A Review of the Medium Term Plan and the Mid Year Fiscal Policy Statement and their Implications on Mining

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Introduction

In July 2011, the government issued two policy statements that have implications on the mining sector in Zimbabwe. These are the Medium Term Plan (MTP) 2011-2015 launched by the Ministry of Economic Planning and Investment Promotion[1] and the Mid-Year Fiscal Policy Review Statement (MYFPRS) presented in Parliament by the Ministry of Finance.[2] The aim of this article is to analyse the implications of these two policy documents on some proposed reforms in the mining sector. These reforms are the Extractive Industries Transparency Initiative (EITI), Corporate Social Responsibility, Environmental Rehabilitation, Royalty Policy and Value Addition and Beneficiation.

Zimbabwe is a mineral rich country. It has huge deposits in gold, nickel, coal, asbestos, chrome, platinum, paladium, black granite and diamonds. Buoyed by rising international mineral prices for gold and platinum, mining is primed as one of the key sectors that can catapult Zimbabwe's economic recovery. It is estimated that mining is currently contributing about 50% of total exports and is a major source of Foreign Direct Investment (FDI) with the potential to contribute even more.[3] The mining sector is targeted to grow by 34% by the end of this year.

Analysis

With regard to the mining sector, the policy objective of the MTP is to "profitably exploit Zimbabwe's natural resources and mineral endowments for socio-economic development". To achieve this objective, the MTP proposes a number of policy targets and measures. The EITI is one of the policy measures proposed by the MTP. The EITI is a voluntary initiative involving governments, mining companies and civil society organisations. Under EITI, mining companies make voluntary commitments to disclose the payments that they make to governments in the form of taxes, royalties etc while government also make voluntary commitments to disclose the payments they receive from mining companies. The EITI helps mineral resource rich countries to derive maximum economic benefits from the exploitation of mineral resources thereby avoiding the proverbial natural resources curse or natural resources paradox.

EITI is an initiative that was launched in 2002. It is a voluntary initiative comprising of governments, mining companies and Civil Society Organisations (CSOs).Under EITI, companies make voluntary commitments to publish all material mining payments they make to government. On the other hand, government also makes commitments to publish or disclose all revenue received from mining companies. The

[1] This was launched on the 7th of July 2011
[2] This was presented on the 26th of July 2011
[3] Medium Term Plan,page.132

publication or disclosure is done to a wide audience and in a publicly accessible and comprehensive manner. The payments made by companies to governments and the revenue received by government from mining companies are subject to credible and independent audit. After audit the payments and revenues are subjected to reconciliation by an independent administrator and the publication of the administrator's opinion.

It is important to note that while EITI is a voluntary initiative, there is an emerging trend where countries are legislating for it to become mandatory. Examples of this trend from the global north include the United States which legislated for EITI through Dodd –Frank Wall Street Act which was passed by Congress on the 15th of July 2010. The Act states that "every listed company engaged in the extractive activity must disclose its payments on a country to country and project by project basis in the countries in which it operates".[4]

The European Union through the French, German and British leadership have expressed willingness to legislate for EITI. The Australians also seem to be buying into the idea. At the continental level, countries like Nigeria, Niger and Liberia have led the way by legislating for EITI.

Benefits of EITI

There are a number of benefits that are associated with EITI. Natural resources rich countries like Zimbabwe are often plagued by the natural resources curse or the resource paradox. This describes a situation where natural resources create stagnation, conflict, environmental degradation, impoverishment of communities and violation of human rights instead of economic growth and development.

Firstly, EITI is credited with building trust and dialogue among stakeholders in the mining sector. The relationship between mining companies, communities, government and civil society is more often than not characterised by suspicion, mistrust and hostility. EITI through the Multi Stakeholders Group (MSG) has managed to bring stakeholders to the table thereby enabling them to dialogue and discuss on mining issues from their various perspectives.[5]

Secondly, EITI helps to improve governance. Through EITI, payments made by mining companies and revenues received by government are publicly disclosed and discussed. The public disclosure and debate about payments and revenue provides a very good basis for scrutinising the use of public resources for the public good.[6]

Thirdly, EITI has helps governments to manage and enhance growth and development. Information obtained through the EITI process has helped reduce mismanagement of public resources and opportunities for corruption due to increased transparency and strengthened accountability measures. Furthermore, EITI increases investor confidence as it can be used as a tool to promote Foreign Direct Investment

[4] Section 1504 of the Dodd –Frank Act
[5] The EITI Secretariat 2010. Impact on EITI in Africa. Stories from the ground.
[6] Ibid

(FDI). Increased transparency and strengthened accountability can also promote economic and political stability.[7]

Fourthly, EITI is building the capacities of CSOs and communities and empowering them to participate more effectively in the policy and decision making processes in the mining sector. The MSG has resulted in CSOs getting a seat at the table with mining companies and governments and access to information which have hitherto been inaccessible to them. They share this information with communities and use it to hold governments and mining accountable while in their lobbying and advocacy activities.[8]

The Ministry of Finance is actively looking for support and technical assistance to implement EITI. EITI as a mineral resource management tool as envisaged by the MTP and the Ministry of Finance is set to receive a major boost through the launch of the Publish What You Pay (PWYP) Zimbabwe Chapter which will be launched by the Zimbabwe Environmental Law Association in collaboration with other CSOs on the 26th of August, 2011.

The PWYP Campaign is a global network of over 600 member organizations in more than 30 countries that are united in their call for extractive sector revenues to form the basis for development and improve the lives of ordinary citizens in resource-rich countries. PWYP undertakes public campaigns and policy advocacy to achieve disclosure of information about extractive industry revenues and contracts. It must be pointed out that while PWYP Campaign initially focused on revenue transparency, it has broadened its agenda to include transparency across the whole value chain of mining including; the granting of mineral claims, contracting, and licensing and revenue transparency.

The premise of the PWYP-Campaign is the call for companies to "publish what they pay" and for governments to "publish what they earn" as a key step towards a more accountable system for the management of natural resource revenues. When companies disclose what they pay, and governments disclose their receipts of such revenues, civil society and African citizens are able to compare the two and thus hold their governments accountable for the management of this valuable source of income. Revenue transparency enlivens democratic debate over the effective use and allocation of resource revenues and public finance in order to meet development objectives, improve public services, and redistribute income.

PWYP is the vehicle through which CSOs monitor the implementation of EITI. While EITI is dependent on the volition of mining companies and government, PWYP is a CSO initiative independent of governments and companies. In some countries, PWYP has been used an instrument to push for the adoption of EITI as a policy tool by government and mining companies for example in Liberia. The hope is that the PWYP Zimbabwe Chapter will be used as a tool to mobilise civil society, legislators, CSOs, media and communities to advocate foe the adoption of EITI in Zimbabwe in

[7] Ibid
[8] Ibid

support of policy pronouncements in the MTP and the efforts of the Ministry of Finance.

Royalty Policy

The MTP proposes a royalty policy. Zimbabwe like many other African countries rich in mineral resources has not benefitted enough or has not derived fair compensation from the exploitation of its natural resources including minerals.[9] Royalties or resources rent tax are the principal instruments for ensuring that the country gets some benefits from the extraction of minerals. There are many different forms of royalties. Currently, royalties for gold is at 4.5% while platinum is at 5%. Diamond royalties are pegged at 15%.[10] According to the MTP, Government will continue to review royalty rates in line with mining sector performance.

Minerals Value Addition or Beneficiation

The MTP proposes minerals value addition or beneficiation of Zimbabwe's minerals. One of the reasons why mining has failed to contribute to the economic development and industrialisation of Africa despite its potential to do so is because most of the minerals exploited in Africa are exported in their raw state. Unprocessed raw materials fetch low prices unlike processed materials. Value addition or beneficiation will result in better prices, create new jobs and other downstream benefits for the Zimbabwe economy.

Conclusion of the Mines and Minerals Amendment Act

The Mines and Minerals Amendment Bill has been a draft since 2007. The MTP calls for the conclusion of the Mines and Minerals Amendment Act by 2011. The proposed Mines and Minerals Amendment Bill proposes a number of progressive reforms. These include reforming the old and archaic Mining Affairs Board which does not reflect new realities that were born out of the land reform programme, recognising communities as important stakeholders in the mining sector which is not the case under the current Mines and Minerals Act, environmental management through environmental rehabilitation funds[11] and a mining titles administration system that is easy to understand, apply and enforce. The Amendment also introduces the "Use it or lose it Policy". The objective of this policy is to discourage the holding of claims for speculative reasons without developing them and this affects the development of the country. A high fee will be charged as a punitive or deterrent measure to discourage the holding of claims for speculative purposes.

Small Scale Mining

Small scale mining is also a key focus area for the Government under the MTP. If done properly, small scale mining can benefit from the ongoing indigenisation and economic empowerment drive under the Indigenisation and Economic Empowerment

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[9] International Study Group Report
[10] These current royalties were set by the Ministry of Finance in the his 2011 Budget announcement
[11] Section 257A

Act. Small scale mining has been hamstrung by the lack of technical and financial support from government. If small scale mining is to thrive, then Government will need to set aside resources both human and financial to support it.

Corporate Social Responsibility

Implementation of Corporate Social Responsibility in the mining sector is one of the clarion calls of the MTP. CSR is defined as "the commitment of business to contribute to sustainable economic development, especially working with employees, their families, the local community and the society at large to improve the quality of life in ways that are good for business and good for development".[12] This working definition shows that CSR is a very broad concept that covers a broad range of commitments and behaviours of business from minimum compliance to laws and policies in country to a more pro active and positive role of investing in communities in the form of infrastructure and skills, local sourcing or raw materials, employment creation and good work place policies. CSR usually entails responsibilities that a business has over and above its legal obligations like the payment of royalties. In other words CSR is a not a substitute to legal obligations.

CSR can take various forms. These include:

a) Investments in social and physical infrastructure and services like the building of schools, roads, health facilities, market places, irrigation schemes and dip tanks, fish ponds , tree planting
b) Support of Small to Medium Enterprises like honey processing, establishment and support to community development funds, grinding mills , sourcing of supplies and other services from the local communities thereby creating employment and support to agricultural activities
c) Giving preferences to locals in the recruitment of non skilled labour
d) Scholarships

Establishment of a Sovereign Wealth Fund

Another significant call by the MTP is the establishment of the Sovereign Wealth Fund (SWF). This will be used to manage natural resources rents like royalties. SWF are meant to support government savings and promote an intergenerational transfer of resources or to build savings for the benefit of future generations. The sovereign fund is a state owned investment fund. The concept of SWF has been used in other countries and as such lessons should be learnt from different countries that have used it. For example Botswana has a Pula Fund which is made up of revenue from diamonds and other minerals, Norway which is rich in oil, used oil revenue to create the Norway Government Pension Fund Global. Similarly, Kuwait has a Reserve Fund for Future Generations from oil revenue, Libya has an Oil Reserve Fund, while Nigeria has an Excess Crude Account from oil revenue.[13]

While the idea of creating a Sovereign Wealth Fund from mining revenue and

[12] Definition adopted from the World Business Council for Sustainable Development and World Bank's Corporate Social Responsibility Practice Group
[13] Zimbabwe Environmental Law Association, 2011. Analysis of Mining Developments in Zimbabwe

payments is well intended, in most cases such funds are created in situations where the government has budgetary surpluses and have little or no international debt. Creating the Fund in the immediate future may not work properly in Zimbabwe, until the macro-economic environment has improved and government has managed to effectively manage the economy with budgetary surplus and having cleared the huge external debt.[14] Currently, Zimbabwe has an unsustainable external debt estimated to be over US$ 7 billion[15] and creation of a SWF may not be feasible due to lack of a budgetary surplus.

The other potential problem with the creation of such a fund is that in many countries where they have been created, there is lack of transparency and accountability on investment decisions and the purpose of investment. The challenge for Zimbabwe is that in the absence of a conducive political and economic environment, proper institutions that are transparent and accountable, the creation of this fund may be a cover for impunity creating a fertile ground for corrupt elements to loot funds from mineral resources.[16]

To address some of the possible pitfalls associated with the management of SWF, the MTP proposes that this Fund be overseen by Government, CSOs and mining companies. The MTP further proposes that the setting up of the SWF be guided by EITI Guidelines so as to avoid the natural resources curse syndrome.

Natural Resources Charter

Another policy pronouncement by the MTP is the Natural Resources Charter. The objective of the Natural Resources Charter is to assist countries and governments that are rich in non renewable resources to maximise economic benefits in a sustainable manner. The charter is organised around 12 core precepts that offer guidance on key decisions on natural resources development.

Transparency and accountability is critical for the success of the Natural Resources Charter. CSOs will play a key role in the development and implementation of the Charter.

The 2011 Mid-Year Fiscal Policy Review Statement (MYFPRS) by the Ministry of Finance also makes pronouncements that have implications on the mining sector. While demand for minerals is increasing as evidenced by the firming of prices for gold and platinum, the MYFPRS notes that “this is not translating into commensurate increased revenue for the fiscus as well as well as increased benefit into the economy”. The failure is as a result of a number of factors. These include the over accommodating tax structure under the disguise of attracting Foreign Direct Investment (FDI) commonly known as the “race to the bottom”. The race to the bottom describes a situation whereby countries that are rich in mineral resources outdo each other by giving ridiculous concessions all in a bid to attract FDI and in the

[14] Ibid
[15] Ministry of Finance 2011. The Mid-Year Fiscal Policy Review Statement
[16] An analysis of Mining Developments in Zimbabwe ,2011. Zimbabwe Environmental Law Association

process lose fiscal earnings and policy options that are necessary to map a more dynamic long term growth path.[17]

The second reason is the lack of value addition and beneficiation in the economy which results in the country exporting most of its minerals in their raw state without processing them. The third reason is an old, outdated and colonial piece of mining legislation in the form of the Mines and Minerals Act (Chapter 21:05). These problems that are articulated in the MYFPRS namely a weak tax structure, lack of value addition and beneficiation and archaic legislation, mirror those problems that are also reflected in the MTP.

The third problem is the failure to comply with the requirements of the Kimberly Process Certification Scheme (KPCS) which Zimbabwe is a member.

Fourthly, there is a serious lack of transparency and accountability in the production and management of generated revenue. As a result, there is a big mismatch between revenues from production, revenue and international prices of diamonds. Although there has been significant production of diamonds from the Marange diamond fields in 2011, according to the MYFPRS, there has been no payment to the treasury of revenue generated between January and June. To address these problems associated with lack of transparency and accountability, the MYFPRS proposes the development of a Diamond Revenue Bill. The Diamond Bill will "create a proper legal framework dealing with the audit trail of all diamond revenue, its sharing and distribution, as well as role of the Zimbabwe Revenue Authority (ZIMRA) at both production and marketing levels".

Conclusion

An analysis of the policy statements namely the Medium Term Plan and the Mid Year Fiscal Policy Statement shows that they make policy pronouncements that have implications on the mining sector. The policy pronouncements seem very progressive and the dovetail initiatives by civil society organisations like the launch of the Publish What You Pay Zimbabwe Chapter. However, the implementation of these policy pronouncements depends on a number of factors chief of them being a conducive political environment. Most of them are anchored on transparency and accountability. Previously, issues to do with transparency and accountability have faltered under the turbulent politics of the inclusive government. Furthermore, some of the policy pronouncements are scheduled to be concluded by the end of 2011. However, this seem to be a very unrealistic timeframe as the year is already coming to an end and there is no evidence that steps have already been taken to kick start these well intended initiatives.

[17] ISG