

Publish 
What You Pay
Zimbabwe

POSITION PAPER

on key Mining Reforms in
Zimbabwe

December 2015

Supported by

 **Oxfam Novib**

CONTENTS

| | |
|---|------------|
| Acronyms | iii |
| Foreword | iv |
| Introduction | 1 |
| Transparency and accountability key in mineral resource governance | 2 |
| Introduction | 2 |
| Background | 2 |
| The legislative environment and the need for reforms | 2 |
| Key asks for policy and institutional reforms | 4 |
| Bibliography | 4 |
| Aspirations on the Mines and Minerals Amendment Bill [Chapter 21:05]: Key lessons from the African Mining Vision and Southern African Resource Barometer | 5 |
| Introduction | 5 |
| The draft Mines and Minerals Amendment Bill [Chapter 21:05] | 5 |
| The Decision to Extract | 6 |
| Getting the best deal: License and contract awards | 7 |
| Monitoring the mining project; Technical and environmental monitoring | 7 |
| Impact of the Indigenization Policy | 8 |
| Conclusion | 8 |
| Reforms to Promote Gender and Women’s Involvement and Broad Based Development | 9 |
| Introduction | 9 |
| Zimbabwe’s Economic Blue-print and Mining | 9 |
| Gender Equality and Broad-based Sustainable Development | 9 |
| ZimAsset, Gender Equality and Mining | 9 |
| ASM and Development | 10 |
| Challenges faced by Women in the ASM Sector | 10 |
| Recommendations | 11 |
| The Need for Sustainability Reporting and Disclosure By Extractive Companies | 12 |
| Introduction | 12 |
| Global Reporting Initiative: Transparency And Accountability | 12 |
| The importance of sustainability report to users | 12 |
| Disclosure In Zimbabwean Extractive Sector | 12 |
| Sustainability Reporting and Disclosure for Civil Society Organisation | 13 |
| Implementation of the Capacity Building on Sustainability Reports | 13 |

| | |
|--|-----------|
| Enhancing Relations Between Companies and Communities | 14 |
| Introduction | 14 |
| Legislation | 14 |
| Mines and Minerals Act | 14 |
| The Communal Lands Act | 15 |
| Community Development Agreements And Best Practice | 16 |
| | |
| Why Domestic Resources Mobilisation (DRM) in Zimbabwe | 17 |
| Introduction | 17 |
| Zimbabwe, Africa and the Developing World are Bleeding | 17 |
| Implications of Poor Domestic Resource Mobilisation Strategies | 18 |
| Policy and Legal Reforms in Pursuit of Tax Justice in Zimbabwe | 18 |
| Tax System in Zimbabwe | 18 |
| Tax Incentives | 19 |
| Recommendations: Government | 19 |
| Recommendations to Civil Society | 19 |
| | |
| Community Participation in mineral resource governance | 20 |
| Introduction: Broader Frameworks and trajectory | 20 |
| Community and mining in Zimbabwe | 20 |
| Recommendations | 21 |



ACRONYMS

| | |
|---------|---|
| ADB | African Development Bank |
| AGM | Annual General Meeting |
| AMDC | African Minerals Development Centre |
| AMV | Africa Mining Vision |
| ASSM | Artisanal and Small-Scale Miners |
| AU | Africa Union |
| CCDT | Chiadzwa Community Development Trust |
| CDA | Community Development Agreements |
| CNRG | Centre for Natural Resources Governance |
| CMV | Country Mining Vision |
| CSO | Civil Society Organisation |
| CSOT | Community Share Ownership Trust |
| CRD | Centre for Research and Development |
| ECA | Economic Commission for Africa |
| EIA | Environmental Impact Assessment |
| EITI | Extractive Industries Transparency Initiative |
| EMA | Environmental Management Agency |
| FDI | Foreign Direct Investment |
| GDP | Gross Domestic Product |
| GNU | Government of National Unity |
| GRI | Global Reporting Initiative |
| IFF | Illicit Financial Flows |
| INSAF | Institute for Sustainability Africa |
| ISR | Industrialisation Strategy and Roadmap |
| PWYP | Publish What You Pay |
| RDC | Rural District Council |
| SADC | Southern Africa Development Community |
| SEA | Strategic Environmental Assessment |
| SIA | Social Impact Assessments |
| ZELA | Zimbabwe Environmental Law Association |
| ZIMASET | Zimbabwe Agenda for Socio-Economic Transformation |
| ZIMCODD | Zimbabwe Coalition on Debt and Development |
| ZMRTI | Zimbabwe Mining Revenue Transparency Initiative |
| ZINWA | Zimbabwe National Water Authority |

Foreword

That mining holds an important locus to Zimbabwe's economic recovery is well known. Both government and the civil society in the country generally agree that if managed well, the abundant natural resources in the country have the ability to turn the economic fortunes of the country.

The current government's economic blue print the Zimbabwe Agenda for Socio-Economic Transformation (ZIMASET) state that the judicious exploitation of natural resources will alleviate the country's economic woes.

Although there is huge potential within the mining sector and the existence of a progressive constitution, real development remains illusive. Part of the reason why there is limited economic growth and development is weak natural resources governance that is characterised by limited transparency and accountability, an impious policy and legal environment with a progressive constitution that exists besides many acts that are yet to be revoked and alligned.

Another challenge within the mining sector is the inadequate participation of communities and other stakeholders with an interest in the sector such as civil society organisations. Effective governance systems, capacity to administer and monitor the mining sector, and horizontal and vertical linkages with other sectors of the economy remain prerequisites for resource exploitation to contribute to growth and development.

As a way of outlining some of these obtaining challenges, the Publish What You Pay (PWYP) Zimbabwe Coalition has put together this position paper which outlines some of their key asks on essential reforms that should be considered in the mining sector. Given its diversity, the coalition's membership has compiled submissions from the perspective of their institutional work and comparative advantage. Given the increasing pressure for foreign direct investments and need for increased revenue, the government needs to ensure that the operational environment allows smart investments that unlock the sector's potential without undermining human rights and the developmental prospects of the country.

The Publish What You Pay Zimbabwe Coalition is a coalition of 13 member organisations as at December 2015. The coalition's thrust is to promote transparency and accountability in the extractives sector. The coalition envisions "A Zimbabwean natural resources sector that is transparent, accountable and that benefits local communities and the national economy in a sustainable manner. With a Mission to become "A campaign on transparency and accountability in Zimbabwe's natural resources sector".

As part of its work, 6 coalition members made submissions towards the compilation of this position paper to:

- Establish the current status of mining reforms in Zimbabwe which includes mapping the major policy and legal shifts in the mining sector and where these processes currently are; and
- Provide specific and in-depth analysis of the views of coalition members on what they consider as essential elements to be included in mining sector reforms to encourage transparency and accountability.



Introduction

The compilation of this position paper is based on submissions that were made by some of the organisations that form the PWYP Zimbabwe Coalition following a resolution from the 2015 AGM. The submissions sought to summarise some of the critical issues to form this position paper on key mining reforms in Zimbabwe.

Given the existing work of the members of the PWYP Zimbabwe coalition, the submissions are a summary of research and reports based on the work of the organisations and they provide generally agreed positions of the coalition on the current state of mining reforms as well as key aspirations of civil society and the general public.

Although the submissions range from issues of mining reforms needed, the need for domestic resource mobilisation, the benefits of sustainable reporting and disclosure and the need to promote gender in the sector, a common thread is on discussing how transparency and accountability can be enhanced so as to transcend the current deficits which have denigrated the potential of the mining sector.

Jabusile Shumba of Transparency International Zimbabwe makes an argument on how policy and legal instruments governing the management of mineral resources in Zimbabwe have failed to promote transparency and accountability. He goes on to examine governance deficits within the existing policies governing the mineral resources sector before making recommendations of the key policy and institutional reforms necessary to salvage the sector.

Nyaradzo Mutonhori (ZELA) outlines some aspirations towards the Mines and Minerals Amendment Bill by comparing the 2007 Mines and Minerals Amendment Bill [Chapter 21:05] with the African Mining Vision and the Southern African Resource Barometer.

The Chiadzwa Community Development Trust (CCDT) through Melanie Chiponda made a case on the need to promote women's participation to stimulate broad-based sustainable development within the mining sector.

Institute for Sustainability Africa as presented by Tapuwa O'bren Nhachi in their paper submits that Sustainability reporting and disclosure by mining companies on economic, social and governance (ESG) issues has arisen to be an essential consideration for promoting transparency and accountability within the sector.

Farai Maguhwu in his submission on behalf of the Centre for Natural Resources Governance (CNRG) posits that a win-win situation can be created if mining companies and communities agree to a shared set of values and expectations. The submission looks at some of the issues hindering good relations between mining companies and local communities that need to be addressed.

Tinashe Gumbo (ZIMCodd) makes a case on the need to promote domestic resource mobilisation in Zimbabwe. He advances that Domestic resources are sustainable, predictable and they allow Zimbabwe to exercise its sovereignty in its development agenda.

James Mupfumi of Centre for Research and Development writes on how the exclusion of community participation and rights in the 1961 Mines and Mineral act has left communities vulnerable to forced displacements and compromised broad based and inclusive development.

TRANSPARENCY AND ACCOUNTABILITY

key in mineral resource governance

Jabusile Shumba
Transparency International Zimbabwe

Introduction

The emerging resource governance thinking emphasise norms, institutions and processes that determine how power and responsibilities are exercised, how decisions are taken and how citizens participate in the management of resources to enhance transparency in the co-production of development outcomes. Sound natural resources governance, characterised by transparent and accountable governance policy and legislative frameworks, is increasingly seen as vital in contributing to national development.

This section engages policy and legal instruments governing the management of mineral resources in Zimbabwe. It examines governance deficits within the existing policies governing the mineral resources sector. Notably, the mines and minerals act is out-dated, while the product of the Indigenisation and Economic Empowerment Act- the Community Share Ownership Trusts (CSOTs) are fraught with legal vagueness and weak accountability mechanisms. Both large-scale and in particular Artisanal and Small-Scale Mining (ASSM) operations suffer transparent and accountable governance deficits. The section draws from internal lessons from international polices and instruments. Key recommendations are proffered for policy and legislative reforms.

Background

Mining occupies a central place in Zimbabwe's state and economy. With a vast range of mineral resources, inter-alia, diamonds, gold, platinum and chrome, the mining sector contributes 15% of Nominal GDP; 58% of Total Exports; 13% of Fiscal Revenue; More than 45,000 Jobs; More than 50% of foreign Direct Investment and Contribution to Corporate Social Investment in Health, Education, Housing, and Infrastructure¹. Meanwhile far more is still expected and can be achieved.

According to the African Development Bank (ADB), Zimbabwe lost \$12 billion to Illicit Financial Flows (IFF) over the past decade.² In the mining sector, notably diamonds, official reports indicate lack of transparency in the sales and declaration of revenues by companies in Marange, Manicaland. Both Tendai Biti (former Minister of Finance during the GNU) and the current Minister Patrick Chinamasa have highlighted serious concerns over lack of transparency on diamond mining and its revenues. For instance, speaking to parliamentarians in Victoria Falls at a 2013 Budget Review Seminar, Minister Chinamasa indicated that out of a targeted \$40 million expected from diamond sales, nothing had been received during the period under review.³ Yet, the country's Zim-Asset is anchored on judicious exploitation of mineral resources in order to fund the country's five-year development programme.

The legislative environment and the need for reforms

The country's gamut of policies and legislative framework governing the mining sector include the Mines and Minerals Act (1961), promulgated under the colonial settler regime, the inactive Zimbabwe Mining Revenue Transparency Initiative (2010) which was designed as a domesticated version of the Extractive Industries Transparency Initiative, Kimberly Process (KP) Certification Scheme compliance initiatives, Indigenisation and Economic Empowerment Act (2007) and the allied Community Share Ownership Trust Schemes, introduced

1 <http://chamberofminesofzimbabwe.com/ws/uploads/publications/2.%20gibson%20chigumira%20-%20contribution%20of%20mining72b6.pdf>

2 "Illicit financial flows curtail economic growth", News Day, 15 September 2014,

3 "Diamond revenue missing: Chinamasa" The Daily News, 6 November, 2013,



through the Indigenisation and Empowerment Act. In January 2014, the government also expanded regulations on transfer pricing to strengthen legislation with regard to administrative deficits in monitoring transfer pricing. Yet, the leakages and bleeding continues. More recently, the Governor of the Reserve Bank has weighed in on the Illicit Financial Flows, arguing for tighter monitoring including submission of company production schedules.⁴

The country's principal legislations, the Mines and Minerals Act is far too out-dated and needs to be reviewed in line with regional and international best practices. Although the government has announced intentions on many occasions, the Mines and minerals Amendment Bill, remains elusive and the consultation processes unclear. Generally, provisions for transparency and accountability are weak especially in regard to access to the information – given restricted access to mining contracts and revenue declaration; the Unit tax is still based on labour (headcount) yet we have seen a major shift towards mechanisation (See below: Third schedule (Sect. 96 & 97): Scales of development levies and special development levies); lack of transparent and accountability in closing down of mines in particular abandonment and forfeiture of the site leading to proliferation of dangerous open shafts and lack of transparent and accountable community displacement procedures to pave way for mining operations and environmental damage: air and water pollution.

- (b) An owner of a mining location referred to in paragraph (b) of subsection (1) of section ninety-six shall pay a land levy in respect of each mining location within the council area of which he is the owner, at whichever of the following rates is appropriate—
- (i) In the case of an owner of a mining location mining or gold, silver, platinum or precious stones—
- A. If he employs more than 5 but not more than 100 workers, 1 unit;
 - B. If he employs more than 100 workers—
 - I. For the first 100 workers, 1 unit;
 - II. Thereafter, for each 50 workers or part thereof, 1 unit;

Equally, the Mines and Minerals Act in its current form promotes informalisation and criminalisation of Artisanal and Small Scale Mining (ASSM). Artisanal miners in Zimbabwe have no official definition other than that they are individuals and groups mining without permits or licensed mining claims referred to as 'Amakorokoza or panners' and small-scale miners have mining licences and mineral rights in the form of a certificate of registration of a block of 10 hectares at minimum. The lack of proper definition has resulted in policy inconsistency over the recognition of A&SM and growing informalisation. The most common reasons for this are: lack of knowledge about legal requirements; little incentives from the government to operate legally; high tax/ fees burden and bureaucratic procedures to gain and remain a formal operation. Equally there is lack of policy clarity and potential conflict between mining and agriculture over access to land and miner exploitation. The Mines and Minerals Act gives precedent to mineral exploration and exploitation ahead of agricultural usage in the process disrupting agricultural activities. The vagueness and discretionary powers create opportunities for corruption and conflict.

In terms of Indigenisation and Economic Empowerment, the legal Framework that facilitates the establishment of Community Share Ownership Trusts (CSOTs) is vague. This has been attributed to as a possible reason to why some companies have failed to honour their pledges. The Act gives too much discretionary power to the Minister over compliance negotiations creating opportunities for rent seeking and corruption.

The Act is also unclear as regards to sustainability in the implementation of 10 percent CSOT ownership. For instance the vendor-financing route may not be realised in the short to medium term as mining companies by nature may operate for longer periods without declaring profits and dividends due to many reasons including mineral price volatility. In addition, the trustees of the CSOTs are appointed rather than elected by communities. Accountability is therefore weakened since appointed Trustees are inclined to follow interests of those that appoint them at the expense

⁴ "Illicit Financial Flows cost Zim US\$500 million", *Herald* 14 December, 2015

of the communities they are meant to serve. As a consequence, communities are marginalised in fund management and planning. Meanwhile, given that tradition accords so much respect to the chiefs, it will by nature make it difficult for local citizens to question their traditional leaders. Finally, none of the legal instruments are clear on the definition of the local community leading to corruption and conflict, i.e. the criteria on which communities are supposed to benefit, for example In Marange both Marange and Zimunya were incorporated in the Marange-Zimunya CSOT and in Chegutu, Zvimba was incorporated to benefit from the Mhondoro-Ngezi CSOT amidst people's concerns.

Key asks for policy and institutional reforms

Given the obtaining challenges, some of the key recommendations on policy and institutional reforms or practices necessary to foster improved mineral resource governance include:

- Localising and prioritising the implementation of African progressive policies such as the African Union Convention on Natural Resources Governance, The African Mining Vision & the Younde Declaration on Artisanal and Small Scale Mining (2008);
- Simplification and harmonisation of the regulatory and administrative framework and compliance procedures (also simplify and translate relevant provisions that regulate mining);
- Limit discretionary powers in the implementation of the Indigensation and Economic Empowerment Act and ensure broad based stakeholder involvement and participation;
- Facilitate greater transparency in contract negotiation and access to information on company contributions to the national treasury;
- Strengthen capacity of communities and local leadership, parliamentarians and facilitate platforms for effective participation in mineral resource governance structures and processes; and
- Build capacity of the state bureaucracy to better negotiate and monitor mining companies.

Bibliography

Arrighi G. 1966. The political economy of Rhodesia. *New Left Review*, 1 (39): 35-65.

BusinessMap. 2001. *Investor Survey 2001: Opportunities in Waiting*. Johannesburg, BusinessMap

Good, K. 1976. Settler colonialism: Economic development and class formation. *Journal of Modern African Studies*, 14(4): 597-620

Mines and Minerals Act Chapter 21:05

Saunders, R. 2008. Crisis, capital, compromise: Mining and empowerment in Zimbabwe. *African sociological review* 12, no. 1: 67-89

Van Onselen, C. 1980. *Chibaro: African Mine Labour in Southern Rhodesia 1900 – 1933*. Johannesburg: Ravan Press

ZELA (2012) An Outline Of The Mining Taxation Regime In Zimbabwe



ASPIRATIONS ON THE MINES AND MINERALS AMENDMENT BILL [CHAPTER 21:05]:

Key lessons from the African Mining Vision and Southern African Resource Barometer

Nyaradzo Mutonhori
Zimbabwe Environmental Law Association

Introduction

This paper outlines some aspirations towards the Mines and Minerals Amendment Bill. These aspirations are grounded in the progressive provisions in the Constitution on public participation. Section 194 of the Constitution is pertinent as it states that the public must participate in policy formulation. Section 13 of the Constitution is on National Development and it states that all development measures must involve the people. These sections propel civil society to be proactive in influencing policy discourse and this paper is one such way of revealing core issues which civil society and the general public feel must be addressed by the Mines and Minerals Act. Enacted more than half a century ago in 1961, the current Mines and Minerals Act has several inadequacies and fails to capture the new developing standards in the mining sector.

Apart from capturing the Constitutional aspirations, the Amendment to the Act should address all inadequacies and capture current international standards. In line with the spirit of the Constitution, the Act must capture values of transparency, honesty, cost effectiveness and competitiveness in the negotiation and performance of, inter alia, concessions of minerals and other rights. Further it is aimed that the Bill should align with the regional and international standards of maximizing the developmental outcomes of mineral resource exploitation by the development of tailored legislation that harness the country's unique strengths. Such regional and international standards are embodied in various instruments like the Southern Africa Resource Barometer and the Africa Mining Vision. These instruments prescribe design of governance institutions that are legitimate, transparent, accountable, and inclusive and fair and that also, in turn, exhibit functional and structural integration, capacity and adaptability in the management of natural resources⁵.

The draft Mines and Minerals Amendment Bill [Chapter 21:05]

In 2007, a draft mines and Minerals Amendment Bill was introduced. The draft sought to introduce a number of reforms such as restructuring the system of issuing mining rights, indigenisation of the mining sector and inclusion of environmental impact assessments. However the draft has been shelved and was never tabled in Parliament. In order to address the inadequacies of the Mines and Minerals Act, enacted in 1961 with minor amendments to date, the government is making efforts to amend this Act.

The paper will use the value chain to outline and explain civil society aspirations in addressing inadequacies of the Mines and Minerals Act. Simply put the Value chain refers to all the stages involved in exploiting mineral resources.

These are illustrated below. (Source World Bank Institute *Parliamentary oversight of Extractives Industries Sector*)



The value chain is premised on the fact that mineral resource extraction must be driven by people-centered development priorities. Mineral resources in Zimbabwe must facilitate maximum benefits to the citizens.

5 SADC Resource Barometer, Southern Africa Resource Watch (SARW) in partnership with the Southern African Development Community-Parliamentary Forum

The Decision to Extract

The African Mining Vision identifies the centrality of a geological survey, which aims at standardizing geological data as well as increasing the availability of geological information to stimulate investment in the industry. The government of Zimbabwe must be in possession of correct geological data on the quantity and quality of its resources before entering into negotiations.

Mining projects in Zimbabwe have caused untold suffering to mining communities as they are marred by massive displacements, limited compensation, and loss of livelihoods, food insecurity and catastrophic environmental degradation. Before mining starts, policy makers have to think through and justify why mineral resource extraction is the right decision to make. The diagram below shows key issues that need to be considered before a decision to extract is made.



The AMV encourages broad-based, active and visible involvement of affected communities in the approval, of mining projects. This include building platforms for consensus building on priorities and options for the development and management of mineral resources; it further suggests the need to make SEAs, EIAs, and SIAs mandatory tools for project approval; to ensure broad participation in the decision-making.

The Mining Affairs Board is the statutory body established under s6 of the second part of the Mines and Mineral Act (hereinafter the Act unless so specified) and to have its composition altered by clause 3 of the Mines and Minerals Amendment Bill (hereinafter the Bill). The functions and duties of this board are to advise the Minister. At present, the Board consists of the Permanent Secretary for Mines and four other officials in the Ministry together with six members appointed by the Minister to represent miners and farmers. A look at the composition of the Board reveals that it is highly technical and with very limited representation of the communal people meaning the views and opinions of this section of the population are not catered for at this level⁶. The establishment of District advisory boards under s406 is an inefficient remedy because, practically, these boards are not established because of financial challenges and sheer lack of political incentive and will⁷.

An inherent flaw in the above situation is the lack of fair representation in the decision-making process and consequently, fears of elitism. The provision for appointing board members at national and local level is not consistent with democratic principles. This function is the preserve of the Minister at the advice of a few elite groups.

Previous amendments to the Act like the 2007 Amendment Bill amends the Constitution of the Board to include the aforementioned Secretary and five other Ministry officials and nine other members that represent a cross section of miners, farmers and rural district council. In a broad stroke, the inadequacy of representation in the decision making process have been addressed in form. Further, the Board is now required to meet once every two months with a half composition quorum. Further, delegation of the Boards functions will be replaced by appointments of committees to assist the Board in its mandate as per s10A (1) and in addition to the

⁶ A Review Of The Legislative And Policy Framework For Community Based Natural Resources: Management In The Mining Sector. Maxwell Maturure, Zimbabwe National CBNRM Forum, Nov. 2008

⁷ supra



Administrative, recourse can now be made, *ex lege*, to the High Court when considering a point of law on an application made to it under s11 (e).

Civil society aspires that the Ministerial influence on the appointment and removal from the Board has to be either removed or be coupled with oversight mechanisms in place to monitor the exercise of this discretion. This, therefore, avoids political manipulation in the appointments and ensures that decisions are made on economic and environmental considerations rather than political ones.

Another key issue here is that of artisanal and small-scale miners. There is need to formalize ASM and upscale programmes to upgrade knowledge, skills and technology in the ASM sector; mainstream ASM into poverty reduction strategies; ensure gender equality; eliminate child labour; stimulate partnership with government and large-scale mining to facilitate access to technology, skills, knowledge and markets; and strengthen ASM associations.

Getting the best deal: License and contract awards

Once a decision to extract minerals has been made the next stage in the value chain entails how to ensure the best possible deal, i.e. the bidding and contract negotiation processes. This stage of the value chain is crucial in that it determines how much government will receive from mining and sets the pace for community and environment issues arising from mining. Not all contractual responsibilities and obligations are found in the actual contract, but different laws may contain other terms and conditions. A strong legal framework is therefore necessary to ensure the best possible deal for the citizens to get best possible benefits from mineral resources.

According to the AMV, SADC governments must strengthen their legal provisions relating to contracts to ensure that all mining contracts comply with a predetermined national legislative format, including measures to override stability agreements that prevent future governments from re-negotiating contract provisions to the disadvantage of the citizens (possibly including limits on the length of the contracts).

The new system proposed by the 2007 draft brings commendable transparency and ushers in opportunities for accountability checks because these licenses are the basis of the rights that exist between the State and the staking agent⁸. The change is not only in the form of the contract but also in the procedure to acquire these. Procedure is adjectival to substantive rights and the sanctity of the process and procedures to acquire the licenses have a bearing on the merits and acceptability of the licenses when granted. Alternatively, the sanctity and clarity of the license acquisition processes diminishes significantly the chances of corruption, favoritism and nepotism that have come to define the same in the wake of the economic upheaval. The new Amendment Bill must continue to capture the above ethos presented in the 2007 Bill.

However, the efforts to expand the licensing regime may be rendered short and ineffective primarily because of a lack of a standard model contract. Catherine Anderson, to this end, opines that little room for negotiation must be left between the state and prospective miners, most of whom may be multi national companies. The need for firm policies in the national interest needs to be balanced by the need for workable contracts and it is best practice for governments to capture as much information about the operations and financial details in a model contract and that ensures that not much is dependent on the negotiating skills and bargaining power of parties. The Principles and Guidelines for Contract Negotiation demand that:

Government must consult civil society and labor unions with expertise on key areas such health and safety, human resource development, technology transfer, skills development, corporate social responsibility, community resettlement and environment protection during the negotiation of contracts.

Realizing the impartibility of having the mentioned stakeholders at every negotiation, a standard form contract can be created in consultation with all the parties.

Monitoring the mining project; Technical and environmental monitoring

The next stage of the value chain once the legal and regulatory framework is in place and contracts have been

⁸ Currently referred to as 'prospectors'

signed, mining operations begin. Mining projects require close monitoring especially technical and environmental monitoring. Mining companies and government are complying with contract provisions, including existing laws and regulations. Government must include provision for a mandatory environmental tax to be paid by mining companies during the lifespan of their project.

In terms of revenue management, the fiscal policy of Zimbabwe is highly competitive in the SADC region but there are currently very minimal systems in place to fully harness and monitor financial flows in the mining sector primarily due to the fact that there is imprecise data on the size, capacity and output of mines neither is there a requirement to furnish these in the Act.

The Income Tax Act only provides for the taxing of “income” of the companies and does not assist in the country’s ability to project the value of its resources, its capacity to secure a fair share of its wealth through coherent, progressive fiscal policy models and its ability to reinvest those resources to produce a sustainable long term benefits. It also provides for royalties payment, which is relatively low in comparison to international standards⁹. The Act also defines the taxing regime for surface taxes and corporate tax, which, again, are relatively low against international standards, and these standards are imputed by implication into the Act.

There is a remarkable shift from this position in the introduction of the grid system that gives unprecedented certainty in the location of alluvial deposits and extractive purposes thereon and the mining commissioners can base estimations on these. The grid system, regrettably, is not complimented by the requirement that companies submit, along with applications for renewal of licenses, detailed report containing the projected lifespan and volume of the deposits on which they are mining. Such information can go a long way in planning for the expected revenue use and management. This also accords well with the transparency and efficient management that founds revenue management and financial discipline principles and further, the need for flexibility for commercial viability is then adequately balanced to the need for certainty and formality.

Impact of the Indigenization Policy

Of appreciable input is the requirement that all prospective applicants for mining rights and title cede a controlling interest to either the State or indigenous individuals¹⁰. This is in conformity with the Indigenization and Economic Empowerment Act (IEEA) and regulations thereunder which have a goal of ensuring the active economic involvement of previously marginalized people¹¹. The propriety or lack thereof of the IEEA is not under scrutiny but it being a wide and overarching piece of legislation, the impact on investor confidence has to be assessed as mining is a sector that is extremely capital intensive and reliant on FDI.

Conclusion

The Bill, for the greater part, is a welcome departure from the previous mining regime that was insufficiently complimentary of developments in the sector. The Bill manages to capture the essence of contemporary developments in international jurisprudence and political convictions relating to mining and the role that present generations play in the time matrix with future generations.

However, there are glaring, almost deliberate, inconsistencies with the said international trends and political conviction and opportunities to nip corruption and abuse of power in the bud. Key opportunity to strengthen transparency and accountability have not been seized or, where they have been, it has been half hearted and the concessions are made under wide, vague and imprecise rhetoric statements and the legal recourse is consequently minimal.

⁹ Royalties (4% for base minerals and 15% for precious stones) represent an important element for the company as they compensate for the extraction of a nonrenewable resource, produce fiscal revenue early in the mining project and present a comparably low administrative burden for the government.

¹⁰ S416

¹¹ Euphemism for black people at the expense of white people



Reforms to **PROMOTE GENDER AND WOMEN'S INVOLVEMENT** and Broad Based Development

Melanie Chiponda

Chiadzwa Community Development Trust

Introduction

The promotion of women's participation to stimulate broad-based sustainable development shall be discussed from the context of the mining sector, which has been touted as having potential to contribute towards development efforts in Zimbabwe. The large-scale and medium scale mining sectors are formal, but the artisanal and small-scale mining (ASM) sector has remained largely informal though a considerable number of the country's population depends on the sector for their livelihoods. The focus of this section shall be on women's participation in the A&SM sector since more women participate in this sector as opposed to the formal mining sector. Policy recommendations on how the participation of women should contribute towards broad-based sustainable development in this sector will be discussed.

Zimbabwe's Economic Blue-print and Mining

The Government of Zimbabwe (GoZ)'s economic blueprint, the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIMASSET) states that mining is one of the major foreign currency earners in the country and it has the potential to contribute towards the economic salvation of the country through value addition and beneficiation. Mining is regarded as one of the sectors that have been identified as the key drivers to growth and employment creation. However, for mining to contribute towards sustainable socio-economic growth there is need for improved revenue collection in the sector¹². Revenue collection can only improve where there is transparency and accountability, principles which are outlined in the Founding Values and Principles of the Constitution of Zimbabwe Section 3 (2)(g). Therefore, it can be said that the GoZ envisions mining that contributes towards the country's broad-based sustainable development under conditions of transparency and accountability as enshrined in the country's constitution.

Gender Equality and Broad-based Sustainable Development

Gender equality and equity are crucial for broad-based inclusive and sustainable development and growth. Broad-based sustainable development is a holistic approach to development that goes beyond the narrow goal of economic growth. It incorporates economic development, environmental sustainability and includes the full range of social, cultural and political factors¹³. Often, sustainable development is primarily viewed as environmental sustainability. This narrow view pushes gender concerns to the periphery and purport to concerntrates on social, economic and ecological dimensions. Achieving gender equality is crucial to the achievement of sustainable development. Gender roles are socially constructed but mostly gender-based disparities exist that disadvantage women, thus impeding their development and that of humankind¹⁴.

ZimAsset, Gender Equality and Mining

Under the Gender and Development Cluster, the GoZ's ZimAsset states the cluster's outcomes as improved gender equality and equity through increasing the number of women's groups benefitting from the Women's Development Fund; mainstreaming Gender in Policy formulation, implementation, monitoring and evaluation; and implementing sector Gender Policies and Programmes amongst other strategies. Through these strategies,

¹² Government of Zimbabwe (2013) Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZimAsset), Towards an Empowered Society and a Growing Economy

¹³ Weaver, J. H., Rock, M. T. Kusterer, K. (1996) *Achieving Broad-Based Sustainable Development: Governance, Environment and Growth with Equity*, Lynne Rienner Publishers, Boulder

¹⁴ <http://www.bridge.ids.ac.uk/updates/gender-and-sustainable-development>

the GoZ intends to see more women contributing towards economic growth and development and participating at all levels of decision making; and 50% of decision making positions being held by women (Ibid).

However, the reality in the mining sector is that women have continued to be marginalized. Women make up only 2% of the mining labour force¹⁵. In Artisanal and Small-scale mining (ASM) women constitute 50% of the people participating in this sector in Zimbabwe¹⁶. Women tend to participate in artisanal and small-scale mining because it is mostly informal and easy to enter than the formal mining sector, and it takes place within their local areas where they can combine their gender roles within the household whilst at the same time contributing to the household economy through increasing the household income. ASM offers livelihood opportunities for women¹⁷. Though there has been reluctance to recognize ASM activities as contributing towards poverty alleviation at micro-level as it is carried out as a subsistence activity. A lot of women can be said to have taken advantage of the opportunities offered in ASM to fulfil their social and economic needs which they seem to be faring better than when they perform the traditional land-based economic activities like land cultivation and livestock rearing.

ASM and Development

The development potential of artisanal mining was first recognized at global level in Small-Scale Mining in Developing Countries, as was shared in a UNDESA (1972) publication¹⁸. There has been heightened interest in ASM as groups and institutions lobbied for ASM to be employed as a springboard for people driven development (Ibid) and to be used as an instrument for rural and community development¹⁹. The ASM is estimated to contribute to between fifteen to twenty percent of global minerals and metals. The sector contributes towards approximately eighty percent of all world sapphires and twenty percent of all gold²⁰. This may explain the sudden global interest in the ASM sector. Whilst there is need to promote the participation of women in the mining sector in general, it should be noted that the ASM offers a relatively gender balanced sector though it has also been accused of having more women at the very bottom of the sector's hierarchy due to women's lack of experience in mining²¹.

The benefits and burdens of mining which affect people are inequitably distributed. Women continue to be underrepresented in the political, social and economic decision making arenas. The marginalization of women increases their vulnerability and is attributed to female poverty. There is therefore need for a sustainable development route which is committed to gender equality and which seeks to promote women's capabilities.

Challenges faced by Women in the ASM Sector

Though women in the ASM sector in Zimbabwe face a multiplicity of challenges which range from working under unhealthy and unsafe conditions to harassment and bullying by colleagues and law enforcement agents, there is a genuine need in Zimbabwe to promote women's participation in ASM. The challenges faced by women in this sector hinder them from achieving their full capacity and contributing towards the country's sustainable socio-economic development agenda. Inadequate institutional framework has been noted as one of the challenges faced by women in this sector. The current institutional framework is not enough to support the development of ASM. The location of the Ministry of Mines offices, for example, is not meant for rural women in ASM to walk in and register their operations since they are mainly found away from most rural women where ASM takes place. This arrangement tends to favour large-scale mines. Of interest is the fact that this is not only a constraint to the women in ASM in rural Zimbabwe but also for the Ministry itself. Mine Inspectors often do not visit these remote mining areas and in some cases may not be aware of their existence.

The marketing conditions are also restrictive to women as only legally registered miners can sell their minerals through the legal channels and to the government. Given the constraints to formalization of their mining

15 <http://www.women.gov.zw/news/120-mining-review-workshop>

16 Hilson, G. (2002a) *Harvesting Mineral Riches 1000 years of Gold Mining in Ghana*, Resource Policy 28 (1 – 2), 13 - 26

17 Labonne, B. (1996) *Artisanal Mining an Economic Stepping Stone for Women?*, Natural Resource Forum, Volume 20, No. 2, pp 117 – 122, Elsevier Science, London

18 Centre for Development Studies (2004) *Livelihoods and Policy in the Artisanal and Small Scale Mining Sector an Overview*, University of Wales, Swansea

19 Bayah, J., Yakubu, I., Choo, T. (2003) *Artisanal and Small-Scale Mining as a Tool in Rural Development: Experiences from a World Bank supported Project in Burkina Faso*, Extractives Industry Review, Regional Consultation Workshop for Africa, Maputo, Mozambique, January 13-17, 2003

20 Levin, E. (2008) *'Artisanal Diamond Cooperatives in Sierra Leone: Success or Failure?'* DDI Policy Brief, <http://www.pacweb.org>.

21 Dreschler, B. (2002) *Small-scale Mining and Sustainable Development Within the SADC Region*, Mining, Minerals and Sustainable Development, International Institute of Environment and Development, England.



operations, most women are unable to sell their produce through the formal channels. This promotes leakages and bullying of women as they trade informally. ASM is estimated to employ 350,000 people, of which 50% are women, and provide livelihoods to an estimated 2 million people in Zimbabwe²². This economic reality cannot be ignored. Unfortunately, the minerals and revenue from the ASM sector goes unaccounted for, on the other hand, ASM operations have no guaranteed sustainability in their present form (Ibid).

By failing to put in place the necessary institutional and legal frameworks that promote the participation of women in ASM, the lives and well-being of these women are being compromised. As a result of ignorance, lack of resources and skills, women are exposed to extremely dangerous and poor health environments. Mine accidents taking place within the ASM sector often go unreported, though approximately 20% of the Zimbabwean population is directly dependent on this dangerous activity. It is definitely clear that this sector needs regulation in order to foster transparency and accountability, protect the lives and well-being of the women participating in the sector as well as contribute towards sustainable development.

Recommendations

People and governments would enjoy prosperity from ASM at local and national level if the necessary steps are taken to ensure that ASM is safe, and less destructive. There is need promote ASM as a stimulus for other productive activities to spark the development of alternative and corresponding productive enterprises which are necessary for poverty eradication; putting people at the forefront through pro-poor strategies and participatory approaches aimed at supporting the capacities of grassroots communities therefore promoting a bottom-up approach²³.

There is need to ensure that the ASM sector is formalized and legal. Legalisation should assist in making sure that the adverse social and environmental impacts of the sector are lessened and mitigated and the GoZ should be able to capture more revenue from the sector. In order to ensure that women in ASM can contribute towards increased family income at household level, reduced poverty levels and broad-based sustainable development, there is need to:

- Ensure that the Mines and Mineral legislation is gender sensitive through including gender issues, that is, those issues that affect women in the sector due to their biological make-up and gender roles. Therefore the legislation should distinctly address women's issues so that the law addresses the needs of women;
- Policy and Legislation in the mining sector should have affirmative action measures and a quota system in order to address the gender disparities that exist in the ownership of mining concessions and Titles;
- In order to promote environmental protection and management in the ASM by women participating in the sector, the Environmental Impact Assessment protocols should be simplified and designed for the ASM sector as well. It should not be applicable to the large-scale miners only. It should address all the major risks in the sector including the risks associated with women in the ASM sector but in a clear and simple way; and
- The GoZ should come up with a "People's Mining Law" which should facilitate licensing of ASM individuals and cooperatives in the sector. The Mining Laws and Policies should be accessible to the people.

²² Dreschler, B. (2002) *Small-scale Mining and Sustainable Development Within the SADC Region*, Mining, Minerals and Sustainable Development, International Institute of Environment and Development, England.

²³ Hentschel, T. Hruschka, F. Priester, M. (2002) *Global Report on Artisanal and Small Scale Mining*, Mining, Minerals and Sustainable Development, International Institute of Environment and Development, England

The Need For SUSTAINABILITY REPORTING AND DISCLOSURE By Extractive Companies

Tapuwa O'bren Nhachi

Institute for Sustainability Africa (INSAF)

Introduction

Sustainability reporting and disclosure by mining companies on economic, social and governance (ESG) issues has arisen to be an essential consideration for promoting transparency and accountability within the extractive sector. Capacity building for civil society organisation, government organisation and other essential stakeholders within the Extractive sector transparency initiative will initiate or ignite effective campaigns around ESG issues.

Global Reporting Initiative: Transparency And Accountability

The GRI framework is a collection of reporting guidance documents all of which were developed through global, multi-stakeholder consultative processes designed to assist companies in preparing sustainability reports and ESG disclosures and at the same time becoming a tool to hold companies accountable for their actions if the need arises. It is essential for civil society, government and other important stakeholders within the transparency and accountability sector to ensure they have stronger lobby and advocacy initiatives. Within the Zimbabwean Extractive sector a variety of concerns around pollution, climate change, human rights issues and economic crises, have prompted the increase in advocacy for transparency and accountability so as to hold the private sector accountable for their actions.

The importance of sustainability report to users

Sustainability reports are valuable to many different types of readers and users and initiates engagement of three key stakeholders thus the civil society organizations, journalists and investors. All the three stakeholders can greatly make use of the disclosed reported data to advance their work in advocacy, partnerships, consumer action, investment decisions, or helping improve public information about sustainability issues.

GRI Thematic Areas

The GRI framework allows organisations to articulate on the following thematic areas within their reports:

-
- Organizational governance
 - Human rights
 - Labour practices
 - The environment
 - Consumer issues
 - Community involvement and development
 - Fair operating practices
-

Disclosure In Zimbabwean Extractive Sector

Mining Companies within the Zimbabwean operating environment have proven to give a blind eye to environmental and social issues within their operation and this has resultantly led to host mining communities bearing the burden of mining.

Various initiatives on transparency and accountability within the extractive sector have merely proven to be futile as the initiatives were not evidence based. Sustainability disclosure can serve as a differentiator in evidence



based advocacy and lobbying and mere campaigns that has been done since immemorial by civil society organisation. Capacity building around sustainability reporting and disclosure can further necessitate creation of greater transparency about firm performance, can provide responsible stakeholders with knowledge necessary to insulate the abuse of natural resources, increase efficiency and effectiveness of their advocacy initiatives and giving a basis to accountability initiatives for CSOs. Sustainability reporting can prepare all and most importantly responsible stakeholders to avoid or mitigate environmental and social risks that might have material financial impacts on their business engagement while delivering better social, environmental and financial value hence creating a virtuous circle.

Sustainability Reporting and Disclosure for Civil Society Organisation

- The concept of sustainability reporting and disclosure aide in availing a platform for: Sustainable and responsible investing for the benefit of the economy and the general populace at large;
- Engagement between all stakeholders on information regarding managing the environmental and social impacts of mining;
- Improvement on regulations related to environmental and social matters if necessary;
- Anticipation and responsiveness to issues of hazards arising from mining operations;
- Increase agility in ESG improvement that may be critical to sustainable resource usage and beneficiation;
- and
- Anticipate and prepare for future materials scarcity.

Capacity building for civil society will basically initiate the move towards standardization for annual reports but rather the inclusion and connection of information on both financial and non-financial aspects of business that are pertinent and meaningful to the marginalised individuals in host mining communities. Also disclosure of information on company's sustainability commitments leads to positive differentiation of project acceptance and non acceptance as they would earn the social licence to operate. Such can be validated by the corporate social responsibility by companies engaging in sustainability initiatives that have had a simultaneously increase in firm success, reduce negative social influence and benefit society at large. For civil society the concept can create a viable and plain ground of engagement for the benefit of the vast majority of host communities for engagement for further development initiatives.

Implementation of the Capacity Building on Sustainability Reports

The Institute for Sustainability Africa (Insaf) as one of the leading organisation around the Global reporting Initiative and also having been the lead in the development and incorporation of ESG disclosure guidelines on the Zimbabwean stock exchange has got the capacity to capacitate other stakeholders on the need to familiarise and interrogate company annual reports. Insaf has had one capacity building workshop with civil society organisation which sparked great debate and interest on the issue. Insuf however has learnt that capacity building workshops on sustainability would need to be done over at least three workshops so as to completely exhaust all issues around GRI and there is also need to hold periodic session to thwart challenges encountered and knowledge sharing amongst trained or capacitated stakeholders.

ENHANCING RELATIONS

Between Companies and Communities

Farai Maguwu

Centre for Natural Resource Governance

Introduction

Mining projects are often established on land which is already occupied and used by people who depend on it for farming, ranching, fishing and artisanal mining. The establishment of a mining project will therefore cause changes in the environment, economy and ecology of the affected area. These changes can either be positive or negative. Positive changes are associated with enhanced welfare of the society through corporate social responsibility projects and land rehabilitation after extraction. Meanwhile, negative changes are associated with irresponsible mining that diminishes the welfare of host communities through environmental degradation, destruction of the means of livelihoods and other social costs.

The establishment of a mining project raises the hopes and expectations of communities. Mining projects come with the promise of development in the form of job creation, infrastructure improvements such as roads and improved service delivery. Yet hope is deferred as mining companies claim they want to recoup capital expenses and eventually the hope fades away as companies declare losses, retrench staff and shut down once the mineral is depleted. It is left to the community to ponder means of reclaiming its amputated environment, with no financial resources to assist them. This creates conflicts between and among many stakeholders in the mineral value chain. However the relations between mining companies and surrounding communities need not be adversarial always. A win-win situation can be created if both parties agree to a shared set of values and expectations. Below we look at some of the issues hindering good relations between mining and local communities that need to be addressed.

Legislation

The major crisis affecting Zimbabwe's mining sector is legislation. Two pieces of legislations, Mines and Minerals Act (1961) and Communal Lands Act (1982), both with a colonial legacy, stand out as the major sources of conflict in Zimbabwe's extractive sector.

Mines and Minerals Act

Zimbabwe's 1961 Mines and Minerals Act (chapter 21:05) gives Mining companies the legal power to acquire mineral rights over agricultural land and even in environmentally sensitive areas. What is more alarming is that in the event of acquisition of communal lands to pave way for mining it is the Rural District Council, not the actual victims, who must be compensated. Section 188(7) states that:

Subsections (2) to (6) shall apply in respect of Communal Land as if all Communal Land within the area under the jurisdiction of any one rural district council were a holding and the rural district council were the owner thereof: Provided that any payments due in terms of subsection (2) in respect of such Communal Land shall be paid to the District Development Fund referred to in section 3 of the District Development Fund Act [Chapter 29:06].

The above provision is the main reason why mining companies are displacing villagers without compensating them. It is also the main reason why government is silent when communities are displaced by mining companies. In fact government has sometimes deployed the state security agents to enforce displacement of villagers as was the case of Marange.



The Communal Lands Act

Whilst the Mines and Minerals Act empathizes with the rights of miners, the Communal Lands Act ironically puts the record straight on the supremacy of mining over surface land rights. Under the Communal Land Act Chapter 20:04 all Communal Land is vested in the President. Thus only the President has the power to declare that a certain section of State Land is now Communal Land, and vice versa. In order to use Communal Land for agricultural or residential purposes one has to get 'consent' from the Rural District Council (RDC) in charge of the area. The RDC has to consider customary law relating to allocation, occupation and use of land and is required to consult and cooperate with traditional Chiefs appointed to preside over particular communities. Section 7 (2) of the Act further criminalises the occupation of communal land in the absence of lawful authority. The crime is punishable by up to a year sentence or level six fine (or both). However, the RDCs are required to provide consent to people who have traditionally and continuously occupied the land. This however belies the stark reality that the Act undermines community rights and exposes communities to undignified eviction should the state decide to use the land for other purposes. Section 10 (2) of the Act states:

'Subject to this section, after consultation with any rural district council established for the area concerned, the Minister may set aside any land contained within Communal Land, other than land referred to in subsection (1), for any purpose whatsoever, including a purpose referred to in subsection (1), which he considers is in the interests of inhabitants of the area concerned or in the public interest or which he considers will promote the development of Communal Land generally or of the area concerned.'

It is essential to note that there is no provision for consultation of the affected communities' or their traditional leaders, even though they are authorised by the Rural District Councils to settle people on communal lands. Section 10(3) (b) is even more drastic. It empowers the minister to publish a statutory instrument 'ordering all persons, or such class of persons as the Minister may specify in the notice, who are occupying or using the land concerned, otherwise than by virtue of a right held in terms of the Mines and Minerals Act [Chapter 21:05], to depart permanently with all their property from the land concerned within such reasonable period as the Minister shall specify in the notice...'

Subsection 7 weighs in with a threat of imprisonment to those who will resist permanent eviction from their ancestral land:

'Any person who, without just cause, fails to depart permanently from any land in accordance with a statutory instrument published in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.'

The Act also empowers the Minister of Lands to set aside communal land for any other purpose which the Minister deems beneficial to the community.

Regarding compensation over loss of agricultural land, the Act states that the affected persons shall, 'so far as is reasonable and practicable, be given a right to occupy or use alternative land', adding that 'if no alternative land is available and no agreement has been reached as to compensation, Parts V and VIII of the Land Acquisition Act [Chapter 20:10], shall apply, mutatis mutandis, in respect of such dispossession or diminution.' Whilst the law is firm and clear on the sort of punishment to be meted on those who refuse to vacate communal land when ordered to do so by the Minister, It is vague on where the evictees must go or who is responsible for their resettlement. Apart from asserting the right of the evictee to 'occupy or use alternative land' the law does not outline consequences for the evictors if they fail to avail alternative land.

Further, part V and VIII of the Land Acquisition Act (1992) referred to in the Communal lands Act as the ultimate solution to compensation disputes was designed to deal with 'agricultural land required for resettlement purpose' and not to communal land acquired from indigenous Zimbabweans for mining and developmental purposes. In fact the Act was designed to make it easier for government to acquire land from white commercial farmers for the purpose of resettling black Zimbabweans. The country need a resettlement policy that lays down the rules of relocation. Further, the new minerals law must clearly address the issue of mining-induced relocation.

Community Development Agreements And Best Practice

Most company-community understandings are informal and often verbal agreements. This is different from agreements made between mining companies and government which are reduced to writing. There is a growing argument for expanding and formalizing these agreements. Several countries are encouraging or requiring companies to negotiate such agreements, currently known as community development agreements (CDAs) in advance or as part of project development. Papua New Guinea, Mongolia and Nigeria each have a provision in their mining law requiring the mining license or contract holders to negotiate and enter into CDAs to facilitate the transfer of social and economic benefits to host communities.

CDAs can help define the relationship between mining companies and impacted communities, including the roles of local and national governments and non-governmental organizations. They often express a mining company's commitment to corporate social responsibility. CDAs vary in coverage but primarily focus on those issues most pertinent to impacted communities they may include company employment commitments, specific local infrastructure commitments, or specific social services.

The World Bank Mining CDA Resource Book (2012) identifies two main visions for a CDA;

1. Improving relationships among companies, governments, civil society, and other stakeholders, and
2. Promoting sustainable and mutually rewarding benefits from mining projects, including pro-poor initiatives and other strategies which may go beyond the immediate scope.

This process seems to be most advanced in Australia and Canada where benchmark agreements were signed in the 1990s directly between mining companies and aboriginal groups, and continue to be negotiated today. The creation of a CDA can also flow from corporate response to significant conflict with local communities. When BHP Billiton acquired the Tintaya Copper Mine in 1996 in Peru, it ran into widespread community discontent related to the land acquisition process and unfavourable treatment of the local community when the mine was under state ownership. The Tintaya Dialogue Table was created to provide a forum for addressing these grievances and an agreement was finally reached with the five communities in 2004, covering issues of compensation and monitoring and establishing a community development fund (Revenue Watch, 2013).

In conclusion, relations between mining companies and communities can improve if there are mutual benefits to mining projects. The current winner-takes-all scenario is creating tension as communities feel robbed and abused.



WHY

Domestic Resources Mobilisation (DRM) in Zimbabwe

Tinashe Gumbo

Zimbabwe Coalition on Debt and Development (ZIMCODD)

Introduction

ZIMCODD views Zimbabwe's indebtedness, the unfair global trade regime and lack of democratic people-centered economic governance as root causes of the socio-economic crises in Zimbabwe and the world at large. Indeed the country has enough resources for its citizens in the form of minerals, land, water, timber among many. However, it is ironic that the country has not been benefiting from the resources as they have been plundered and exploited by other players outside the borders of Zimbabwe. As a result, the country has been relying much on aid, which has proved not to be sustainable for the country.

The aid has also proved to be not predictable thereby distorting the country's development planning processes. Most importantly, aid comes with conditions attached to it and has led the country into an unsustainable debt estimated at 8,4 billion dollars according to the 2016 National Budget although other independent sources have put it at over 10 billion dollars. These contradictions on the country's indebtedness have necessitated a call for an official public debt audit to ascertain how much the country actually owes and to which creditors. From a social and economic justice perspective, it is also critical that the citizens be made aware with regards to the social and economic impact of the debts.

Given this background, there is need for the country to focus on its domestic resources for it to achieve its development goals. Domestic resources are sustainable, predictable and they allow Zimbabwe to exercise its sovereignty in its development agenda. Utilisation of the country's natural resources (minerals in this case) will be the panacea to Zimbabwe's social and economic crisis. The same resources can be used to pay off all the legitimate debts that the country currently owes to the various creditors. Zimbabwe boasts of gold, diamonds, platinum and silica among other minerals deposits. However, due to lack of strong policy and legal framework, the country has been losing out through illicit financial outflows. This paper thus argues for policy and legal reform that plug off this loss of potential revenue for Zimbabwe.

Zimbabwe, Africa and the Developing World are Bleeding

Despite the fact that Zimbabwe is endowed in natural resources, it has failed to benefit from the exploitation of these resources and this is attributed to various factors. These include: specialisation in the export of primary commodities, structural heterogeneity of the productive apparatus, illicit financial flows and the volatility in the prices of raw materials in the world market. In addition to this, the country has been trapped in debt traps as a result of heavy borrowing motivated by export booms. It is estimated by the Global Financial Integrity that over the three decades from 1980 to 2009, Zimbabwe has lost 12 billion through illicit financial flows. Globally, it is estimated that illicit financial outflows from the developing world totalled a staggering US\$946.7 billion in 2011, with cumulative illicit financial outflows over the decade between 2002 and 2011 of US\$5.9 trillion²⁴. Ironically, this is almost seven times the volume of aid enjoyed by the same countries. As for Africa, by some estimates, illicit flows from the continent could be as much as US \$50 billion per annum. This is approximately double the official development assistance (ODA) that Africa receives and, indeed, the estimate may well be short of reality as accurate data does not exist for all transactions and for all African countries²⁵.

²⁴ <http://blogs.worldbank.org/publicsphere/poor-countries-are-losing-1-trillion-year-illicit-capital-flows-7-times-volume-aid>

²⁵ <http://www.uneca.org/iff>

Implications of Poor Domestic Resource Mobilisation Strategies

In order to realise the full benefits of the domestic resource mobilisation as a development strategy, the country's policies and laws should be water tight against illicit financial flows. Poor domestic resources strategies lead to tax injustices where the big mining companies will continue to make huge profits without paying the taxes that are due to the government. They will always evade and avoid taxes thereby depriving the country of its source of revenue for social and economic development that will manifest itself through poor infrastructural development, poor expenditure for critical social sectors like health, education and others as well as general economic decline. As a result, tax burden will be borne by ordinary people through Pay As You Earn (PAYE), Value Added Tax (VAT) among other direct and indirect taxes.

Policy and Legal Reforms in Pursuit of Tax Justice in Zimbabwe

For Zimbabwe to effectively benefit from the domestic resource mobilisation strategies there is need for policy and legal reforms that promote tax justice in the mining sector which is a major economic driver for the country. Any policy or legal reform in the mining sector should target the tax compliance and good governance. Tax justice concept is relatively new for most of the civic organisations in Zimbabwe. It represents a situation where the pooling and employment of the country's resources is consistent with common view (collective social choice) of a society. Taxes must not have negative effects on the socio economic setup of a nation. Tax systems should be fair, progressive and benefiting the tax payers. Adam Smith (Wealth of Nations) argues that taxation must be equitable based on the ability to pay. Section 298(1)(b)(i) of Zimbabwe's Constitution supports this principle.

Tax Justice is about Stopping and correcting the outflows due to tax avoidance or evasion. It is about levelling the playing field in order for countries to begin to get their fair share of tax revenues. Tax justice helps enable the provision of basic services and the achievements of greater equity in a country. Minerals resources belong to the people and the government is only administering them on behalf of the people. The citizens have a right to know how much their government is selling their minerals for, how much they are getting from their exploitation and how the generated resources are being used. Mineral exploitation should benefit all people and not individuals who are politically and economically connected. Tax justice is linked to the concepts of transparency, accountability and social corporate responsibility. Transparency relates to the situation where information about the country's resources is available to anyone who needs it. In terms of accountability, there have been complaints by the successive Ministers of Finance in Zimbabwe on the contribution of diamond to the Treasury. The proceeds from the diamonds have not been properly accounted for.

Tax System in Zimbabwe

The current taxation system is regressive in nature hence inequitable and unfair. It is regressive in the sense that it is the poor who bears the brunt of taxation. The poor and the vulnerable are contributing a greater chunk of their incomes to the national fiscus through VAT and PAYE. A more just system is one that ensures that the big mining companies are paying adequate taxes based on their profits they make from the mining venture.

There is lack of transparency and accountability in the administration and management of tax revenues regardless of the fact that there are Constitutional provisions on transparency and accountability. Transparency and accountability are compromised by a number of factors that include the involvement of too many revenue collecting agents in the mining sector, failure of collecting agents to remit resources into one purse/account and the lack of institutional capacity to collect on the part of ZIMRA. The lack of transparency and accountability in the mining sector is also attributed to lack of provisions on transparency and accountability in the governing legislations (Mines and Minerals Act).

In a bid to attract Foreign Direct Investment (FDI), a number of tax incentives and exemptions have been put in place. These have contributed to the loss of potential revenue to the government that could have been used to eradicate poverty and contribute to economic development in Zimbabwe. The situation has also been further aggravated by the failure of the companies to honour their social responsibilities.



Tax Incentives

Many developing countries have used tax incentives to attract international companies including the extractive industries. They include tax exemptions and tax holidays, tax deferrals, de facto control of national infrastructure such as railways, ultra-low royalty rates and excessively generous access to water, land, and timber among other natural resources. In most cases, this is done without any consideration to human and environmental impact. Contracts are usually negotiated and signed between the Multinational Companies (MNCs) and African governments without the involvement of the ordinary citizens and their parliamentary representatives²⁶. The incentives have deprived the country of revenue.

Recommendations²⁷

Government:

- Should have sound taxation policies to harness resources from all sectors through tax and plug all tax loop holes as well as desisting from luring FDI that grants tax holidays and tax breaks to MNCs at the expense of communities and citizenry social and economic rights.
- Develop a transparent taxation framework at all levels including the resource mobilisation and allocation of such resources to social service delivery for the fulfilment of social and economic rights.
- Increase in transparency and accountability on revenue collection, management and usage. For instance in the issuing of contracts to companies in the mining sector and their tax obligations for debate in Parliament and by citizens.
- To guarantee citizen participation in economic policy making to influence progressive taxation policies and abolish retrogressive taxes.
- ZIMRA's capacity in terms of human and financial resources has to be enhanced especially in the area of forensic auditing and investigations.

Recommendations to Civil Society

- Continue with the building and strengthening of a movement around tax justice to better engage with policy makers for progressive taxation policies in the mining sector.
- Demand for corporate responsibility from the private sector to honour tax obligations and environment policies.
- There is need for further interrogation on effectiveness and efficiency of the legal and institutional frameworks with regards to tax system in Zimbabwe.

²⁶ www.insiderzimbabwe.com/.../2949-masijiva-said-gono-starved-the-nation-to-...

²⁷ Zimbabwe's Tax System: Opportunities and Threats for enhancing Development in Zimbabwe, ZIMCODD, 2015

COMMUNITY PARTICIPATION in mineral resource governance

James Mupfumi

Center for Research and Development

Introduction: Broader Frameworks and trajectory

The African mining vision (AMV) is premised on “transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable socio-economic development.” The vision was adopted by the Africa Union heads of state and government in February 2009 as the key continental framework to promote mineral resource – based development and structural transformation on the continent (AU 2009). The SADC framework for harmonisation of policies and standards is anchored on creating a transparent one stop mineral administration in Southern Africa. It also compels member states to adapt programmes towards meaningful empowerment and participation of nationals to manage benefits of mineral exploitation (ECA 2004).

The AMV is informed by several initiatives including the above-mentioned SADC framework. The SADC summit of 29 April 2009 approved the implementation of the industrialisation strategy and roadmap for Southern Africa (ISR). In line with the AMV vision, ISR edges member states to fully exploit their comparative advantage in resource intensive sectors through value addition, beneficiation along with financing downstream industrialisation projects linked to the country’s natural resource endowment (SADC 2015). The roadmap also put an emphasis on the formulation of “specific laws that deals with critical issues of land ownership and mineral exploitation”. The success of these initiatives is by and large anchored on good governance practices of member states. Good governance entails public participation in formulating a shared country mining vision (CMV) and initiating and implementing national policy frameworks that are aligned to the attainment of the AMV of broad based economic development.

Community and mining in Zimbabwe

The law governing the mining sector in Zimbabwe was crafted in 1961 by the colonial government to promote minority economic interests. The mines and minerals act is exclusionary and supersede any other law including the communal lands act whenever minerals are discovered. The act has no provision for community participation in mineral exploitation and grants community only use rights to land leaving communities vulnerable to forced displacements. Efforts by government to amend the act by drafting an amendment bill in 2007 has not materialised and communities in mining areas continue to live in isolation and abject poverty. Corporate social responsibility programmes undertaken by mining companies are not backed by any piece of legislation but are wholly at the discretion of mining companies. Therefore mining operations dating back as far as 1970s have left communities with no source of livelihood from existing mining operations.

The environmental management agency (EMA) has produced several reports implicating mining giants for abandoning communities in squalid conditions after exhausting mining operations. According to these reports over 60 000 people are living under hazardous conditions especially in the downstream of chrome washing plants where chemicals are finding their way into the water. In most cases, tailing dams were eroding and collapsing transmitting chemically contaminated effluent into the environment. Evidence of acid mine drainage had been overwhelming in several disused mines, with gullies forming, dust from tailing dams high and air pollution very high according to EMA reports.

The conditions described by EMA are prevalent in most ghost mining towns like Mhangura, Mvuma, Alaska, Penhalonga, Zvishavane, Kamativi, Gatsi mines to name but just a few.



The government through the Zimbabwe Indigenisation Programme passed the Indigenisation and Economic Empowerment Act (Chapter 14:33) and amendment regulations no 2 statutory instrument 116/210 to address what the Indigenisation Programme described as colonial economic imbalances by demanding foreign companies to cede 51% of shares to government. According to the act 10% of the equity in the 51 percent quota will go directly to communities in areas where foreign companies are extracting natural resources. The funds will be held for the community through Community Share Ownership Trusts (CSOT/s).

As mining realised growth in 2009 from 33.3% to an estimated 47% in 2010. (Min of Fin 2011 budget statement), it is easy to conclude that some government elites used the indigenisation act to grab shares in foreign companies at the expense of government. According to the ministry of finance, Zimbabwe realised more than 1.7 billion dollars from diamond exports from 2010 to 2014 but less than 200 million dollars in taxes, royalties and dividend was remitted to government. This abhorrent gap between revenue generated and revenue remitted to treasury is evidence that government misappropriated its 50% shareholding in diamond mining companies to individuals for selfish gains. The net effect on the community has been massive loss of employment, collapse of service delivery and increased poverty.

In mining communities according to the Crisis in Zimbabwe Coalition Economic paper 2015 over 60 CSOTs have now been established yet the appointment of CSOTs as the sole beneficiary to the indigenisation process is done at the discretion of the mining company. In the mining sector notably Zimunya - Marange Community Trust in Manicaland, Mhondoro-Ngezi in Mashonaland West, Gwanda Community Trust in Matebeleland South, Tongogara CSOT and the Zvishavane Community Trust had been established by 2012. Only 22 million dollars had been paid to CSOTs by end of 2013 out of 107 million dollars pledged by mining companies as seed money. In Manicaland where government is the majority shareholder in several diamond mining companies only US 400 000 dollars has been paid to Zimunya Marange Community Trust out of the US 50 million pledged. Inadequate legal backing for CSOTs and lack of community involvement and ownership has made it difficult for communities to derive meaningful benefits from CSOTs operating in the mining sector. Some CSOTs that have been lucky to receive funds in recent years have managed to kick start projects in their communities but allegations of mismanagement of funds are rife within the structures of these CSOTs.

The increased entry of state actors into the mining sector in the last decade has been characterised by limited transparency and accountability particularly with respect to issuing of mining licenses, an absence of the right to consent for affected communities, an absence of integration of the communities into the economy around mining in their environs, general disregard of environmental health and other rights of the communities by the mining ventures.

Forced displacements severely affect many of the communities that largely depend on agriculture for livelihood. The displacement of communities from Marange to Arda Transau in Manicaland province is an iconic representation of low regards for human rights by both state and non-state actors. The new constitution makes provision on environmental and socio-economic rights of citizens in natural resource governance. However, in the mining sector for instance, these rights are not enshrined in the mines and minerals act and not enforced by such laws as the environmental management act, water act, communal lands act, indigenisation and economic empowerment act. Furthermore, different acts that underpin natural resource governance are not harmonised creating policy gaps and inconsistencies. The net effect has been that communities fail to derive benefits from the abundant natural resources around them. Yet these communities bear much of the burden brought by resource exploitation and extraction and bear more in terms of conservation of the resources but reap the lowest rewards from the exploitation of the same.

Recommendations

Zimbabwe as an active member of both AU and SADC believe in the AMV and has recently endorsed ISR in order to meet some of the goals of the AMV. However Zimbabwe has no shared CMV as evidenced by the continuous use of archaic and unsynchronised legal policy frameworks that are exclusionary and lack transparency and accountability principles. According to (BoscoV,AMDC 2014) CMV is an embodiment of national aspirations on the developmental role of the minerals sector: its alignment to a country's overall development vision should ensure that mining serves medium and long-term objectives for structural economic transformation, inclusive growth, and poverty reduction. In order to create CMV a multi-stake holder approach involving government,

civil society community based organisations, local administrators and private sector is required to facilitate what Bosco describes as “ the integration of the country’s mining vision into a framework that outlasts political cycles.” Through a multi stakeholder approach CMV will domesticate AMV at national level leading to broad-based economic transformation and community empowerment out of resource exploitation.

The following key aspects should be firmly embedded in Zimbabwe’s CMV for communities to derive benefits in the exploitation of their natural resources:

- An AVM compliant legal policy framework that domesticate best international practices of transparency and accountability in the mining sector such as EITI.
- Realigning the legal policy framework to the new constitution by incorporating socio-economic and environmental rights of communities in the mining sector. CSR must be embedded in the legal policy and legislative framework.
- Synchronisation of all acts that underpin the mining sector. The new mineral policy must incorporate acts such as the ZINWA Act Chapter 20:25, EMA Act Chapter 20:27, Urban Councils Act Chapter 29:15, Rural District Councils Act Chapter 29:13 to close policy gaps and inconsistencies.
- Revise the communal lands act to give security of tenure to communal farmers that has clarity on compensation for displacements.
- Revise Indeginisation laws and close existing policy gaps to ensure clarity and certainty.
- Promoting local procurement of goods and services, value-addition and local beneficiation of minerals, diversification from minerals, as well as optimizes business multipliers and enhancing linkages between mining and other sectors of the economy, including at local community level (ECA, 2004).
- Government must revive ZMRTI and collaborate with civil society and community based organisations to play an oversight role in the mining sector.





Publish What You Pay Zimbabwe
c/o Zimbabwe Environmental Law Association
26B, Seke Road
Hatfield, Harare, Zimbabwe
+263 4 573601-3