The CGC will provide information about the mine, its exploration processes and an overview on how the Committed Party meets the requirements listed below.

§ 7.2 The Committed Parties must ensure their compliance with the Millennium Development Goals number six, seven A and seven B.

§ 7.3 The Committed Parties must ensure their compliance with ILO Convention number 155, 176 and 182.

§ 7.4 The labour force of the mine shall be informed about their rights concerning health- and security issues, and must ensure that they additionally comply with the Mine Health and Safety bill of 1996.

§ 7.5 The cash flow from the gold mine is subject to annual auditing based upon internationally accepted auditing principles. The Gold Mine shall obtain its transparency by giving the auditor full access to all data required.

§ 7.6 Compliance with The King Code of Governance Principles is encouraged.

§ 7.7 The Committed Parties must cooperate with local authorities in order to combat the existence of smuggling and the black market.

§ 7.8 The Participants of the Clean Gold Regulation must ensure that their actions are consistent with international laws governing human rights and environment.

§ 7.9 Issues of non-compliance with the Clean Gold Regulation are subject to law enforcement and will be addressed as such. Additional penalties may be enforced by the Chair if the penalties from the Participant Government Authorities are perceived as insufficient. Such penalties may include exclusion from the Clean Gold Regulation.

§ 7.10 Cases concerning the actual mine company such as ownership, fiscal situations etc shall be dealt with between the respective parties concerned. The Clean Gold Regulation does not interfere with activities concerning the actual mine company and their relationship with its stakeholders, apart from what automatically derives from the Requirements.

5.5.2 Justification of the Clean Gold Regulation's requirements

§ 1: The first contractual element is based on the introductory texts and structure of the KPCS. This is seen in the literature review's section concerning the KPCS. It is also based on findings from the interview with Mr Smillie where he recommended that the requirements should be clear, fair, enforceable and enforced.

§ 3: Legal status has been debated in the literature review and additional sections of this study. It was noted that such a status is a strength to a feasible regulation, even though not necessarily a requirement. Regardless, § 3 denotes that such a status should be obtained by implementation of the proposed Clean Gold regulation into South African jurisdiction.

§ 4: The idea of a designated Community Authority (CA) as the handling section of imported S.A. gold is based on the CA's prominent role as seen in the literature review of the KPCS.

§ 5: The composition of the Chair is based on KP`s own acknowledge as seen in the interview with Alfsen where she points out the importance of cooperation between NGOs, governments and industry. This distinction between board members was also emphasised by the WWF and Mr Smillie.

§ 6 is based on Mr Smillie's critique of the KPCS and recommendations on how to improve the KPCS' conduct with annually auditing. The role of the auditor has also been identified as an important contractual element of the WGC Standard and the EITI Standard. Nina Rose as the WWF also pointed out the importance of transparency in such a regulation as the proposed Clean Gold regulation.

§ 7-1: The idea of a Clean Gold Certificate is based on the KPCS where the certificate is a crucial element of the regulation as well as WWF's notion of the importance of such a certificate.

§ 7-2: The regulation's compliance with the MDGs are based upon the acknowledgment of the importance of the MDGs and their applicability with regard to the S.A. gold mining industry as seen in the PESTEL analysis. There is also recognition that contributing towards reaching the MDGs is an international responsibility and one that will have vast positive impacts on reversing trends of both environmental and societal degradation.

§ 7-3: The regulation's compliance with the listed ILO Conventions is based on the Convention's identity as elements of the legal environment of the gold industry. Their relevance with regard to the gold mining industry was also backed up in the interviews with Save the Children and the ILO.

§ 7-4: The interview with Mrs Alfsen justifies why health and security issues have been identified as a contractual element. It is thus acknowledged that this may have a positive impact on reversing particularly societal challenges related to harsh labour conditions in the gold mining industry.

§ 7-5: Transparency regarding the mine company's cash flow was based on the EITI Standard which is fully concerned with this matter, and accordingly with findings from the interview with the WWF. The findings from the interview with Mr Smillie also made it clear that there are no substitutes for independent third party monitoring as expressed with §§ 6 and 7-5.

§ 7-6 confirms the prominent position of the King III Report, justified by the interview conducted with Mr Nesvaag at the Royal Norwegian Embassy in Pretoria and the document analysis of the Report. This is the only contractual element which is not obligatory. The reason for this is based on the notion that the King III Report only applies for companies listed on the Johannesburg Stock Exchange. However, the Clean Gold Regulation contributes in highlighting important issues of CSR with this contractual element.

§ 7-7: The black market and the negative impacts that it imposes towards the feasibility of the regulation has been identified. This is based on Smillie`s criticism of the weaknesses of the KPCS, and is also justified by the two observations presented in the preceding section. It is also recognised that combating this is mainly a job for the S.A. authorities rather than the responsibility of the Clean Gold regulation's management.

§ 7-8: As seen in the literature review of the KPCS, the regulation encountered violating additional laws by implementing a very simple paragraph which largely relates to § 7-8. However, there was a need to highlight the awareness concerning existing environmental and human rights laws, also made evident in the PESTEL analysis as the Clean Gold Regulation does not focus on KPCS' focus on trade.

§ 7-9: Smillie also mentioned the lack of penalties for cases of non-compliance as a major weakness with the existing KPCS. The importance of legal status in order to achieve this has been discussed in chapter three, and the introduction of this paragraph is a way to emphasise on the fact that non-compliance has negative consequences for the Committed Parties. The threat of exclusion is based on FFS's ways of treating non-compliance, found in the interview with Cartwright.

§ 7-10: There was a need to identify issues that are not the responsibility of the proposed regulation. This is because the distinction between the regulation's responsibility and those of local authorities must be ensured in order for the work burden of the Chair not to be immense.

5.5.3 The feasibility of the Clean Gold Regulation in South Africa

Having designed the Clean Gold Regulation, it is now prudent to assess its expected feasibility in South Africa in terms of its role as a CSR initiative. The final question that remains unanswered refers to whether compliance with the proposed Clean Gold Regulation can be perceived as an act of CSR, as it was emphasised in the literature review that the proposed regulatory framework should be consistent with principles of CSR in order to become feasible in South Africa. By assessing figure VI and VII, it became possible to determine whether compliance with the Clean Gold Regulation in fact was an act of CSR, thus increasing the feasibility of the regulation in South Africa.

In the literature review's economic section it was revealed that philosophers recognise four general principles that may be applied in terms of justifying actions. Based on these, it seems that adherence with the regulation is justified by a mix between utilitarianism and human rights. The well-being of humankind is related to both environmental and societal challenges being combated, whereas human rights refer to law. Thus, compliance with the regulation may be considered 'ethical', and the gold mining industry may as such attract foreign investors which are concerned with ethical investments, such as the Norwegian Government Pension Fund Global.

The following model presented in chapter three provides answers to whether compliance with the Clean Gold Regulation in fact is a corporate social performance;

Figure VI: Criteria of corporate social performance

Criteria of corporate social performance			
Economic responsibility	Legal responsibility	Ethical responsibility	Discretionary responsibility
(Make a profit)	(Obey the law)	(Do what is right)	(Contribute to community)

(Boddy 2008: 155)

According to § 7.10 of the Clean Gold Regulation, it is evident that the regulation does not interfere with the economic responsibilities of the gold mining company. This indicates that the economic responsibility of the company is maintained even if compliance with the regulation is ensured. Additionally, the WGC is identified as a chair member in § 5 and has a pertinent stake in ensuring an increased gold demand, thus contributing in maintaining a focus on the gold mining industry's economic responsibilities.

Concerning the legal responsibility of the gold mining company identified in the regulation as a Committed Party, it became evident in the PESTEL analysis in chapter 5.1.6 that the gold mining industry and the government of South Africa are obliged by various ILO conventions. By including §§ 7.3, 7.4, 7.7 and particularly 7.8 it is ensured that compliance with the actual conventions and laws is obtained. Hence, the mine company's legal responsibilities are ensured.

Part three in identifying the criteria of corporate social performance concerns the ethical responsibility of the gold mine company. The ethics concerning the Clean Gold Regulation are justified by the wording in §§ 1, 2 and 7.6, and compliance with the regulation will as such ensure that the S.A. gold mining company does "what is right".

The last part of figure VI concerns the discretionary responsibilities of the gold mining company. § 2 relates to the main objective of the regulation similar to the main objective of this study. By compliance with the regulation it is likely that trends of environmental and societal degradation deriving from gold mining activities will be reversed. Bearing in mind the devastating consequences from some gold mining activities, the contribution to society is expected to be immense.

Based on the criteria of corporate social performance model, it is thus evident that compliance with the proposed regulation will be defined as CSR. This increases the likelihood that the Clean Gold Regulation will be feasible in South Africa.

The last model presented in the theoretical framework of this study was figure VII below. By assessing this model with regard to the Clean Gold Regulation, it was possible to identify some of the drivers of the Clean Gold Regulation now identified as a CSR initiative.

Figure VII: Drivers of CSR in developing countries

INTERNAL DRIVERS

Political reform   Crisis response

Cultural tradition   Socio-economic priorities   Governance gaps   Market access

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International standardisation   Supply chain

Investment incentives   Stakeholder activism

EXTERNAL DRIVERS

(Crane *et al.* 2008: 481)

As seen in the introduction of this study as well as in § 2 of the regulation concerning its main objective, it is apparent that the regulation is a crisis response as it aims to reverse the impacts of the current environmental and societal crisis by reversing environmental and societal degradation. Moreover, it was noted in various interviews that there is a great deal of mistrust of South African politics and politicians. By compliance with the proposed regulation, it may be that this governance gap will be weakened as the contribution to society increases in form of environmental and societal restoration. There are also obvious socio-economic priorities at the base for the regulation, the need of which are displayed in the presentation of the negative impacts of gold mining in chapter one. This is also displayed in §§ 1 and 2 of the regulation.

In conclusion, the standardisation exemplified by the Clean Gold Regulation is one which is largely based on the standardisation of the diamond industry (KPCS). The investment incentives as an expected consequence of compliance with the regulation has been counted for in the analysis and interviews concerning the King III Report, the Norwegian Government Pension Fund Global and by Mr Smillie who pointed out the positive fiscal consequences of regulation in the extractive industry sector. Finally, stakeholder activism is encouraged in the regulation through §§ 1 and 5.

As such, seven internal and external driving factors are identified, and they are likely to contribute in making the Clean Gold regulation feasible in South Africa.

The fiscal consequences of the Clean Gold regulation in South Africa

The fiscal consequences of the Clean Gold Regulation are impossible to assess. However, I denote that the likelihood of a positive fiscal outcome can be justified by the fiscal outcome of the KPCS regulation. The similarities between diamonds and gold have already been counted for. As such, it may be likely to expect somewhat the same outcome of the proposed regulation, even though this rhetoric has some obvious drawbacks concerning the generality of this research as discussed in chapter four. Nonetheless, in my interview with Ian Smillie, it was pointed out that regulation of the diamond industry had several positive fiscal outcomes. First, the KPCS did help to end the diamond wars. This was because the spotlight was on a "*completely unregulated industry"*. As an outcome of this, legal Sierra Leonean exports rose from $1 million in 2001 to $170 million in 2004 (Smillie 24.09.2011). Another finding from our interview is that regulations in the commodity market do not need to be costly. *"The sky did not fall on the industry as many predicted. In the first years, the KPCS gave industry something to be proud of and to advertise, and it raised the volume of legally exported diamonds from many poor countries"* (Smillie 24.09.2011).

Again bearing in mind the limitation of transferability regarding the diamond industry and the South African gold mining industry, the notion that the diamond industry was proud of the new regulation (KPCS) is interesting. This, in addition with the South African emphasis on conducting ethical behaviour in business expressed by the King III Report weakly indicates that ensuring the industry's support do not necessarily have to be challenging.

CHAPTER 6: CONCLUDING REMARKS

There is a gap between the South African gold mining industry and sustainability. This is also recognised by the gold industry through the World Gold Council. This study has also identified a link between environmental and societal degradation. There is a fairly high level of awareness on the subject of the gold mining industry's patterns of degradation and the need for regulation, and it is most commonly noted by NGOs.

The context of the South African gold mining industry, i.e. the external environment of the industry, consists of a multitude of elements which the gold mining sector has little or none influence over. Governmental instability has been expressed by the fairly high level of South African's political mistrust. This may threaten the feasibility of the Clean Gold Regulation. Moreover, South Africa's emphasis on CSR indicates that a CSR initiative such as the Clean Gold Regulation may be welcomed as it complements the King III Report and encourages the industry to compliance with CSR principles.

The study also found that there are important socio-cultural elements that may threaten the proposed regulation. Most prominent was the notion that the great diversity between populations, cultures and languages made brotherhood-feeling utopian (Toby 04.02.2011). The cultural diversity of South Africa illustrates a feature of the gold mining industry's context which may indicate that the hypothetical driving factors of the regulation identified in figure VII must bear in mind the great variations between various groups of the South African population in order to bridge the gap between the industry and sustainability through regulation. Finally, it became evident in the literature review and the PESTEL analysis that there is a set of existing laws regulating many of the same aspects that this proposal aims to regulate. Most prominent are a set of ILO conventions which already are committing the South African gold mining industry.

In spite of various existing regulations aimed to regulate the gold mining industry, the contracts are lacking a holistic focus on environmental challenges. This indicates a need for creation of the Clean Gold Regulation. Gold cannot be amended in the KPCS mainly because the KP Office is not interested in such a proposal. Nor can amending the KPCS be justified through an interpretation of the KPCS contract. This proves as another justification on the need for the proposed Clean Gold Regulation.

The way existing regulations are organised have also contributed to the structure of the Clean Gold Regulation's framework and regulatory body. The structure of the WGC Standard and the KPCS has proven to be of interest concerning the structure of the Clean Gold regulation. This, in addition to findings from various interviewees, found that it is likely to strengthen the hypothetically regulated South African gold mining industry if one includes the United Nations and the ILO as participants of the regulation's regulatory body. The government of South Africa as well as the gold mining industry's representational organisation, the WCG, were also identified as crucial stakeholders in the regulatory body. However, the actual probability of those two actively involving themselves in the needed processes for the creation of the Clean Gold Regulation is weak. The lack of political involvement concerning this study questions South African politician's willingness to contribute. Moreover, the WGC are concerned with the WGC Standard and is therefore not likely to focus on a "competitive" contract. Thus, the actual feasibility of the regulatory body for the proposed regulation is questioned.

Research question number four addressed the proposed regulation's likelihood in contributing to reverse the South African gold mining industry's trends of degradation, and thus how likely it is to bridge the gap between the industry and sustainability. Whereas the level of awareness of the need for such a regulation was found to be fairly high, the study also found areas of concern for the likelihood that the regulation will achieve a desired outcome in South Africa. Two observations concerning the black commodity market of South Africa, Zimbabwe and Angola identified potential obstacles concerning the expected outcome of the Clean Gold Regulation. Smuggling illustrates how the gold mining industry may contribute in violating the proposed regulation, because the existence of the smuggler market enables an additional chain of supply for gold, one that is without transparency and accountability. It is also argued that it is the responsibility of the respective governments, for this case South Africa, Angola and Zimbabwe, to ensure that such loopholes are addressed. However, the observations concluded that there is a great deal of uncertainty when assessing the feasibility of the proposed regulation in South Africa.

Based upon the findings of research question number one to four, the Clean Gold regulation was created and presented accordingly. In this document, the regulatory body and contractual elements were identified and structured. It is the outcome of this study's main objective, and serves also as a summarisation of the main findings.

The regulation is expected to contribute in reversing the trends of environmental and societal degradation by presenting ten paragraphs emphasising on ensuring the South African gold mining industry's compliance with environmental and societal requirements.

Bearing in mind the need for perceiving compliance with the Clean Gold regulation as an act of CSR, I analysed the regulatory framework in accordance with the theoretical framework presented in chapter three. The two analyses concluded that compliance with the Clean Gold regulation in fact is conducting CSR, justified by the use of figure VI which identified the four criteria of corporate social performance (Boddy 2008: 155). By the use of figure VII, I accordingly analysed the expected drivers of the Clean Gold Regulation in South Africa. It was argued that the regulation is a crisis response concerning existing environmental and societal challenges related to South African gold mining. It was also stated that because the regulation can be defined as a crisis response, it is likely that it may contribute in minimising the governance gaps of South Africa because the outcome is expected to contribute so the South African society at large. Finally, the regulation may be perceived as a way to attract foreign investors as it has the identity of a CSR approach which may attract foreign investments from funds where ethical considerations are guiding the investments.

In conclusion, there are great uncertainties concerning the actual potential and expected outcome of the Clean Gold regulation in South Africa. However, one can conclude that the regulation is expected to contribute in bridging the gap between the gold mining industry and sustainability, and the contractual elements identified are explicitly aimed at contributing to this achievement. However, the numerous uncertainties concerning the feasibility of the Clean Gold regulation strongly question the likelihood of such a regulation being created. The most prominent of the uncertainties was the lack of S.A. political involvement as well as the lack of crucial stakeholders' recognition of the need for regulation, implying that the actual stakeholder involvement concerning the design, implementation and evaluation of the proposed regulation is unlikely. It is therefore recommended that support is given to the World Gold Council's Conflict-Free Gold Standard which stands out as the most feasible of the existing regulations, primarily based on WGC's own recognition in the gold mining sector.

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