



Taking our Diamonds from De Beers

Who owns diamonds mined by Debswana?

Sheila Khama
November 2025

Some of the remarks made by Botswana's President on 17/07/25 are not unusual:

<https://youtube/o3tRgVPbn0I?si=EPRmECqNZ7ZLZlqc>

In fact, they are likely to echo beyond Botswana and resonate with some African's whose leaders have and will continue to express similar sentiment towards mineral, oil and gas resources. Think about it and consider how often have you heard a national leader utter these words, "*these are our minerals*"? Have you wondered what the words mean, or have you assumed the words self-evident? Inspired by Botswana's President and using the case of Debswana Diamond Company in Botswana I unpack the issue and more. I have documented three separate blogs in which I pose and attempt to answer essential questions starting with who owns diamonds mined by Debswana. Though specific to Botswana diamonds and regardless of the mineral type or jurisdiction, the discussion offers useful insights into minerals rights as pertains to host countries or investors, security of tenure, governance and benefits sharing.

First listen to President Boko: <https://youtube/o3tRgVPbn0I?si=EPRmECqNZ7ZLZlqc>

His Excellency the President of Botswana suggested based on the State's ownership of the resources, the government might intervene and replace De Beers in the marketing of Debswana diamonds. So let's start here. The question of who owns a country's extractives resources is best answered by unpacking the rights enjoyed by companies relative to those accruing to the State. Botswana's mineral legal framework as relates to the issue is described below. It is similar to that of other African countries as can be found in this database: <https://www.a-mla.org/en>

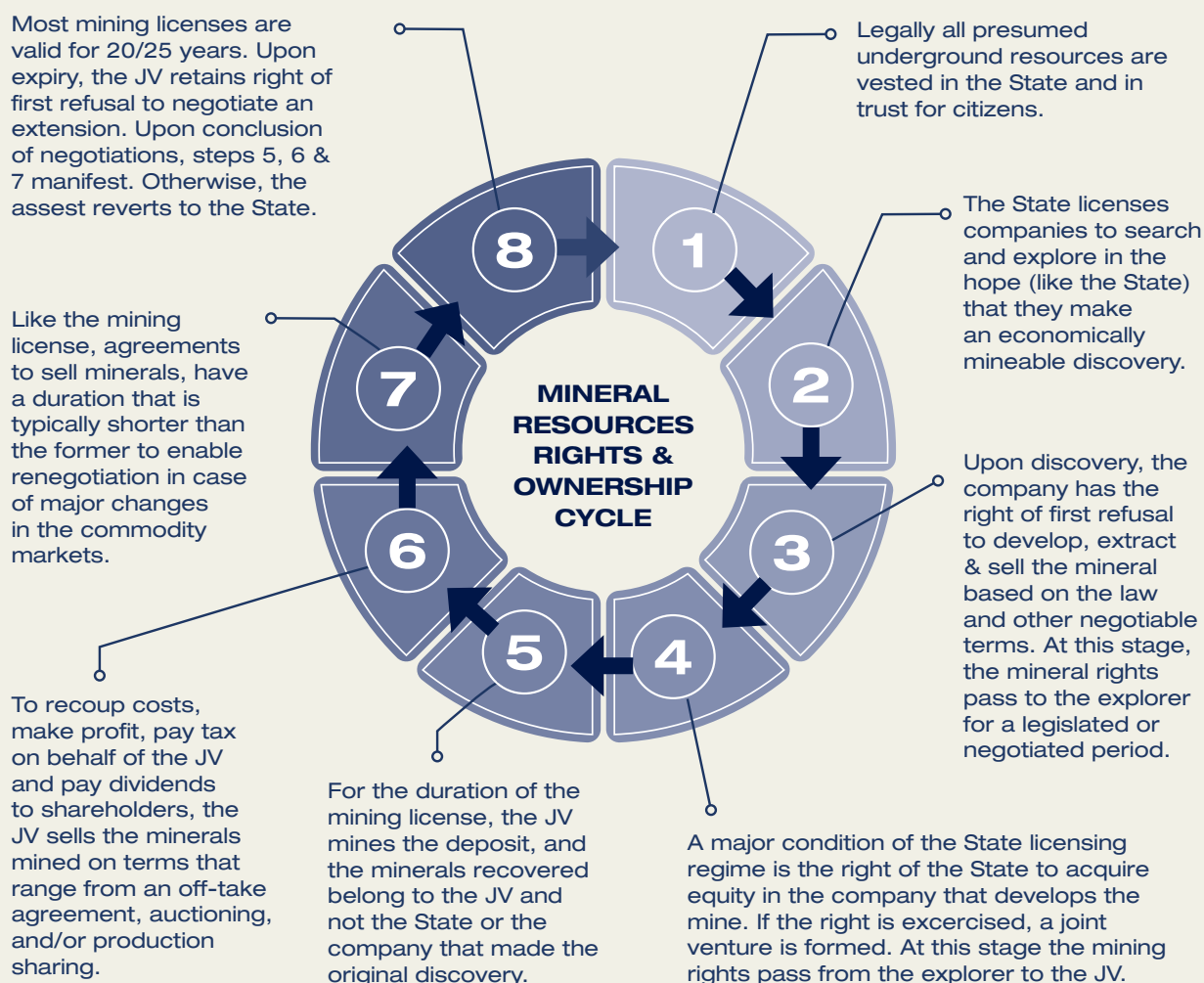
Botswana mineral law vests the resources in the State. However, upon making a discovery, De Beers, like other mining companies, secured right of first refusal to develop the mine. Consistent with Botswana's Mines and Minerals Act, the State has the right to acquire equity in the company that develops and operates the mine. If and when the State exercises this right, a joint venture (JV) between the explorer and the State is formed. It is this JV that applies for and is granted an original mining license and subsequent renewals. Through this process for the duration of the license, the JV acquires and retains the right to mine the mineral deposit. In the case of the partnership between Botswana and De Beers, that JV company is Debswana and was formed in 1969 following De Beer's discovery of the Orapa and Letlhakane deposits. Upon De Beers' discovery of the Jwaneng deposit in 1976, the assets was incorporated into Debswana. To ensure parity, the State's shareholding in Debswana rose from 25% to 50% in 1978. What this means is that neither the State nor De Beers alone holds mining rights for Debswana mines, but rather the two shareholders enjoy the rights jointly. This is despite De Beers having discovered the deposits and the law having vested the minerals in the State.

Based on the above, the short answer to the question of ownership is that the two shareholders in Debswana own the diamonds equally. A good way to understand the rights as relates to ownership is to think of a mine in terms of a project with a life cycle over which ownership changes hands as shown in diagram 1 below. To start with, having invested in exploration De Beers earned mining rights. Secondly, having financed the original cost of mine development and future resources extension projects, Debswana, like other mining companies, enjoys the right to sell the production, recoup costs and make a profit.

Under Botswana law, and the shareholders' agreement, the two Debswana shareholders enjoy this right jointly and equally. Using this analogy, ownership of diamonds from the Debswana mines depends on the stage in the life cycle of a deposit. At the very beginning of the cycle, which is the pre-discovery stage, legally the State owns the minerals that are presumed to be available. However, post discovery, post licensing of the development of a deposit and post mineral extraction, the mineral law transfers these rights to the party granted a mining license. In the case of Debswana mines, based on the company's mining license and hence the right to extract, for the duration of the license, the State has passed ownership rights to that company. Once the diamonds have been extracted, diamond stocks also belong to the company and are reflected as assets on the financial records of Debswana. That is to say, at that stage, the diamonds belong to the shareholders of Debswana not the Botswana Government alone. But here too, the State has a lot of leverage including influence over the rate of extraction such that as the regulator the Government approves annual and long term mineral development plans submitted by the company and consistent with its own development and budget plans. As the custodian of national wealth responsible to attract investment in mining, the State not only needs to protect private property rights, but to also ensure security of tenure. Investors like De Beers invest in the expectation that such rights are indeed guaranteed.

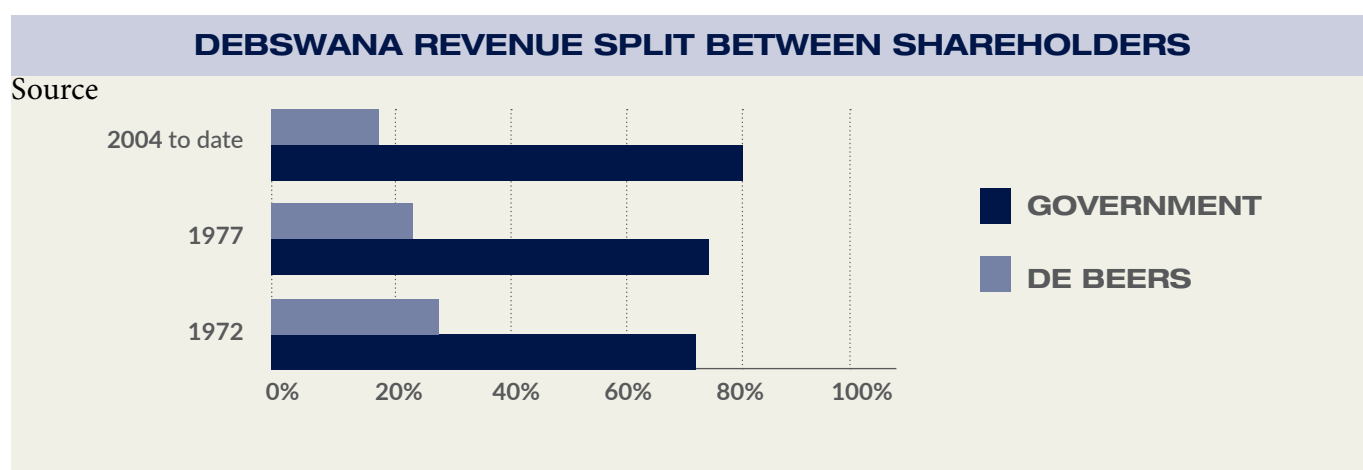
Diagram 1:

Mineral Resources Rights and Ownership Cycle: Botswana Mineral Law (@sheilakhama ©)



But the State is in a unique position recognized in law. Botswana mineral law therefore grants the State certain privilege as the lessor and custodian of mineral wealth. These rights are not enjoyed by De Beers. Apart from the very right to license third parties, the State enjoys many more including two worth mentioning. That is powers to regulate the company that is licensed to mine a deposit and the State's right to impose different forms of tax on the mining company to generate revenues for itself. Hence notwithstanding the 50/50 shareholding in Debswana, as at 2006 at a ratio of 81:19 to the dollar from Debswana, the split of revenue to the State has been significantly higher than that received by De Beers. (See diagram 2 below). This is because De Beers only receives dividend and sales commission while the State's share of income also includes a number tax revenue streams. On the other hand, because of the 15% share Botswana has in De Beers Group, when that company declares dividend based on profits from all its subsidiaries including Debswana, Botswana also receives a share consistent with the country's equity and company dividend policy. Based on the latter, one could therefore argue that income from Debswana is much higher than shown below. For more details on this and the JV arrangements up and midstream of the diamond value chain, visit <https://www.sheilakhama.com/joint-venture-arrangements/>.

Diagram 2: Split of Debswana Income



Source: <https://www.sheilakhama.com/article-1-legal-institutional-frameworks/>

So the notion of State ownership of mineral resources, though true in Botswana and other countries, not only needs to be contextualized, but under certain circumstances it also belies the reality. This is in part because under certain conditions it does not supersede the rights of investor on matters of property rights, mining rights, and specific agreements entered between the country and investor. Importantly, through a multiplicity of rights and benefits accruing to the State (and not the ability to act unilaterally) State ownership continues to manifest.

Given the thrust of His Excellency's remarks, in my next commentary I turn attention to sales arrangements for Debswana production. I discuss marketing, arrangements sales agreement and any powers of the State to terminate or alter them unilaterally under current legal frameworks.

Sheila Khama has been a non-executive director of FTSE, NASDAQ, ASX, and Saudi Stock Exchange listed companies, a policy advisor, podcast host, and an associate fellow of Chatham House. She is former CEO of De Beers Botswana, a former NED on boards of Debswana and DTC Botswana, and former Compliance Officer of Anglo American Corporation Botswana.

www.sheilakhama.com/Podcast
[www.sheilakhama.com/blogs@sheilakhama](mailto:blogs@sheilakhama)

