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**Towards A Transparent and Accountable
Mineral Resources Governance Framework:
A Compendium of Research Papers
on Key Mining related matters
in Zimbabwe**

December 2016

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Towards A Transparent and Accountable Mineral Resources
Governance Framework: A Compendium of Research Papers on
Key Mining related matters in Zimbabwe

December 2016

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Twitter: PWYP_ZIM

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List of Acronyms

AIPPA	:	Access to Information and Protection of Privacy Act
ALAC	:	Advocacy and Legal Advice Centre
AMV	:	African Mining Vision
ASM	:	Artisanal and Small-Scale Mining
ASX	:	Australia Securities Exchange
CBOs	:	Community Based Organisations
CNRG	:	Centre for Natural Resources Governance
CSOs	:	Civil Society Organisation
CSOTs	:	Community Share Ownership Trusts
CSR	:	Corporate Social Responsibility
DDF	:	District Development Fund
EITI	:	Extractive Industry Transparency Initiative
EIA	:	Environmental Impact Assessment
EMA	:	Environmental Management Agency
EPO	:	Exclusive Prospecting Orders
FPIC	:	Free Prior and Informed Consent
GDP	:	Gross Domestic Product
GNU	:	Government of National Unity
GRI	:	Global Reporting Initiative
HRIA	:	Human Rights Impact Assessment
ILO	:	International Labour Organisation
ICC	:	International Call Network
JSE	:	Johannesburg Stock Exchange
JVP	:	Joint Venture Partnerships
LCD	:	Local Content Development
LSE	:	London Stock Exchange
MAB	:	Mines Affairs Board
MMA	:	Mines and Minerals Act
MMAB	:	Mines and Minerals Amendment Bill
MMCZ	:	Mineral Marketing Corporation
MoMMD	:	Ministry of Mines and Mining Development
OSISA	:	Open Society Initiative of Southern Africa
PAR	:	Participatory Action Research
PIL	:	Public Interest Litigation
POSA	:	Public Order and Security Act
PWYP	:	Publish What You Pay
TIZ	:	Transparency International Zimbabwe
TSE	:	Toronto Stock Exchange
ZANU-PF	:	Zimbabwe African National Union Patriotic Front
ZCDC	:	Zimbabwe Consolidated Diamond Company
ZELA	:	Zimbabwe Environmental Law Association
ZIMCODD	:	Zimbabwe Coalition on Debt and Development
ZMDC	:	Zimbabwe Mining Development Corporation
ZIMRA	:	Zimbabwe Mining Revenue Authority
ZMRTI	:	Zimbabwe Mining Revenue Transparency Initiative
ZPP	:	Zimbabwe Peace Project
ZRP	:	Zimbabwe Republic Police
ZSE	:	Zimbabwe Stock Exchange

Introduction

This compendium presents abridged versions of research papers that have been done by some Publish What You Pay Zimbabwe coalition members in their effort towards contributing to a more transparent and accountable mining sector.

The compendium opens with a paper from the **Transparency International Zimbabwe (TI-Z)**, which argues that rampant corruption in the mining sector threatens to erode the potential the sector has to contribute to economic recovery and drive socio-economic development in Zimbabwe. The focus of the study was on corruption in the extractive sector in Zimbabwe with special attention on gold, diamond and platinum mining in Kwekwe, Gwanda, Mhondoro-Ngezi and Chiadzwa areas. This paper presents findings from the study with specific focus on the power dimension to mineral related corruption in gold and diamond mining in Zimbabwe.

The **Zimbabwe Coalition on Debt and Development (ZIMCODD)** did an analysis of the Auditor General's reports from 2013 to 2015. The analysis was meant to assess progress in the implementation of the Auditor General's recommendations; draw out irregularities raised by the Auditor General's 2013 to 2015 financial reports; show revenue leakages from ineffective governance; pointing out facilitating factors to leakages and how it hinders fulfilment of socio-economic rights, entrench injustices and debt burden.

The Institute for Sustainability Africa (Insaf) presents findings of the research which sought to evaluate the extent of compliance with stock exchange requirements on sustainability reporting (Environmental, Social and Governance (ESG) reporting) by public listed mining companies operating in Zimbabwe. The research established a basis for engaging with mining companies on strengthening modalities for transparency and accountability while creating platforms for sustained dialogue on common approaches and practices which enable mining stakeholders to appreciate the extent of mining sector contribution to sustainable development and poverty alleviation in Zimbabwe.

One of the key developments in 2016 within the natural resources governance in Zimbabwe has been the presentation of a Mines and Minerals Amendment Bill in Parliament. The efforts at amending the Mines and Minerals Act (MMA), which is the primary legislation that regulates the exploitation and management of mineral resources in Zimbabwe are welcome, and indeed, overdue. However various concerns remains as to whether an amendment will be panacea to the ills bedeviling the mining sector in Zimbabwe. The **Zimbabwe Environmental Law Association (ZELA)** explores the opportunities and pitfalls of this amendment.

The compidium closes with an argument over the search for alternatives to mining by the **Centre for Natural Resources Governance (CNRG)**. In this paper, CNRG argues that the search for alternatives to mining should not be taken for granted because, mining has failed to usher sustainable development to the country and the communities at large. The evidence presented in this paper shows how communities where mines exist are the poorest in Zimbabwe.

Power Dimensions in Mineral Related Corruption

Preliminary findings from a study conducted by Transparency International Zimbabwe (TI-Z) on the state of corruption in Mining Sector- The case of Gold, Diamond and Platinum in Kwekwe, Gwanda, Marange and Mhondoro - Ngezi

Introduction

Rampant corruption in the mining sector threatens to erode the potential the sector has in contributing to economic recovery and drive socio-economic development in Zimbabwe. Endemic corruption that has permeated the mining sector brings to fore the resource curse phenomenon¹. The resource curse phenomenon magnifies the negative correlation between natural resource abundance and socio-economic growth².

Broadly conceptualized, the resource curse theory maintains that export-driven natural resource sectors minerals, precious metals and gemstones generate substantial revenues both for the state and foreign owned multinational businesses, yet these do not translate into broad based economic development benefiting all sectors of the population and especially the poor³.

Evidence of the resource curse is widespread environmental degradation, pollution of water systems, loss of livelihoods, forced evictions and relocations, drug shortages at rural hospitals and clinics, dilapidated school infrastructure, collapsed bridges and poor road networks in areas where mining is taking place.⁴ Thus instead of being a blessing, Zimbabwe's mineral resources are increasingly turning out to be a resource curse.

This paper thus presents preliminary findings of a recent study carried out by Transparency International Zimbabwe on the state of corruption in the mining sector. The focus of the study was on corruption in the extractive sector in Zimbabwe with special attention on gold, diamond and platinum mining in Kwekwe, Gwanda, Mhondoro-Ngezi and Chiadzwa areas. This paper presents the findings from this study with specific focus on the power dimension to mineral related corruption in gold and diamond mining in Zimbabwe. The power dimension to mineral related corruption brings to fore corruption involving those entrusted with power and authority in Zimbabwe, the politicians, military leadership, bureaucrats and influential business people.

Research Findings

Politicians and political corruption

The study established that politicians, notably senior government ministers were implicated in most corrupt activities concerning the extraction, sale and exportation of gold and diamonds in Zimbabwe. Government ministers command power and often abuse that power to engage in political corruption. It emerged that the politicians particularly government ministers use their influence to derive personal gain from gold and diamond mining through forming syndicates with illegal panners and agents (runners) who act on their behalf. To escape attention and public scrutiny the politicians use agents or runners who act on their behalf in the mining and trade of gold and diamonds. The runners are responsible for mining and even the illegal buying and selling of gold and diamonds on behalf of the politicians. Runners of politicians enjoy immense

¹Evans, B, R (2000) *The Cost of Corruption A discussion paper on Corruption, Development and the Poor*

²Kronenberg, T (2004) *The Curse of Natural Resources in the Transition Economies* Oxford Blackwell Publishing,

³Hawkins, T et al (2009) *The Mining Sector in Zimbabwe and its Potential Contribution to Recovery* United Nations Development Programme Comprehensive Economic Recovery in Zimbabwe Working Paper Series p 13

⁴Mtisi, Shamiso, et al (2012) *Extractive Industries Policy and Legal Handbook Analysis of the Key Issues In Zimbabwe's Mining Sector: The Case Study of the Plight of Marange and Mutoko Mining Communities*, Harare, Zimbabwe Environmental Law Association (ZELA)

protection from the law such that the police do not usually investigate their illegal activities. Where they are investigated the cases usually go cold as the police cease investigations with no plausible reason or they fail to secure a conviction ostensibly on the grounds that there was no sufficient evidence.

The study also established that the police do not raid certain areas where there is illegal gold or diamond mining; because influential politicians protect them. One such protected area is in Kwekwe, known as Sherwood, popularly known by the locals as Kuhasha. In this area senior politicians have formed syndicates with police officers and the illegal gold panners to engage in an organized and complex chain of hidden corruption. The gold that is mined at Sherwood is not sold directly to the Reserve of Zimbabwe as required by the law but finds its way out of the country through murky transactions.

The Sherwood gold belt is not raided often giving credence to the widely held claim that the area is protected by senior politicians who directly benefit from the illegal gold mining activities taking place there. Whenever there are impending raids the illegal gold miners seem to be well informed of the raids, their timing and how they will be carried out. This clearly shows that the politicians in cohort with the police as well as the illegal miners are working to deprive the country of gold and attendant revenues, which should contribute to the national fiscus. From the in-depth interviews high-ranking officials from the Zimbabwe African National Union-Patriotic Front (ZANU-PF) were identified by the respondents interviewed as the main politicians who were corruptly promoting and protecting illegal mining and trade of gold as well as diamonds in Zimbabwe.

In the mining of diamonds, particularly in the Marange diamond fields, the politicians are believed to be influencing the awarding of diamond mining contracts. Currently there is no transparent and accountable process in which concessions to mine diamonds in Zimbabwe are awarded. Basing on evidence prevailing on the ground, the study found out that all the companies that have been given mining rights to mine diamonds in Zimbabwe are those with close links to senior politicians in government and the military. The Chinese company Anjin is a beneficiary of having close links with senior politicians in government and the military as the instrumental means through which it gained access to the Marange diamonds. There is strong reason to believe that the senior politicians and the top brass in the military are getting kickbacks for granting diamond-mining licenses to companies of questionable repute through opaque processes that are not open to public scrutiny.

The failure by companies mining diamonds to remit their contributions through the normal channel, which is directly connected to the Ministry of Finance, further creates a veil of secrecy already shrouding diamond mining in Zimbabwe. At the same time the unexplained accumulation of wealth by senior government ministers and the top military brass with close links to diamond mining in Marange is a clear indication of abuse of position, authority and influence for self-enrichment at the expense of the majority who have to make with poorly equipped hospitals, clinics and schools.

Bureaucrats and bureaucratic corruption

The study revealed that other than political corruption, there is also widespread bureaucratic corruption in gold mining stemming from the concentration of wide discretionary powers in the hands of bureaucrats and the opportunities that government structures create for corruption. The main bureaucrats involved in bureaucratic corruption in gold mining are the officials in the Ministry of Mines and Mining Development and members of the police force. It emerged that officials in the Ministry of Mines and Mining Development (MoMMD) are in the habit of overtly demanding bribes or kickbacks from members of the public who wish to venture into mining in return for gold mining licenses and mining claims in areas that are deemed lucrative in terms of gold mining.

The Ministry of Mines officials have made it extremely difficult and almost impossible for people who want to venture into mining without paying some form of a bribe. It has become common occurrence that those who fail to pay bribes to the Ministry of Mines officials find themselves being supplanted under flimsy reasons either for encroaching into an existing claim or having being allocated the wrong claim. Those who are able to pay hefty bribes to the Ministry of Mines officials are able to gain access to lucrative gold claims.

The Police and bureaucratic corruption

Evidence from the study clearly point out that the police are involved in corrupt activities in gold mining mainly. There is strong evidence to suggest that the police are acting corruptly by receiving bribes. In Gwanda and Kwekwe it emerged that the police were receiving bribes from people illegally involved in gold mining. As a result of this, it was noted that senior police officers were living lavish lifestyles. Some of those who were allegedly fingered to be engaging in corrupt activities are amassing wealth at a rate that defies their salary scales. The police officers have become an emergent business class owning taxis, shops and commuter omnibuses. It is most likely that they are getting all this money to start businesses through bribes from those with the financial muscle and politicians to forcefully remove people with legally acquired claims by applying the law in a selective and biased manner. The study established that those with money are approaching the police and offering irresistible amounts of cash to secure gold claims that have been allocated to certain individuals who cannot match the bribe money offered by their rivals. The police upon receiving the bribes embark on eviction operations that lead to the dispossession of gold mine claims from those who had legal rights. Overnight those with legal claims find themselves destitute of the right to legally mine gold and the bribe payers became the new claim owners. The threats from the police combined with high legal costs and the bureaucratic processes involved to regain the lost claim discourages most people who had been dispossessed of their claims to seek legal recourse. In fact the police are regarded as law unto themselves whatever they proclaim is law.

It also emerged from the study that the police are also receiving bribes from the illegal gold miners who want to pan or are already panning for gold in restricted areas without mining certificates. Mining laws in Zimbabwe require mining activities to be lawful and this is done through the acquisition of mining licenses. It is also critical to note that mining licenses are only granted if the miners satisfy laid down criteria that are also compliant with environmental regulations stipulated by the Environmental Management Agency (EMA). In Gwanda and Kwekwe the study established that the majority of the gold miners were mining gold illegally as they did not possess the requisite mining licenses and environmental certification. To circumvent this legal requirement the illegal miners simply paid bribes to the police to facilitate their illegal mining operations. More so the police are also receiving bribes from the unlicensed miners who intend to sell their gold. Mining laws in Zimbabwe are clear that only licensed dealers can sell or buy gold. By allowing unlicensed dealers to sell or buy gold on condition that they would have paid the police a bribe, distorts information of how much gold has been extracted and the revenues it generates. The bulk of the gold that is traded illegally does not find its way to the Reserve Bank but is usually shipped out of the country thereby depriving the country of the much-needed revenue.

The Rich

The politicians and the bureaucrats do not only perpetrate corruption in the gold and diamond sector. The rich, particularly the local business and international business people as well as cartels are also heavily involved in mineral related corruption in Zimbabwe. Chinese, Korean, Israeli and Russian fortune seekers are some of the many foreign nationals that have invaded the Zimbabwean mineral Eldorado. The study established that wealth business people both locally and internationally had and exercised financial power to corruptly muscle their way into gold and diamond mining. Because of the financial power they possess international business people have the capacity to get lucrative mining contracts by bribing the politicians

and bureaucrats. In fact the study established that foreign treasure seekers are prepared to pay large amounts in bribe form to acquire mining rights of Zimbabwe's precious minerals. The study established that this supply side of corruption goes beyond bureaucratic corruption, which is petty corruption to political corruption that is classified as grand corruption. Grand corruption involves the exchange of mega bucks in return for high value mining concessions. This form of corruption involves the big guns, those in power and the rich business people or cartels⁵.

An Ambiguous Mining Policy Framework

The power elites in Zimbabwe have used ambiguity to camouflage their corrupt activities in the mining sector. In the context of this study policy framework denotes scheme of courses of action that guide conduct. Usually the mining policy framework is explicitly stated in the country's national budgets, Mid Term Plans and at times in the speeches made by the President and government ministers. The power elites are the ones who make policy pronouncements. Policy pronouncements are difficult to make in a polarized political environment as currently experienced in Zimbabwe. Under the GNU, Zimbabwe has witnessed a strained policy environment characterized by conflicting policy statements, which have created confusion in the country's mining policy framework. A confused policy environment sends ambiguous policy signals that are seized upon by the power elites to engage in corrupt activities.

Invariably, mining policies in Zimbabwe recognize that minerals must be profitably exploited for socio-economic development. For the policy goal to be realized in the mining of gold, diamonds and platinum there has to be transparency, accountability and probity in how mining deals are negotiated and transacted as well as a record of revenues generated by the minerals. However, policy practice prevailing in Zimbabwe is an anti-thesis to the principles of transparency, accountability, probity and fairness.

The power elites are negotiating mining deals in gold, diamonds and platinum under a veil of secrecy. What is generated from these deals is not known to the general public serve for doctored financial statements, which clearly show that the country's mineral wealth is being underpriced to conceal corrupt dealings involving the power elites. The four mining companies that have been awarded diamond-mining rights in Chiadzwa, Mining Corporation, Anjin Investments, Marange Resources and Mbada Diamonds in Chiadzwa are still to make their shareholding structure known to the public. The fact that they can maintain silence on their shareholder structure for a considerable period of time shows that they are enjoying the support of the power elites who are keen to keep their levels of benefit from diamond mining away from public scrutiny.

Gaps in the legal framework that promote mineral related corruption

The legislative framework governing mining in Zimbabwe is not watertight and has created opportunities for corruption involving the power elite. Power elites are quick to exploit any gaps in the legal system for self-enrichment. A raft of legislative instruments regulates mining in Zimbabwe. The study had a particular interest in the Mines and Minerals Act (Chapter 21:05), Gold Trade Act (Chapter 21:03), Precious Stones Trade Act (Chapter 21:06). The Diamond Act is yet to be enacted. These pieces of legislation are the principal laws governing the mining sector in Zimbabwe, as they specify clear provisions for the acquisition, maintenance and relinquishing of mining title and how precious minerals such as gold, platinum and diamonds should be traded. Particular emphasis in this study was on the Mines and Minerals Act (Chapter 21:05), which is the principal governing law mining in Zimbabwe.

⁵ http://www.zimdiaspora.com/index.php?option=com_content&view=article&id=10279:mugabe-to-fire-corrupt-ministers&catid=38:travel-tips&Itemid=18

Mines and Minerals Act (Chapter 21:05)

The Mines and Minerals Act (Chapter 21:05) is the main piece of legislation governing mining in Zimbabwe and is administered by the Minister of Mines and Mining Development through the Ministry of Mines and Mining Development. This law besides providing for security of tenure stipulates provisions for acquisition, maintenance and relinquishing of mining title. The law has been in force since 1962 and has been amended several times to reflect the prevailing socio- economic realities. The fact that the law has survived colonial times and continues to be relevant in the post-independence era is probably its major weakness. On this basis, the Act is deemed to be old and perpetuates the colonial legacy. In all intent and purpose the colonial era was characterized by despotism, racial bias and the enactment of laws that unfairly empowered those in power. This legacy seems to have been carried over into the post-independence Zimbabwe and this has created an environment that promotes corruption involving the power elites. Close scrutiny of the Act reveals that it has sections that are out of sync with democratic and good governance tenets. These anachronistic sections have created unnecessary room for rent seeking behavior.

Section (2) Part I of the Act vests the rights to minerals in Zimbabwe in the President instead of the State. This provision of the Act gives the President unfettered control over all the mineral resources in the country. This is perceived to be one of the reasons why the mining sector is riddled with corruption. Thus the granting of special mineral rights without following due procedure to foreigners such as the Chinese to mine diamonds in Chiadzwa's diamond fields is a typical example of how the Act gives an individual boundless powers to singly allocate the country's mineral resources. The Act also gives wide discretionary powers to the Minister of Mines and Mining Development and his Ministry officials. In a way the Act gives the Minister of Mines powers to act unilaterally with little regard for the principles of accountability, transparency and professionalism that should guide his conduct as a government minister serving the people.

Part II of the Act gives the Minister the powers to appoint the Mining Affairs Board whose function inter alia covers the issuance of mining licenses. The Minister appoints the chairperson of the Board and the bulk of its members. This opens room for patronage politics as the people appointed to the Board, in more often cases than not, pay allegiance to the Minister. Objectivity in the granting of mining licenses is eroded as the whole Board cannot oppose the Minister even in cases where there is evidence of outright corruption in the awarding of licenses.

The Act gives the Mining Commissioner discretionary powers in the awarding of mining claims. A mining claim is simply a permit to mine. Ordinary claims are up to 25ha and special claims are between 26 and 150ha. The claim confers on the holder the exclusive right to mine the mineral resource for which the claim was registered and of prospecting for other minerals on the claim. According to the Act the claim must be inspected annually and fees paid annually as well. This has opened an avenue for corruption involving the Mining Commissioner and officials in the Ministry of Mines. What is obtaining on the ground is that miners are not following the provisions of the Act. Claims are not inspected annually as prescribed by the law. Those with backlogs in fee payments are bribing officials in the Ministry of Mines who are mysteriously making current their claim rights. In Kwekwe there was a case in which claims were made current when it was evident that the claim holder was not making any payments for six years. The Act is clear, if a miner fails to pay the annual fees for three consecutive years that claim is repossessed.

Further the Mining Commissioner is using his powers to revoke some claims and awarding them to certain individuals under unclear circumstances. This has seen a number of miners being unfairly dispossessed of their claims. For those dispossessed of their mining claims it is difficult to repossess the claim.

The Act (Section 89(3)) limits the rights of an applicant to appeal to the Administrative Court against the decision by the authorities to revoke their claim. With full knowledge of this provision of the Act, officials

in the Ministry of Mines have accepted bribes to illegally dispossess legal holders of claims. As of 2012, Transparency International Zimbabwe's Advocacy and Legal Advice Centre (ALAC) received 4 cases of different individuals from Kwekwe and Chegutu who have lost their gold claims to government officials and business people in corrupt ways involving both the police and officials from the Ministry of Mines and Mining Development.

Loopholes in the institutional framework that encourage mineral related corruption

The existing institutional framework in Zimbabwe's mining sector promotes corruption involving the power elites who are aware of its inherent weaknesses. By manipulating these weaknesses the power elites are abusing the institutions that are supposed to be responsible for the administration of mining for personal benefit. The institutional framework that administers mining in Zimbabwe spans from the Ministry of Mines and Mining Development to its specialized parastatals such as the Zimbabwe Mining Development Corporation (ZMDC) and the Minerals Marketing Corporation of Zimbabwe (MMCZ). The socio-political environment in which they operate significantly shapes institutions as administrative structures through which government policies and legislations are enforced. If the socio-political environment is one that promotes and sustains corruption it is likely that the institutions will reflect this environmental influence.

The Minister of Mines and Mining Development on the basis of the wide discretionary powers he wields has usurped the powers and functions of Ministries such as Finance. In fact the Minister of Mines has maintained a stranglehold on the mining of diamonds in Zimbabwe. Vesting excessive powers in an individual politician is a recipe for corruption and rent seeking tendencies. For example the Minister of Mines covertly controls the proceeds from the sale of diamonds mined at Chiadzwa, a function that is supposed to be that of the Ministry of Finance and Zimbabwe Revenue Authority. The incessant war of words between the Minister of Finance and the Minister of Mines concerning revenues from Chiadzwa's diamonds is a clear manifestation of a turf battle going on and alerting the nation to abuse of national resources with little or no accountability and transparency.

The ZMDC is one such institution that was created by the government to oversee mining in Zimbabwe. ZMDC's key responsibilities are to invest in the mining industry of Zimbabwe on behalf of the state, planning, coordinating and implementing mining development projects on behalf of the state, advise the minister on all matters concerned with corporate investments in the mining industry, reviewing annually the economic conditions and prospects of the mining industry. However, the situation obtaining on the ground is that the ZMDC lacks the institutional capacity to effectively carry out its mandate. For example due to ministerial intervention ZMDC has lost control of its function to monitor and control the joint venture initiatives that the Government of Zimbabwe is going into in the diamond fields of Chiadzwa.

The MMCZ is part of the institutional structure responsible for mining in Zimbabwe. Its broad mandate include the marketing and selling agent for all minerals, investigating marketing conditions for all minerals, purchasing and acquiring any minerals for its own use account and to sell and dispose them, advising the minister on all matters relating to marketing of minerals, encouraging local beneficiation and utilization of minerals. The role of the MMCZ has been supplanted by the Minister of Mines. Evidence on the ground clearly point out that the Minister is using his powers to grant marketing rights to mining companies relegating the MMCZ to a bystander.

The Zimbabwe Republic Police Minerals Unit is the arm of the ZRP that is responsible for enforcing Zimbabwe's mineral laws. Its main function is to ensure that there is full compliance with the country's mineral laws. The study established that due to manpower shortages in the force the enforcement of mineral laws is now done by the generality of all the members of ZRP. This has given rise to bureaucratic corruption, as the ZRP officers are demanding bribes from the illegal miners such as the gold panners. In

Gwanda and Kwekwe the study noted that the ZRP officers even colluded with the illegal miners to facilitate the deals in gold which is unlawful and proscribed by the law. The Precious Minerals Act and the Gold Act clearly stipulate that only licensed people can deal in gold, diamond and platinum. The fact that Zimbabwe's gold and diamonds are leaving the country through unorthodox means despite heavy police presence is sufficient evidence that there is corruption involved and the beneficiaries are the power elites who can facilitate the presumed lax in security to enable minerals to pass through the supposed water tight net.

Recommendations

To deal with corruption involving the power elites the study recommends the following measures:

1. Zimbabwe's political environment needs urgent pacification so that the current politics of polarization that have created room for rent seeking behaviour, corruption, lack of probity, transparency and accountability can be done away with. This can be done if all political parties and the general populace accept a democratic order where those in power can be held to account for their actions. Such a democratic order is only possible through a constitution which demands accountability, transparency and honesty by those who occupy positions of power and authority in government and society at large.
2. Creating a democratic political order has to be done concurrently with the building of independent and efficient watchdog institutions such as an effective Anti-Corruption Commission with powers to prosecute those public officials found guilty of corruption in the mining sector. Civil society watchdog organisations can take a lead in ensuring that there are surveys and timely reporting on corruption issues so that the general populace is always informed on whom among the power elites are engaging in corruption. Watch dogs also include a vibrant and independent media, which are free to report power elites who engage in, corrupt activities in the mining sector.
3. An effective fight against corruption demands political will to back up intentions to mitigate corruption. The presidency should show serious resolve to do away with corruption in the mining sector by backing up prosecuting agencies such as the police when it comes to bringing to book politicians and bureaucrats found to be involved in corrupt deals in the mining sector.
4. Laws such as AIPPA and POSA which criminalise reporting on the power elites need to be repealed so that the media can report corrupt officials who engage in corrupt deals in the mining sector. Currently AIPPA and POSA are being used by the power elites to shield themselves from media scrutiny in instances where they will be participating in corrupt mineral deals.
5. There is urgent need to enact the Diamond Act that will regulate the extraction and trade in diamonds. The absence of a diamond Act has promoted a free for all scenario in diamond trade where the power elites have literally acted in a *laissez faire* fashion to enrich themselves from diamond mining.
6. All the government officials (politicians and bureaucrats) should be made to compulsorily declare their wealth upon taking office. This can help to curb political corruption as public officials will be made to account for how they would have accumulated wealth if they suddenly become very rich or show signs of unexplained affluence. Such a measure can be buttressed by a name and shame policy where those public officials who acquire wealth through the abuse of office are named and shamed in public without fear or favour. Knowledge that they will be publicly named and shamed can deter public officials from engaging in corrupt deals in the mining sector.
7. The Zimbabwe government should come up with stiffer penalties that make it unattractive to engage in mineral related corruption. Jail terms for mineral related corruption should be custodial sentences that entail more than ten years of incarceration. This should be sufficient enough to deter anyone including the power elites from mineral related corruption.
8. There is need to create a lean but efficient government which is not oversized and within the limits of what current economic performance can sustain. The current Zimbabwe government is too bloated and this has in a way created power elites who want to become rich quickly whilst in power.

Thus a lean but efficient government has to be accompanied by privatization policies that allow the participation of private players in the mining sector who play by the rules of accountability and transparency.

9. There is no doubt that the mining laws in Zimbabwe need to be overhauled. The Mines and Minerals Act needs to be revised completely so that it reflects that Zimbabwe is now an independent state where the laws are not designed to serve the class or individual interest of a certain group of people.
10. There is need to broaden the players involved in the granting of mining rights and mining deals. Parliament as the representative body of the people and cabinet as the highest decision making body should work jointly to all the mining deals entered into by the Minister of Mines and the President. Through parliamentary scrutiny, all the mining deals are examined to ensure that there is transparency, accountability and probity on the part of the public officials involved. This will remove the veil of secrecy currently synonymous with mining deals in Zimbabwe.
11. Zimbabwe should come up with a strong regulatory framework that ensures that the revenues generated from the sale of gold, diamonds and platinum are declared to the general public on a regular basis. Strengthening ZIMRA and the Ministry of Finance so that these institutions are able to assess whether there is correlation between volume of minerals sold and the revenues paid into the national fiscus can offer the solution.

Conclusion

There is no denying that the power elites in Zimbabwe are an obstacle to socio-economic development by engaging in mineral related corruption. Their abuse of power in the mining sector has prejudiced the country of revenues that are supposed to ensure that schools, hospitals and clinics and roads are maintained in a functioning state for the benefit of the poor.

The only way the excessive powers of the elite can be curtailed is through a democratic political order that has strong checks and balances that make it difficult for the power elites to enrich themselves from the country's mineral resources.

Analysis of the Auditor General's Reports From 2013 – 2015

Zimbabwe Coalition on Debt and Development

Introduction

The policy framework of public funds and public property administration is defined through Constitution Amendment 20, the Audit Office Act (Chapter 22:18), the Public Finance Management Act (Chapter 22:19) and Treasury Instructions. Section 309 of Constitution Amendment 20 sets out the functions of the Auditor-General and Section 308 defines duties of custodians of public funds and property. It is the duty of the Auditor General to audit all institutions, government agencies and when requested by government he or she carries out special audits of the accounts of any statutory body or government controlled entity.

There was some traction on the implementation of the Auditor General' recommendations especially in the Ministry of Finance and Economic Development. Prior to the current audit reports, the Ministry of Finance and Economic Development had issues of misappropriation of funds, gaps on Treasury Instructions, and absence of contracts for security and cleaning services noted in the previous reports. The current reports by the Auditor General show some 'efforts' by the Ministry of Finance and Economic Development to address these anomalies. All other Ministries have, although lowly, addressed a few of the Auditor General's recommendations with the exception of the Ministry of Mines and Mining Development. Issues of lack of budgetary system, unsupported expenditure and use of cash to make payments instead of using bank transfers continue to haunt the Ministry of Mines and Mining Development. The absence of Audit Committees remains outstanding in many Line Ministries and several Funds falling under line Ministries.

The 2013 – 2015 period, just like the previous period, continued to be dogged by a crisis of governance in the administration of public funds. Effective governance requirements are not yet fulfilled. Poor maintenance of accounting records, weak internal controls, unsupported expenditure, poorly constituted Boards of Directors, tax evasions and avoidance, violations of legal, policy and regulatory framework continue to drive public funds leakages. The absence of effective governance bred misstatement of financial statements, undervaluation, and high salary costs.

The ZIMCODD carried out an analysis based on in-depth interviews with key stakeholders in public finance management and Desk Study of Auditor General's 2013 – 2015 Auditor General's Reports.

Misstating of financial statements from balance of payments between Pay Master General Account and Exchequer Account on one hand and Line Ministries, Local Authorities, State Enterprises and Parastatals on the other hand was analyzed. Tax evasions and cumulative losses were analyzed. Like the previous report, citizenry tax justice demands and socio-economic demands coupled by the debt question in Zimbabwe, informs proposed interventions in this report.

The analysis gives both policy recommendations and action points to address the raised concerns. The results below are a summary, which illustrates the public funds leakage in the two-year period of this analysis.

Analysis Results: Public Funds Leakages from 2013 – 2015 in Zimbabwe

The analysis noted that the amount of money lost during the period translate into approximately one billion United States Dollars. A pointer to the total amount lost is the case of the 2013 Ministry of Finance and Economic Development statements where take-on balance and closing balance had a variance of USD5 000 000; line Ministries balances and Treasury balances had a variance of USD324 670 068; line Ministries' Appropriation Account expenditures and Treasury total expenditure had a variance of USD31 687 074; undocumented loan write-offs amounting to USD5 025 000 as well as non-recovered debt repayment for a private company amounting to USD11 833 443. The absence of the figures impacted negatively on graphical presentation of total licit capital flights and the cumulative licit capital flight expressed as a percentage of the total licit capital flight.

The following unexplained variances, misstatements, and under-valuation of assets were noted within line Ministries:

MINISTRY/PARASTATAL	AMOUNT Unaccounted in US\$	CONTRIBUTORY FACTORS
1. Office of the President and Cabinet	\$12 805	Violations of the Treasury Instruction 1504 which require that advances be cleared immediately upon return from official travel by the member so advanced. Non-recovery of money for Foreign Travel and Subsistence Allowances.
2. District Development Fund	\$1 544 517	Legal expenses incurred for failure to pay bills. Inflated prices for materials supplied for projects. Violations of State Procurement Board Circular No. 1 of 2012. Violation of Section 8 of Procurement Regulations 2002. Double dipping. Violations of Public Service Circular 1 of 2012. Violations of Section 12(1) of the Public Finance Management Act (Chapter 22:19). Overstating of maintenance of plant and equipment expenditure.
3. Parliament of Zimbabwe	\$15 465	Unexplained variance between amount banked and amount receipted.
4. Public Service, Labour and Social Welfare	\$102 573	Unexplained variance.
5. Ministry of Defence	\$4 879 774	Unconfirmed payment for debts.
6. Ministry of Finance and Economic Development	\$577 082 115	Payments made outside the Public Finance Management System Absence of an Investment Policy. Contingent liabilities amended without necessary documentary evidence. Loans issued without disclosure of the purpose and beneficiaries.
7. Ministry of Industry and Commerce	\$14 994	Violation of Treasury Instruction 1208.
8. Ministry of Agriculture, Mechanization and Irrigation Department.	\$27 015	Misappropriation of funds.
9. Ministry of Local Government, Public Works and National Housing.	\$3 248 587	Violation of Section 81(b) (iii) of the Public Finance Management Act (Chapter 22:19).
10. Ministry of Health and Child Care	\$16 078 095	Violation of Treasury Instruction 0103.
11. Youth Development and Creation Fund	\$1 887 949	Unexplained variance. Violation of Section 81(b) (iii) of the Public Finance Management Act (Chapter 22:19).
12. Ministry of Information, Media and Broadcasting Services	\$32 400	Irrecoverable loans.
13. Strategic Fuel Reserve Fund	\$965 263	Double dipping: Paying transport allowances to 27 staff members who were allocated Ministry official motor vehicles. Undelivered but paid fuel.

Drivers of Leakage of Public Funds

Governance

Mis-governance of public funds in Zimbabwe is expressed through policy gaps, violations of laws and regulations governing the administration of public funds as well as uncoordinated institutional framework. In 2013 the District Development Fund (DDF) engaged suppliers of boreholes and irrigation material without following formal tender procedures. DDF in the same year engaged Tenda Transport Pvt Ltd on US\$520 000 road construction projects without a formal tender. This was in breach of Section 8 of the Procurement Regulations 2002. Contrary to provisions of the Public Service Circular 1 of 2012, DDF in the year 2013 awarded transport allowances for officials with motor vehicles for both official and personal use. In 2014, DDF expenditure on employment stood at 80% with only 20% left to finance operations. This violated Section 3 of the District Development Fund Act (Chapter 29:06). Almost all Ministries had no Audit Committees and this is in violation of Section 84(i) of the Public Finance Management Act (Chapter 22:19). In contravention of Section 81(b)(iii) of the Public Finance Management Act (Chapter 22:19), the Ministry of Local Government, Public Works and National Housing did not avail for audit inspection supporting documents with respect to payments amounting to US\$2 304 541 paid by the Treasury to service providers on the Ministry's behalf. In 2015, the Ministry of Macro-Economic Planning and Investment Promotion violated requirements of Section 30 of the Procurement Act (Chapter 22:14) in procuring office furniture, computers and printers worth US\$85 878.

In 2014 the National Heroes' Dependants Assistance Fund ledgers were maintained on Microsoft Excel spreadsheets as was reported in the Analysis of Auditor General's Reports of previous years. The Fund operated with a Board whose tenure of office expired in 2006. Several Ministries benefited from advances made by Funds which they are supposed to supervise. An example is the Public Service Training Loan Fund advance of US\$38 969 to the Ministry of Public Service, Labour and Social Welfare in 2014. Several Ministries do not have Audit Committees as required by Section 84 of the Public Finance Management Act (Chapter 22:19). As at 31 December 2015, the Ministry of Defense had no such committee. In 2014, the Defense Procurement Fund operated with no budget to guide, control and monitor allocation of resources.

Public Debt figures had variances that were not reconciled. There were also variations on debt repayments between the Treasury and the Debt Management Office.

In 2015 the Ministry of Environment, Water and Climate Appropriation Account reflected a net unauthorized excess expenditure of US\$11 909 412. This was in contravention with Section 299(1) (c) of the Constitution of Zimbabwe read in conjunction with Section 19 (3) of the Public Finance Management Act (Chapter 22:19). These irregularities in the Ministry of Environment, Water and Climate happen whilst provision of water and even public spending on water infrastructure remains a challenge in Zimbabwe. The constitutional provision on the human right to water that is enunciated in Section 77 of Constitution Amendment 20 remains a dream not yet fulfilled for many Zimbabweans.

The Ministry of Finance had no Investment Policy as at 31 December 2015. This creates gaps, which can be manipulated for personal and selfish ends.

In 2013 the National Education and Training Fund disbursed US\$3 354 387 in respect of cadetship grants but the database of all beneficiaries was never provided. This compromises fulfilment of Section 75 of Constitution Amendment 20.

Fiscal Drivers

Fiscal drivers were expressed through unexplained variances, over-invoicing, under-invoicing and tax avoidance.

In 2015 the Ministry of Environment, Water and Climate had an unauthorized excess expenditure of US\$11 909 412. Almost all Ministries had variances between receipts in the Public Finance Management system and the cash reflected in the bank accounts throughout the period under study. In 2014 ZINARA receipts showed a difference of US\$2 201 660 between disbursements figure disclosed in financial statements and the figure as per the submitted ZINARA schedule. Revenue collected by ZINARA for the New Limpopo Bridge Fund in 2014 was understated.

In 2013 the New Vehicle Security Registration Number Plate financial statements were deemed as unfair representation of the financial position of the New Vehicle Security Registration Number Plate Revolving Fund. US\$ 555 572 was paid without supporting invoices.

The Youth Development and Employment Creation Fund declared irrecoverable the loans amounting to US\$ 1 887 949 by 31 December 2014.

In 2015, fifteen officers from the Registrar General Department with free government accommodation were also paid housing allowances amounting to US\$129 per month and this was a pure case of double dipping. The District Development Fund in 2013 inflated the prices charged by vendors for materials supplied for its projects by US\$ 319 921. Corruption in City of Harare BIQ system bred fake bills and receipts which were posted to customer accounts.

Tax avoidance was also another fiscal driver. In local Authorities top management members of Local Authorities were given huge allowances, which were not taxed. This was done to avoid taxation of salaries.

Conclusion

Unexplained variances, over-invoicing, under-invoicing, tax avoidance, policy gaps, violations of laws and regulations governing the administration of public funds as well as uncoordinated institutional framework were the chief drivers of public funds leakage.

A Human Rights Based Approach that aims to enhance capacity of both rights holders and duty bearers; that addresses root causes to the problems and address concerns of the marginalized, offers a viable path to tax justice, debt management and realization of rights.

The analysis suggests the following recommendations:

Recommendations to Government

- Synchronization of public finance management laws and regulations.
- Partnering with CSOs to strengthen the capacity of financial institutions to monitor public finance administration and adherence to policy and law.
- Improve effectiveness and cost efficiency of public spending.
- Implementation of AGs recommendations to avoid repeating the same gaps raised in the previous reports

Recommendations to Civil Society Organizations and Citizens

- Scaling up citizen, literacy, involvement and public awareness on research findings in order to increase accountability.
- Investigative research into public funds leakage beyond the Auditor General's Report.
- Section 62 of the Constitution of Zimbabwe Amendment No. 20 entitle citizens the right of access to information held by the State or by any institution or agency of government in so far as information is required to realize public accountability interests. Citizens should demand the right of access to public finance management information.



Sustainability Reporting Compliance by Public Listed Mining Companies in Zimbabwe: An Evaluation Against Stock Exchange Requirements.

Institute for Sustainability Africa (Insaf)

Introduction

Over the decades, sustainability reporting made its way into stock exchange listing requirements as an obligation in global and emerging capital markets particularly those whose economies are anchored on mining and extractive sectors. While less than 100 firms reported on sustainability information twenty years ago, by 2013, more than 6,000 companies around the world were issuing sustainability reports (Ioannou and Serafeim, 2014). This has been a result of Governments and stock exchange responses the world over that have promoted sustainability reporting by adopting regulations or listing requirements that often mandate this form of disclosure on environmental, social and governance (ESG) which is also known as sustainability reporting. The term 'sustainability reporting' is interchangeably referred in this research with 'ESG reporting' to allow continued clarity. However, this article is a summary version of a research conducted by the Institute for Sustainability Africa with the support of Oxfam in Zimbabwe.

In 2015, Zimbabwe adopted the inclusion of sustainability reporting in the listing rules later than many developed countries capital markets. During this adoption, a chapter on Sustainability Information and Disclosure was adopted to compel sustainability reporting by companies listed on the Zimbabwe Stock Exchange. However, by the time Zimbabwe adopted the listing requirement on sustainability reporting, a number of developed countries had already adopted and implemented the requirement for disclosure of economic, environmental and social impacts based on international standards such as Global Reporting Initiatives (GRI)'s Sustainability Reporting Guidelines which are considered a global de facto in sustainability reporting in many jurisdictions that house some of the multinational mining companies operating in Zimbabwe. The standards also provide sector specific reporting requirements in sectors like mining, oil and gas and others, and similar guidelines have been adopted in Zimbabwe. Critical to these guidelines is need for companies to conduct stakeholder engagement with the view to promote inclusivity, materiality and responsiveness (AA1000, 2015).

While a number of companies have taken voluntary steps to adopt and start sustainability reporting in Zimbabwe using international standards, it remains critical to understand the extent to which mining companies are reporting on their sustainability impacts in compliance with stock exchange listing rules either locally or internationally. Reporting is a critical component for transparency and accountability on the extent to which mining companies are contributing to sustainable development and poverty alleviation in communities they operate in Zimbabwe. It is crucial to acknowledge that transparent and accountability in sectors such as mining has been imperative that this research is seeking to address by establishing the extent to which mining companies operating in Zimbabwe have been complying with stock exchange listing rules on sustainability reporting.

From this context, the rest of this article presents findings of the research which sought to evaluate the extent of compliance with stock exchange requirements on sustainability reporting (Environmental, Social and Governance (ESG) reporting) by public listed mining companies operating in Zimbabwe. The research was meant to establish a basis for engaging with mining companies on strengthening modalities for transparency and accountability while creating platforms for sustained dialogue on common approaches and practices which enable mining stakeholders to appreciate the extent of mining sector contribution to sustainable development and poverty alleviation in Zimbabwe.

The research was conducted using a content analysis technique employed in the review of published annual reports of listed mining companies to assess compliance with stock exchange requirements. The research adopted a cross sectional strategy using 2014 company annual reports. A sample of 10 companies (Zimplats, Unki, Mimosasa, Murowa Diamond, Metallon Gold, Caledonia, Hwange, RioZim, Falcon and

Bindura Nickel) listed in five stock exchanges (ZSE, ASX, JSE, LSE and TSE) were used. The companies were evaluated against five stock exchanges sustainability reporting requirements which were mapped to formulate a compliance criteria and framework.

Key Findings

The research findings showed that sustainability reporting compliance was largely by foreign listed mining companies as compared to locally listed mining companies. These findings were attributed to foreign stock exchanges having clear sustainability reporting requirements supported by legislative requirements annexed to stock exchange requirements. The research noted that ZSE did not provide specific guidelines on sustainability reporting in its current listing rules as of 2015 to compel locally listed mining companies. An analysis of company reports showed that no disclosure on stakeholder engagement to indicate that it was not a common practice by locally listed companies and requires regulatory attention in Zimbabwe.

A comparative analysis on environmental, social and governance disclosures between local and foreign listed companies showed that foreign listed companies were disclosing more information supported by quantitative data measurements unlike local listed mining companies. The research findings showed that locally listed mining companies were only providing qualitative statements in many cases without providing any statistical performance data. As such, questions could be raised on legitimacy of the extent of transparency and accountability by locally listed mining companies.

Corporate governance disclosures were found to be weak within locally listed mining companies due to lack of strong drivers on corporate governance practices in Zimbabwe. Over the past years, Zimbabwe did not have its own corporate governance code as compared to foreign stock exchanges. Zimbabwe launched its own National Code Corporate Governance in Zimbabwe (ZIMCODE) in 2015 and is still finding its way into implementation. Prior to 2015, companies had to rely on foreign corporate governance codes such as King III Code of South Africa on a voluntary basis. While ZSE Listing requirements cite international codes such as Cadbury and King Report, the rules were found to be less stringent to compel mining companies.

Conclusion

The research concludes that sustainability reporting compliance was largely by foreign mining listed companies as compared to locally listed mining companies due to a number of factors. Foreign listed mining companies were disclosing more information on environmental, social and governance impacts as compared to local listed mining companies because the findings showed that foreign stock exchange requirements on sustainability reporting were very strict and linked to national laws. The research noted regulatory gaps between local and foreign stock exchanges. This position provides a strong basis to conclude that foreign listed mining companies have a strong obligation to comply with stock exchange requirements in their primary listing than in Zimbabwe. Observations from the mapping of stock exchanges showed that countries with strong mining sector economy like Australia and Canada had mandatory requirements and legal instruments on sustainability reporting to compel compliance.

The findings identified variations on the quality of sustainability reports information between local and foreign listed mining companies. Majority of locally listed mining companies reports were considered poor as they concentrated on making qualitative statements which were not supported by figures or quantitative performance data measurements unlike foreign listed companies. Further, lack of a national framework on sustainability reporting was identified to be an imperative forcing foreign listed mining companies to rely on their primary foreign stock exchange listing requirements. Consequently, locally listed mining companies could only report on basic information. The research provide a strong business case for sustainability

reporting regulation in Zimbabwe through strengthening the ZSE's Listing Requirements, Companies Act (24:03) and the Mines and Minerals Act (21:05) which are currently going through revision. Finally, the research provide recommendations to the mining sector stakeholder value chain so as to create sustainable dialogue towards improving regulatory frameworks on sustainability reporting in Zimbabwe.

Recommendations

The research recommend that:

Parliament and Government (Ministry of Mines)

- Ensure sustainability reporting is included in the Companies Act (24:03) and Mines and Mineral Act (21:05) as mandatory requirement for all mining companies so as to compliment stock exchange requirements.
- Encourage the Chamber of Mines to ensure that sustainability reporting becomes a membership value or practice requirement.
- Drive a regulatory and mandatory requirement on stakeholder engagement by mining companies
- The Ministry should work in tandem with regulatory bodies such as EMA to ensure that companies make ongoing environmental impacts data publicly available through sustainability reports.
- Setting up of a clear grievance mechanism for ongoing sustainability impacts performance.

Stock Exchange-Zimbabwe Stock Exchange

- Speed up the implementation of new sustainability reporting requirements which are comparable to foreign stock exchanges.
- Develop a monitoring mechanism for mining companies to ensure sustainability reporting is prioritised in annual reporting and filing.
- Ensure sustainability reporting is supported by quantitative data not just qualitative statements alone.
- Develop a system for stakeholders to communicate or raise concerns on any particular published sustainability reports by mining companies to the stock exchange.
- Consider embarking on a learning process from experiences of others countries.

Mining Business Association-Chamber of Mines in Zimbabwe

- Encourage members adopt and implement sustainability reporting in line with international trends.
- Adopt value system for member mining companies on sustainability reporting;
- Develop or incorporate sustainability reporting into member training calendars annual events.
- Incorporate sustainability reporting with membership conditions of mining companies.

Locally Listed Mining companies in Zimbabwe

- Proactive implementation of sustainability reporting using international standards.
- Benchmark practices with other foreign listed mining companies operating in Zimbabwe.
- Disseminate or communicate sustainability reporting information according to information needs of various stakeholders.
- Provide sustainability information in a language that is understood by communities and other stakeholders.

Civil Society

- Support communities to be active in demanding sustainability reporting information from mining companies;
- Encourage communities to participate during stakeholder engagement which is a core practice in sustainability reporting frameworks.
- Developing a mechanism for monitoring and evaluating sustainability reports produced by mining companies.

- Raise awareness on the new listing guidelines provision on sustainability reporting and demand companies share reports with stakeholders and communities.
- Support communities in identifying and communicating grievances with stock exchanges and regulators.

Research Institutions and Think Tanks

- Develop tools for continuous monitoring of sustainability reporting performance by mining companies which should be available for public use.
- Support the local stock exchange and locally listed companies in developing technical capacity for sustainability reporting in Zimbabwe.
- Facilitate potential learning experience for ZSE and regulators through study visits to other regional stock exchanges and regulators that are doing well.

Overall the research recommends a multi-stakeholder approach to addressing issues of compliance with stock exchange requirements on sustainability reporting to achieve meaningful results. Compliance can be monitored at a regulatory level through the stock exchange, legislative level through statutory bodies and ministries; and a public level through the civil society organisations and community based organisations.



The Mines And Minerals Amendment Bill: Its Promises And Pitfalls

Zimbabwe Environmental Law Association (ZELA)

Introduction

Since 2007, the Government of Zimbabwe has made various attempts to amend the mining regulatory regime, targeting the major mineral law, namely the Mines and Minerals Act. These efforts have not seen a final product as yet, and to date the Government of Zimbabwe is still in the process of reforming the Mines and Minerals Act.⁶ The latest efforts have led to the formulation of the Mines and Minerals Amendment Bill (MMAB).⁷ The efforts at amending the Mines and Minerals Act (MMA), which is the primary piece of legislation that regulates the exploitation and management of mineral resources in Zimbabwe are welcome, and indeed, overdue. However various concerns remains as to whether an amendment will be panacea to the ills bedeviling the mining sector in Zimbabwe.

The MMA is a very old piece of legislation that was enacted in 1961 during the colonial era. Despite several piecemeal amendments since its enactment, it has essentially retained its focus or orientation on mineral resource extraction for export rather than sustainable development.⁸ Consequently, this has become its biggest criticism. It is not anchored on the principles of sustainable development and ignores various developments in the mining sector.

Analysis of the ‘Promises and Pitfalls’ of the Mines and Mineral Amendment Bill

The MMAB 2015 is a progression of the MMAB of 2007 and 2010. The 2015 MMAB has a number of progressive provisions that augur well for mineral resources governance, and if implemented in good faith, can enhance the contribution of mining sector to economic development.

‘From Pay It or Lose It’ to ‘Use it or Lose It’

The MMAB proposes to institute a “Use it or lose it” policy with regards to exclusive prospecting licenses. It provides that every exclusive prospecting licence shall be valid for a period of twelve months.⁹ This is a very good provision that will help to minimize the hoarding and holding of mining claims for speculative purposes by mining companies, as is the case under the current MMA.

Another progressive provision in the MMAB is the stipulation that applications for mining licences are to be dealt with on a first come first serve basis also known in practice as ‘first in first assessed.’¹⁰ This provision is very important in promoting investments without delays and also helps to address investment inhibitors like corruption and speculation.

⁶Chapter 21:05.

⁷ The Mines and Minerals Amendment Bill, H.B 19, 2015 was gazetted on the 12th of August 2016. The Ministry of Mines and Mining Development also presented the Bill to Parliamentarians on the 21st and 22nd of March, 2016 at Rainbow Towers Hotel.

⁸ T. Murombo ‘ Law and indigenization of mineral resources in Zimbabwe: Any equity for local communities? (2010) Vol.10 SAPL 569. See also J Tsabora. The Legal and Economic Framework for Natural Resources-Related Statutory Funds in Zimbabwe (2016) 27.

⁹Section 21(2).

¹⁰ Section 19.

Designation of Minerals

Another progressive provision is the designation of strategic minerals.¹¹ The MMAB defines strategic minerals as minerals that 'are declared or designated as strategic in terms of this section on account of their importance to the economic, social, industrial and security development of the country'. A more conventional definition of strategic or critical minerals is 'minerals for which the risk of disruption in supply is relatively high and for which supply disruptions will be associated with large economic disruptions'.¹² Critical or strategic minerals are minerals designated mainly by developed economies that are heavily dependent on raw materials from emerging markets or economies to power and sustain their economic growth. Political instability in these emerging economies poses a great threat to the supply chain. While the designation of strategic minerals is good, the problem is that the MMAB goes further to state that special and unique conditions will apply to their exploration, ownership, exploitation and beneficiation, marketing and development.¹³ The special and unique conditions are not spelt out.

Institutional changes

Another important provision is changing the composition of the Mining Affairs Board and extending its functions.¹⁴ The MAB is an important institution in the governance of the mining sector. Institutions are key in achieving sustainable development. It therefore follows that for stakeholders to participate effectively in the governance of the mining sector, they have to participate in the policy and decision-making institutions and the MAB is one such institution.

Members of the MAB are the Permanent Secretary in the Ministry of Mines who shall be the Chairperson of the Board, all Principal Directors, Director of Geological Survey, any other two Ministry officials appointed by the Minister and six other members appointed by the Minister. In appointing the 6, the Minister shall include two representing the Chamber of Mines, one representing small scale miners, one representing farmers, one shall be a member of the Institute of Chartered Accountant and one shall be based on his or her experience or qualification that the Minister deem to be of assistance to the Board.

In appointing the six members, the Minister has to endeavor to secure gender balance. This is a progressive provision, which is in line with the Constitution, which calls for gender balance.¹⁵ However, the composition of the MAB falls short of standards or best practices that are expected of multi-stakeholder initiatives. The mining sector affects a number of stakeholders. These include government, business, communities, labour, traditional leaders and CSOs.

The Mining Cadastre System

The MMAB also proposes the establishment of a mining cadaster, and this is a very welcome development.¹⁶ The introduction of a mining cadastre is in line with trends in the region. A mining cadastre is defined as 'the system for manual or electronic management and recoding of processes that create mining rights and titles'.¹⁷ It is the principal public institution that is responsible for managing mining titles in a country.¹⁸ It is

¹¹ Section 5.

¹²R.Coulombo, S. Dietz, M. Godunova and T.B Nielsen (2015). *Critical Minerals today and in 2030: An analysis of OECD countries* (2015). OECD Working Papers.

¹³Section 5(3).

¹⁴ Section 6.

¹⁵Section 17 of the Constitution.

¹⁶ Section 14.

¹⁷Section 14 (1).

¹⁸E.O.GironesA.Pugachevsky and G. Valsler Mining Rights Cadastre: Promoting Transparent Access to Mineral Resources (2009) 4.

regarded as the cornerstone or foundation of good mineral resource governance in any country that is serious in ensuring that mineral resources contribute effectively to economic and social development.

Environmental Rights

Influenced by the provisions of the Constitution, which calls for alignment of existing legislation to the Constitution, the MMAB makes provisions for Environmental Protection under Part XVA of the Act. With regards to mining, the Minister and his/ her team of mining experts, shall be responsible for determining the best method of mining to be used in any area including rivers, surface and underground, the tools and machinery to be used and the level and extent of such mining activities.¹⁹ An Environmental Impact Assessment (EIA) is also required to be carried out and submitted to the Cadastre Registrar as part of the application process before any mining right or title is issued out. This is a very important provision which if implemented will result in the mitigation of environmental degradation and pollution by mining activities.

Strict Liability of Company Directors

The MMAB introduces the concept of strict liability for directors of mining companies for acts that mining company would have conducted and that leads to environmental pollution and degradation. The Bill states that:

“Notwithstanding the provisions of the Companies Act [Chapter 24:03] the directors of a company or members of a close corporation or syndicate are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution advertently or inadvertently caused by the company or close corporation or syndicate, which they represent or are represented.”²⁰

This provision is a masterstroke and lifts the corporate veil traditionally used as a shield by directors of mining companies facing allegations of pursuing mining activities in a manner that leads to environmental degradation. In addition to introducing strict liability, the penalty attached to degrading and polluting the environment as result of mining activities has been made very deterrent. In terms of the Bill, for instance, those found guilty shall be liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding twenty years or to both such fine and imprisonment.²¹

To further strengthen the protection of natural resources and the environment, the MMAB provides for the establishment of an Environmental Rehabilitation Fund known as the Safety, Health and Rehabilitation Fund [SHRF].²² The objectives of the SHRF as its name suggests, are to rehabilitate the environment with regards to environmental degradation associated with mining activities that includes mine fires and explosions, entrapments and inundations, ground subsidence, tailings and waste dump breaches and contamination, chemical spillages or acid mine drainage and chemical leaks, water contamination and collapse.²³ While the introduction of SHRF is a progressive provision and is much better and stronger compared to the ERF under the 2007 MMB which was only focusing on LSM, it needs to be reconciled with other existing Statutory Funds that are aimed at making sure that miners contribute towards environmental rehabilitation as a result of the negative impacts of their activities on the environment. A good example is the Environmental Fund under the Environmental Management Act.²⁴ The two SFs should be synchronized to avoid duplication.

¹⁹ Section 257 B (2).

²⁰ Section 257 D (3).

²¹Section 257 (C) (4).

²² Section 257 E (1).

²³ Section 257 E (2).

²⁴ Section 48.

Riverbed Mining

While the MMAB has some very progressive provisions on the environment, it also has some very disturbing provisions especially with regards to riverbed mining. While the Bill prohibits riverbed mining, it has some provisions that make it acceptable.²⁵ The Bill exclusively reserves the right to carry out riverbed mining to the Government of Zimbabwe through the Ministry of Mines and Mining Development.²⁶ In carrying out riverbed mining, the Government may decide to do it in partnership with relevant companies and organisations through Joint Venture Partnerships (JVPs). However, the decision to go into partnership through JVPs or not, is the Government's alone to make based on its own discretion. Through the 2016 Mid-Year Fiscal Policy Review Statement, the Government of Zimbabwe identifies Angwa, Mazowe, GatsheGatshe, Save, Odzi and Mutare rivers as potential areas for riverbed mining. It is evident from the Mid-Year Fiscal Policy Review that the Government of Zimbabwe is planning massive riverbed mining.

Harmonizing Environmental Protection and Mining Development

The Environmental Management Act is the principal law regulating environmental protection and management in Zimbabwe. If any law is in conflict or inconsistent with it with the exception of the Constitution, with regards to environmental management, the Environmental Management Act, shall prevail.²⁷ In terms of the Environmental Management Act, the Environmental Management Agency is the authority that is primarily responsible for environmental management by setting standards, regulating, monitoring, review and approval of Environmental Impact Assessments. Through EIAs, the Environmental Management Agency is able to regulate and monitor the negative impacts of economic activities on the environment including mining. It also has the powers to regulate and monitor the management and utilization of ecological fragile ecosystems like riverbeds.²⁸

However, from the provisions of the MMAB, it appears as if the Environmental Management Agency is going to be playing a secondary role in the regulation, management and utilization of ecological fragile systems like river beds when it comes to mining activities, with the primary responsibility falling on the Ministry of Mines and Mining Development. It is the responsibility of the Minister with his or her team of experts to determine the best methods of mining to be used in any area including rivers, on surface and underground, the tools and machinery to be used and the level and extent of such mining activities through out Zimbabwe.²⁹

Overall, the provisions of the MMAB on the management and utilisation of fragile eco systems like riverbeds seem to be a usurpation and subversion of the powers and independence of the Environmental Management Agency by the Ministry of Mines and Mining Development. The Mines and Minerals Amendment Bill amends both the Environmental Management Act and Statutory Instrument 92 of 2014 controlling alluvial mining of riverbeds.

²⁵Section 319 A.

²⁶Section 319 A (3).

²⁷Section 3 of the Environmental Management Act.

²⁸Section 10 (1)(b)(vii).

²⁹ Section 257 b (2).

Mining Title

Another important feature introduced by the MMAB is a new mining title management system.³⁰ The current title management system can be described as complex, confusing and overlapping. The ongoing reforms are therefore an opportunity to rationalize and simplify Zimbabwe's mining title system. Currently, there are six different titles for mining. These are Exclusive Prospecting Orders (EPOs), Special Grants (Energy Minerals), Special Mining Leases, Special Grants (General Minerals) Mining Leases and Mining Claims.

The MMAB proposes to replace the current mining system with three mining titles namely:

- a) An exclusive prospecting licence; or
- b) An exclusive exploration licence; or
- c) Special grant for exploration

With regards to mining rights, it again proposes three types of mining rights. These are:

- a) Special mining lease; or
- b) Mining lease ;or
- c) Special Grants for mining

The Chamber of Mines of Zimbabwe is of the view that title management system can be better rationalized by combining mining titles and mining rights of three distinct titles namely mining claims for small workings, mining leases for large scale mining and special grants for energy minerals and hydrocarbons.³¹

Indigenization

One of the objectives of the MMAB is to provide for the indigenization and localization of the mining industry. This is in line with the Indigenization and Economic Empowerment Act.³² Section 393A of the MMAB provides for the localization of shareholding of corporate holders of mining title. It states that no mining rights or title shall be granted or issued to a public company unless the majority of its members are listed on a security exchanges in Zimbabwe.³³ To show how serious the Government of Zimbabwe is regarding this requirement, the Minister of Mines and Mining Development has powers to cancel any mining right or title, if it is proved that it was obtained fraudulently by falsifying information about the shareholding structure.³⁴

While it will still be possible for companies that are listed on the foreign stock exchanges to be granted a licence, they will be required to inform the Minister about their listing outside Zimbabwe and required to ensure that eighty-five per centum of the funds that would have been raised from such listing shall be used solely for the development of the mining rights and title in Zimbabwe. The change in the shareholding structure by any company holding a mining title or right in Zimbabwe is also required to be brought to the attention of the Minister within fourteen days of change in such shareholding.³⁵

³⁰ Section 14.

³¹ Chamber of Mines of Zimbabwe (n 121 above) 2.

³² Chapter 14:33.

³³ Section 393 A (1).

³⁴ Section 393A(3).

³⁵ Section 393 (1).

The MMAB also requires all holders of mining title or right to utilize Zimbabwean financial institutions.³⁶ The objective of this provision is to make sure that revenue derived from mining activities in Zimbabwe by mining companies is available to stimulate economic growth through lending.

Value addition and beneficiation

The failure to promote objectives related to value addition and beneficiation is regarded as one of the major weaknesses of the current MMA. The Act does not make it mandatory for minerals to be beneficiated before they are exported.

The MMAB states that ‘no mineral (including industrial scrap) derived from minerals in Zimbabwe shall be exported raw or unprocessed except with the consent of the Minister to the exporter’.³⁷ This provision is aimed at promoting value addition and beneficiation. While this provision, does not completely ban the export of raw materials, it requires the Minister to give consent through written authorization and it is hoped that the process of getting consent will result in due diligence to determine the circumstances why the mineral cannot be beneficiated local. Even in those instances where consent is given, there are taxes that are imposed to discourage exportation without value addition.

In order to promote value addition and beneficiation, the Bill encourages the Minister to be proactive in identifying minerals that can be beneficiated economically in Zimbabwe and come up with the necessary terms and conditions. Furthermore, the MMAB also makes provisions for the Minister to make incentives to promote the beneficiation of minerals in Zimbabwe³⁸ The Minister also has the power to declare any factory, refinery, smelter or treatment plant which is situated in Zimbabwe to be an approved beneficiation plant in relation to a mineral or mineral bearing plant.³⁹ All these measures are aimed at promoting value addition and beneficiation. While the provisions on value addition and beneficiation are progressive they need to be supported by a clear policy and programme for implementation that are cognizant of the fact that value addition and beneficiation are a process and not an event and are dependent on other factors like power, infrastructure and other support mechanisms. It has to be done in stages.

Regulation of Miner–Farmer relations

To address conflicts between miners and farmers, the MMAB makes provisions for ground that is not open to prospecting.⁴⁰ Ground not open to prospecting includes land which has been *bonafide* cleared or ploughed or prepared for the growing of farm crops, ploughed land on which farm crops are growing, ploughed land from which farm crops have been reaped, for a period of three years from a date of completion of such reaping, land which has been *bona fide* prepared for the planting of such permanent crops as orchard or tree plantations, and land on which such crops have been planted and are being maintained.⁴¹ It also includes ploughed land on which grass has been planted and maintained for harvesting, rotation of crops or stock feeding, for period of six years from the date of planting.⁴²

³⁶ Section 393 B.

³⁷Section 307 A.

³⁸Section 307 A (5).

³⁹ Section 307 B (1).

⁴⁰ Section 65.

⁴¹Section 71 (a)(b)(c)(d).

⁴²Section 71 (e).

Co-habitation between miners and farmers is further provided for in terms of section 81. It proposes to allow farmers to cultivate the surface of a mining location by allowing the occupier of any land on which a registered mining location exists to apply for permission to cultivate the land from the Registrar of the Cadastre. However, the cultivation is temporary and cannot be for the purpose of planting or establishing orchards, tree plantations or other long term, permanent crops.⁴³ While this provides a reprieve to farmers that are cultivating on land that has been registered under a mining title or right, the cultivation is temporary and is meant for crops that can easily be planted and reaped.

Additionally, the miner is required to fence off a mining location that is adjacent to pasture land. If the miner fails to fence off the area in the manner prescribed within the period that is specified by the Cadastre Registrar, the owner or occupier of the land can fence off the whole of the mining location at his own cost and recover it from the miner.⁴⁴ This is likely to resolve tensions and conflicts between miners and farmers. Farmers usually lose their cattle, which fall in mined out areas that have not been fenced or rehabilitated resulting in serious economic loss.

Fiscal Provisions

The MMAB provides that the Minister ‘may by statutory instrument, require any miner of a registered mining location, or any class of such miners, to pay a specified sum at specified intervals to any local authority within whose area the registered mining location is situated’.⁴⁵ The payment of these certain payments is building on the provision of the Rural District Councils’ Act, which makes provisions for the payment of levies, rates and other charges.⁴⁶

While these provisions are progressive, the MMAB misses a great opportunity for progressive taxation. This approach, which is the norm these days, gives the government a greater share of profits as revenues raises rather than having them fixed. The Constitution calls on the State to ensure local communities benefit from the resources in their areas⁴⁷ and for the equitable sharing of national resources.⁴⁸ However, the MMAB makes the mistake of equating local authorities with communities.

Women’s Rights

Despite progressive constitutional provisions, unfortunately, there are very few provisions for women’s participation in the mining sector in the MMAB. Section 6 establishes the Mining Affairs Board. The Bill provides that the Board shall consist of “six other members appointed by the Minister, with respect to whose appointments the Minister shall endeavor to **secure gender balance**”⁴⁹. (Emphasis added). However, apart from this provision, it is not clear how this is going to be realized or achieved with regards to women’s participation in the mining sector.

⁴³Section 81 (2)(a)(i).

⁴⁴Section 85 (A) (2).

⁴⁵Section 76 (1).

⁴⁶Sections 95 and 96 of the Rural District Councils Act [Chapter 29:13].

⁴⁷Section 13(4).

⁴⁸Section 3(2) (j).

⁴⁹Section 6 (1) (e).

Children's Rights

Child labour is regulated by section 403 B of the MMAB. It empowers the Minister to reserve the right to revoke, cancel or withdraw any mining right or title once he or she contravenes the provisions of the Labor Act [Chapter 28:01) by employing child labour.⁵⁰ Furthermore, any miner whose licence would have been revoked for using child labour in violation of the Labour Act will not be eligible to hold a mining right or title under this Act for a period of five years from the date of such revocation, cancellation or withdrawal.⁵¹

Compensation

The MMAB makes provisions for compensation. It provides that: Any owner or occupier of ground who is injuriously affected by the affected exercise of any right under any mining rights or title granted under this Act shall be entitled to recover compensation from the person to whom the mining rights or title was granted or in whose favour the mining rights or title was granted or in whose favour the mining rights or title was made in such amount as maybe agreed upon or, failing such agreement, as shall be determined by the Administrative Court⁵².

Recommendations

From the analysis of the Mines and Minerals Amendment Bill benchmarked against a number of international, regional and national best practices a number of recommendations emerge. The Government must take these recommendations into consideration before the MMAB is finalized into law, or in the near future when considering necessary changes and modification of the system established by primary mining legislation.

Development of a new and comprehensive Mines and Minerals Act

The first recommendation relates to the MMA, the legislation being amended by the MMAB. The MMA has outlived its usefulness and should be repealed and replaced with a new piece of legislation that is in tandem with stakeholders' aspirations in the mining sector. As already noted, there are a number of stakeholders that are interested in the mining sector and these should be embedded in the principal law governing the sector. Zimbabwe has repealed whole pieces of legislation in the past, and examples in the recent past include the repeal of the Natural Resources Act, which was replaced by the Environmental Management Act, and the Lancaster House Constitution, which was repealed and replaced by a new Constitution in 2013. After many fits and stops through amendments, the Government decided to take the bull by its horns and came up with a new Act and a new Constitution. The same root and branch approach is required to deal with the fundamental flows of the MMA rather than to try and patch them as what the MMAB attempts to do. The Draft Minerals' policy was very clear on what needs to be done. It provides a roadmap and that's the pathway that needs to be followed.

⁵⁰ Section 403B(a).

⁵¹ Section 403B (b).

⁵² Section 85 B.

Alignment with the Africa Mining Vision

Should the Government of Zimbabwe decide to address the myriad of problems in the mining sector through an amendment as seem to be the case with the MMAB, then at the very least it should be aligned with the Africa Mining Vision and international best practices. The African Mining Vision is blueprint on how African countries, Zimbabwe included, can develop economically from their significant and diverse mineral resources. The African Mining Vision is not about mining only, but about mining and its contribution to economic development and this is very clear as it calls for 'transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development'. Unlike other mineral resource blue prints like the Natural Resources Charter and the EITI, AMV is a homegrown initiative by African Governments and States and cannot be tainted by imperialist connotations.

Access to information

Access to information provisions can be strengthened through specific provisions on access to information in the mining sector rather than rely on provisions in the Constitution and the Access to Information and Protection of Privacy Act (AIPPA). The MMAB should therefore contain a specific Right to Information provision which require the Minister to make any information relating to minerals available to any member of the public, local or foreign who has an interest in mining activities and investment. Access to information can be further improved by either reviving the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) or by adopting the World Bank's EITI. The ZMRTI was an initiative of the Government of National Unity, which was viewed as the first step on Zimbabwe joining the EITI. Countries that have adopted the EITI like Ghana, Zambia, Mozambique, Liberia and Nigeria provide better access to information to stakeholders.

Compensation

Provisions on compensation should be improved for those that are affected by involuntary displacement and resettlement and other inconveniences associated with mining activities. Those that are affected should be paid fair and adequate compensation promptly and compensations issues should be discussed and finalized before mining activities commences and communities are involuntarily displaced and relocated.

Broad Participation in the Mining Affairs Aboard

There is need for broad representation of all the stakeholders that have an interest in mining activities in the mining policy and decision-making bodies. The MAB is one of the most important policy and decision bodies in the mining sector. Currently, its representation as reflected in the MMAB is mainly comprised of official from the Mines Ministry while other important stakeholders are conspicuous by their absence. The missing stakeholders include important Government Departments and Ministries like the Ministry of Environment, Water and Climate and the Zimbabwe Environmental Management Agency, the Ministry of Finance and Economic Development and ZIMRA, Ministry of Local Government and traditional leaders, CSOs and CBOs. The failure to include other stakeholders is very much out of tune with the trends in mineral resource governance as reflected in the EITI and the African Mining Vision. The concern here is that while these important stakeholders are not participants in the MAB, its deliberations and decisions have significant impacts on them. While it maybe argued that their concerns and views would be taken into account thorough representative democracy, it must be noted that there is now a move towards participatory democracy. International best practices require each stakeholder in the sector to have its own representative to ensure that their concerns are taken on board in the policy and decision making process.

Locus Standi

There is need to operationalize the expanded *locus standi* provided in the Constitution in the MMA through the MMAB. Expanded locus standi is very important for Public Interest Litigation (PIL). Expanded locus standi will enable those stakeholders whose rights have been negatively impacted either by the policy and decision-making processes or mining activities to vindicate their rights in the courts. While locus standi is provided for broadly in the Constitution under section 85, this could be enhanced through specific locus standi provisions in the MMAB.

Clear gender provisions

Gender parity should be seriously considered in the mining sector, and the MMAB provides an opportunity for gender inclusivity in mining decision-making and policy arenas. The gender provisions in the MMAB are not satisfactory at all. Apart from the commitment to ensure balance in the MAB, it is not clear how gender considerations and specifically women's participation in the mining sector will be achieved. The MMAB should explore how certain provisions can be leveraged to ensure that the call for gender equity and participation including in the mining sector is achieved.

Recognition of artisanal miners

The MMAB must recognize artisanal mining. While it recognizes and regulates small-scale mining, one of the biggest weaknesses is the non-recognition of artisanal miners. The non-recognition is despite the important role that they play in economic development especially in the gold sector, which has been acknowledged by the Government and various policy pronouncements to the effect that they were going to be recognized. The Africa Mining Vision calls for the recognition and regulation of Artisanal and Small Scale Mining (ASM). Both the Kenyan and Zambian mining laws specifically recognizes and provides for ASM while one of the objectives of the draft Minerals Policy is to achieve a vibrant, environmentally friendly ASM sector. By not recognizing and regulating artisanal mining, the provisions of the MMAB are a continuation of the current MMA, which criminalizes artisanal mining.

Local Content Development

The MMAB must include Local Content Development (LCD) so as to maximize on local employment, local procurement and local enterprise development. This will result in the maximization of non-fiscal benefits that accrue to the country as this integrates mining business into the local economy. The Bill currently does not make any provisions for LCD and fails to establish any procedures for handling local content programmes and monitoring their implementation. The failure by the Bill to include LCD is very surprising for a country that has made a number of policy and legal pronouncements on it in the form of the Indigenization and Economic Empowerment Act, the Special Economic Zones Act, Statutory Instrument 64 of 2016⁵³ and ZIMASSET. The MMAB is an opportunity to concretise LCD in the mining sector and this is missing. Inspiration can be derived from the Zambian Mines and Minerals Development Act, which makes provisions for LCD through preferences for Zambian products, contractors and services and employment of citizens.⁵⁴

⁵³ Statutory Instrument 64 of 2016 Control of Goods (Open General Import License)(No.2) (Amendment) Notice, 2016.

⁵⁴ Section 20(1)(2)

Compulsory competitive allocation of known mineral resources

The MMAB must make competitive allocation of mineral rights mandatory for known resources. Currently it is optional. This will ensure that the country derives maximum possible benefits from the exploitation of its vast and significant mineral resources. This is also in line with best international and regional practices and also in line with the provisions of section 315 of the Constitution, which calls for competitive allocation of mining rights.

Clear FPIC Provisions

The MMAB must make clear provisions on FPIC especially with regards to involuntary displacement and relocation as a result of mining activities and the resultant compensation.

Development of a model contract law

The MMAB must make provisions for the development of a model contract and creation of a single licencing authority. One of the reasons why Zimbabwe has not derived maximum value from its minerals resources is as a result of poorly negotiated contracts. This is as a result of factors among them corruption and incompetence by the negotiators due to lack of experience and expertise. Negotiating a mineral's contract requires skill and expertise which most of our negotiators lack hence the poor contracts that unlock value to individuals rather the country. One-way of going around this problem as Zimbabwe tries to build a critical mass of expertise, is to have a model contract. Examples of model contracts include the International Bar Association's Model Mining Development Agreement. The African Legal Facility under the African Development Bank can help in the development of a model contract. This can be tied to the creation of a single licencing authority as proposed by the MMAB 2007. This will streamline the licencing procedures and reduce room for discretionary decision-making, which increases chances of corrupt practices and inefficiency.

Human Rights Impact Assessments

The MMAB should in addition to Environmental Impact Assessments require Large Scale Miners to conduct a Human Rights Impact Assessments (HRIAs). HRIAs are different from EIAs in that that they are based on binding international human rights laws to which governments have voluntarily submitted themselves through and participation in international treaty negotiations. They measure the extent to which the project complies with human rights both in terms of content and processes.

Mandatory Community Development Agreements

The MMAB must make provisions for mandatory Community Development Agreements as is the case under the Nigerian Minerals and Mining Development Act or alternatively make Community Share Ownership Schemes or Trusts (CSOS/Trusts) mandatory. This will address the current challenges that are there with regards to the Social Licence to operate and Corporate Social Responsibility (CSR).

Conclusion

This research has reviewed the Mines and Minerals Amendment and highlighted its progressive provisions, which are known as its promises as well as its negatives, which are known as its pitfalls. While the MMAB has some very good provisions, which are certainly, an improvement on the current Mines and Minerals Act, it also has some very worrying provisions. Overall, the research has argued that the reforms of the Mines and Minerals Act which are being proposed by the MMAB are not good enough or do not go far enough to address the fundamental flaws that are currently in existence. What is needed are

comprehensive reforms of the Mines and Minerals Act to ensure that the potential of the mining sector is realized. Comprehensive reforms are only possible through the development of a new Mines and Minerals Act as was envisaged by the draft Minerals Policy of 2012.

A new comprehensive Mines and Minerals Act should be preceded by wide consultation of all the stakeholders that are interested in the mining sector and should be based on best regional and international best practices that include the Africa Mining Vision, the Natural Resources Charter, the Extractive Industries Transparency Initiative and aligned to the Constitution which has some very progressive provisions. It is only through such a process that the transformative and developmental potential of the mining sector as envisaged by the Africa Mining Vision will be fully realized. It is hoped that as discourse on the on-going legal reforms, this research paper, its findings and recommendations can be part and parcel of those discussions.



⁵⁵ Chamber of Mines Report 2016

Rethinking about the Mining Sector in Zimbabwe: In search of sustainable alternatives

Centre for Natural Resources Governance (CNRG)

Introduction

Since Independence Zimbabwe's economic story has always revolved around the exploitation of natural resources with agriculture being the key driver in terms of contribution to the gross domestic product (GDP), total exports and employment creation until the mid-2000 when mining began to overtake agriculture. At its peak, agriculture contributed over 30% to GDP, while accounting for between 60% and 70% of employment. The reasons for the rapid decline of agriculture lie in the fast track land reform program which disrupted farming through the often-violent land grabs which saw over 4000 commercial farmers driven off their farms and leaving over half a million farm workers jobless. There has been a general lack of government support to the agricultural sector, especially to those in communal lands.

The mining sector played second fiddle to the agricultural sector the period from 1980 to 2000. As testimony to its robust agricultural sector, Zimbabwe was tasked with food security of the SADC region at independence in 1980. But by 2012 the agricultural sector had crumpled with millions surviving on food aid. By 2014 agricultural exports amounted to 33% of total exports from over 50% at peak (Mangudhla 2016). With the demise of the sector, government turned to mining as the pinnacle for economic development.

However, Zimbabwe's extractive sector has not lived up to its pledge of spearheading development through job creation and revenue generation. Statistics from the Chamber of Mines shows that mineral exports accounted for an average 55% of total exports between 2012 and 2015 and an average 9% of GDP between 2013 and 2015⁵⁵. Allegations of capital flight, corruption and illicit financial flows have been raised against the mining sector. The president of Zimbabwe Robert Mugabe acknowledged the crisis within the extractive sector when he revealed that Zimbabwe had lost a massive USD15bn in potential diamond revenue from Marange, adding that treasury had received only Two billion United States dollars since the start of commercial diamond mining in 2008.

In all districts that the Centre for Natural Resource Governance (CNRG) have interacted with, which include Marange (Diamond) Penhalonga (Gold Mining), Hwange (Coal Mining), Mutoko (Black Granite Mining), Bikita (Lithium Mining) and Darwendale (Platinum Mining) there have been growing calls for the immediate stoppage of mining activities until communities are brought on board with regard to contract negotiations, mining operations, marketing and sale of the minerals. The demands include the revival of other alternatives such as agriculture which are have been their livelihood before mining. This has sparked the debate on whether to continue to mine or not to. Mining communities are beginning to say 'nothing about us, for us, without us.'

To Mine or Not To Mine Debate

There is evidence that mining communities in Zimbabwe have been left poor especially after the mine has closed. The Marange area is a good example of the failure of mining to promote local development. Whilst diamonds worth billions were syphoned out of the country, the Marange community has remained largely the same with shocking levels of poverty. Similarly the mining of black granite in Mutoko since the seventies has not triggered economic development despite the fact that the stone is exported to countries such as Italy, United States, and Great Britain. Another case is Penhalonga where over a century of gold mining has not led to any tangible benefits to the community. In the case of Zimbabwe when mining is complete and the company has left, the investments that were once active will be left desolate as was the case at Kamativi, Empress, Pangani, Mhangura and Inyati, to name just a few former mining centres.

Those who argue that mining should continue, acknowledge that, communities are being left poor but this is not because of the mining but because of the sharing system. The blame is shifted to the capitalist system that allows the mining companies to take all the profits and leave the community in poverty⁵⁶. The architects of the problem are the states or community administrators and legislation, and not the extraction of diamonds from Chiadzwa or gold from Penhalonga.

In his column, “Should Mining be totally be banned in Philippines” Fr. E meterio Barcelona, wrote that, tourism developed in Baguio because of the existence of the mines in the area. He went further by stating that the country want responsible miners who are willing to give a fair share of the harvest with the community, so that jobs are created as well as wealth created. The priest argued that there is need for responsible mining and as well as vigilant communities⁵⁷.

The Panos Report (2007) seems to agree. Mining, it said, can help push the economic activities of a country if the government recognized mining “as a national strategic industry” aside from “developing mining policies which ensure that a fair share of the vast profits go towards local communities and sustainable development practices⁵⁸. However, it is a fact that extraction especially in developed countries is neither responsible nor redistributive in nature, but profit making and violent to both the environment and the community which will leave the later a pawn in the mining game.

In some jurisdictions mining has been credited for spearheading development and urbanization. Johannesburg is a classical case of a metropolitan city that developed because of mining. Mining has been applauded for generating employment, government revenues, and opportunities for economic growth and diversification. However this has not been the case in most cases because the quality of work that the mines bring has been questioned as being too hazardous and very unhealthy. There are numerous documented abuse of mine workers by foreign employers, especially the Chinese. Reports of beatings and other forms of physical punishment is rife in Zimbabwe’s mines⁵⁹. Reports include abuses that range from forced work underground and also being made to do harmful work without protective clothing. Beatings whilst carrying wheel barrows were reported to be frequent.

The remuneration within the mining sector for the majority of the workers is unsustainable. Workers are also victims of structural violence in the extractive sector. The minimum wage in the mining sector is \$249.24 but the national poverty datum line is pegged at \$481.00 (Kuwaza, 2016). In February 2016, thousands of diamond mine-workers in Marange were left out in the cold when government forced the mining companies to shut down after resisting being merged to form Zimbabwe Consolidated Diamond Company (ZCDC). Hwange Colliery has not been paying its employees since 2014 and recently the workers have been given food hand-outs in form of maize and rice a way to pacify the unpaid workers. The workers are owed 40 months unpaid salaries. The mining work stoppage that have recently characterised the SA mining sector is clear testimony. Mining can be easily be affected by, market fluctuations, economic and public institutions, and resource revenues can present challenges in converting natural resource wealth into sustainable economic growth and development.

⁵⁶ Liza T. Agoot and Jonathan L. Mayuga in a special report published in Sunday Business Mirror August 2016. <http://www.businessmirror.com.ph/>

⁵⁷ Fr. E meterio Barcelona, Should Mining be totally be banned in Philippines <http://www.thedailyguardian.net/index.php/local-news-8/3311-mining-to-ban-or-not-to-ban>

⁵⁸ The Panos Report (2007) <https://business-humanrights.org/en/rio-tinto-response-to-report-by-panos-and-friends-of-the-earth-regarding-the-ilmenite-mine-in-madagascar>

⁵⁹ <https://www.thestandard.co.zw/2016/08/07/shock-abuse-chinese-owned-mine/>

The Marikana killings in South Africa is another example of how inhuman extractive industries are to labour. The Geneva -based International Labour Organization (ILO) considers mining as one of the world's most hazardous sectors. The ILO (2016) report also noted that hazardous substances cause the deaths of an estimated 440,000 workers each year. Of these, asbestos alone kills some 100,000 workers worldwide each year. More than 115,000 miners die each year⁶⁰. Accidents in the extractive sector are numerous and most have been attributed to “big engineering mistakes” by management. In 2014, 301 miners were killed in a fire inside a coal mine in Soma, western Turkey, the nation's worst mining disaster. The tragedy exposed poor safety standards and superficial government inspections in Turkey's mines.⁶¹ On March 24 1996, the Marcopper's open pit burst open and released two to three million cubic meters of mine tailing into the Boac River in Marinduque killing marine life in the 27-kilometer waterway and flooded farmlands and barangays along its banks⁶². The clean-up cost about US\$80 million⁶³.

Extraction has drastic negative impact on women and children. Environmental, social-cultural and economic impacts of mining have an extra or an induced burden on women. Mining causes air and water pollution through emissions leading to various types of diseases. Other effects of mining include noise pollution and vibrations, habitat loss and soil erosion. In addition, deforestation and increased land disputes were also found to be associated with mining activities. The highlighted environmental challenges adversely affect women and children more severely than men, as they degrade food and water sources. Land and water grabbing by mining companies is a common practice throughout Zimbabwe. Women are responsible for household food and water collection and the daily struggle to do so is exacerbated as a result of noise, air and water pollution and loss of land. Reports from the Participatory Action Research (PAR) by CNRG (2016), shows that communities associated environmental pollution with higher levels of disease including respiratory diseases, skin diseases and ailments affecting women's sexual and reproductive health. Infrastructure, including housing and schools as evident in Mutoko, Hwange and Penhalonga, is slowly destroyed by the vibrations⁶⁴.

During PAR exercises with women from various districts, the women testified that the presence of mining companies altered their social and cultural fabric. Mines bring with them an increase in migrant workers and income for some men. This has been tied with heightened alcohol abuse leading to multiple concurrent relationships and temporal marriages, polygamy and/or abandonment of the family by migrant workers. These trends were also highlighted by communities interviewed, particularly in Penhalonga and Mutoko where women complained of inter-racial sex between their daughters with foreigners who either works or owns the mines resulting in ‘coloured’ children. Higher levels of alcohol consumption also precipitate marital instability and gender based violence, including psychological and physical abuse⁶⁵. Women are seldom employed in mines, but their unpaid household work often increases due to the changes in the family structure. In Africa women are viewed as the care givers and gate keepers of the communities and once they are affected it means the whole community is vulnerable. Other reported issues include loss of livelihoods as well as source of revenues due to displacements by an incoming mine and an increase in child labour.

⁶⁰ The ILO report (2016) Decent Work - Safe Work, ILO Introductory Report to the XVIIth World Congress on Safety and Health at Work, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_005176/lang-en/index.htm

⁶¹ Turkey Mine Disaster (2014) <http://www.cbsnews.com/news/turkey-copper-mine-collapse-miners-trapped-some-dead/>

⁶² The Marcopper Disaster Philippines (1996) <https://ejatlas.org/conflict/marcopper-placer-dome-mining-disaster-marinduque-island-philippines>

⁶³ *ibid*

⁶⁴ CNRG Participatory Action Research Reports 2016

A study by CNRG (2015) revealed that resource-rich communities in Zimbabwe are poorer than those communities that are not endowed with natural resources. This is mainly because once a mining project begins in an area, government transfers all responsibilities for community development to the mining company. However, mining companies argue that they are in the area to mine and that their sole obligation is to pay taxes to government, which is responsible for the development of the country. The blame game between government and mining companies appear to be farcical since the two share common interests and protect each other against aggrieved communities.

Maguwu (2016) argues that mining has no backward and forward linkages that can spur local development. Mining in Zimbabwe is largely an enclave economy whose most visible and lasting features are hazardous open pits, polluted rivers and impoverished communities. With the exception of Zvishavane and Shurugwi, which were developed during the colonial era, no major towns have developed as a result of mining in post-independence Zimbabwe. Instead, communities where mining is taking place are sinking deeper into poverty as government and mining houses blame each other for not doing enough to help communities⁶⁶. It is a fact that mining is a system that is hinged on the capitalist model of development. A capitalist system is out to maximise profits by any means necessary. There are little chances for such a system to be responsible, redistributive, non-violent and less destructive. Evidence of mass relocations without respect for human life, corporate killings, and all other forms of human and environmental rights abuse is clear testimony that mining has failed to sustainably break the cycle of poverty and create wealth for host communities. It is time for a shift to alternatives that are redistributive and create sustainable livelihoods. Since this change to alternatives cannot happen overnight, there is need for civil society organisations working in the extractive sector to focus projects that equip community members with necessary knowledge and tools for the transition. Centre for Natural Resources Governance has been running a number of projects in different districts that equips duty bearers with the necessary knowledge and tools to hold duty bearers accountable. The project are explained in detail below.

CNRG activities within the extractive sector in Zimbabwe

CNRG works with community monitors in mining towns which include Hwange, Penhalonga, Marange Bikita and Mutoko. CNRG is currently expanding its activities to platinum mining towns such as Darwendale. The following activities are key to shaping a new development narrative that offers alternatives to mining.

⁶⁵Ibid

⁶⁶Maguwu F Extractivism, Social Exclusion and Conflict in Zimbabwe: The Case of Mining

Alternatives to Mining

CNRG is leading the civil society campaign in search of alternatives to mining. Scholars and activists argue that mining by its very nature is unsustainable and is a major source of conflict and illicit financial flows on the African continent. It benefits fewer people when compared to agriculture and manufacturing which once stood as the biggest contributors to Zimbabwe's GDP as explained above. CNRG has begun a process of engaging mining communities to explore alternatives to mining with the aim of improving human security. Through support from ICC Cooperation CNRG managed to carry out farmer mobilization and capacity building work among the 1400 families displaced from Marange diamond fields to Arda Transau outside Mutare. Through this initiative, communities shifted their conversations from what mining companies should do for them to what they can do for themselves to improve their livelihoods independent of mining. CNRG has engaged two agricultural extension officers, one in Manicaland and the other in Mutoko to train farmers affected by mining to shift to animal husbandry as an alternative to mining. CNRG is advocating for the revival of agriculture to improve food sovereignty among communities affected by extraction of natural resources. CNRG believes agriculture has more linkages with other sectors of the economy when compared to mining which, even at its peak, failed to improve liquidity in the economy.

Climate Change

Climate change is taking its toll on Zimbabwe's poor who have little or no adaptation options. The impacts are more severe in mining areas where a combination of land grabbing, water grabbing and pollution of rivers are reducing food security. Government over-dependence on fossil fuel for energy generation, particularly coal powered Hwange Thermal Power Station is a major contributor to climate change. CNRG has begun working with communities in and around Hwange Colliery to raise awareness on the dangers of overreliance on fossil fuels. More work need to be done to develop localized responses to climate change. There is need to do community based knowledge gathering on climate change in mining communities. This will result in co-production of climate change knowledge that involves community driven adaptation measures which can be used to lobby the authorities to be included in the national adaptation mitigation and implementation strategy by the relevant Ministries.

Women Movement Building

Currently CNRG is implementing a three year project with support from OSISA entitled, 'Enhancing the Capacity of Women in Communities Affected by Extractive Industries in Zimbabwe to mobilize and demand rights' which was initiated in late 2015 and will end in 2018. The project is being implemented in 5 districts namely Bikita, Mutoko, Penhalonga, Hwange and Darwendale. The purpose of the project is to engage and capacitate grassroots women in Participatory Action Research (PAR) and use the evidence gathered to lobby and advocate for sustainable positive change of women situation. This project aims to empower women in mining areas with strong evidence to approach duty bearers in the quest to demand their rights which include transparency and accountability.

Artisanal Mining

Since its inception, the CNRG has excelled in research and advocacy on ASMs. CNRG is the leading engine behind the civil society campaign for the formalization of artisanal mining as it sees the practice as a livelihood option for not less than two million Zimbabweans. Consequently, the Zimbabwe government responded to the CNRG by announcing in December 2013 that it was going to decriminalize artisanal mining. Nevertheless, there is policy inconsistency in government with regard to artisanal mining. Whilst the Reserve Bank of Zimbabwe has move forward to decriminalize artisanal mining by announcing that artisanal miners can now sell their gold to government without being asked questions on where they

obtained the gold, the Ministries of Mines and Home Affairs have remained defiant with regards to decriminalization and formalization. However CNRG argues that if artisanal mining is formalised it will benefit the local communities, thus improving livelihoods, better environmental management as well as transparent and accountable revenue inflows to state coffers. As it stands smuggling of minerals is rife and the main beneficiaries are a privileged few and foreign buyers.

Capacity building of communities and local government officials on Economic Social and Cultural Rights (ESCR) in the Extractives

CNRG in partnership with Zimbabwe Peace Project (ZPP) jointly implemented a one year project focusing on enhancing the capacity of communities on socio economic rights and strengthening the capacity of local government officials, including councillors to monitor the activities of mining companies and to enhance accountability in the extractive sector. The project has been implemented in Hwange, Bikita and Mutoko districts. The rights based approach has been used throughout the project activities, hence the communities and local government councillors have been able to use every opportunity to demand that communities benefit from.

Operation Hakudzokwe

Every year in November, CNRG commemorates Operation Hakudzokwe – a security crackdown on Marange diamond fields late 2008 that left more than 400 artisanal diamond miners dead, hundreds of women raped and many maimed. After the security crackdown, corporate violence and impunity continued to claim lives to this day and will most likely continue for the entire duration of the Marange life cycle. This year's commemoration was done on the 1st of November 2016 where more than 500 people converged at Bambazonke Business Centre in Marange for the event. Commemorating Operation Hakudzokwe is a reminder of what happened and the need for justice for the victims and survivors. The commemoration affords survivors a safe space to narrate what happened to them and demand justice. The commemoration is also a space for solidarity with the Marange Community as various national NGO leaders will converge in Marange and speak in solidarity with the community.

Conclusion

The search for alternatives should not be taken for granted because, mining has failed to usher sustainable development to the country and the communities at large. The evidence available shows that communities where mines exist are the poorest in Zimbabwe. Even proponents of the continuation of mining have acknowledged that mining has left people poorer although they shift the blame to bad policies and archaic legislation. However it is without contention that when sectors like agriculture and manufacturing were thriving, the whole economy was thriving as well. In recognition of the potential of agriculture in unlocking sustainable human development, the World Bank's 2008 World Development Report focused on 'Agriculture for Development'. The Report notes that agriculture can be a vital development instrument for achieving the first Millennium Development Goal of halving poverty by 2015. This is particularly so because three out of every four people in developing countries live in rural areas and the majority depend on agriculture for their livelihoods⁶⁷: 'Agriculture contributes to development as an economic activity, as a livelihood, and as a provider of environmental services, making the sector a unique instrument for development' (World Bank, 2008: 2–3). The need for alternatives is therefore very imperative and extremely urgent.

⁶⁷ World Bank, 2008

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PWYP Zimbabwe

c/o Zimbabwe Environmental Law Association (ZELA)

26 B Seke Road, Hatfield, Harare, Zimbabwe

Twitter : @PWYP_ZIM

