

# ZIMBABWE ENVIRONMENTAL LAW ASSOCIATION (ZELA)



## Zimbabwe Alternative Mining Indaba 2013 Report

**Theme:** *“Community Rights, the key to empowerment”*



**Report by:**

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## **ACKNOWLEDGEMENTS**

The Zimbabwe Environmental Law Association Law (ZELA) would like to thank its partners for the technical and financial support that enabled the organisation to successfully host the 2<sup>nd</sup> Zimbabwe Alternative Mining Indaba (ZAMI). These partners include, the principal supporter of the programme the Norwegian Church Aid (NCA), Norwegian People's Aid, Christian Aid and Irish Aid, Global Green Grants, the UNDP and AFRODAD.

ZELA would also want to thank the participants, presenters, facilitators and staff members for making the 2<sup>nd</sup> Zimbabwe Alternative Mining Indaba a success. In particular, ZELA would like to thank Mr. Rodney Ndamba, Judith Kaulem and Dakarayi Matanga for facilitating the different sessions.

## **EXECUTIVE SUMMARY**

This report summaries the proceedings and results of the 2<sup>nd</sup> Zimbabwe Alternative Mining Indaba which was organised and hosted by The Zimbabwe Environmental Law Association (ZELA). The Indaba was held in Harare from the 10<sup>th</sup>- 11<sup>th</sup> of September 2013 under the theme “Community rights, the key to empowerment.” The indaba attracted a wide and diverse audience. A total of 143 participants attended the Alternative Mining Indaba. These included local communities affected by mining operations from Zvishanave, Shurugwi, Guruve, MhondoroNgezi, Marange, Chipinge, Chimanimani and Buhera. Other participants included traditional leaders, civil society organisations, members of parliament, small scale miners, media, local authorities, community based groups, embassies and government officials.

This report summarizes papers presented, issues discussed, recommendations and the declaration that was adopted during the Zimbabwe Alternative Mining Indaba. This years’ ZAMI followed the success of the inaugural ZAMI that was jointly organized and hosted by ZELA, the Environmental Justice Network (EJN), the Zimbabwe Council of Churches (ZCC) and the Chiadzwa Community Development Trust (CCDT) from the 11<sup>th</sup>-13<sup>th</sup> of September 2012 with support from the Norwegian Church Aid (NCA), Christian Aid and the Green Grants Fund. It was also preceded by the Provincial Alternative Mining Indabas in Manicaland and Midland whose main objective was to provide a platform for communities affected by mining operations to discuss amongst themselves with policy makers, government, mining companies and civil society the impacts of mining on livelihoods, human rights and environmental sustainability among others.

The ZAMI was created as a parallel platform for communities, civil society, faith based groups, media, decision makers and even mining companies to discuss problems caused by mining and finds common solutions to those problems. The concept of Alternative Mining Indaba is basically to address is the limited participation of community groups and other stakeholders in the Mining Indaba that is held on an annual basis in which government and the corporate sector actively participates. In 2013 the Mining Indaba will be held from the 25<sup>th</sup> -27<sup>th</sup> of September. Over the years, this event has emerged to be a club for rich individuals and government officials to share ideas about how they can promote investment in the extractive sector. Attendance at the Mining Indaba is paid for and the fees are prohibitive. As an alternative, civil society organised its own version of the Indaba-the Zimbabwe Alternative Mining Indaba to give an opportunity to communities and other stakeholders who cannot afford the high fees to come together and discuss the problems being faced in the mining sector in Zimbabwe. The 2013

Alternative Mining Indaba was intended to include deeper discussions around revenue generation, mining taxation and use and distribution as well as the tax justice campaign.

The specific objectives of the 2013 ZAMI were included; the need to identify and discuss some of the challenges in the mining sector and the impacts on communities, discussions on the implementation of the Africa Mining Vision, discussions on the implementation of the indigenisation programme in the mining sector especially the community share ownership scheme and the aspect of equitable distribution of income from mineral resources exploited in the country.

This report therefore outlines some of the main discussion points and issues drawn from the deliberations. During the ZAMI a number of presentations were made by economists, lawyers, labour experts and government officials. The presentations included; feedback and progress check on how the resolutions in the declaration that was adopted during the 2012 ZAMI were implemented. The key observation on the progress check was that significant progress was made by civil society and government to implement some of the demands and resolutions such as the process to develop a draft Minerals Policy in Zimbabwe. The other key presentation that was made during the ZAMI was on how the country can unlock economic development from the abundant mineral resources. The presentation was made by Dr Godfrey Kanyenze and it outlined some of the challenges and possible solutions to enable the country to derive maximum benefits from mining. Discussions on the implementation of the Indigenization Economic Empowerment Programme also generated a lot of interest and different views from participants. The key speakers included the President of the Small Scale Miners, legal experts from the Research and Advocacy Unit (RAU) and Chief Mapanzure representing beneficiaries of Community Share Ownership Schemes.

There were also specific presentations from the women's sector and community based groups based on deepening understanding amongst participants of the impacts of mining on women and local communities. One of the most interesting presentation was by Mrs Rosemary Jena from the Save-Odzi Community Network which is a network of communities in Chipinge, Buhera and Chimanimani being affected by pollution of Save and Odzi Rivers by diamond mining companies. Mrs Jena brought a sample of the water communities use in the area to illustrate the severity of their problem. This attracted a lot of interest from participants. Other presentations included an overview of workers' rights in the mining sector by a labour expert from the Zimbabwe Congress of Trade Unions (ZCTU), a presentation by the KPCS Civil Society Coalition representatives in Zimbabwe, a presentation on the Africa Mining Vision and the Draft Minerals Policy of 2013. In addition, many participants expressed interest in a presentation that was made by TawandaZhuwara from the Zimbabwe Lawyers for Human Rights (ZLHR) on the new Constitution and the challenges for promoting and protecting community rights in the

mining sector. The presentation outlined some of the new constitutional rights such as environmental, economic, social and cultural rights.

Government departments also made presentations during the ZAMI. In particular, the Zimbabwe Revenue Authority (ZIMRA) made a presentation on the different mining taxes being paid by mining companies and the challenges being faced in collecting taxes from mining companies. Further, the Zimbabwe Human Rights Commission also made a presentation on its functions and how it is trying to position itself to tackle human rights violations in the extractive sector. Lastly, solidarity messages from regional partners were received from Zambia, South Africa and Mozambique.

At the end of the ZAMI a Declaration was adopted by participants which stated their key demands. Some of the issues that participants want government to address include the passage of a new Mines and Minerals Act, promotion of value addition, making artisanal mining legal, transparency and accountability in the production and marketing of minerals as well as the implementation of the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI), the need to implement the African Mining Vision, strengthening revenue collection in the mining sector to curb tax evasion and avoidance, carrying out a geological survey before issuing mining contracts and providing legal clarity in the implementation of the indigenisation and economic empowerment programme among others.

## CONCEPTUAL BACKGROUND

The mining sector in Zimbabwe has proved to be one of the critical drivers of economic growth in the past 3 years. The sector has contributed more than 60 % of the country's total exports. The visible boom in the mining sector is attributed to the stable macro-economic operating environment that was characterized by the introduction of the multi-currency regime up to the establishment of the inclusive government. The Zimbabwe mining sector has become the topical discussion issues, of course because of the discovery of the diamonds. Although the country is endowed with a vast array of minerals, the top contributors in the last years are platinum, diamond and gold. They have put in up to 90% of the total mineral export earnings in the country.

A number of challenges however have been noted. There has been a rise in power outages as the debt of ZESA seems to increase and the sector will not cope with the rate of outages. There has been high tariffs and the slowing down of international mineral commodity prices and so the control of prices is external. Commodity prices are controlled externally and thus the mining companies or the governments hands are tied as far as commodity prices are concerned. Due to the economy and the fact that mining is capital intensive there has been lack of medium and long term credit schemes as banks and investors are reluctant to extend loans to miners or mining companies. Most miners have outdated or obsolete equipment, investors shy away especially because of the political environment thus infrastructure, roads, bridges and dams are hindering the production of minerals.

The other major challenge in the country was the introduction of the controversial indigenization and empowerment programme. The lack of clarity in the law and the implementation has led investors to adopt a wait and see strategy. However most of the giant mining companies have complied with the law which led to the development of CSOTs in most mining regions through submission of implementation plans.

Diamond revenue has been a topical issue in the country. According to the Ministry of Mines and Mining Development the country has raised more than US\$2 billion in diamonds. This revenue was generated from royalties, advance payment of dividends and corporate taxes. However, the Ministry of Finance has been accusing diamond mining companies such as Anjin of failing to pay proceeds from diamond sales to Treasury.

Conflict arises as mining companies record gains monthly and yet surrounding communities record losses. Zimbabweans are living in poverty especially those

communities surrounded by mining activities. The question is what are the mining companies doing to ensure that environmental, cultural, economic and social benefits are derived from their activities.

Mining experts say that most revenue is lost through the exportation of minerals. Employment is therefore acquired to the countries they are exported to and we retain the minimum value as they are exported in their primary or unprocessed form. Although mining is highly likely to bring development, communities are suffering as miners maximize profits. They use cheap labour and a lot of families have been forcefully removed from their homes, they are not consulted neither are they compensated adequately if they are compensated at all. Mining is generally situated in rural areas where agriculture is also prevalent. Their activities impact negatively on agricultural land and grazing areas. This reduces food security. These mining activities also have visible impacts to women and children in these communities.

In this light as a way of ensuring that communities gain, there was the introduction of CSOTs, although communities are supposed to be the beneficiaries they do not know what constitute of the trusts. There has been very little economic value to women and the youth in mining communities; this has lead to the emergence of artisanal miners who are popularly known as Makorokoza. This type of mining is dangerous both to the environment and the people involved.

It is also imperative for the media to continue and act as the watchdog of both the government and the mining companies so that communities get the full benefits of their land. Due to these and other factors it is imperative that communities are engaged in decision making processes by consultation with relevant stakeholders a better community will be developed.

## **SPECIFIC OBJECTIVES OF THE 2013 ZAMI**

The following were stated as the specific objectives of the 2013 ZAMI;

- 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.
- To discuss the realisation of the Africa Mining Vision and its implications on proposal legal reforms in Zimbabwe's mining sector.
- To critically analyse the structure and implementation of the indigenisation programme as an empowerment model for communities in Zimbabwe.
- To create a platform for engagement among mining companies, government and civil society, the media and the communities affected by mining operations.
- To provide an alternative space for stakeholders to discuss issues of equitable distribution of income from mineral resources exploited in the country.
- To share information on the lessons, challenges and achievements of various stakeholders' initiatives on promoting natural resources governance and transparency in the mining sector.

## **OPENING REMARKS**

The 2013 ZAMI was opened with remarks from Mutuso Dhliwayo, the Director of the Zimbabwe Environmental Law Association (ZELA). He began by acknowledging the presence of all regional and local participants and welcomed them to the Indaba which was being hosted by ZELA in partnership with AFRODAD and the Economic Justice Network. He said the theme of the 2013 ZAMI reflected what ZELA believed in and said the organisation believed in promoting community rights as they are crucial in driving democracy, development and good governance of natural resources in the country. He went on to point out that without the communities, ZELA's work will be incomplete, since the organisation treasures community participation.

In the same vein, Mutuso gave a brief background and concept of Alternative Mining Indabas. He added that Alternative mining indabas were meant to create an alternative space meant for discussing and sharing perspectives on the negative and positive impacts of mining on mining communities. He said this was contrary to the misconception that the platforms were meant to compete with the private sector organised mining indaba. He said civil society organisations do not oppose mining but said the only bone of contention is that the private sector and government seem to be acting like three monkeys who see, hear and say no evil when it comes to the negative impacts of mining. He said it was important to look at how mineral resources could be enjoyed by everyone and how mining can be responsive to community needs.

He went on to thank supporting partners namely AFRODAD, Christian Aid and Irish Aid, Norwegian Church Aid, Norwegian People's Aid and Action Aid International as well as the UNDP. He said it was his hope that the discussions were going to be fruitful, participatory and enriching so that the declaration that will be presented to the government and mining companies at the end of the Indaba will reflect every participant's concerns and recommendations.

## REMARKS FROM SUPPORTING PARTNERS

Amongst the supporting partners that attended the ZAMI, the Economic Justice Network and the Norwegian Church Aid made some remarks. The following message boxes give an indication of their key messages which showed great support to the idea of community participation at the ZAMI.

We look forward to a day when communities are able to challenge any investor and participate in the extraction of mineral resources from their area. We also need a nation with sound mineral policies that are pro- poor and community centred, that will enable sustainable development for us and the future generations.

**Ntsama Chinkakwa, Economic Justice Network.**

We would to thank ZELA for creating a platform for communities and many other stakeholders for discussing and sharing ideas on challenges emanating from mining.

**David Takawira, Norwegian Church Aid**

## HIGHLIGHTS OF PRESENTATIONS

### PROGRESS CHECK ON THE OUTCOMES OF THE 2012 ZAMI: MR. SHAMISO MTISI

The first presentation of the first day of the ZAMI was a presentation by Shamiso Mtisi on ZELA on progress made by civil society organisations, community groups, government and mining companies to implement some of the resolutions that were contained in the 2012 ZAMI Declaration. The progress check was important to enable participants to assess whether the 2012 demands were fulfilled or not. Shamiso indicated that the 2012 ZAMI ran under the theme “*Counting the costs and questioning the benefits*”.

**Some of the key demands made in 2012 were as follows;**

- ❖ **Immediate passage of the Mines and Minerals Act and Policy:** The progress that was made on this issue was that Government had started consultations in May 2012 on the development of a Draft Minerals Policy. A Draft Policy already exists. ZELA was invited to represent civil society and to make a presentation during the consultation process. ZELA used the opportunity to present many of the issues that were contained in the 2012 ZAMI Declaration. However, it was noted that there was no progress on the development of a new Mines and Minerals Act.
- ❖ **Legislators must play an oversight role and be granted permission to access mining areas such as Chiadzwa:** The progress made on this was that the Parliamentary Portfolio Committee on Mines and Energy which was working with ZELA produced a report on what was happening in Marange and on Chrome Mining in Zimbabwe, in terms of community relocation, marketing of minerals, beneficiation and acquisition of minerals rights. The report on Marange diamond mining was presented to Parliament. Parliament also managed to play an oversight role in the mining sector. However, it was pointed out that the Chairman of the Parliamentary Committee on Mines died a few days after presenting the report and this was a major concern to civil society. The new Committee that will be established after the 2013 elections was encouraged to emulate the work on the last committee.
- ❖ **Corporate Social Accountability and Responsibility** should shift from being a voluntary to a mandatory mechanism with agreed minimum standards which directly benefits the affected communities; No specific legislation was passed by

government of CSR, but the Draft Minerals Policy makes reference to communities benefiting from mineral resources; Further, the Indigenisation and Economic Empowerment Act has implications on CSR since mining companies are compelled to come up with indigenisation implementation plans that can promote CSR through the Community Share Ownership Schemes. However, there is need to check on how much has so far been allocated for Community Share Ownership schemes and how the money is being used.

- ❖ **Review and renegotiation of mining contracts and promotion of transparency and accountability in the mining sector;** No noticeable action was taken by government to review and renegotiate some mining contracts that do not benefit the country. On transparency and accountability, the Zimbabwe Mining Revenue Transparency Initiatives (ZMRTI) was adopted by the Unity Government in 2012 to promote public disclosure of mining revenues, but the Ministry of Mines and Mining Development refused to attend meetings and to participate in the process. The new government was encouraged to continue implementing the initiative.
- ❖ **Improve the capacity of the Human Rights Commission and the Environmental Management Agency** to fully investigate and prosecute human rights and environmental abuses in the mining sector: In 2013 all the commissioners who are members of the Zimbabwe Human Rights Commission attended a workshop on Business and Human Rights in the extractive sector that was organised by ZELA. During the meeting the commissions made a commitment to focus on environmental, economic, social and cultural rights in carrying out their work. The ZHRC also attended the 2013 ZAMI and made a presentation. However, EMA has to improve its environmental monitoring role especially on pollution of Save River and Odzi River which are being polluted by diamond mining companies operating in Marange.
- ❖ Government must ensure that **Community Share Ownership Schemes benefit communities** that are directly affected by mining activities; Government has been implementing the programme and some mining companies have complied with the programme requirements and started giving funds to the Community share ownership schemes. However, what is needed is an audit of the process to ensure transparency and accountability.
- ❖ **Tax evasion and avoidance:** Government must ensure that mining policies do not give excessive incentives to foreign investments but instead put in place appropriate tax policies that curb capital flight through methods such as evasion and avoidance. In 2012 and 2013 various Civil society organisations launched projects on tax evasion and avoidance. For example ZIMCODD, ZELA, ACTION AID, AFRODAD, CNRG ETC have all been working on tax justice projects. In addition, a new research and advocacy consortium is carrying out research on

illicit financial flows in the mining and natural resources sector. The group includes ZELA, CNRG, AFRODAD, TIZ and ZIMCODD.

- ❖ Government must create a conducive environment for civil society, media and other stakeholders to have **access to information and fully exercise the right to know**; Civil society participation during consultation meetings on the Minerals Policy commendable: However, no public disclosure of mining revenues in a disaggregated manner was done, despite the adoption of the ZMRTI by government. In the environmental sector access to Environmental Impact Assessment reports is hindered by the payment of \$250 as access fee. This is too costly for communities.
- 1. Makes it mandatory for companies extracting minerals in the country be **listed on the Zimbabwe Stock Exchange (ZSE)** before being registered elsewhere; Government officials quoted in the media making this demand during the course of the year. The Institute for Sustainability Africa is one of the NGOs that is doing some work with listed companies to promote the concept of sustainability reporting.
- 2. **Urgently finalise the Constitution:**The Constitution was finally passed and is now operational. It includes environmental, economic, social and cultural rights and the right for communities to benefit from natural resources wealth. What remains is to ensure the implementation of the constitutional provisions.
- 3. **Legalize artisanal and small-scale mining:** Government officials issued public statements about this, but no concrete action taken.

## Discussion session

- Participants wanted to know what civil society organisations such as ZELA did on the review of the old mining laws. The response by ZELA was that the organisation carried out a research on the Minerals Policy and the Diamond Policy with the objective of trying to influence the development of a clear legal framework on mining in Zimbabwe. A number of publications were produced by ZELA and were shared with Government officials and mining companies. It was also indicated that in 2012 and 2013, the Ministry of Mines had a confusing legislative agenda. The Ministry was not clear whether they wanted to come up with a new law on diamonds or whether they wanted to amend the Precious Stones Trade Act or amend the Mines and Minerals Act. The messages from the Ministry have been conflicting and inconsistent on their desired legislative path.

- Participants also wanted to know whether ZELA has taken any legal action on the restriction of movement in the Marange Diamond fields. The response was that no specific legal action was taken by ZELA on restricted access to Marange. However, civil society and parliament managed to visit the area in 2012. Advocacy campaigns on protection of the rights of the residents of Marange by ZELA and community based groups continue. Some of these campaigns are targeted at the Kimberley Process Certification Scheme. It was also noted that the only court action that was initiated by ZELA in 2010 was for the removal of soldiers who were harassing people in the diamond fields. However, the matter has not yet been heard and is still pending since then.

## **UNLOCKING ECONOMIC DEVELOPMENT FROM MINERAL RESOURCES: PROBLEMS AND SOLUTIONS: DR GODFREY KANYENZE**

The key speaker for the 2013 ZAMI was Dr GodfreyKanyenze. He started his presentation by congratulating ZELA and its partners for organising an alternative space which values the voices of the communities. He highlighted that the shocking thin in Africa is that the continent is rich but the people are poor. The current African Economic Outlook edition poses a question on why in spite of sustained economic growth there is little poverty reduction in Africa as compared to other continents. There seems to be a shift of resources from low productive sectors to high productive sectors, which is structural progression in other continents and the opposite is true in Africa. Since its rebound in 2009, Zimbabwe's economy has mainly been driven by raw materials as seen in the mining sector.

In his presentation Dr Kanyenzecited some of the problems that are associated with the mining sector in African countries. He pointed out that mining is a prototype "enclave sector" linked to external markets than the local markets. According to a recent report, Minerals and Africa Developments by the International Study Group, there is need for African mining countries to remove the colonial enclave nature whereby African countries are still depending on overseas markets to export raw materials. The study also shows that there is need for transformation from raw material activity countries to industrial ones. Most African mining countries export raw materials with little or no value addition thus exporting jobs. In this regard he gave the example of the creation of 60 000 jobs in the diamond and cutting industry in Surat, a small town in India where Zimbabwean diamonds are being exported to in their raw form. Therefore even though mining has contributed to high Gross Domestic Product (GDP) in most African mining countries, there are high levels of poverty and this is because mining has not been able to create significant employment to locals.

On jobs, Dr Kanyenze informed participants that according to the latest ZIMSTAT survey,mining contributed 32,2% to the GDP but only managed to contribute 3.2% to the employment. This means that the link between mining and job creation is very weak. Thus without job creation from the sector, abject poverty will continue to co-exist with vast mineral deposits in Africa, since employment is one the critical aspects in terms of poverty reduction. ZIMSTAT latestsurvey indicates that 62% Zimbabwe population lives in poverty while 84% of the Zimbabwean population is employed in the informal sector. This therefore means that the Zimbabwean economy is regressing and not progressing.

In the same vein, Dr Kanyenze outlined that mining in Africa mostly depend on Foreign Direct Investments (FDIs) because mining is capital intensive and requires specialised technologies and skills hence these challenges become a barrier of entry to many local players. This has led to lack of infrastructure in mining communities and the country as a whole as foreign investors would be more concerned in extracting resources and exporting to it overseas markets. On taxation, Dr Kanyenze said that a survey by the World Bank found out that mining policies and tax structures in African countries are deemed to be too generous and overly accommodative for foreigners at the expense of their local communities. In Zimbabwe, the Mid Term announced by the Ministry of Finance (2011) concurs with the findings of the World Bank. Zimbabwe is a classic example of a mining country using mining policies which are overly accommodative to foreign players. The country still uses a piece of legislation that was promulgated in 1963, over 30 years after independence. On this he concluded that the Mines and Minerals Act serves the interests of a few and neglects and sidelines the majority of local people. Dr Kanyenze said these were some of the factors that contributed to the African paradox of a diverse mineral base co-existing with endemic poverty.

Furthermore, he outlined that most African countries focus on rent appropriation. African countries have short term plans when it comes to the mining industry. Most African countries do not invest the revenue from mining exports thus nothing tangible is left for future generations. In Zimbabwe, mining revenue has been used to remunerate civil servants and this results in no sustainable growth and development in the economy thus causing a disjuncture in mineral export growth and social development. Dr Kanyenze also spoke about state capture. He said Zimbabwe is a classic example of state capture whereby individuals or elites seize state assets such as mines for their own use and benefit.

In addition, Dr Kanyenze spoke of the economic rebound being experienced by most African states and Zimbabwe is one of them. The economic rebound in Zimbabwe is associated with the multi-currency regime and also the recovery was mainly resource based and mainly driven by mineral resources and agriculture. Mineral exports rose from US \$1613million- US\$4251million between 2009- 2013. Minerals accounted for 62% of exports, with agriculture with almost 30% and manufacturing contributing 6.7%<sup>1</sup>. However the shift towards mining does not foster job creation since mining is capital intensive and susceptible to commodity cycles. Dr Kanyenze also spoke of diamond exports in Zimbabwe. According to the World Bank's Zimbabwe Economic briefing for September 2013, the diamond sector experienced a strong performance in 2012, with 12 million carats produced and 15 million carats exports. However, the diamond sector in Zimbabwe has been characterised by lack of transparency and

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<sup>1</sup>Zimstat survey 2013.

accountability and this is evidenced by counter accusations, from 2009-2013, between former finance Minister Tendai Biti and former Minister of Mines and Mining Development, Obert Mpofu, with the former saying the growth of mining (diamond) sector does not translate into increased revenue for the fiscus or increased benefit of the economy and latter accusing the then Minister of Mines of refusing to remit revenue.

Dr Kanyenze further outlined the constraints in the mining sector. Most African countries have challenges of availability of transport infrastructure such the roads, air and rail and access to power. He spoke about the legal and fiscal regime in Africa. These include pieces of legislation that do not benefit the ordinary people but pursue the interests of a few individuals. Dr Kanyenze also highlighted that the country has not carried out any comprehensive geological and exploration surveys, but many times just sign mining contracts without adequate knowledge of the minerals in the respective areas being given to investors.

Dr Kanyenze, concluded by giving recommendations can help African countries to unlock value from their resources. He said it was important for African Mining countries to build resource linkages with the rest of the economy. African Mining countries such as Zimbabwe can largely borrow from the African Mining Vision (2009) that argues for creation of strong linkages which connect with the economy to promote growth and development. The linkages include (i) the Fiscal Linkages (resource rent capture and deployment/reinvestment), (ii) the Backward Linkages (upstream- mining supplier industries), (iii) the Forward Linkages (downstream- mineral beneficiation), (iv) the Knowledge Linkages (side-stream- mineral technical HRD and R&D) and (v) the Spatial Linkages [side-stream- collateral use of mineral infrastructure (road, ports, rail, power and water) and Local Economic Development (LED)]. He cited Paul Jourdan who said, *"if the linkages cannot be made the people's resources are better left unexploited."*

Dr Kanyenze also gave the establishment of Sovereign Wealth Fund (SWF) as a recommendation that would be utilizing natural endowment development. There is also need to invest in trainings and technology that would help in mining. He also spoke about the need for transparency and accountability hence the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) under the outgoing Deputy Prime Minister, Thokozani Khupe. There is also need to adopt other initiatives such as Publish What You Pay (PWYP). There is also need to enact a Diamond Revenue Bill.

His presentation set the tone of indaba as he spoke of issues that really affect the communities and the economy of Zimbabwe in general.

## **Discussion Session**

Some participants asked Dr. Kanyenze why some tax regimes are being referred as too generous and whether it is not the World Bank that sponsors those regimes. The response was that times are changing and that we need to revisit those things the World Bank says and if there are positive aspects we make use of them to our own advantage. He stated that resource seeking is more important and not macro-economic fundamentals.

The other question was on how the country can trust structures such as IMF and the World Bank after their disastrous programmes like ESAP. Dr. Kanyenze said “the most important thing is that you trust yourself. Development begins with the individual and in this case it begins with the country. What do we want about Zimbabwe? We should all talk from the same discourse and be more strategic.”

### **SMALL SCALE MINING IN ZIMBABWE: MR WELLINGTON TAKAVARASHA**

Mr. Takavarasha is the President of the Zimbabwe Artisanal and Small Scale Miners Federation. He was invited to share the perspectives of small scale miners on various issues such as the legal position on small scale miners, environmental rehabilitation, production, job creation and marketing. Small scale mining and artisanal mining in Zimbabwe has created jobs for many people. There are many small scale and informal miners in Zimbabwe, therefore their voice is very important in the mining discourse.

He said Artisanal and Small Scale Mining as it is popularly known is defined by a range of different criteria but basically involves a degree of mechanized recovery of material from mine in size, quantity of reserves, no of employees, level of capital investment and volume of sales between that of an artisanal miner (who uses manual labour-rudimentary tools) and that of an industrial mine. Artisanal mining is largely a poverty driven activity according to Takavarasha. It may be the only recourse of people in the collapsing economy and thus plays an important economic role.

However, he said that despite the actual potential and economic value of this livelihood, those occupied are amongst the poorest, most marginalized members of the society and often given derogatory term like “makorokoza” and thus their activities are criminalized and the gold they mine is not declared and is illicitly traded and consequently government is not benefitting and the GDP suffering.

He stated that the artisanal and small scale mining sector directly employs more than 1,500,000 on a full time, seasonal and occasional basis. He informed participants that

many miners are involved in gold and chromite mining. However, many have been arrested with figures reaching 9700 having been arrested and jailed.

Small scale miners have contributed to the overall country's gold production figures. Takavarasha said in 2004, small scale miners contributed 60% of 29 tonnes and in 2005, 50% of the 29tonnes delivered to Fidelity Printers, but due to numerous factors small scale miners have not been able to operate to full capacity.

Mr. Takavarasha concluded his presentation by stating that policies and legislation like the Environmental Management Act have been a hindrance to the development and growth of small scale miners. He said the process is too costly as consultation alone can be as high as US\$5000, after which the miner is not able to read the piece of paper that is given after the consultation. He called on the ministry of finance to reduce taxes as this will also eliminate the black market which will then give rise to the production figures in the country.

Takavarasha said as a council they are urging the government to review the fees stipulated in some of the mining laws and policies and also revamp the mining law system. He also urged the government to produce some of these pieces of legislation in vernacular languages so that the lay small scale miner will understand what he is getting himself into.He emphasized that although banks were willing to extend a hand to small scale miners, the miners have no form of collateral and hence difficulties in acquiring loans.



*Artisanal Miners in Zimbabwe: Picture by Zimbabwe Artisanal and Small Scale Miners.*

### **Discussion session**

One of the issues that was raised by participants on small scale and artisanal miners was how they can address the environmental damage they cause especially the dangers

of chemicals they use during their activities. Mr. Takavarasha said most of the small scale miner's are not aware of the dangers of using mercury in processing gold. The miners need to be educated about these dangers. The signing of the Global Mercury treaty will curb the use of mercury and also EMA has banned the importation of mercury.

In addition, Mr. Takavarasha stated that as a federation they have requested government to put in place legislative provisions that would mandate the Environmental Management Agency to carry out block Environmental Impact Assessments for artisanal and small scale miners to ensure compliance with environmental standards and compliance.

### **COMMUNITY SHARE OWNERSHIP SCHEME BENEFICIARIES: CHIEF MAPANZURE**

In order to understand how the concept of Community Share Ownership Scheme is being implemented in Zimbabwe, one of the beneficiaries of the programme, Chief Mapanzure from Zvishavane was invited to make a presentation on what the Zvishavane Community Share Ownership Scheme is working. This presentation was important in that it is one of the first times a presentation on how the concept is being implemented was made by a traditional leader.

Chief Mapanzure informed participants that the Zvishavane Community Share Ownership Scheme (ZCSOT) received funds from MIMOSA mine, which platinum is mining company operating in Zvishavane. The programme is being implemented under the Indigenisation and Economic Empowerment Programme. The Chief said that the trust was launched in December 2011. Mimosa Mine initially donated a seed fund of \$2 million. He stated that his belief is that development is not about influence or power but about the people. Most of the projects being implemented are based on what people wanted.

He highlighted the composition of the trust. The trust is made up of the following people; Chiefs from the area, CEO of the Rural District Council, Council representative, lawyer, accountant, District Administrator, representative from the Ministry of Indegenization, Youth representative, representative of the disadvantaged, Women's representative and representative from the mine.

The Chief also highlighted some of the accomplishments of the Trust so far. He said that to date the trust has built 13 blocks of school classrooms and 1 science block which means students in the area have been introduced to science subjects. These classrooms

are adequately furnished. It has also constructed 6 staff houses for teachers and nurses. They drilled 10 boreholes and erected 11 km of electricity. The trust constructed a rural clinic and obtained a UD Truck for the transportation of grain.

The chief said there were still future projects in the pipeline; there is need for the empowerment of women and the youth to be given loans for their own projects. The chief had this to say to participants, *“Zimbabwe has the most educated but the least development, knowledge is power, but it is only power when used.”*

The chief however highlighted that although there have been strides in the development of the community there are still facing a number of challenges. He said the trusts were given shares under the indigenization programme but up to this date there have not been issued with the Share Certificates by the mining companies. The chief urged the technocrats of the mining communities to assist chiefs in the implementation of developmental projects in the relevant communities and there is need to improve literacy levels in these communities. He also said that the exclusion of chiefs in the company board of directors meetings leads to the lack of financial transparency and accountability as there is no information about the financial position of the company made available to the chiefs.

#### **CIVIL SOCIETY PERSPECTIVES ON THE LEGAL ASPECTS OF INDIGENISATION AND ECONOMIC EMPOWERMENT PROGRAMME : DERECK MATYSZAK**

Dereck Matyszak from the Research and Advocacy Unit (RAU) made a presentation on legal aspects of the indigenization and economic empowerment programme.

Derek Matyszak started his presentation by stating that policy can be analysed at three levels: Policy as legislated, Policy as pronounced and Policy as practiced. “It is safe to conclude that policy as legislated is not necessarily the same as policy pronounced, nor is it equal to policy as practiced...”

The Indigenisation and Economic Empowerment Act states that the Government shall, through this Act or regulations or other measures under this Act or any other law, endeavour to secure at least fifty-one *per centum* of the shares of every public company and any other business shall be owned by indigenous Zimbabweans. He said “if we critically analyse this we note that companies do not own shares and as such that statement should be directed to shareholders.” He highlighted that the Indigenisation and Empowerment Act lacked substance as it directs companies to dispose some shares

to communities, instead of directing the shareholders to do so as they are the owners of the shares.

Dereck also stated that from a legal perspective there was no law that required the transfer of shares. The indigenisation law only states that there is need for mining companies to submit indigenisation implementation plans and not that the company surrenders their shares. Dereck thus highlighted that there was general lawlessness around the Indigenisation Act and the way the programme is being implemented. He recommended that there is need to ensure legal clarity.

### **IMPACTS OF MINING ON WOMEN: DORCAS MAKAZA**

Dorcias Makaza from the Women in Law in Southern Africa (WLSA) made a presentation based on a study by WLSA on the impacts of mining on women. She started her presentation with a situational analysis and indicated that generally the Government has made great strides in promoting gender equality and realization that women do and can contribute meaningfully to the economy of the country. This is even evident in the new Constitution of Zimbabwe which clearly recognizes women's rights. The national gender policy also addresses key sectors: women in politics, and decision making, education and training of women, institutional mechanisms for the advancement of women, women and the economy. Its main policy objective is to mainstream gender in all spheres and eliminate negative economic, social and cultural practices. On the ground, the Ministry of Mines has also introduced new programs to enhance women in mining e.g. through a Loan Fund and access to machinery and also the reduction of mining fees.

Her presentation also highlighted some of the legal challenges faced by women. She stated that some laws are silent on gender issues. The Mines and Minerals Act as well as the Environmental Management Act were cited as laws that are silent on gender equality. For example the Mines and Minerals Act is silent on equal participation of men and women in Mining Affairs Boards and hence women issues are not adequately represented.

A study by WLSA in the Midlands province, specifically in Kwekwe and Zhombe District showed that an estimated 600 women in Zhombe and 300 women in Kwekwe were participating in informal and formal small scale mining. The research results indicated that many women who participated were not registered. Where informal miners operate many pits and open dongas remain uncovered thus posing a danger to human beings especially children. Farmers in Zhombe complained about their livestock falling into pits and no compensation was obtained. Most women miners are in the widow

category thus face threats and are bullied by male miners. The research also revealed that women complain of suffocation from hazardous substances they use e.g. and mercury, cyanide and explosives. They expose their family to mercury poisoning as they cook, handle and sell food. She highlighted that sometimes women are cheated during the marketing process by men who use fake scales to weigh the gold. Other problems that are faced by women miners include; lack of information, lack of finances to formalize operations, lack of skills to upgrade from rubbles to shafts , lack of adequate and appropriate equipment, police harassments,arrests and unscrupulous Gold Traders and lack of personal protection against occupational hazards.

From the research, the following recommendations were made; there is need to develop a gender sensitive mining policy that addresses equality in social ,economic and decision making in mining, adopt principles of affirmative action or quota system in Community share ownership trusts and all mining activities, government should fully outline guidelines for informal miners to operate, mining laws are outdated and should be reformed, the Ministry of Mines should set up mining information centres, there is need for women to be encouraged to form mining syndicates and Associations and there is need to simplify the registration and compliance procedure.

### **Discussion session**

During the discussion session, GetrudeChimange from the Catholic Commission for Justice and Peace (CCJP) shared her experiences in working with women living in mining communities. She indicated that in the mining sector women are often affected through early marriages, numerous school dropouts, gender based violence, marriage breakdown, HIV / AIDS prevalence rates sour and there always many orphans in mining communities, sexual Abuse and the booming of prostitution in mining areas. In many cases women are most affected by displacements and relocation to make way for mining operations as well as child labour in the mines especially in artisanal mining areas. Chimange stated that in her work with women she observed that women are not included in decision making that is effective decision making. There are also less employment opportunities for women and if they are to find any work the kind of work will not be rewarding.

After setting the tone for discussions, other participants also contributed to debate on the issue of women and gender. Some participants believed that sometimes women are afraid to take up positions and this affects their participation in decision making processes. Others called for improved public education on gender and women issues in the mining sector. Civil society organisations that are working on extractive sector issues were also encouraged to mainstream and strengthen gender programming.

## **PRESENTATIONS BY COMMUNITY REPRESENTATIVES**

Representatives of communities that are affected by mining operations were given an opportunity to share their experiences in the mining sector by focusing on the impacts of mining on communities and some of the strategies they are using to claim and advance community rights and interests. Two presentations were made by community representatives from the Great Dyke Community Network and the Save-Odzi Community Network.

### **Great Dyke Community Network**

The Great Dyke Community Network is a loose coalition of community representatives and activists from different mining areas found in the Great Dyke which is a mineral rich range of mountains in Zimbabwe. The area is rich in minerals such as gold, platinum, chrome and iron ore among many others. Mr. Sibanda from Zvishavane who represented the Great Dyke Community Network informed participants that mining has affected communities in both a negative and positive way. From a negative perspective he stated that mining has caused a lot of land degradation since the mines blast everywhere and leave huge pits resulting in the death of people and animals, mining activities have also led to pollution-air, water and noise. This is caused by the constant movement of haulage trucks. In some cases houses are cracking due to mine blasts. In many mining areas the workers and families are exposed to diseases such as TB and spread of HIV and AIDS in the mining compounds. Mining has also resulted in displacement of communities without consultations and loss of agricultural land which in turn led to hunger and reliance on food handouts.

Some of the positive impacts of mining in the Great Dyke that were pointed out include, employment opportunities and infrastructure developmente.g building of schools, clinics and roads. For other communities the mining areas create a market for farm produce.

### **Save-Odzi Community Network**

The Save-Odzi Community Network is another network of communities that are affected by the pollution of Save and Odzi Rivers by diamond mining companies that are operating in Marange. These communities are found in four districts namely Chipinge, Chimanimani, Buhera and Mutare West (Marange). The group was represented by Mrs. Rosemary Jena from Hotsprings where many mining workers in Marange stay. She indicated that mining has reportedly led to a lot of miscarriages in the area since

women are exposed to polluted water, dust and vibrations caused by mine blasting. There has been an upsurge in miscarriages in the area.

The major impact of mining activities in this area is the unavailability of clean and safe water to drink for communities that live along Odzi River and Save River. A research carried out by ZELA in 2012 indicated that diamond mining companies are polluting these rivers without putting in place any measures to curb pollution. The companies that are responsible are Marange Resources, Anjin and DMC. The pollution of water resources has therefore deprived the communities of clean water and livestock deaths have also been reported, while fishing and other traditional livelihood activities have been greatly affected. People are also exposed to different diseases. Diamond mining has also been expanding and a lot of families have been displaced and relocated to Arda Transau. Further, mining has also contributed to school dropouts, child abuse and child pregnancies. There is also general fear in the communities since diamond mining has been treated as a sensitive issue and there is a lot of illegal mining and trade of diamonds in the area.

#### **AN OVERVIEW OF THE RIGHTS OF WORKERS IN THE MINING SECTOR: ZAKEO MUTIMUTEMA**

Mr Mutimutema from the Zimbabwe Congress of Trade Unions (ZCTU) made a presentation on the rights of workers in the mining sector. He stated that the rights of workers are provided for in terms of a number of legislative frameworks that include the Constitution of Zimbabwe, the Labour Act (Chapter 28:01) and the Collective Bargaining Agreement: Mining Industry (General Conditions) 1990, Statutory Instrument 152 of 1990. He informed participants that worker rights are basically Human Rights. Zimbabwe adopted a new constitution which came into operation on 22 May 2013. He said the new constitution now directly provides for the rights of workers and workers in general are also protected by the Bill of Rights.

Some of the rights that are protected by the law in Zimbabwe include the following fundamental rights;right of employees and employers to form, join, and participate in trade unions, right of workers to form a worker's committee and also the right not to be subjected to forced labour.The constitution also provides for freedom from forced labour, right to equality and non-discrimination as well as freedom to associate. The law also provides basic rights of employees such as sick leave 180 days- 90 days full pay 90 days half pay, vacation leave 30 days per annum including holidays, saturdays and sundays, special leave 12days per annum, weekly rest at least 24hrs continuous,public holidays and Maternity leave 98 days -1hr breast feeding time during working hours."

Mr. Mutimutema also stated that in as much as business intends to maximise its profit, great care must be taken to the labourers who drive the process. In this case respect for human rights and general conditions of work as provided for in the Constitution of Zimbabwe, the Labour Act, statutory instruments, Contracts of employment and progressive company policies must be adhered to by mining companies. In the mining sector, there is need to engage in social dialogue to minimise conflicts and disputes.

### **THE NEW CONSTITUTION: OPPORTUNITIES AND CHALLENGES IN PROTECTING AND PROMOTING COMMUNITY RIGHTS IN THE MINING SECTOR: TAWANDA ZHUWARARA**

In order to ensure that participants are aware of the new constitutional provisions that can be used to advance community rights in the natural resources sector and more specifically the mining sector, the ZAMI included a presentation on constitutional rights by the Zimbabwe Lawyers for Human Rights (ZLHR). ZLHR has been at the forefront of fighting for human rights in Zimbabwe. The presentation was made by Mr Tawanda Zhuwarara from ZLHR.

Mr. Zhuwarara outlined the key constitutional provisions that are applicable in protecting the rights of communities in mining areas. In terms of the new Constitution every person has the right to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting economic and social development. The state is encouraged to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the rights set out in this section.

The constitution also provides the right to food and water. It states that every person has the right to safe, clean and potable water; and sufficient food. In this regard, the state must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.

Zhuwarara stated that these constitutional provisions are important in that they seek to protect the people, even in mining communities. There is need for safeguarding the resources so that it takes care of the community and the community after us. He also said that there was need to maintain the quality of land left after mining has ended. Mining is regarded as the thirstiest business-it needs water. Imagine a huge mining company sharing the same water hole with a small community...it is evident who will

lose. He emphasized that politics of water will be more serious than politics of the state. This calls for the protection of the rights of communities. He said during the constitution making process people concentrated on the politics of political parties instead of looking at the communal lands Act and section 3 of the Mines and Minerals Act. The pieces of legislative allow for the movement of people from their lands whenever minerals are found making mining communities very vulnerable. He said this is what people should have rectified during the constitutional making process.

Zhuwarara also said that according to the new Constitution mass movement of people or displacement is an infringement of the people's rights. The Constitution states that no person shall be moved out of their house without a court order. The court should first look at the relevant issues before ordering people to be moved from their rightful homes. Displacement of families in areas like Marange has caused cultural disintegration and disharmony. Most communities should be consulted even before the establishment of a mine in the surrounding community. Communities have a right to be consulted. Mining communities are being affected by negative effects of mining or the dangers of mining simply because they do not know the implications as they were not consulted. Another problem is that the communities do not understand the documents presented to them during consultation and they use technical languages. Section 85 ensures that all the above rights are enforceable. Anyone can enforce these laws although it is very expensive and time consuming. There is need for the public to be informed and educated on these rights. He wended up by encouraging participants to spread the lessons of what they had learnt 2013 ZAMI so that the constitution becomes a living document and that it can be implemented.

### **Discussion Session**

During the discussion session, many participants expressed appreciation to Mr Zhuwarara for clearly articulating and informing them about their rights and how to claim those rights. Some participants stated that there is need for the Human Rights Commission to ensure that human rights violations in the mining sector are monitored and investigated.

### **UPDATE ON THE KIMBERLEY PROCESS CERTIFICATION SCHEME: SHAMISO MTISI**

Mr. Shamiso Mtisi who is the Coordinator of the Kimberley Process Civil Society Coalition representatives in Zimbabwe, updated participants on the current position of the Kimberley Process Certification Scheme (KPCS) on Zimbabwe's diamonds. He stated that the KPCS is an international diamond trading systems that was put in place to curb trade in conflict diamonds that are used to finance rebel movements. He also outlined

some of the minimum requirements of the KPCS which include the fact that all diamond exports must be accompanied by a KPCS Certificate. All cash purchases of all rough should be routed through official banking systems supported by verifiable documentation. He also said governments are required provide the KPCS with information and data on the how much diamonds are produced and submit reports to the KPCS. In addition all diamond mining companies, traders, cutting and polishing companies and couriers must be registered and licenced. The other internal control measures that should be put in place by governments include; enacting or amending appropriate laws or regulations with dissuasive penalties, to maintain relevant official production, import and export data, make known the names of individuals or companies convicted of activities contrary to the requirements of the KPCS, all cash purchases of rough diamonds are routed through official banking channels, prospecting and mining companies must maintain effective security standards and artisanal and informal diamond miners should be licensed

Mr. Mtisi also informed participants about the current position of the KPCS on Marange diamonds. He said that the KPCS adopted a Communiqué during the KPCS Plenary held on 30 November 2012 in Washington, D.C which provides that the KPCS has resolved to lift the special measures adopted in 2011 on Zimbabwe. In the communique the KPCS appreciated Zimbabwe's reiterated willingness to ensure that the KP civil society coalition representatives in Zimbabwe continue to have access to Marange. In addition, the KPCS encouraged Zimbabwe to maintain the best practices that have developed during 2012, including facilitating engagement among government, industry and civil society with respect to the development of diamond-related policy and legislation, exchange of information on the internal control system and measures to address the situation of artisanal mining in order to also combat smuggling and address security incidents at mine level. The KPCS expressed its appreciation for the efforts of the Zimbabwean authorities, the KP Monitoring Team and KP civil society coalition representatives in Zimbabwe to resolve the concerns of KPCS non-compliance in Marange. The KPCS civil society group in Zimbabwe is led by ZELA.

## **Discussion Session**

As the first discussant of the session, Farai Maguwu of the Center for Natural Resource Governance outlined some of the challenges of the KPCS. He informed participants that some of the problems encountered by the KPCS are associated with the limited definition of conflict diamonds and this has disabled the KPCS from effectively dealing with human rights violations in many diamond producing countries where human rights violations are taking place in the diamond fields. The current definition of conflict diamonds is diamonds that are used by rebel movements to fund armed conflict. He also stated that civil society in the KPCS does not have so much power as governments since

they are just observers. The KP relies on voluntary basis of governments on keeping the minimum standards of which some governments do not have the good will of doing so and this becomes very problematic. The other problem is that the cutting and polishing industry is not covered by the provisions of the KPCS.

Other participants also wanted to know why the KPCS has not been dealing with issues such as water pollution, environmental degradation and workers' rights. Participants were informed that the KPCS has a limited mandate and does not want to be involved in such matters. However, Shamiso Mtisi informed participants that while the KPCS does not look at those issues, the KP Monitoring team took note of the water pollution situation in Marange and included it in their report, although the report stated that the KPCS does not have a mandate on those issues. The fact that the KPCS included the issue in the report indicates that at least there was an attempt to understand the issue by the Monitoring team.

#### **AN ANALYSIS OF ZIMBABWE'S DRAFT MINERALS POLICY: MUTUSO DHLIWAYO**

A presentation on the Draft Minerals Policy was made by Mutuso Dhliwayo, the Director of ZELA. He started his presentation by giving the background of the Minerals Policy in Zimbabwe. He said in 2007 the government tasked the Ministry of Mines to come up with a new Minerals Policy.

In his presentation he highlighted the importance of focusing on community rights. He said that the African Charter People's and Human Rights provides scope for the protection of the rights of communities to natural resources wealth. He stated that communities living in adjacent to mining areas bear the costs of mining (pollution, relocations and land degradation) and rarely see the benefits. There is always violation of Environmental, Economic, Social and Cultural rights (EESCRs) in the mining sector. Development is only realised by other actors whilst communities are observers and continue to sink in poverty. It has been observed that the problems being faced by communities are due to poor governance. The voice of communities is always absent in decision making processes in the mining sector.

Accordingly, the Draft Mineral policy tries to capture all stakeholders involved in the mining sector and recognises the need for a friendly environment in its vision statement which is commendable considering that the current policy does not do that. The draft minerals Policy is based on principles from the new constitution which again is a commendable move. It also seeks to enhance participation of all Zimbabweans and by implication this means communities in mining areas are being taken on board. It also provides for consultation of all stakeholders being affected by mining and this also

means communities in mining areas are being taken on board. While the Draft Minerals Policy also provides for transparency and accountability by emphasising the inclusion Extractive Industries Transparency Initiative in its current form the Draft Minerals Policy does not include clear provisions on how transparency and accountability in the mining sector will be promoted e.g. access to information, disclosure provisions, public participation and the oversight role of parliament. The role of parliament as an oversight body in contract and revenue management and review should be clear. This is important for the review of some existing mining contracts that are not benefiting the country at all. In the same vein, on transparency and accountability, the draft Minerals Policy does not make reference to the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) which is another government initiative to promote transparency and accountability through disclosure of mining revenues and contracts. It only mentions the EITI, which is good.

On small-scale and informal miners, the draft policy does not include a workable and effective mechanism to incentivize the payment of lower levels of taxes by the small scale and informal miners and concrete mechanisms to enhance revenue collection from the migratory miners. This will improve the revenue base for the country from the mining sector since there are many small scale and informal miners in Zimbabwe.

The proposed Minerals Development Board should include all key stakeholders in terms of its composition. In the draft policy there is no reference to inclusion of representatives of communities affected by mining operations in the Board. This can be achieved by inclusion of a provision that provides for the selection of a representative of communities from any organized community group from any part of the country where mining activities are taking place. The draft Minerals Policy must include clear and specific provision on labour issues, especially occupational health, safety and environment. In this case, all investors (whether from Mars, China or any country must) be required to demonstrate capacity to comply with national laws on labour rights, safety and environment. No investor should be treated as more equal than others and hide behind politicians or high offices. We do not want our people to be abused in the mines. The draft policy must provide for clear provisions on granting of tax incentives. Where possible tax incentives must be avoided. Granting of tax incentives to mining companies must not be discretionary, but based on clear guidelines. The policy document does not include any clear provision and requirement for mining companies and government to carry out human rights impact assessments before they start mining, in as much as they carry out EIAs. The mining sector, especially diamond mining has caused lots of suffering to local communities and violations of their civil, political, environmental, economic and social rights. The document makes reference to constitutional provisions in the new constitution, on other matters, but does not do the same on human rights.

## **MINING TAXATION REGIME IN ZIMBABWE: Mr MADONGORERE**

Mr Madongorere began by outlining that a miner is taxed the same way as a trader however allowances on capital expenditure (All expenditure relating to mining operations such as Construction or purchase of buildings, works or equipment, land buildings, work or equipment, shaft sinking, expenditure incurred before commencement of production, e.g. all development and general administration and management expenses etc.) are claimed in form of Capital Redemption Allowance. He also explored methods of determining mining taxes which are based on a new mine basis, life of mine and also a mixed basis which is the new mine basis and the life of mine are combined resulting in expenditure incurred before the first year of production being spread over the life of the mine while current capital expenditure incurred in that year of production is deducted in full.

Mr Madongorere also spoke about the different taxes being paid by different miners from small scale miners to large scale miners. The small scale miners pay presumptive tax of 2% on gross sales when they fail to produce a valid tax clearance certificate. Large scale miners also pay taxes ranging from cooperate tax, Additional Profit tax and royalties among others. He also stated that mining companies are required to pay *corporate tax* which is now pegged 25% of taxable income. In addition, they are required to pay *Value Added Tax (VAT)* which is levied at 15%. However, it was pointed out that since most minerals are being exported, VAT is chargeable at 0% hence many mining companies are claiming refunds on a monthly basis from ZIMRA. The other form of tax paid by all mining companies is *Pay As You Earn (PAYE)* which ranges from 0% to 35% depending on how much each employee earns. The major tax payments by mining companies are *Royalties*. The rate of tax for royalties on precious metals is 3.5%. On diamonds the rate is 15%. ZIMRA was designated as a collecting agent for royalties on all minerals except gold which is to be collected by financial institutions who will in turn remit the proceeds collected to ZIMRA within a prescribed timeframe.

Apart from royalties and other taxes, mining companies also pay *Withholding tax*. Withholding tax on tenders is 10% for clients without tax clearance certificates and withholding tax on non-resident tax on technical services, royalties, interest, dividends and other remittances is levied at 15% while on management fees it is 20%. *Additional profits tax* is another tax paid by mining companies. Additional profit tax is levied on holders of Special Mining Leases. It is charged over and above normal Income Tax and based on Net Accumulated Cash Position in terms of Section 33 as read with the 23<sup>rd</sup> Schedule of the Income Tax Act.

Mr Madongorere went on to talk about the challenges associated with Zimbabwe's mining sector as far as taxes are concerned. These include lack of capital especially by locals to sustain a viable mining company, Inconsistence power supply, volatile mineral prices and sanctions imposed on certain mining companies. Mr Madongorere also highlighted some of the benefits which can be enjoyed by miners. These include miners being able to claim all VAT paid on imported goods and local acquired goods since exports are taxed at 0% for VAT.

### **ILLICIT FINANCIAL FLOWS PROJECT: ZIMCODD**

A representative of a newly established consortium of civil society groups in Zimbabwe that is carrying out research and advocacy activities on illicit financial flows made a presentation on the project. The group was represented by Hopewell Gumbo of ZIMCODD. The group is comprises the following organisations; Zimbabwe Environmental Law Association (ZELA), Zimbabwe Coalition on Debt and Development (ZIMCODD), Transparency International Zimbabwe (TIZ), AFRODAD, and Centre for Natural Resources Governance (CNRG). The topic on illicit flows is relatively new in Zimbabwe and selected civil society organisations have been making individual efforts to raise debates around the issues with efforts to do this in a coordinated manner, now building up.

The goals and initiative of the project is to improve the legal and institutional governance of national resources for sustainable development while strengthening the evidence base and deepening the understanding of the extent, main drivers and impacts of illicit flows in Zimbabwe. It aims at creating a broader and better coordinated CSO coalition on illicit flows issues, mainstreaming key demands in CSO advocacy and campaigning on Zimbabwe's development. It will continue lobbying and advocating for policy and practice change that will allow more resources to be used in Zimbabwe for development and poverty eradication. Its major activities include research, advocacy and training among other activities.

During his presentation, Gumbo informed participants about the challenges of illicit financial flows. He said that while mining companies and individuals are benefiting illicitly in the sector, many children are deprived of education, mining communities are being neglected and hospitals do not have medicine. The Mbeki High Level Panel on Illicit Financial Flows of the African Union states that Africa loses about \$50 billion every year in illicit flows; while Kar and Cartwright-Smith (2010) estimate that Africa lost about US\$854 billion in illicit financial flows from 1970 to 2008, a yearly average of about US\$22 billion. Africa loses more through illicit flows than it gets in foreign aid and Foreign Direct Investment. According to the UN Economic commission for Africa, "Illicit

financial flows constitute, among others, undocumented commercial transactions and criminal activities characterized by over pricing, tax evasion and false declarations facilitated by some 60 international tax havens and secrecy jurisdictions that enable creating and operating of millions of disguised corporations, shell companies, anonymous trust accounts, and fake charitable foundations.”

Gumbo made reference to Ndikumana and Boyce (2008) who rank Zimbabwe as the sixth highest on illicit financial flows from 1970 to 2003. UNCTAD (2009) estimated that illicit flows from Zimbabwe were 344% of its GDP in 2004. Gumbo highlighted that Zimbabwe’s illicit flows are more apparent in mining, forestry and wildlife related safari activities. These can be identified in the proceeds of theft, bribery and other forms of corruption by government officials, the proceeds of tax evasion and laundered commercial transactions; and the proceeds of criminal activities, including drug trading, racketeering, counterfeiting, contraband and terrorist financing.

Illicit flows drain foreign exchange reserves, reduce tax collection, cancel out investment inflows and worsen poverty and undermine the rule of law, stifle trade and worsen macroeconomic conditions.” Some of the techniques used include money laundering, transfer pricing and corruption.

#### **PRESENTATION BY THE ZIMBABWE HUMAN RIGHTS COMMISSION: PROFESSOR C.T KHOMBE**

The Zimbabwe Human Rights Commission attended the 2013 Alternative Mining Indaba and made a presentation. This showed commitment to work on human rights issues in the extractive sector. Professor Khombe represented the Human Rights Commission and made the presentation. He outlined the legal mandate of the Zimbabwe Human Rights Commission and its basis. He said it was established by Constitutional Amendment 19 in February 2009 and the Commissioners were sworn in by the President on the 31<sup>st</sup> of March 2010 and the enabling legislation for the Commission was gazetted into law on 12<sup>th</sup> October 2012. He also mentioned that the commission was independent in its operations thus it was free from any interference from the state, body, agency or institution.

He also spoke of the terms of reference of the commission which include; to promote awareness of and respect for human rights and freedoms, to monitor, assess and ensure observance of human rights and freedoms, to investigate allegations of human rights violations and to conduct research into issues relating to human rights and freedoms and social justice and to make recommendations Parliament to promote human rights. Prof Khombe also spoke of the powers of the commission and said it can summons

any authority or person to appear before the commission, ask questions during an investigation and require any person asked to answer or disclose information.

He said the commission cannot act on a matter reported 3 years after it occurred or act on matters that occurred before 13 February 2009. He also spoke of the thematic groups in the commission which include environmental rights, economic social and cultural rights, political rights, women rights and gender among others. Prof Khombe also stated that the violation of environmental rights in mining communities is an issue that can be of concern to the Commission if brought to its attention. He spoke of the land degradation, water and air pollution and also human rights abuses. Lastly he spoke of the how the commission would engage with other stakeholders. He said the commission would engage stakeholders such as the media, civil Society Organisations, individual complaints and researchers as well to help with investigations for research purposes.

#### **AFRICAN MINING VISION: GILBERT MAKORE**

Gilbert Makore from ZELA made a presentation on the African Mining Vision. He stated that since 2003, mineral prices have been rising leading to a rise in demand of minerals globally. Minerals prices reached its peak in 2008. Even though African countries did export minerals this did not alleviate poverty. In addition, African countries were mainly concerned with exporting minerals and nothing significant was being done to empower the local people in the long run. It was realised that African countries were still in colonial enclave thus African were mainly concerned with extraction and never had a mind of development. Africa was forced into adopting measures that benefit the foreign investors. It was observed that there was need to have guidelines for Africans, guidelines that would help Africans leverage on their resources. This laid the basis of the African Mining Vision (AMV).

Gilbert defined the African Mining Vision, as the African aspiration of “transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development” It states that mining should be integrated into the economic and social developmental processes. The logic of the AMV is that there is need for transforming minerals into sustainable and greater value since it is a known fact that minerals are finite. It also talks about linking mining with different sectors of the economy in order to enhance development. The logic also involves distributing benefits equitably.

The AMV speaks of the need to optimize value along the minerals chain. He said most African states were still in the stages of extraction of the minerals where there a very

limited jobs created, whereas the developing countries are in the finishing stages of the chain. The AMV also looks at the linkages which Dr Kanyenze alluded to in his presentations. For the AMV to be a living document there has been developing of the clusters that can be followed by nations and the regions. In addition to the cluster African Minerals Development Centre which will mainly be used to identify gaps within member states and to also monitor and evaluate progress of implementation of the AMV. Gilbert also identified that the International Study Group (ISG) research on African Mining Countries. In terms of its realisation, there is need for reforming mining laws and policies in Zimbabwe, an active parliament that can push for its adoption and implementation of the AMV. There is also need for Civil Society Organisations to keep pushing its adoption and proper implementation.

## **PRESENTATION AND ADOPTION OF THE 2013 DECLARATION**

Participants had the opportunity to discuss and adopt the 2013, Zimbabwe Alternative Mining Indaba Declaration. Attached is a copy of the Declaration.



## **ZIMBABWE ALTERNATIVE MINING INDABA (ZAMI), 2013**

### **DECLARATION BY PARTICIPANTS**

**ADOPTED AT CROWN PLAZA HOTEL, HARARE, ZIMBABWE**

**ON THE 11<sup>TH</sup> SEPTEMBER, 2013**

**WE**, members of civil society, community based groups and activists, traditional leaders, faith based organisations, youth and women groups, the media, with regional representation from South Africa , Mozambique and Zambia having gathered at the 2<sup>nd</sup> Zimbabwe Alternative Mining Indaba (ZAMI) in Harare, from the 10<sup>th</sup> -11<sup>th</sup> of September 2013 at the Crown Plaza Hotel, jointly hosted by Zimbabwe Environmental Law Association (ZELA) and the African Forum and Network on Debt and Development (AFRODAD) under the theme “*Community Rights, the Key to Empowerment*”,

**CONFIRM** that the ZAMI is a yearly alternative platform for different participants to share and exchange ideas, experiences and strategies on how to promote the rights of communities affected by mining operations and noting that those affected by mining

operations are not always afforded an equal opportunity by private sector actors who organise Mining Indaba's and other platforms to participate and share their problems;

**AWARE** of the significant contributions that prudent, efficient, equitable and sustainable exploitation and management of our mineral resources can make towards the achievement of broad-based socio-economic development;

**CONVINCED** that while Zimbabwe is resource rich, there are high levels of poverty and under-development in many communities and that communities that are directly affected by mining operations and citizens in general, have not benefited from the mineral wealth;

**CONCERNED** that the extractive sector in Zimbabwe has been politicized thus compromising human rights, transparency and accountability, environmental sustainability, socio-economic justice, inter-generational equity;

**CONCERNED FURTHER** by the poor recruitment policies, remuneration, working and living conditions and other unfair labour practices in the mining sector;

**NOTING** some of the steps taken by government over the past year to develop various policies and initiatives in the mining sector such as the **Zimbabwe Revenue Transparency Initiative (ZMRTI)**, the **Draft Minerals Policy**, the Diamond Policy and significant efforts to comply with the **Kimberley Process Certification Scheme (KPCS)** on the trade of diamonds and the establishment of **Community Share Ownership Schemes**;

**HAVING** deliberated during the Zimbabwe Alternative Mining Indaba, we specifically demand that the Zimbabwean government;

1. Enacts legislation that will transform the extractive sector from being a raw material activity to an industrial one through promotion of value addition. This should be done through the passage of a new Mining law than the current Mines and Minerals Act which is old.
2. Enacts and passes laws and policies that maximize on the high commodity prices of minerals and to develop linkages leading to the growth of other sectors of the economy such as manufacturing, transport and agriculture thereby create the much needed jobs and improve the delivery of social services in general.
3. Uses the Africa Mining Vision (AMV) to strengthen the provisions of the current draft Minerals Policy and other legislation governing the mining sector.
4. Strengthens the capacity of the Zimbabwe Revenue Authority (ZIMRA) and other revenue collection institutions for maximum mineral revenues collection to

eliminate tax evasion and avoidance. Further, government should provide scope for further consultations with communities and civil society on the formulation of the **Income Tax Bill** on issues related to mining revenue collection.

5. Undertakes a comprehensive geological survey and audit of the mineral resources in the country to ensure that mining contracts are negotiated from a geologically informed position.
6. Ensures enhanced transparency and accountability throughout the whole mineral value chain from the negotiation and awarding of mining contracts, public disclosure of contracts, production figures and mineral revenues. In this case there is need for continued implementation of the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) to enable the public disclosure and publication of mineral revenue for purposes of transparency and accountability.
7. Promulgates a Diamond Bill to create a comprehensive legal framework dealing with the trade, audit trail and marketing of diamonds as well as revenue sharing and distribution. In this regard ZIMRA and the Minerals Unit must monitor all production stages and marketing of diamonds.
8. Revises and provides clarity on the calculation of unit tax for the benefit of Local Authorities.
9. Adopts clear and transparent mechanisms for the implementation of the Indigenisation programme in the mining sector and to ensure that all laws and policies are clear and easy to interpret and apply.
10. Ensures that Community Share Ownership Trusts be provided with financial performance information of the companies in which they own shares and get Share Certificates. In this regard, Community Share Ownership Schemes should also provide information to community members about how much they are receiving and how the funds have been used. Therefore, information should be made publicly available.
11. Passes laws to legalise artisanal mining and organize them into groups to ensure they comply with environmental laws and ensure that they pay reasonable taxes commensurate with their operations and means. In addition, Small Scale miners should be provided with adequate financial and technical support.
12. Develops a gender sensitive Minerals Policy and ensure adequate participation of women and other marginalized groups during the consultation processes towards the development of the policy.

13. Provides adequate financial and technical resources to the Zimbabwe Human Rights Commission to investigate and monitor cases of human rights violations in the mining sector, especially environmental, economic, social and cultural rights.
14. Ensures that the Environmental Management Agency improves its environmental monitoring activities in mining areas and compel mining companies to rehabilitate and reclaim open pits created by mining operations in areas such as the Great Dyke. The Environmental Management Agency and the Ministry of Environment must take comprehensive steps to address the plight of communities living along Save River and Odzi River which are being affected by diamond mining companies operating in Marange to stop polluting the rivers. In the same vein mining companies operating in Marange and other mining areas must adopt proper environmental management systems to curb and control pollution of rivers and dams.
15. Protects and promotes the rights of mine workers and Chinese mining companies in particular must abide by the labour laws of Zimbabwe.

**END**