

# COMMUNITY PARTICIPATION IN NATURAL RESOURCES GOVERNANCE: AN EXPOSITION OF THE OUTCOMES OF ALTERNATIVE MINING INDABAS IN ZIMBABWE

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**Abstract:** Zimbabwe's mining sector continues to be touted as the anchor and backbone to country's economic growth and poverty reduction initiatives. This fact is acknowledged in the Government of Zimbabwe's five year development plan where mining and mineral beneficiation have been identified as an important development cluster. Mining is outlined as the lead sector based on its contribution to both the Gross Domestic Product (GDP) and export earning having contributed nearly 20% and 60% respectively in 2013. However given the prominence mining has in the economic and fiscal realm of the country in Zimbabwe there is limited participation by communities in natural resources governance. Platforms for communities to dialogue with government and mining companies on the impacts of mining on the life in general and livelihoods in particular are very few. Despite the potential of the mining sector to contribute to economic development, the sector is presently causing untold suffering to the local communities living adjacent to mining operations. Some of the problems affecting mining communities include issues of forced evictions and relocations of communities from their traditional lands without free and prior informed consent and lack of fair and adequate compensation in order to pave way for mining activities. These irregular relocations and resettlements have been done and continue to be done without government and the mining companies recognising local communities as an important stakeholder in the mining sector. This situation is leaving a lot of poor men, women and children suffering from loss of agricultural and grazing lands, thereby, threatening their food security and livelihoods. The situation is even worse for rural women as they are heavily dependent on subsistence agriculture for their livelihoods. Furthermore, mining activities continue to cause environmental degradation, siltation of rivers, water and air pollution that affect their lives related to extractives.

The above scenario sets a clear justification for convening Alternative Mining Indabas as open platforms for mining affected communities to discuss the impacts of mining on their livelihoods, rights and environment with the government and the mining companies. The fundamental concept behind the initiative being to enable communities to deliberate on these issues and provide a platform within which they develop advocacy strategies that would ensure the protection, promotion and realization of their rights in the mining sector by government and mining companies. Alternative mining Indabas have evolved to become the biggest public interest gatherings on mining and mining impacts in Zimbabwe. This paper thus serves as an expose of the major outcomes from all alternative mining Indabas held in Zimbabwe in 2014.

**Keywords:** Governance, Indabas, Mining, Participation, Zimbabwe.

## INTRODUCTION

Zimbabwe is a highly endowed country in terms of minerals with more than 6000 known mineral deposits (ZELA, 2014) and with the Great Dyke stretching for 550Km touted as the haven of most minerals in Zimbabwe constituting a massive sulphide zone bearing mostly, but not exclusively limited to gold, Platinum Group of Metals (PGMs), chrome, coal, iron ore and diamonds. The contribution of mining to the general fiscus is significant currently constituting 60% of Zimbabwe's export earnings. Kahwai (2011) in a conference report on extractives sums up by providing a historical perspective on the contributions of mining on the

Zimbabwean economy noting that “The mining sector contributed 49% in 2008 and 50% in 2009 to the economy ahead of agriculture and manufacturing which were at 33% and 34% respectively. It was stated that the mining sector contributed to foreign currency generation, social infrastructure development and other downstream multiplier effects. Mining also contributed to development in towns like Bindura, Hwange, Mashava, Zvishavane, Dorowa, Shamva, Mvuma, Shurugwi, Kwekwe, Gweru, Ngezi, Selous and Gokwe. The mining industry also contributed to the fiscus through Pay as You Earn by US\$25million dollars (15% of total in 2009), Value Added Tax by 37% and Customs Duty by 20%.”

Whilst it is important to underwrite the mineral endowment Zimbabwe has it is also critical to note that across the country in most if not all places where mining is happening evident violations of economic, social and cultural rights have been witnessed. Development induced displacements particularly in mining is on the high side with so many communities loosing land which in turn leads to violation of the communities' rights to housing, education, water, culture and generally disrupt livelihoods. Mining has also caused massive environmental degradation and water pollution.

Community participation in the governance and overall decision making process around mineral resources found in their areas was and still remains minimal hence the initiative to have alternative mining indabas. The term Indaba comes from the Zulu word, meaning "business" or "matter" and is in practice an important conference held by principal men of the Zulu tribes of South Africa. As (<http://en.wikipedia.org>, 2014) acknowledges “The term has found widespread use throughout Southern Africa and often simply means *gathering or meeting*.”

Of importance to note is that the Government of Zimbabwe has been positive about the alternative mining Indabas allowing stakeholders to congregate, with key government departments coming in to contribute to the process and make presentations on what their department’s role was in advancing mining in Zimbabwe. (Zebbies Mumba, 2014) Affirm the validity of Alternative Mining Indabas by noting that “The Alternative Indaba was a key opportunity for community members’ to voice their opinions to parliamentarians, academics, chiefs and members of civil society. PWYP Zambia noted that one of the reasons this truly flowed was that each member was free to speak in their preferred language, rather than have to fit their experiences to a language they were less familiar with.”

In 2014 three alternative mining Indabas were convened by Zimbabwe Environmental Lawyers association all with the following objectives: (a) To identify and discuss some of the challenges in Zimbabwe’s mining sector and the impacts of mining on community livelihoods, human rights and environmental sustainability among others and how these can be addressed (b) To critically analyze the structure and implementation of the Indigenisation Programme as an empowerment model for communities in Zimbabwe. (c) To create a platform for engagement among mining companies, government and civil society, the media and the communities affected by mining operations (c) To provide an alternative space for stakeholders to discuss issues of equitable distribution of income from mineral resources exploited in the country. (d) To share information on the lessons, challenges and achievements of various stakeholders’ initiatives on promoting natural resources governance and transparency in the mining sector.

However of the three two were provincial level conferences and one was the national level Indaba.

The key stakeholders involved in all the conferences included but was not exclusively limited to : Civil Society Networks/Coalitions/Alliances and Community Based Organizations, Mining communities ,Mining Companies, Artisanal and Small Scale Miners, Women and Youths in Mining Groups, Labour Unions and Mining company employees, Relevant government departments e.g. Ministry of Mines and Mining Development, The Chamber of Mines in Zimbabwe, Ministry of Indigenization and Economic Empowerment, Ministry of Finance, Ministry of Environment and Natural Resources, Media, Traditional leaders, Members of Parliament and Regional and International partners among others .

This paper thus is an aggregate of the major action points that came out at all the three, substantiating further how each proposed action points in the final declaration could be achieved and have been achieved.

#### **OUTCOMES OF THE ALTERNATIVE MINING INDABAS**

##### **Institute and operationalize Effective and efficient taxation systems in Mining**

It is an unquestionable given that taxation forms a critical base through which nations can develop and provide quality services to its citizens. Taxation is further acknowledged as a fundamental principle required to advance democracy (Placeholder1) and a much needed weapon to tackle poverty and equitable wealth distribution particularly in developing countries (ChristianAid, 2005). (Actionaid, 2014)Actionaid Zimbabwe in a 2014 study also affirms that taxation is the most predictable and sustainable source of revenue for development purposes in any democracy. Improving revenue collection using taxation is also a sustainable way of reducing dependence on Official Development Assistance (ODA). As such, it is imperative that ways to maximize revenue generated using

taxation be determined and be fully exploited. Globally developing countries have been touted as losing significant funds through poor taxation system and compounded by financial illicit flows. The Mbeki committee on illicit financial flows notes that Africa is losing close to US\$1.3 billion each year through illicit financial flows and within the same predicament Zimbabwe is not spared with (Newstime-Africa, 2014) affirming that Zimbabwe has lost close to twelve billion dollars in the last three decades and that in itself has perpetuated social inequality and poverty. (Dhliwayo, 2014) And (Afrodad, 2014) further approximate that between 2009 and 2013, cash-strapped Zimbabwe lost 2, 85 billion dollars through illicit financial flows in mining, fisheries, forestry and illegal safari activities. This context above is one of the critical issues observed by stakeholders during the 2014 Zimbabwe Alternative Mining Indaba (ZIMA), and this observation is reinforced by observations made by Afrodad in their 2014 study (Afrodad, 2011) which noted that revenue collection in Zimbabwe was generally poor and was attributed to various interlinked factors including by not exclusively limited to (a) Limited capacity and skills of public institutions –acknowledging that the Zimbabwe Revenue Authority (ZIMRA) is failing to effectively monitor business operations and transactions and to deal with corruption involving its officials, private businesses and individuals.(b) Corruption and lack of transparency in revenue management e.g. in the diamond mining sector (c) Tax evasion and tax avoidance.(d) Slow economic growth and low capacity utilization in manufacturing and agricultural sector (e) De - industrialization in cities like Bulawayo and Gweru leading to the informalisation of the economy and (f) Limited Foreign Direct Investment due to inconsistent economic policies.

The context above as observed throughout all the Alternative mining Indabas propagated a unison call for the Government of Zimbabwe to establish strong and strict taxation mechanisms that will ensure that the government doesn't lose out through tax holidays and tax havens particularly in Mining. ( Ministry of Mines, 2013) Affirms this by referencing the former minister of Finance calling on Government to urgently amend the country's mining and taxation laws if Zimbabwe is to benefit from its huge natural resources. This call came amid revelations that the country's earnings from the sector were minimal due to multiple tax rebates and concessions available through the mining law ( Ministry of Mines, 2013). The need to address this taxation issue thus require that the government effectively monitor the payment of currently gazzeted taxes and charges , which according to ( Zimbabwe Environmental Lawyers Association, 2014) include royalties, income tax (corporate tax), Pay As You Earn (PAYE), non-residents Tax, Additional Profit Tax, Value Added Tax (VAT), marketing commission, customs duty, presumptive tax for small scale miners, capital gains tax, withholding tax, licensing fees, environmental charges and in some cases charges by local authorities among others. Reinforcing the above mentioned measure, Alternative mining Indabas also noted the revision of the current tax and mining acts in line with the new constitution as a significant step to be taken in addressing this. (Afrodad, 2011) Alludes to further Enforcement and full, effective and efficient operationalization of the 2010 Acts on Public Fund Management (PFM) and Audit.

### **Adopt the Extractive Industries Transparency Initiative**

The pronouncement by the then Minister of Finance in 2010 that the government of Zimbabwe should join the Extractives Industries Transparency Initiative (EITI) (ZELA, 2014), received a lot of positive applauds from the general populace whose hope and thinking was that it would generate transparency and accountability in the Mining sector (Masango, 2014). The announcement reinforced by positive perceptions across different stakeholder as noted in the report by (ZELA, 2014) created a lot of hope for communities heavily affected by mining across Zimbabwe. The hype for the adoption of Extractives Industries Transparency Initiative (EITI) was acknowledged by the three 2014 Alternative mining indabas. The Extractive Industries Transparency Initiative (EITI) as noted by (Placeholder2) "is a global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources." The Extractives Industries Transparency Initiative (EITI) seeks ensure full disclosure of taxes and other payments made by mining companies to governments These payments are disclosed in an annual EITI Report . This report allows citizens to see for themselves how much their government is receiving from their country's natural resources. Kademba (2014) in a conference report re-emphasized transparency and accountability in the extractives sector by noting that "the way resources are extracted and revenue is distributed affects society in multiple and profound ways. Citizens need to protect resources against any kind of exploitation by both local and outside actors. Accountability and transparency in the extractive industries ensures that government is responsible when managing the resources and revenues. In addition, accountability and transparency in the extractive sector ensures that revenues are distributed equally." (ZELA, 2014)

Transparency can only lead to accountability if there is understanding of what the figures mean and public debate about how the country's resource wealth should be managed. Therefore, the EITI Standard requires that EITI Reports are comprehensible, actively promoted and contribute to public debate. Critical recommendations that need to be adopted in pursuit of transparency and accountability in the extractives sector through learning from those

countries that are members of the EITI and based on the report by (Mainhardt-Gibbs, 2010) are but not exclusively limited to (1) government to flex regulations and stop threats to or arrests of CSOs or journalists who work on extractive industry issues. (2) Making EITI more meaningful at the local level, by this (Mainhardt-Gibbs, 2010) bluntly affirms that “engagement would be significantly improved if the EITI process and the reported Extractives Industries revenue data were made more meaningful at the local level, especially to the extractive industry-affected communities. To begin addressing this concern more effort needs to be expended: to capture input/involvement from non-MSG groups, to build the capacity of and create the opportunity for local/community-based CSOs to be able to act upon the disclosed revenue data, on public awareness, and on expanding the disclosure of information to include project-level revenue data, social expenditures (especially at the community-level), and contracts.”

Overly there is a consensus among stakeholders on the need for the government of Zimbabwe to adopt EITI, the general buy in across all stakeholders will make the institutionalizations and operationalization of the initiative much easier. The government only has to engage with the necessary institutions including World Bank to join and roll out this as a matter of priority.

### **Institute Transparency and accountability in the financial management of Community Share Ownership Trusts**

Transparency and accountability in the mining sector in Zimbabwe has been a challenge that has seen mining communities living in poverty yet there is abundance of minerals. In 2012, the government of Zimbabwe created the Community Share Ownership Trust (CSOTs) under the Indigenous and Empowerment Policy. CSOTs are regarded as a vehicle for shareholding participation in community businesses and to empower communities to benefit from natural resources in their localities. There are 5 CSOTs in Zimbabwe under mining sector, namely Mhondoro Ngezi Trust in Mashonaland West, Gwanda Trust in Matebeleland South Province Tongogara Trust, Zvishavane Shurugwi Trust and Zvishavane – Shurugwi Trust and Zimunya – Marange Trust in Manicaland.

(Herald, 2014) The Minister of Youth Indigenization and Empowerment highlighted that financial management of CSOTs were facing challenges because of lack of acumen of the trustees and as such accountability and transparency was also a major challenge. Traditional chiefs are the chairpersons of the CSOTs and their ability to ensure transparency and accountability have been limited due to lack of understanding of business. CSOTs were introduced through the top down approach with little participation and involvement of the communities who are supposed to derive benefits from the initiative. Therefore a level of awareness and understanding is low amongst community members on the purpose and functions of CSOTs. Consequently there is need to sensitize community members on the reason of establishment, functions and mandate of the CSOTs.

In recently conducted Indaba meetings (July and September 2014) by Zimbabwe Environment Lawyers Association in Shurugwi and Bulawayo community representative lamented about not being consulted by CSOT trustees on projects to be implemented. It has been pointed out in the same meetings that communities are not aware of how the funds are utilized as such issues of transparency and accountability are a major challenge. (Mangena & Moyo, 2014) Highlighted that Chiefs from Zvishavane paid themselves \$5000 each as annual seating allowances this robbed the communities of funds they could have benefited from for service delivery.

There has been however notable successes that have been recorded in service delivery in some areas like Mhondoro Ngezi, Tongogara, Shurugwi and Zvishavane. Effectiveness of CSOTs for example rehabilitation of Sitezi clinic and Guyu and Chelesa irrigation schemes. Successes have also been recorded the construction of road, maternity ward and mortuary at Zvamavonde Hospital in Zvishavane and classromm blocks and teachers' houses in Shurugwi (Mabhena and Moyo 2014). More importantly there is need to raise awareness of the rights and duties of trustees. Through empowering communities to feel the ownership in CSOTs firm foundations demand driven transparency and accountability in the management of CSOTs are laid.

### **Enhancing community participation across the whole value chain of service delivery from CSOTs (planning, implementation, monitoring and evaluation)**

#### ***Planning***

Evidence from the ground points to poor community involvement in the planning stages of programmes run by CSOTs. There is need to strengthen regulations to put clear procedures and guidelines on community involvement in needs assessment. Further there is need to understand that the effectiveness of any good regulation is just as good as its implementation. Thus trustees must be trained on people centered approach development in a manner that creates spaces and engagement processes with communities on needs prioritization. Participatory planning will lay the foundation for transparency and accountability through public clarity on how resources are to be spent and accounting for community development priorities.

### **Implementation**

The use of Social accountability tools such as the Public Expenditure Tracking Survey (PETS) should be promoted. This will enable communities to trace funds from the initial source (agreement) to when the funds are disbursed by mining companies and reach the CSOTs. Also, the public eye will trace the allocation and release of funds to various projects until they reach the intended service delivery units. This is critical for the public to keep track of delays, leakages and misappropriation of funds that are key financial management risks likely to bog the implementation of CSOTs programmes.

### **Monitoring**

Trustees of CSOTs must be able to furnish communities with progress reports both financial and narrative on the implementation of programmes. There is need for Civil Society Organizations (CSOs) to Simplify the reports removing jargon than can create barriers to effective consumption of the reports by the intended consumers (community members). It might be necessary to produce narrative reports in vernacular languages and making use of pictures and dramas to effectively share the financial and narrative reports with community members. Issues of accessibility of reports and timeliness will need to be addressed. Communities are empowered to demand information on the affairs of community trusts if they are clear of the nature and deadlines of the reports that are due which ultimately set the right tone for accountability in the financial management of the CSOTs.

### **Evaluation**

The effectiveness of any expenditure has to be viewed through the lenses of users or consumers of goods and services created. It is important to get user feedback on availability, accessibility and affordability of services and goods rendered to be able to gauge value for money. It is critical for communities to use tools such as Community Score Cards (CSC), Citizen Report Cards (CRC) and social audits to effectively gather evidence on performance of service delivery and be able to present such evidence to trustees proffering community solutions to challenges noted. Social audits will be a critical to compliments supply driven agenda of annual audits by promoting the demand side of accountability.

### **Formulate laws in terms of the new Constitution**

In 2013, Zimbabwe enacted a new Constitution of Zimbabwe Amendment No. 22 ACT 2013. The new Constitution contains provisions that have potential to transform the future governing the country's mining sector with regards to issues of transparency and accountability hence trigger growth. The Constitution is the supreme law of the country, whereby any law, practice, custom or conduct which is inconsistent with it is invalid. In addition, the obligations imposed by the Constitution are binding on every person natural or juristic persons including the State and its Institutions. Within the new Constitution, the State and its institutions are bound by the principle of good governance which includes transparency, justice, accountability and responsiveness<sup>1</sup>. The right to information is enshrined in the Constitution<sup>2</sup>, whereby every person is entitled the right of access to any information held by the State or by any of its Institutions as long as the information required is in the interest of public accountability. This right of access to information means that any person can approach government departments or agencies responsible for regulating any mining activities to obtain any information with regards to any stages of the mining value chain. Access to information such as the mining contracts, production figures, revenues and expenditure is a means of ensuring transparency in order to hold to account on any of its decisions to steer economic growth of the country. Transparency entails Government providing accessible and timely information to its citizenry. Therefore, the government does not necessarily have to wait for individuals to approach public bodies seeking relevant information but it should provide such public information to the public. In other words, being open or providing information should be the default position within government. The Constitution provides that a specific legislation be enacted to give effect to the right of access to information but such a law is allowed to restrict this right regarding information on the interests of defence, public security or professional confidentiality. However, such restriction of this right by any piece of legislation shall only be valid if it is fair, reasonably necessary and justifiable in a democratic society based on openness. In Zimbabwe, the Access to Information and Protection of Privacy Act<sup>3</sup> (AIPPA) is the current law governing access to information. The Act provides members of the public with the right of access to records or information held by public bodies<sup>4</sup>. A written application has to be made to the Director of a public body requesting access to a record or information accompanied by the prescribed fee. This application can be made to institutions such as Zimbabwe Revenue Authority, Ministry of Mines and others with regards to mining contracts, mineral

<sup>1</sup> Section 3(2) of the Founding Values and Principles of the Constitution of Zimbabwe

<sup>2</sup> Section 65 of the Constitution of Zimbabwe

<sup>3</sup> Chapter 10:27

<sup>4</sup> Section of AIPPA

productions, revenue collected and expenditure. However, despite the right to access information accorded by AIPPA, certain information is classified by the Act as protected information which heads of public bodies may refuse to disclose<sup>5</sup>. The word “may” means the head of a public body has discretionary powers and the prerogative to either approve or disapprove access to information classified as protected. Section 19 of AIPPA classifies certain information as “protected information” which is not privy for the public. Examples of such protected information include information relating to the financial and economic interests of a public body or the State. This claw back provision restricts the right of access to information such as mining contracts, production figures and revenues from mineral resources being disclosed to people. The provision is, therefore, in contradiction with the right to information for matters of public accountability prescribed by the new Constitution and the law has to be amended to remove these bottlenecks. Implementation of the new Constitution could improve transparency for growth in the mining sector through enactment of legal frameworks in line with its provisions. It is vital that the primary law governing access to information which is the AIPPA needs to be in line with the new provisions of the Constitution whereby the provision on protected information such as financial, commercial and technical information is inconsistent in ensuring public accountability.

The alligement of the access to information law with the new Constitution’s provisions will ensure that the State and its public bodies will ensure that all information concerning the governance of the mining sector for purposes of public accountability is made readily available for the public to hold them accountable for any decisions made concerning the country’s mineral resources. Disclosure by the Public bodies such as the Ministry of Mines, ZMDC, MMCZ, ZIMRA and the Ministry of Finance will ensure that their decisions are put to public scrutiny and participation by the general public in the governance of the mining sector. In so doing, this can enable government to ensure that the mining contracts they enter into on behalf of the country unlock maximum value and revenues collected are managed well for the purposes of achieving broad based growth. Section 194 of the Constitution outlines the principles of public administration whereby it entails being accountable to Parliament and the general public. In order for public officials or bodies responsible for administering public resources like mineral resources to be accountable, Parliament and the general citizenry, transparency must be fostered by providing the public with timely, accessible and accurate information. The state is supposed to enact legislation to promote the values and principles of public administration outlined in the Constitution. State controlled entities must also establish transparent, open and competitive procurement systems<sup>6</sup>. This, therefore, means that state owned enterprises like the Zimbabwe Mining Development Corporation (ZMDC) and the Minerals Marketing Corporation of Zimbabwe are supposed to enter into mining ventures based on public bidding processes and not closed door negotiations. In addition, the procurement of equipment, machinery and services should also be through a transparent and public process. These public processes are meant to promote transparency in national investments for purposes of maximizing on national resources through competitive bidding and thus combating scope for corruption by public officials who have a fiduciary duty to make bona fide decisions of behalf of the country. Legislation needs therefore to be enacted regulating the administration of public resources such as minerals. The legislation on public administration should ensure that by public bodies or state controlled entities such as the ZMDC and MMCZ are accountable to Parliament and to the general public by providing the public with timely, accessible and accurate information either through annual reports or on their websites. Access to information such as mining contracts helps to review them and ascertain if the tangible value is being unlocked from the minerals.

The constitution also provides principles of public financial management<sup>7</sup> which should be premised on transparency and accountability in financial matters. Public funds must be expended transparently, prudently, economically and effectively. This means that all information pertaining to mineral resources revenue is to be made public as well as any expenses by the State for the purposes of ensuring public accountability and participation by the public over the management and use of public funds for economic growth. In order to achieve public accountability, financial reporting must be clear. Financial reports by government over mineral revenue and expenses should be easily understood by ordinary persons and not be too complicated. Parliament is also conferred with an oversight role of state revenues and expenditures<sup>8</sup> in order to ensure that all revenue and expenditure is accounted for. In order for Parliament to exercise its oversight role, it needs to be provided with information to make enquiries that ascertain correct revenues owed to the State and collected by its institutions such as the Zimbabwe Revenue Authority (ZIMRA) and expenditures. The Auditor-General shall have the responsibility to audit the accounts, financial systems and financial management of all government departments and institutions<sup>9</sup>. The

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<sup>5</sup> Part III of AIPPA

<sup>6</sup> Section 195, Constitution of Zimbabwe

<sup>7</sup> Section 298, Constitution

<sup>8</sup> Section 299, Constitution of Zimbabwe

<sup>9</sup> Section 309(2)(b)

information compiled by the Auditor –General will be presented to Parliament to oversee revenues owing and received by government department or institutions involved in mining revenues. The oversight powers of Parliament will ensure that all revenues from mining will be properly collected and accounted for and power is given to them. In so doing public officials will be brought to account and cases of corruption and mismanagement over revenue collected and expensed will be reduced because of greater scrutiny. Legislation therefore needs to be enacted to ensure that Parliament exercises its oversight role pertaining to State revenues and expenditures. The promulgation of this legislation will ensure that Parliament access information concerning all revenue accruing from mining operations in order to ensure that it is correctly accounted for and expenditures are properly incurred.

The Constitution also provides for the enactment of legislation regarding the negotiation and performance of concessions of mineral rights. The procedures for negotiating mineral concessions shall be done in a transparent, fair, honest, cost effective and competitive. This means that legislation enacted will strive to ensure that information regarding the negotiation and the awarding of mining contracts is in line with the principles of transparency. The Constitution therefore lays a foundation on which future legal framework regulating the mining sector are premised on the principles of transparency. In addition, the procedures for the procurement of goods and services by the State and all its institutions are laid whereby procurement should be effected in a transparent, fair, honest, cost effective and competitive manner. These provisions entail the realigning of the Mines and Minerals Act which confers one group of people to award mining but instead such processes will be disclosed to the public and the process shall be as competitive as possible contrary to previous practice. The new constitution therefore sets a solid basis for the reform of the mining sector with respect to transparency and accountability.

### **Expedite the processes to decriminalize, regulate and support artisanal small scale mining**

The country's 5 year economic blueprint the Zimbabwe Agenda for Sustainable Socio Economic Transformation (ZIMASSET) leverages on judicious exploitation of mineral resources. Artisanal mining is still illegal despite policy intentions by government to legalize it (Ministry of Finance, 2014). Decriminalization, regularization and support of artisanal mining represent a front door way of empowering many rural communities who are disconnected from the main economic arteries within their locality. There are approximately over 500,000 transient Labour directly involved in artisanal mining especially in the gold sector (Zimbabwe Artisanal and Small scale Miners Council, 2014). Climate change which has diminished food provision through extreme weather patterns like droughts and floods which affect agricultural yields. All this has brought to fore the importance of supporting artisanal and small scale mining as an alternative form livelihood for rural communities in light of diminishing agricultural needs.

Artisanal and small scale miners are faced with a plethora of challenges which include lack of finance, equipment and technological expertise and limited economically exploitable gold reserves (Zimbabwe Artisanal and Small scale Miners Council, 2014). Finance capital is scarce, short term and expensive for artisanal and small scale miners who normally fail to cross the first hurdle of providing collateral to access finance capital. Government has given fiscal incentives to support gold production by artisanal and small scale miners. Royalty rates of small scale gold miners producing less than 0.5kgs of gold per month were lowered from 7% to 3%<sup>10</sup>. Further government scrapped presumptive tax of 2% on gold proceeds from the artisanal and small scale miners association was scrapped off<sup>11</sup>.

The Zimbabwe Republic Police (ZRP) has chipped in to give breathing space for artisanal miners to regularize their operations by suspending operations against artisanal mining with exception of those mining along the rivers<sup>12</sup>. Fidelity Printers and Refinery (FPR) is decentralizing gold buying centers to eliminate several middlemen involved in the gold trade which results in lower gold prices being realized by artisanal and small scale miners. The unsafe use of mercury in the processing of gold is a health hazard to artisanal and small scale miners. There is need to raise awareness on the health and ecological challenges posed by mercury and to promote safe usage or handling of mercury by artisanal and small scale miners.

There is need to urgently review the Mines and Minerals Act which currently treats mining business as one without paying particular attention to the different development stages like artisanal and small scale mining<sup>13</sup>. Currently the acquisition costs of mining rights is a flat structure which means artisanal and small scale miners are treated similarly like big mining corporations which limit their effective participation in mineral resource exploitation. The mineral legal framework can be regarded to be pro poor by reserving alluvial mineral reserves for artisanal and small scale miners since they are not expensive to mine like underground minerals.

<sup>10</sup> 2014 National budget statement, Ministry of Finance

<sup>11</sup> 2014 mid-term national budget review statement

<sup>12</sup> October 2014, An overview of the enforcement of mining legislation especially the gold sector by law enforcement agents. ZRP minerals unit presentation at Kadoma legislators training meeting organised by ZELA

<sup>13</sup> 2 October 2014 State of the artisanal and small scale mining in Zimbabwe, the president of Zimbabwe Artisanal and Small Scale Miners Council (ZAMSC), Kadoma legislators training meeting

### **Expedite the setting up of a local institution to conduct geological surveys**

Currently the Zimbabwean government is not aware of the net worth of its mineral resources. A clear illustration of this reality is the example of the Marange Diamonds whereby recently talks by the mining companies and the government is that the alluvial diamonds have finished and what are now left are the industrial diamonds. This situation clearly demonstrates the failure by the Ministry of Mines to fully know the worth value of the underground diamonds in Zimbabwe. What the government is merely relying on are estimates of the value of the minerals that are being awarded in some of the large scale development project. It is therefore critical that the government through the Ministry of Mines invest financial and technical resources to get geological experts that will conduct a geological survey in order to fully quantify the quantity and quality of all the minerals that the country has. Since mining has been escalating in the past decade, it is important that this process is expedited so that decisions can be made from an informed position. The lack failure by the Ministry of Mines and Mineral development to know the quantity and quality of the mineral resources can greatly short change the country as a result of poorly negotiated contracts made from an uninformed position. If the country wants to optimally exploit its mineral resource wealth for the benefit of local communities and the nation at large, the first point call for the government needs to conduct a comprehensive geological survey. Minerals are finite resources and once an opportunity to benefit from these minerals resources is lost, such an opportunity can never again be recovered. Strategically, the findings of the geological survey will adequately inform the Zimbabwean government if indeed the country is well endowed with minerals resources such as diamond, platinum, gold, chrome and many others and design a Mining Policy based out on the outcomes. The country cannot continue touting the mining sector as the means to end the current economic problems without fully ascertaining potential for growth based on the availability and quality of minerals available

### **Strengthen the capacity of the Zimbabwe Revenue Authority (ZIMRA) for maximum mineral revenues collection to eliminate tax evasion and avoidance**

The Zimbabwe Revenue Authority, or ZIMRA, is the body responsible for collecting taxes in Zimbabwe deriving its mandate from the Revenue Authority Act, passed by the parliament of Zimbabwe in 2002 and other related legislation (<http://www.zimra.co.zw>, 2015). The institution among other responsibilities as is noted in its website (<http://www.zimra.co.zw>, 2015) is responsible for administering the subsequent revenue heads as part of revenue collection. (a) *Customs Duty* – levied on imported goods in terms the Customs and Excise Act [Chapter 23:02] (b) *Value Added Tax (VAT)* - levied on consumption of goods and services (c) *Excise Duty* - levied on specified locally manufactured goods (d) *Income Tax* - levied on income earned from trade *€Pay As You Earn (PAYE)*- levied on income earned from employment (e) *Presumptive Taxes*- it's a concept of taxation according to which Income Tax is based on average income instead of actual income (f) *Road Tolls* - fees levied for the use of the roads (g) *Capital Gains Tax (CGT)* – levied on sale of immovable properties and marketable securities (h) *Surtax* – levied on imported vehicles older than five years. This critical responsibility was highly acknowledged by the alternative mining indabas however of critical importance and as a high level recommendation was for ZIMRA to strengthen its capacity and efficiency in collecting mineral revenue from all operating mining companies.

Acknowledgements were made by participants on the current Zimbabwe Revenue Authority program (ZIMRAP), An initiative that was instituted in response to a request from the Zimbabwe Minister of Finance in 2009. The ZIMRA Program (ZIMRAP) started in April 2010 after an intensive scoping mission in Zimbabwe in November 2009. (<http://www.cardno.com>, 2010). Within this initiative critical capacitation and real time rolling out of lean skills were recommended on a range of fiscal policy and mining taxation issues including windfall taxes, thin capitalization, ring-fencing mineral rights, loss-carry forwards and depreciation, revenue modeling and the calculation of royalties.

The main drive and motivation from participants to have ZIMRA advance this was the June 2014 ZIMRA report which reflected that the Revenue Authority had collected US\$45 million in mining royalty's arrears as at June 2014. (John Kachembere, 2014) affirms this in his report by acknowledging that "Gershem Pasi, Zimra commissioner-general, said during the period under review, total royalties collected amounted to \$112, 6 million, 45 percent above target, adding that the arrears were settled in March." This recommendation to increase the capacity of Zimra was made with the vision that it will result in more resources being generated by the government as part of domestic resource mobilization which in turn will facilitate and improve service delivery across Zimbabwe but more in the mining areas.

### **Government should revise the provisions within the tax law that provide for mining companies to indefinitely carry over losses**

The Mining sector is unique to other sectors. In Mining the state owns the resources but requires huge capital outlays to exploit them in order to create economic value. Development of the mine usually takes a long time. Long

pay back periods associated with mining activities coupled with huge capital outlays makes mining ventures a very risky business. There is also no guarantee of the mining activities being profitable. Investors are usually attracted to countries with political stability, stable social environment, and favourable fiscal and monetary policies. In response to this, Government usually respond by offering incentives to attract investment. Zimbabwe has various tax incentives in mining sector of which some undermines mineral tax revenue contributions to the fiscus.

The various tax incentives in place in the tax system in general make it difficult for the nation to realise the full benefits from mineral resource exploitation by mostly foreign investors. Whether provided in lieu of direct or indirect taxes, these incentives have an effect of depleting the tax revenue base. Mining companies can also carry over losses indefinitely. The carrying forward of mining losses for an indefinite period of time is deemed as the most generous and a disincentive to revenue mobilisation efforts of the government as it grants most mining operations effective tax holidays for an indefinite period resulting in virtual non-payment of income taxes by most mining companies. As far as other corporates are concerned, losses are carried for a maximum of 6 years as per Income Tax Act, section 15(3). In regards to capital expenditure, all capital expenditure incurred wholly and exclusively for mining operations will be allowed as a deduction at the rate of 100% in the year expended whilst other corporates get 25% SIA each of the four years.

## CONCLUSIONS

The action points substantiated above as some of the critical declarations from all the 2014 Alternative mining Indabas if taken and acted upon by government and all the critical stakeholders will not only improve the mining sector and its contribution to the fiscus in Zimbabwe but will also benefits the communities in which the actual mining is happening by redirecting resources and benefits to those communities and overly leading to improved basic service delivery. The general acknowledgement by the government and the general populace on the importance of mining and its contribution to the development of Zimbabwe is a great opportunity and a motivation that should drive every key stakeholder involved in mining directly and indirectly to push for these recommended initiatives.

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