



# OUR THINKING

## Strategic Interventions And Focus

### Issues In Zimbabwe's

### Extractive And Mining Sector

THE NEXT FIVE YEARS: - 2014 - 2018

COMPILED BY  
ZIMBABWE ENVIRONMENTAL  
LAW ASSOCIATION (ZELA)

Supported By



Zimbabwe Environmental  
Law Association



FORD FOUNDATION



EUROPEAN UNION

Published by: Zimbabwe Environmental Law Association (ZELA)

Sponsored by: Ford Foundation and European Union

Copyright: 2014, Zimbabwe Environmental Law Association (ZELA)

This publication may be reproduced in whole or in part and in any form for educational or non-profit uses, without special permission from the copyright holder, provided full acknowledgement of the source is made. No use of this publication may be made for resale or other commercial purposes without the prior written permission of ZELA.

Disclaimer: The views expressed herein do not necessarily represent those of the Ford Foundation and the European Union but those of ZELA.

Year of  
Publication: 2014

Available from: Zimbabwe Environmental Law Association (ZELA),  
No. 26B, Seke Road, Hatfield, Harare.  
Email: [zela@mweb.co.zw](mailto:zela@mweb.co.zw), Website: [www.zela.org](http://www.zela.org)

Design & Layout: Suneagles Promotions  
[suneaglespromotions@gmail.com](mailto:suneaglespromotions@gmail.com)

# TABLE OF CONTENTS

ACKNOWLEDGEMENTS .....	3
INTRODUCTION .....	4
WHAT ZELA STANDS FOR IN THE EXTRACTIVE SECTOR .....	6
POLITICAL, ECONOMIC AND SOCIAL SITUATION AND TRENDS .....	9
Economic and political situation .....	9
Background on Mining in Zimbabwe .....	11
Corruption and lack of transparency and accountability .....	13
Community rights and concerns .....	15
The current and proposed legal regime .....	17
ROLE OF STAKEHOLDERS IN THE EXTRACTIVE SECTOR .....	22
SCENARIO ANALYSIS OVER THE NEXT FIVE YEARS .....	24
OPPORTUNITIES AND CHALLENGES .....	31
Opportunities .....	31
Challenges .....	33
INNOVATIVE APPROACHES AND PARTNERSHIPS .....	35
Parliamentary oversight .....	35
Civil society coalitions .....	36
Community networks and monitoring .....	37
Community rights training .....	39
Engaging mining companies and government .....	39
Strategic litigation and advocacy .....	40
Investigative research .....	40
Budget Tracking and Monitoring .....	41
International multi-stakeholder platforms .....	41
THEMATIC RECOMMENDATIONS .....	43

## ACKNOWLEDGEMENTS

The Zimbabwe Environmental Law Association (ZELA) would like to thank the Ford Foundation and the European Union for providing the financial support that enabled the organisation to implement various research and advocacy activities on mining and natural resources management over the past years. Such support has resulted in ZELA making a conscious decision to compile this strategic interventions and thematic focus paper to guide the organisation and other civil society groups in planning and shaping their extractive sector programmes in the next five years-2014 - 2018. The information used to compile this paper was derived from the ideas and positions based on the various research activities and projects implemented by ZELA with support from the EU and the Ford Foundation. A lot of ideas were also derived from interactions with communities in the following areas, Marange, Chipinge, Chimanimani, Bikita, Buhera, Mutoko, Guruve, Mhondoro-Ngezi, Shurugwi and Zvishavane. Consequently, ZELA would like to thank all the community based activists and monitors in those communities.

ZELA would also like to thank all its staff members for the hard work in 2013 and in previous years and for making the organisation become one of the leading voices in the extractive and mining sector in Zimbabwe.

## INTRODUCTION

The purpose of this paper is to give a brief description and statement of ZELA's strategic thinking in shaping the extractive and mining sector discourse in the coming five years (2014 – 2018) in Zimbabwe. The paper sets out the strategic interventions that will be used by ZELA and possibly other civil society groups in independently and effectively seeking to promote democracy, good governance and community rights in the troubled mining sector in Zimbabwe. Qualitatively, the paper contains five analytical components. The first component is a section that reaffirms the impact of the recent past and current political, economic and social situation in Zimbabwe on the mining sector. In this case, the paper essentially states the problems in the mining sector such as corruption, lack of transparency and accountability, human rights abuses in mining communities, environmental harm and the existing legal and policy gaps. These factors have contributed to pushing back the potential of the mining sector to meaningfully contribute to national progress and development. Secondly, the paper identifies some of the active and key civil society actors in the extractive sector. This section restates the role of civil society and emphasises the impetus for collaboration and coalition building in the extractive sector.

The third strand in the paper is a scenario analysis section. The section is largely based on ZELA's reading of the current political and economic situation and how this is likely to shape the written and unwritten policies to be implemented by the ZANU PF government in the mining sector in the coming five years. In effect, the paper assesses the likely impacts of the ZANU PF government's economic policies and the increase in mining sector investments especially by the Chinese and other so-called friendly nations especially the BRICS countries, namely (Brazil, Russia, India, China and South Africa).

Fourthly and more importantly, the paper makes a case for the adoption and application of innovative approaches and partnerships by civil society and community groups in confronting the challenges associated with the new political and economic dispensation and the likely scenario in the coming five years. Some of the strategic and innovative approaches that should be adopted include strengthening existing

and new civil society coalitions, establishing community based networks and groups, enhancing community based monitoring of the impacts of extractive industries, improving community rights training and engaging government and mining companies in multi-stakeholder or tripartite arrangements especially the concept of business and human rights. The equation may also include strategic litigation as well as investigative and evidence based research and advocacy. ZELA will definitely pursue these strategic and innovative approaches to achieve its organizational objectives and goals. In the same vein, it will pursue partnerships with other like-minded civil society groups to apply these tools to promote human rights, transparency and accountability and environmental protection in the mining sector. The overall aim of using these strategies will be to ensure that extractive industries and government are more responsive and address the plight of poor and marginalized communities in mining areas and promote economic growth.

The fifth and last aspects the paper addresses are the key thematic aspects that ZELA and other civil society groups can focus on in the coming years. The paper contains a quick guide or list of recommended thematic issues that can be tackled in the mining sector. The list include; acquisition of mining rights and negotiation of mining contracts, environmental pollution, human rights violations including displacements and land tenure rights, poor labour practices, marketing of minerals and revenue collection, management and use (particularly transparency and accountability issues such as disclosure and access to information). Further, the list includes tax justice campaigns focusing on tax evasion and avoidance, corruption, implementation of the indigenisation programme especially the community share ownership schemes, corporate social responsibility or investments, business and human rights, national and local authority budget monitoring and implementation and enforcement of the new Constitution and other extractive sector laws.

## WHAT ZELA STANDS FOR IN THE EXTRACTIVE SECTOR

The Zimbabwe Environmental Law Association (ZELA) is a public interest environmental law organization that was formed in 2000. Since 2000, ZELA has progressively developed into a nationally, regionally and internationally recognized think tank and advocacy group on legal and policy issues in the natural resources sector, especially the extractives/mining. This was achieved through the use of innovative approaches to research, advocacy and litigation strategies to achieve set objectives. While the first few years of the organisation's existence, from 2000-2005 were more focused on raising community awareness on environmental justice, natural resources laws and policies in both urban and rural communities, in 2006, ZELA made a deliberate and timely decision to focus and pay particular attention to the plight of communities living near and/or affected by mining operations in selected mining areas.

The objective of the transition was to promote all aspects of human rights in the extractive sector and in particular the environmental, economic, social and cultural rights of target communities. Support for the programmes was provided mainly by the Ford Foundation and the European Union. This was a progression of the work of ZELA from a purely environmental protection perspective to include second generation rights in its work. This decision led ZELA to redesign its programmes and projects. Consequently, a five year Strategic Plan was developed which laid out the key programme areas for the period 2010 – 2015. The programmes are; Extractive Industries (Mining) Programme, Urban Environment Programme, Transboundary Natural Resources Management Programme and the Rural Communities Programme. These programmes are tailored to respond to the environmental, natural resources and human rights needs of poor and marginalized women, youths and men in rural and urban areas. They are also aimed at influencing policy and legal reforms in the country.

However, of all the organisations' programmes, the most active programme has been the Extractive Industries (Mining) Programme. The Programme is aimed at stimulating systematic and evidence based research, knowledge-based public policy discourse,

litigation and community capacity building actions in Zimbabwe's mining sector. The goal of the Programme is to promote transparency and accountability in the extractive sector and to protect the economic, social, cultural and environmental rights of communities against violations by government and mining companies' activities in Zimbabwe. In particular the programme is targeted at mining areas such as Marange, Mutoko, Bikita, Guruve and generally the Great Dyke. Some of the problems in the mining sector that the programme seeks to address include violations of the economic, environmental, social and cultural rights of communities living adjacent to mining areas or those displaced by mining operations, lack of transparency in the allocation of mining rights and mismanagement of mining revenue. In addition there is inequitable distribution of the costs and benefits in the mining sector and limited scope for public participation and access to information especially the mining contracts that are not made public.

The Extractive Industries Programme has various project components and activities such as; building the capacity of legislators in the extractive sector, training sessions on community rights, community based human rights monitoring, coordinating the Kimberley Process Certification Scheme Civil Society Coalition Representatives in Zimbabwe, coordinating the Publish What You Pay (PWYP) campaign in Zimbabwe and leading civil society participation in the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI). Through the Extractive Industries (Mining) Programme, ZELA has successfully carried out evidence based research activities that have helped to shape and influence national and regional policy and legal processes in the extractive and natural resources sector. It has also helped to create and establish strong community based groups in resource rich areas such as Marange and Mutoko.

In addition, ZELA has also grown to be a leading voice on extractive sector issues in the country, regional and at an international level. This is evidenced by its leading role in initiatives such as the Kimberley Process Certification Scheme, Publish What You Pay Campaign, African Initiative on Mining, Environment and Society and the International Alliance on Natural Resources in Africa (IANRA). The organisation is also participating in building the capacity of decision makers such as the Mines and Energy



Parliamentary Portfolio Committee. The Committee has been instrumental in calling for transparency and accountability in revenue management and distribution. ZELA's timely and innovative research, advocacy and litigation interventions in the extractive sector have resulted in the organisation getting a good measure of technical and moral support from local communities, decision makers, government departments as well as regional and international partners.

## 1.0 POLITICAL, ECONOMIC AND SOCIAL SITUATION AND TRENDS

### 1.1 Economic and political situation

From 1997-2008, Zimbabwe experienced major economic and social problems. The economic and political scourge was characterized by sharp contraction of the gross domestic product by over 50%, manifested by hyperinflation which peaked to 230 million% in 2008, job losses, acute shortages of food and foreign currency, dilapidation of infrastructure, closure of mining and manufacturing companies and human capital flight among other effects. The economic and political situation brought so much suffering to the people and escalated the poverty levels in the country as it also resulted in significant breakdown of the social and public service delivery systems; in particular health and education sectors amongst others. The political and economic crisis also precipitated a lot of social upheavals and human rights violations in the country. The net effect has been a breakdown in the rule of law, justice, transparency and accountability and generally weak governance structures, increased corruption levels and hundreds of lives lost to diseases such as cholera. Even the mining sector was not spared by the scourge. The combination of a deteriorating macroeconomic situation, the exodus of skills, infrastructural bottlenecks and policy unpredictability and uncertainty, resulted in minimal investment in mining exploration and development.<sup>1</sup>

However, the period after 2009 was marked by improved performance of the economic sector as a result of political developments such as the formation of the Unity Government comprising the Movement for Democratic Change (MDC) and ZANU PF. Nevertheless, the Unity Government ended after the July 31, 2013 elections which were won by ZANU PF. A new government was formed by ZANU PF. The new ZANU PF government has crafted an ambitious, but vague and incomplete economic blue print known as the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim Asset). The stated objective of Zim Asset is to pursue a new trajectory of accelerated economic growth and wealth creation. The programme will

---

<sup>1</sup> Tony Hawkins, 2009, The Mining Sector in Zimbabwe and its Potential Contribution to Recovery, The United Nations Development Programme Comprehensive Economic Recovery in Zimbabwe Working Paper Series, Working Paper 1

run for a period of 5 years and 3 months from October 2013 - December 2018.<sup>2</sup> The pillars of the new programme include indigenization, empowerment and employment creation which are expected to be largely propelled by the judicious exploitation of the country's abundant human and natural resources. Mining, particularly value addition of mineral resources is expected to play a key role in propelling economic growth. However, the programme omits or is silent on the need to fight corruption, human rights violations and issues of transparency and accountability in a sector that is opaque and secretive.



<sup>2</sup> Government of Zimbabwe (OCTOBER 2013- DECEMBER 2018); Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim Asset) *"Towards an Empowered Society and a Growing Economy"*

## 1.2 Background on Mining in Zimbabwe

From a natural resources perspective, it is important to note that Zimbabwe is endowed with natural resources such as minerals, land, water, forests and wildlife among others. Since the decline of the agricultural sector in the past decade, mining has emerged as the leading sector that can anchor the revival of the economy. The country has a relatively long history of mineral exploration and mining. This is because the country is host to a lot of minerals which include gold, diamonds, platinum, black granite, palladium and many others with the potential to transform the socio-economic status of the country. The country has more than 60 known economic minerals and huge deposits of industrial minerals. Just as examples, the country has large deposits of platinum, chrome and diamonds. In this case, Zimbabwe has the second largest platinum reserves after South Africa and has 15% of the global chromite reserves. The platinum resources and other minerals are found in the Great Dyke area (an almost 550km stretch of mineral rich mountains that are 10km wide). The major companies mining platinum in the Great Dyke include ZIMPLATS, MIMOSA and Unki Mines.

The discovery of alluvial diamonds in Marange in 2006 became a game changer for ZANU PF and some well-connected individuals. The diamonds occur in what is called the Mkondo Geological series in the eastern part of the country. Most of the companies operating in Marange are Joint Ventures (JV) between the state owned Zimbabwe Mining Development Corporation (ZMDC) and foreign investors- in many cases Chinese entities. Marange has been touted as the biggest discovery in the last century with unsubstantiated reports suggesting that it has the potential to supply between 20-30% of world diamond production worth over US \$2 billion per year.<sup>3</sup> With such big numbers, the country has been gripped by the euphoria and belief that the diamond sector will create jobs, deflate the ballooning current account deficit and improve revenue flows to the fiscus, consequently spurring economic revival and development.

---

<sup>3</sup> Zimbabwe does not need De Beers. Herald, 3 November, 2011

Generally, the contribution of the mining sector to the Gross Domestic Product (GDP) has grown from an average of 10.2% in the 1990s to an average of 16.9% from 2009-2011. Mineral exports rose by about 230% over the 2009-2011 period, making it the leading export sector. In 2011, Zimbabwe's diamond output was pegged at around 7% of the world's diamond production (by volume) and 10% by volume in 2012. Platinum was pegged at 5% of the world's platinum production, and palladium at about 4% of the world's palladium output.<sup>4</sup> By the end of 2011 the sector accounted for 47% of total exports.<sup>5</sup> In 2012, declared mineral export shipments accounted for 64% of total exports.<sup>6</sup> This clearly shows that Zimbabwe is a significant player in the global mining industry. Further, mining has other positive multiplier economic and social effects including contributions to infrastructure, employment and linkages to other sectors of the economy, for example, through supply of goods and services.

The country has a combination of formal and informal mining entities. Some mines are operated on a small scale basis with many informal and unregistered miners working mainly on alluvial gold deposits scattered in various parts of the country. Most of them fail to register and get licences mainly due to high costs of formalisation emanating from exorbitant licencing fees, onerous environmental impact assessment requirements, scarce and expensive financing options and other procedures. Large scale mining companies are also operational and these include both local and multinational mining corporations such as Anglo-American Corporation, Rio Tinto, New Dawn, Aquarius Platinum, Caledonia Mining and a host of less known and shady Chinese owned corporations. The state also actively participates in the mining sector through the Zimbabwe Mining Development Corporation (ZMDC) which has entered into Joint Venture agreements with foreign companies. This is more evident in the diamond sector where JVs have been entered into. Examples of Joint Venture companies include Mbada Diamonds, Diamond Mining Corporation (DMC) and Anjin Pvt LTD among others.

However, with the advent of the Indigenisation and Economic Empowerment Act, shareholding in many foreign companies may dramatically change since the law

---

<sup>4</sup> United States Geological Survey, 2011 Minerals Yearbook, Zimbabwe, <http://minerals.usgs.gov/minerals/pubs/country/2011/myb3-2011-zi.pdf>

<sup>5</sup> 2013 National Budget Statement; Ministry of Finance (15 November 2012; page 36)

<sup>6</sup> Ministry of Finance, 2013 National Budget Statement

requires all mining companies to dispose 51% of their shares to indigenous Zimbabweans. Many have drafted implementation plans that are resulting in the setting up of Employee and Community Share Ownership Schemes as will be demonstrated in preceding sections.

Nevertheless, despite its role and potential, the mining sector has and continues to give rise to various social, environmental and economic problems particularly for local communities that live in the vicinity of mining operations. Generally, despite the abundance of natural resource wealth, an estimated 72% of Zimbabweans live under the poverty datum line of US\$507.96.<sup>7</sup> Some of the social ills include irregular displacements of poor communities, human rights violations, environmental degradation and lack of transparency and accountability.

### 1.3 Corruption and lack of transparency and accountability in the mining sector

The existing political and economic environment has created a fertile ground and conditions for corruption in the mining sector. Rampant corruption in the mining sector threatens to erode the potential the sector has to contribute to economic recovery and drive socio-economic development in Zimbabwe.<sup>8</sup> A study by Transparency International Zimbabwe (TIZ) established that politicians, notably senior government ministers and officials were implicated in most corrupt activities concerning the extraction, sale and exportation of gold and diamonds in Zimbabwe.<sup>9</sup> Globally, in terms of corruption, Zimbabwe was ranked number 20 in 2012 on the Corruption Perceptions Index<sup>10</sup> which ranks countries based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. This shows that corruption is a major problem in the country.



<sup>7</sup> ZIMSTAT, Price Statistics in Zimbabwe August 2012

<sup>8</sup> Farai S. Mtondoro, Godwin Chitereka, Mary-Jane Ncube and Andrew I. Chikwore (2013) : Research Paper on the Power Dimension to Mineral Related Corruption; Preliminary Findings from a Study conducted by Transparency International Zimbabwe (TIZ) on the State of Corruption in the Mining Sector-The case of Gold, Diamond and Platinum mining in Kwekwe, Gwanda, Marange and Mhondoro-Ngezi

<sup>9</sup> Examples include the case of Masimirembwa (former Chairman of ZMDC) and the case of Kurotwi (a former Director of Canadile which lost its licence in Marange diamond fields). The former Minister of Mines, Obert Mpofu has been accused by a report that was produced by Partnership Africa Canada of being corrupt and is a very rich man.

<sup>10</sup> See more at: <http://cpi.transparency.org/cpi2012/results/#sthash.Lr4bw26b.dpuf>

What has caused corruption to flourish in the country and in particular the mining sector is largely the secrecy shrouding the whole mining value chain from poor policies and legislation, weak institutions, granting and negotiation of mining rights, production and sale of minerals, revenue remittance to the fiscus and its utilisation. The general citizenry is not aware of the actual revenues accruing to Treasury from the mining sector. The challenges related to mining transparency and accountability permeates the whole mining industry. There remains very low public knowledge of the contracts that government has signed with various mining companies and the former Minister of Finance has previously highlighted that some mining companies may be evading and avoiding tax. Moreso, some mining contracts are project based which creates administration overload, loopholes are created for negotiating taxes lower than the tax code and rent seeking behaviour on the part of government agents negotiating contracts (for example bribery allegations against Masimirembwa).

As a result, mining has only benefited a few politically connected individuals and investors. This means the local women, youths and men are marginalised and have not derived any tangible benefits from the mining sector despite counting the costs of mining. Many reports have been compiled by civil society groups monitoring the situation in Marange of criminality, smuggling and leakages of diamonds. At one point even the President had to point fingers at some individuals who are being accused of corrupt activities in the diamond sector such as the former Chairman of the Zimbabwe Mining Development Corporation (ZMDC). What has also been observed and worrying in the diamond mining sector is the variation of production and exports data both by volume and value from sources such as the Ministry of Finance, ZIMSTAT and KPCS. Further, some state institutions such as the ZMDC and the Minerals Marketing Corporation (MMCZ) in connivance with diamond mining companies such as Anjin as well as the Ministry of Mines and Mining Development have not been declaring all the payments and receipts from the sale of diamonds. This has deprived the national fiscus of a key source of revenue. The Ministry of Mines was controlled by ZANU PF during the Unity Government. The Ministry of Finance which was being controlled by the MDC had been stating that it was not receiving all the revenues. The diamonds have therefore emerged as a game changer, political theatre and source of survival for

ZANU PF and some politicians. This situation has reportedly enabled ZANU PF to win the July 31, 2013 elections by using various tricks and strategies using diamond funds.

In order to try and promote transparency and accountability, in 2012 the GNU tried to establish the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) as a multi-stakeholder platform involving civil society, mining companies and government to promote the disclosure of mining revenues and contracts. This was a domestic version of the Extractive Industries Transparency Initiative (EITI). However, the problem with the initiative is that the Ministry of Mines did not attend the meetings and was not committed to the programme. Further, the new ZANU PF government has not even made attempts to include this in Zim Asset or any of its policy agenda documents. This may leave in limbo the operationalization of ZMRTI in Zimbabwe.

#### 1.4 Community rights and concerns

From a community perspective, the local natural resource governance context in Zimbabwe is characterized by limited community participation and violation of communities' environmental, economic, social and cultural rights by private and government owned companies that are involved in the extraction of natural resources. The natural resources sector has, therefore, emerged to be a major source of conflict over the past years. The conflicts often pit poor communities and civil society on the one hand against government and private players on the other. Worse still, the government is both the player and regulator, security forces who are gate keepers of the law are running mining companies accused of trampling on community rights. Therefore, natural resources instead of being a blessing are becoming a curse for the country; hence the concept of a 'resource curse' applies to the situation in Zimbabwe. Just as an example, the forceful removal of informal miners and villagers from the diamond fields in Marange in 2007 resulted in gross human rights violations such as beatings, injury and even the death of more than 200 people. In communities that live along Save and Odzi Rivers in Chipinge, Chimanimani and Buhera the conflict is between diamond mining companies operating in Marange against communities who have lost their sources of livelihood due to pollution and



siltation of river systems. Another example of the conflict is in the Great Dyke where mining companies are causing great environmental degradation by failing to rehabilitate open mining pits. The above problems are manifest in many parts of the country including poor labour practices, particularly by Chinese mining companies.

Currently, there is very limited dialogue on the concept of business and human rights in Zimbabwe's extractive sector. Thus, there has been no industry-wide effort to implement international initiatives and standards such as the UN Guiding Principles on Business and Human Rights, and the government has not been proactive in defending community rights as it often take the side of mining companies under the pre-text of attracting foreign investment or ensuring stability in the industry. Indeed, in some cases, it is government-owned mining companies that are at the centre of human rights abuses. In cases where mining companies violate community rights, there have been a few existing opportunities for the community members to seek redress.

The focus for the past few years has been on how to harness diamonds from Marange to benefit the whole country and communities especially the poor women, men and youths. The exploitation of this mineral has not yet resulted in community development and the realisation of the economic and social rights of communities living near mining areas. In essence, the country has also not yet derived national economic and social growth from its abundant minerals. Worse still, the little revenue accruing to the fiscus from diamonds is utilised along dubious national security interests defying economic rationale. Examples include the construction of the US\$98 million defence college with a loan from China whose repayment will be based on revenues from the sale of diamonds from Anjin Pvt Limited. This comes at a time when capital expenditure in socio-economic assets of the country is marginal given that the wage bill gobbles about 70% of government revenue. Some communities in mining areas do not have access to good schools, clinics, roads, clean water, electricity and other necessary social services.

One of the major concerns for communities is that many mining companies go to communities and inform them that mining takes precedence over any other laws and

cannot be stopped as mining overrides all land surface land rights. This is a wrong legal position being used by mining companies to disempower and scare local communities. Instead, on environmental issues, the Environmental Management Act takes precedence since no mining activities are allowed before a company carries out an Environmental Impact Assessment (EIA). At the same time, due to high distant power ratio between communities and mining companies, there is lack of social accountability which results in wanton trampling of community rights. The land tenure system is also a problem. In communal lands, the surface land rights are vested in the state, while in private land, owners have title to the land and this has implications on compensation for loss of land to mining operations. Land ownership, displacements and compensation are some of the issues affecting communities. Notably, the combined effect of poverty, poor service delivery and lack of knowledge about available environmental rights and how to claim them have generated a serious decrease in the quality of life (poverty) for most rural and urban residents.

### 1.5 The current and proposed legal regime on extractives

The extractive sector in Zimbabwe is governed by a number of legal and policy frameworks. Below is an outline of some of the important pieces of legislation.

**Mines and Minerals Act (Chapter 21:05):** In Zimbabwe mineral rights are vested in the President who holds them in trust for the benefit of all citizens. The Act requires any person who intends to prospect, explore or mine for minerals to apply for a mining title or permit/licence. It identifies various categories and types of licences such as Exclusive Prospecting Orders (EPO), Special Grants, mining leases and special mining leases. The issuance of mineral rights has been problematic. Secrecy and failure to carry out due diligence on investors has been identified as a major weakness. In addition, the law was passed during the colonial period and does not adequately take into account developments over the years such as environmental protection. Further, the law does not adequately protect the rights of communities against displacements by mining companies.

Precious Stones Trade Act (Chapter 21:06): The Act regulates diamond trade. It criminalises the dealing in or possession of precious stones (diamonds and emeralds) without licence. The Act domesticated the provisions of the Kimberley Process Certification Scheme (KPCS), which regulates trade in conflict diamonds. However, this piece of legislation is not adequate to address all the problems being faced by the country in trading its diamonds and in ensuring full compliance with the KPCS minimum requirements.

Minerals Marketing Corporation of Zimbabwe (Diamond Sales to Local Diamond Manufacturers) Regulations, SI 157 of 2010: The regulations enable local diamond manufacturers to buy rough diamonds for cutting and polishing as part of beneficiation and value addition. The problem is that those who got the licences ended up selling the rough diamonds since they had no equipment, finance and the market to sell products. Government responded by suspending some of the licencees. There is lack of transparency and accountability in the whole system.

Zimbabwe Mining Development Corporation Act (Chapter 21:08): The Act established the Zimbabwe Mining Development Corporation (ZMDC) which acts as the government investment arm in the mining sector. It has the responsibility to develop the mining sector. The ZMDC can operate some mines either in partnership with other investors or on its own. It has already entered into partnerships with foreign investors. This institution is at the centre of the murky and secretive diamond mining operations in Marange. As part of the investors in Marange it has not been remitting dividends to government over a number of years until recently.

Minerals Marketing Corporation of Zimbabwe Act: The Act established the MMCZ which is a government owned company responsible for marketing minerals. It is the sole marketing and selling agent for all minerals. However, it has the power to authorize mining companies to market minerals. This is another institution that has been at the forefront of the secretive diamond deals in Marange.

Indigenisation and Economic Empowerment Act and regulations thereof: This law requires foreign owned mining companies to dispose 51% of their shares to locals. Mining companies have an option to dispose shares to Community Share ownership Schemes or Trusts, Employee share ownership schemes/trusts and Management share ownership schemes or trusts. Many mining companies have already launched Community Share Ownership Schemes and donated funds to the schemes for community projects. However, the problem is lack of transparency and accountability and manipulation of the programme for political mileage by some politicians.

Environmental Management Act (Chapter 20:27): The Act sets out environmental rights and duties. It contains provisions on Environmental Impact Assessments (EIA). Mining companies are required to carry out EIAs and this should be done before mining operations start. The implementation and enforcement of this law is affected by limited institutional capacity within the Environmental Management Agency and political interference in some cases in the mining sector. Mining companies do not comply with the law as well and end up causing environmental harm to communities. The pollution of major rivers such as Save River and Odzi River by diamond mining companies operating in Marange is a case in point. The polluters include DMC, Anjin and Marange Resources.

Income Tax Act and the Finance Act: These laws provide scope for revenue collection and management in Zimbabwe. Mining companies are required to pay royalties, dividends and other taxes. However, the problem is tax evasion and avoidance in the sector.

New Constitution: Zimbabwe passed a new Constitution in 2013. It has a lot of implications on the extractive sector. A lot of its provisions can be used by communities and civil society to promote the rights of people affected by mining and to call on government and mining companies to account. For example it has founding values and principles that should bind the state such as transparency, justice, accountability and responsiveness and equitable sharing of national

resources. In addition, it encourages the state to adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in Government at every level and in every public institution. The state is also encouraged to take measures to expose, combat and eradicate all forms of corruption and abuse of power by those holding political and other public offices. The state is also required to ensure that local communities benefit from the resources in their areas. The Constitution also contains provisions on environmental rights by guaranteeing every person 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 by preventing pollution and ecological degradation and promote conservation. The constitution has other economic, social, cultural rights including the right to food, water, education and health care among many others. However, the problem with the Constitution is that most of the rights such as the right to food and water are treated as progressive rights that can only be fulfilled with the availability of resources to the state. It will be very difficult to ensure that all these rights are realised.

**Draft Minerals Policy:** In March 2013, the government developed a draft Minerals Policy to promote the mining sector. The stated vision of the Policy is “equitable and optimal exploitation of Zimbabwe’s mineral resources to underpin broad-based sustainable growth and socio-economic development”. Some of the issues that the Policy seeks to promote include; mineral beneficiation, linkages with other sectors, small scale mining, environmental sustainability, development of a regulatory framework, minerals marketing and improved knowledge of the mineral base of the country among others. The draft has a lot of weaknesses. For example the draft Policy does not include clear provisions on how transparency and accountability will be promoted. Many communities affected by mining operations did not participate in the consultation processes which were only confined to provincial capitals.

**Diamond Policy:** In May 2012 the government also developed a Diamond Policy to provide a framework for stringent controls and to ensure licencing of the diamond industry, security of diamonds, valuation and marketing and to protect diamonds

from smuggling. However, the diamond policy does not contain specific provisions on how government could promote transparency and accountability in the diamond sector.

Amending the Mines and Minerals Act: Since 2007 Government has been considering amending the Mines and Minerals Act. In 2007 a Draft Mines and Minerals Amendment Bill (2007) was produced. The draft sought to introduce a number of reforms such as; restructuring the system of issuing mining rights, indigenisation of the mining sector, inclusion of environmental impact assessment reports and establishment of an Environmental Rehabilitation Fund. However, the draft has been shelved and was not introduced in parliament.

## 2.0 ROLE OF STAKEHOLDERS IN THE EXTRACTIVE SECTOR

Different stakeholders have interacted or participated in the extractive sector in different ways. Civil society has been engaged through the work of individual organisations and sometimes as coalitions. The Zimbabwe Environmental Law Association is the pioneer and one of the most active civil society groups in the extractive sector calling for transparency and accountability as well as protection of the rights of communities. Other actors included the Centre for Research and Development (CRD) and the Centre for Natural Resources Governance (CNRG). At the community level the Chiadzwa Community Development Trust (CCDT) has also been active, while community based networks made up of communities affected by mining operations are being established in the Great Dyke (Great Dyke Community Network) and the Save-Odzi Community Network made up of communities affected by pollution of rivers by diamond mining companies operating in Marange. The Chiadzwa Community Development Trust was registered by ZELA. The organisation offered it legal, financial and technical support during its infancy. Other groups that are emerging to work on extractive sector issues include the Zimbabwe Coalition on Debt and Development, AFRODAD, Poverty Reduction Forum Trust, Action Aid International and Transparency International Zimbabwe.

From a collective civil society perspective, ZELA has coordinated a number of coalitions in the extractive sector such as the Kimberley Process Civil Society Coalition representatives in Zimbabwe. This is a coalition of seven organisations that are monitoring the situation in Marange and reporting to the KPCS. The group includes ZELA, NANGO, Crisis Coalition, Women's Coalition, Counselling Services Unit, Zimbabwe Lawyers for Human Rights (ZLHR) and Centre for Research and Development (CRD). Further, a Publish What You Pay- Zimbabwe chapter was launched and is being coordinated by ZELA. This civil society coalition calls for the disclosure of mining revenues and contracts by government and mining companies. The PWYP is still in its infancy and requires a lot of capacity building and strengthening. It also needs to reach out to different communities and more civil society actors.

However, the relationship between government and civil society has always not been rosy. It has been punctuated by accusations and counter accusations. Civil society accuse government of being corrupt and mismanaging mineral resources, while government accuses civil society groups of being appendages of the west and being used to effect regime change. As a result, some civil society groups and activists have been arrested, verbally abused and in some cases threatened with arrest and physical harm in the extractive sector. On the other hand, mining companies have also been accusing civil society of lying and inciting communities to rise against them.

At the community level, only a few organisations have programmes that resonate well with the needs of communities. Some organisations such as ZELA have started programmes aimed at capacitating communities to exist as legal entities and to amplify their voices in the natural resources sector and to call government and mining companies to account. This has been done with success in areas such as Marange and the Great Dyke where viable community groups now exist.

Some donors and financial institutions have also been playing a key role in supporting government to try and promote transparency and accountability in the extractive sector. The notable ones are the World Bank. The World Bank for example was supporting the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) through the Multi-donor Trust Fund to promote disclosure of revenues in the mining sector. On the other hand, the International Monetary Fund (IMF) was also working with government on the staff Monitored Programme which calls on the government to account for diamond revenues from 2010-2012 and to develop a new law on diamonds as part of conditions to start re-engagement with the government of Zimbabwe that for a long time has not been receiving any support from the IMF. However, the problem with this initiative is that so far government has not taken any concrete steps to comply with the conditions set by the IMF such accounting for diamond revenues and developing a new law on diamonds. All what the new government did was to promise that they will comply and implement it through the Ministry of Finance.



### 3.0 SCENARIO ANALYSIS OVER THE NEXT FIVE YEARS

Over the next five years, there are number of current and past events and situations that can be used to predict possible scenarios in the extractive sector. The first such aspect is that after the win by ZANU PF during the 31st July 2013 harmonised elections, the new government crafted a five year economic blue print known as the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim Asset) which was mainly drawn from the ZANU PF election manifesto. The stated aim is to pursue accelerated economic growth and wealth empowerment for the period October 2013 - December 2018.<sup>11</sup> The programme has four strategic clusters that are identified as; Food Security and Nutrition; Social Services and Poverty Eradication; Infrastructure and Utilities; and Value Addition and Beneficiation. On funding, the following, interalia, have been identified as financing mechanisms for Zim Asset; tax and non tax revenue, leveraging resources, creation of a Sovereign Wealth Fund, re-engagement with the international and multilateral finance institutions and focusing on Brazil, Russia, India, China and South Africa (BRICS). The programme recognizes the potential of the mining sector as a major foreign currency earner. Through Zim Asset the new government stated that it seeks to promote value addition and beneficiation, establishment of a Sovereign Wealth Fund, strengthening the capacity of mining institutions and evaluating the country's mineral resources.

From the above, there are a number of scenarios that may be important to focus on. Firstly, given the centrality and potential of mining as an economic growth factor, there is need to focus on contract and revenue transparency in the extractive sector. This is because a lot of mining contracts will be signed with many investors as the country is trying to re-engage other countries and international players. The most notable countries are China, India, Brazil and South Africa (the BRICS countries) as these are viewed as friendly by the new ZANU PF government. The focus on BRICS is stated in the Zim Asset. It is likely that as the country faces the economic squeeze due to ZANU PF's uncreditworthiness, in order to attract investors it will give away many mining contracts to investors from these countries. The mining investment deals are likely to



<sup>11</sup> Government of Zimbabwe (OCTOBER 2013 - DECEMBER 2018); Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim Asset) "Towards an Empowered Society and a Growing Economy"

be without any stringent terms and conditions. These companies may as well get a lot of tax exemptions and other incentives. Further, Zimbabwe may also be an attractive destination for opportunists, daring and get rich-quick mining outfits and investors that will be attracted by the use of the United States dollars (US\$) and tax incentives in the country. This is because other countries are hesitant to invest in Zimbabwe. The opportunists are likely to snap up, in many cases corruptly, a lot of mining rights and start mining or resell the rights at a much higher price. This situation would clearly necessitate adoption of measures by civil society to promote contract and revenue transparency initiatives.

In the same vein, there is likely to be a lot of secrecy by the ZANU PF government. It is unlikely that there will be immediate and significant changes in the mining sector since most of the mining companies are being controlled by political elites and the military. However, changes may only be witnessed in companies that are fully owned by the state and not privately owned companies or Joint Ventures. Some of the changes may be cosmetic only. The military factor may even make the new Minister to stop the fight against corruption in the sector. Many government officials and even civil society groups will be afraid to question the army generals who control the mines like Anjin. In this case, the fiscus will continue to be starved of revenue by some diamond mining companies. This will then call for enhanced vigilance and more work on transparency and accountability by civil society groups, parliament and local communities. Working with parliament can help in ensuring that the executive is held to account. It is more likely that parliament will play a critical role in contract negotiation and monitoring. This means parliament has to play its oversight, representation and legislative role. This will bring the executive to account. In fact, the challenge for the current Mines and Energy Committee is to emulate the work done by the previous Committee in exposing the problems in the Marange diamond.

In the next five years, what may also happen is that government will try to focus on unlocking value in some strategic mineral resources especially high value mineral resources such as diamonds and platinum. The focus on diamonds is because a lot of companies are being granted mining rights and are exploring for diamonds and other minerals. Emphasis may be on value addition as already noted in the Zim Asset. Other

minerals where there will be a lot of granting of mineral rights include coal and iron ore. Therefore, any interventions should be focused on assessing government actions around these strategic minerals.

Secondly, over the next five years, government is likely to focus on reforming mining laws. In particular, some amendments to the Mines and Minerals Act may be passed. Government may also either amend the Precious Stones Trade Act or pass a new Diamond legislation. What may also be another development in the next five years is the passage of the Sovereign Wealth Fund Bill and the establishment of the Sovereign Wealth Fund (SWF) thereof. This will be in response to a provision in the Indigenisation and Economic Empowerment regulations on the establishment of SWF as well as the Zim Asset. What is therefore needed are programmes to monitor the use, investment and management of the funds since the mining sector will be contributing to the SWF.

Thirdly, in the next five years, it is unlikely that government will join the Extractive Industries Transparency Initiative (EITI) or revive the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI). If it does, there are likely to be a lot of challenges and bottlenecks around implementation of the programme. This is because this has a lot of implications on a sector which government does not want many people to know about, namely diamond mining. The secrecy in the sector will make it difficult for government to disclose the revenue streams and contracts signed with other secretive countries like China. However, it should be noted that there will definitely be increasing demands by civil society and communities in Zimbabwe for government and mining companies to disclose revenues, payments and contracts in the mining sector as well as tax justice campaigns. Debate on the need for the country to join the Extractive Industries Transparency Initiative (EITI) has been ignited by civil society organisations such as ZELA and this will continue in the next five years. What is therefore necessary is to build the momentum and coalitions around this issue. In addition there is need to rope in Parliament. In this context, debates on tax justice may be key in the extractive sector.

The fourth likely scenario is that the ZANU PF government is likely to continue implementing the Indigenisation and Economic Empowerment programme by focusing on value addition in the mining sector and facilitating the state participation

in the mining through the ZMDC or the SWF. However, the concept of value addition may not be pursued to its logical conclusion since it is often misunderstood and is not backed by any concrete research, skills development and deployment of financial resources and the market for products. Many developing countries that have tried value addition did not achieve great success. Broadly, the indigenisation programme is likely to continue and many community share ownership schemes will be established towards elections or before 2018. It is likely that a lot of corrupt deals that took place will be unraveled within the coming years on the implementation of the Community Share Ownership Scheme and generally the Indigenisation programme. This would then call for more civil society work on monitoring the contracts and revenue flows as well as how mining companies carry out corporate social responsibility activities. Going forward, there is need to start following the money and find out how Community Share Ownership Schemes are using the money at the community level. This requires investigative research and independent auditing of the schemes.

The fifth likely scenario is that if the economic environment improves, a lot of businesses will attempt to reach out to regional and international markets that have developed standards on sustainability, environmental and human rights reporting. These standards include the Global Reporting Initiative, OECD Guidelines and ISO 14000 certification among others. In this context there will be emphasis on business and human rights. It is likely that many companies will start seeking ways of protecting the environmental, economic, social and cultural rights of communities and the rights of workers. There is likely to be a lot of attention on Business and Human Rights using the UN Principles on Business and Human Rights. Civil society organisations in Zimbabwe have already started to work closely with the Zimbabwe Human Rights Commission and the Ministry of Labour and Social Welfare to promote the concept of business and human rights and the pressure from civil society for government and mining companies to take this issue serious is likely to continue. In this case mining companies will be forced to look at ways to reduce their human rights violation footprint by carrying put due diligence. In addition, companies, civil society, government, human rights commissions and communities may start to form alliances and multi-stakeholder forums aimed at addressing problems from a collaborative approach in the extractive sector. This will be part of efforts to resolve conflicts. In this

case, it is likely that corporate social responsibility projects by mining companies will be improved.

The sixth scenario is that there is likely to be increased violations of the environmental, economic, social and cultural rights of communities in some mining areas as more and more mining companies will be given concessions in highly populated areas and even ecologically sensitive areas. This is likely to cause a lot of tension and conflicts. The major problem may be companies from China which do not respect the rights of communities. The conflicts are likely to revolve around displacements, land tenure, water pollution, compensation and failure to comply with environmental standards among other community driven demands. This means there is likely to be a continuation of some of the current problems being faced by communities in the Great Dyke and in Marange among many other mining areas. In addition, the rights of workers are likely to be violated by Chinese mining companies since they have a different work culture from Zimbabweans. Labour disputes in the extractives sector are likely to escalate in the coming years. In the human rights arena, the work and role of the Zimbabwe Human Rights Commission may also become more relevant as the commission can help to monitor and investigate cases of human rights violations in the extractive sector. The Zimbabwe Human Rights Commission is likely to focus on violations of economic, social, environmental and cultural rights as well, than civil and political rights.

Over the next five years, one of the key legal issues that will confront the new government is the need to develop legislative, policy and other administrative measures to implement the provisions of the new Constitution of Zimbabwe. What will be key is to align all existing laws with the new constitutional requirements. Some of the rights, principles and provisions in the new Constitution require enabling legislation. The new Constitution has many provisions that have implications on the management of natural resources and the revenues thereof. In the same vein, it has progressive provisions on protecting the rights of people and these include environmental, economic, social and cultural rights and the need for the state to ensure that local communities benefit from the resources in their areas. As stated

earlier, the new constitution also calls for accountability, transparency and financial probity in Government at every level and in every public institution. In addition, the constitution also states that government should take measures to expose, combat and eradicate all forms of corruption and abuse of power by those holding political and other public offices. Some of these provisions require the passage of laws and other measures to make them operational. Others require the provision of financial resources by the state in order for them to be realized. This means parliament and the executive are expected to drive a lot of legal reforms. Parliament will be called on several occasions to play its legislative and representation role in the coming years. However, this all depends on whether the ZANU PF government is committed to implement the new Constitution. If it is not, then there will be very limited legal developments associated with the new Constitutional dispensation. In the above context, there is likely to be a lot of discussions and advocacy efforts by different groups to promote the implementation of the different provisions of the Constitution. This may also entail the need to capacitate existing constitutional structures such as the Zimbabwe Human Rights Commission to make them more effective.

Over the next five years, Zimbabwe's compliance with the Kimberly Process Certification Scheme (KPCS) on trade of conflict diamonds will remain an issue due to the fact that Zimbabwe became the test case for the KPCS on the need to redefine conflict diamonds to include diamonds that are mined in areas where the state or other non-state actors perpetrate acts of violence or human rights abuses. Currently the definition of conflict diamonds includes diamonds that are used by rebel movements to remove legitimate governments. At the moment there is no agreement in the KPCS on redefining conflict diamonds and this situation is likely to continue in the next five years. Zimbabwe, Russian, South Africa, China, India and other African countries have been very vocal in the KPCS refusing a redefinition of conflict diamonds. Given the problems in the KPCS, other observers and participants have started to think creatively about other initiatives outside the KPCS that can be used to promote human rights due diligence by mining companies in the diamond sector. For example, there is a group, including Zimbabwean civil society, that is working on trying to assess the possibility of developing a due diligence framework

along the lines of the OECD Guidelines on precious stones from conflict affected areas. In the next five years, this group is likely to consolidate its work and become a major actor in promoting human rights in the diamond sector if the KPCS does not swiftly play its part in redefining conflict diamonds. What may also be important given the centrality of diamonds to the immediate economic needs of the country is to ensure that civil society continue monitoring the situation in Marange together with communities to make sure the rights of communities are protected and to promote transparency and accountability. In this context, Zimbabwean civil society should be able to influence such international processes. The diamonds issue will also remain a key issue in Zimbabwe given the massive diamond deposits in the country.

## 4.0 OPPORTUNITIES AND CHALLENGES

### 4.1 Opportunities

There are a number of opportunities and challenges that should be noted by civil society groups in designing future programmes in Zimbabwe's extractive sector.

From a political perspective, it appears the ZANU PF government realized, at least theoretically, that it may not be able to improve the lives of people and the economy alone and the way forward is re-engaging other international partners and countries that they considered as hostile. This re-engagement can work as an opportunity since the government will become more open to criticism and may even open some space for civil society do its work without facing threats of arrest or prosecution. The other opportunity is that from a human rights perspective, the new Constitution offers a glimpse of hope in that it contains a lot of provisions that are important in the extractive sector and for local communities that depend on natural resources. This is more relevant as the Constitution protects environmental, economic, social and cultural rights and well as the rights of communities who live in natural resource rich areas to benefit. Further, from a human rights perspective, ZELA has been engaging the Zimbabwe Human Rights Commission to get them interested in investigating and monitoring human rights violations in the extractive sector. The response has been very positive since the Commission has expressed willingness to partner with civil society in monitoring and investigating any reports of the violation of environmental, economic, social and cultural rights in the extractive sector. The willingness of the ZHRC to work on extractive sector issues is an opportunity that should not be missed.

Further, the Constitution also offers hope and opportunities in that it provides scope for more work on promoting transparency and accountability in the extractive sector. This is because the constitution calls for financial probity, transparency and accountability and the need to curb and expose corruption in the public sector. This offers opportunities for civil society and other government bodies that play an oversight role such as parliament to promote revenue and contract transparency in



the mining sector. The fact that the President has on several occasions openly spoken against corruption and even pointed out the names of corrupt individuals in the diamond mining sector is another opportunity and indication that there is need to find a way of taking advantage of such pronouncements.

On revenue and contract transparency, the other opportunity is that during the Government of National Unity, a lot of steps had already been taken by government to establish the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI). While this was housed under the Prime Minister's Office which was abolished, there is need for civil society to continue advocating for its implementation and to encourage government to build on what has already been established. This can work if it is mixed with advocacy work for government to implement the IMF staff monitored programme which calls on government to account for diamond revenues and to develop a diamond law. The IMF staff monitored programme also offers an opportunity for civil society to call on government to be accountable.

The existence of the Publish What You Pay –Zimbabwe Chapter is also another opportunity that should be taken advantage of. It shows that civil society and community groups are already discussing and aware of extractive sector issues such as disclosure of mining contracts and revenues and tax justice. What is needed is to strengthen the coalition and to build further capacity and make PWYP a rallying point for all civil society working on extractive sector issues in Zimbabwe.

The other opportunity is the increased interest and awareness by many civil society organisations to work on extractive sector issues by designing new projects and programmes. Even organisations that have been focusing on purely civil and political rights have started to talk about the importance of natural resources and mining in the country. Some are designing programmes to promote economic, social and cultural rights, tax justice issues and illicit financial flows in the extractive sector. A related opportunity in this regard is that civil society groups like ZELA already have existing working relationships with government departments, parliament and communities. For example the organisation has over the past ten years been

organizing training meetings and outreach visits for the Parliamentary Portfolio Committee on Mines and Energy. The Committee would normally give ZELA mining contracts to review and give advice as well as asking for legal advice on extractive sector issues. This relationship with parliament should be taken advantage of to enhance the capacity of legislators to monitor and review mining contracts in the extractive sector and to exercise their oversight, legislative and representation role.

Some organisations already have established relationships with communities in different mineral rich parts of the country. This includes facilitating the formation of community based groups and organizing capacity building training meetings on community rights and strategies to claim them. This is an opportunity that should also be taken advantage of in working on human rights issues in the extractive sector.

#### 4.2 Challenges

However, in trying to take advantage of opportunities, there are a number of challenges and risks that should be closely monitored and addressed. The first challenge is that many people believe that the ZANU PF government has no capacity and the will to embark on any meaningful economic recovery initiatives. It is often said that some individuals and state institutions are happy with the status quo which facilitates corruption, mismanagement and pillage of the country's mineral resources and revenues. Many also doubt that with the participation of the military, police and other well connected individuals who are benefiting from the diamonds, the ZANU PF government will reform. The state security sector for example is always trying to protect its interests in the mining sector. The security sector especially the military has control of the diamond fields through Anjin (Pvt) Limited which is a joint venture with the Chinese. They would want the situation to continue as this will enhance their power and reach in the extractive sector. This is a major challenge for civil society and other stakeholders since the operational environment may not be free, safe and open for credible engagement between civil society actors, community groups, mining companies and government. There is always a lingering fear that a lot of human rights defenders in communities and working within civil society may be victimized.

The state is also likely to note the increased number of NGOs that are now interested in the extractive and natural resources sector and will be closely monitoring them. Government and mining companies have always felt threatened by initiatives that seek to empower the communities to demand improved natural resource governance from government and the respect of their rights by mining companies. Diamonds remain a sensitive issue in Zimbabwe. Under such a situation, one of the difficulties that may be faced in the next five years is the likely continuation of tensions between civil society and communities on the one hand against government and mining companies on the other over the Marange diamond mining issues.

The other challenge worth noting is that given the fact that ZANU PF has stated in the Zim Asset that it will continue working closely with emerging economies such as the China, Brazil, South African and Indians indicates that there may be a reduction in terms of labour, environmental and human rights standards in the extractive sector. The Chinese factor is the most worrying since they do not pay attention to these issues. They trample upon the rights of communities from areas where they are mining and have very terrible working conditions for workers.

The third challenge is that even if new laws that are in line with the new Constitutional dispensation are adopted these reforms may not be implemented and enforced due to limited resources and capacity. Zimbabwe is well known for developing progressive laws and policies that end up not being implemented and enforced. Even though the constitution may contain the rights of communities in mining areas and to promote transparency and accountability as well as curbing corruption, these provisions may not be enforced. Through implementation of various programmes, it has been observed that the major problem affecting social and environmental accountability in the extractive sector is limited or lack of enforcement of laws and policies. Political and institutional constraints are the primary stumbling blocks to improved management and oversight of the extractive industries. However, in practice sometimes key institutions such as the legislature are marginalized or barred from playing an oversight role by the executive or even frustrated by mining companies. Parliament is sometimes excluded from the negotiation of mining contracts and they will become more reactive than proactive on such issues.

## 5.0 INNOVATIVE APPROACHES AND PARTNERSHIPS

There are several approaches that can be innovatively used by civil society and community groups in the next five years to protect the rights of communities and to promote transparency and accountability in the extractive sector.

### 5.1 Improving the capacity of parliament to play its oversight, representation and legislative role

- Given the centrality of contract negotiation and revenue management in the country's extractive sector, there is need to ensure that members of parliament are capacitated to perform their oversight, legislative and representation role. In this case what is needed is to ensure that legislators are empowered through tailor made training sessions on contract negotiation, monitoring and contract review. They should also be trained on budget monitoring and about international initiatives on revenue and contract transparency. This means there is need to develop a training programme for the members of parliament. The target Committees of Parliament can be the following; Mines and Energy Committee and the Budget and Finance Committee and the Environment and Natural Resources Committee.
- The training programme can be complemented by outreach visits for members of parliament to mining areas and communities. This will ensure that legislators understand and appreciate the concerns and problems being faced by communities. This will also enable them to debate and make contributions in parliament from an informed position about the problems being faced by local communities. The training can also include business and human rights issues.
- In addition, parliamentarians should be supported to organize public hearings where mining companies, government officials, communities and

civil society groups are called to testify about their operations, problems and perspectives on particular and topical extractive sector issues.

- Related to the above, civil society should also be capacitated and be ready to analyse mining contracts and revenue streams so as to advise parliamentarians. The advice can be of a legal or economic nature. In this case civil society can even analyse contracts for parliament.

## 5.2 Building and strengthening civil society coalitions in the extractive sector

An important approach that should be adopted in the extractive sector from a civil society perspective is to build, strengthen or improve civil society coalitions. What this means is that there is need to create a united voice on particular advocacy issues. This can result in joint programming, pooling of financial and technical resources and presenting a united front in calling government and mining companies to respect the rights of communities and to be transparent and accountable.

Building and strengthening coalitions may include two key strategic aspects; (a) creating new coalitions to work on particular issues in the extractive sector. This can be at a regional or national level and (b) where coalitions already exist, and they face capacity constraints, there is need to capacitate them through provision of resources and technical capacity and training.

Examples of civil society coalitions that already exist and can be strengthened include the Publish What You Pay-Campaign, the KP Civil Society Coalition and the Zimbabwe National Anti-Illicit Financial Flows network. The PWYP Zimbabwe chapter is still in its infancy and requires a lot of resources and technical skills for the secretariat and its members. In this regard, more members from communities and civil society circles should be recruited so that it becomes a strong social movement. This should be complemented by further training, strategic planning and outreach by the coalition. More groups should join and become active members of the PWYP coalition. The

coalition will also embark on varying advocacy initiatives aimed at calling on government and mining companies to disclose the mining contracts for the benefit of the public. The KP Civil Society coalition should also focus on advocacy work to interest the government and work with other SADC civil society groups to call for the inclusion of human rights and violence in the definition of conflict diamonds. The work can include continuing with human rights monitoring in diamond mining areas such as Marange and other new mining sites. The group will then transmit the information to the KPCS and participate in international forums to advocate for the redefinition of conflict diamonds.

### 5.3 Building and capacitating community networks and organisations for community monitoring and advocacy

It is important to note that the state power and reach in many rural mining communities and mining sites is very limited. In many cases government officials rarely visit and monitor mining operations. What is therefore important is to embark on a composite of strategies aimed at capacitating community groups and activists to take action. In this regard the following activities will be key at the community level;

- Registration or formalization of community based groups or networks where they do not exist, to enable them to exist as legitimate and where possible legal entities that can act as a strong community voice to claim and demand for the respect of community rights by mining companies,
- Embarking on community based monitoring activities. This can be done by recruitment of community monitors and training them on information gathering, dissemination, advocacy and data security management. Community monitoring will be vital in areas where civil society may not be allowed entry such as diamond mining areas. This will enable community monitors to gather information themselves and take action. The community monitors can be supported with modern information gathering and

communication equipment such as cellphones, GPS systems, camera's and other applications. Community monitoring is meant to empower communities to effectively monitor the actions of mining companies and government at the local level. The objective is to ensure that community activists and CBOs have the skills to observe, analyse and develop action strategies around the problems faced by the community.

- Once community based groups are established, there is need to ensure that the groups are sustainable and can endure after the end of any project. This can be done through a set of initiatives that encompass sub-granting to local communities. Sub-granting can be complemented by training on financial management, project management, proposal writing and resource mobilization. It will be important for groups as well, where possible to be involved in income generating activities in the natural resources sector that can help them sustain their operations.
- The component on building community networks will include the establishment of networks and forums for community groups to discuss and share ideas and skills on strategies to claim and demand their rights in the extractive sector. A related issue is the need to ensure that communities embark on skills sharing and exchange visits to learn from each other. This can even be expanded to include regional trips to other countries where there are communities that can act as case studies as a way of indicating to communities how they can improve their situation.
- The communities should also be linked with decision makers such as government departments and members of parliament through dialogue meetings, public hearings and outreach visits by members of parliament.

#### 5.4 Community rights training

Going forward, there is need to promote discourse around the rights of communities affected by mining operations. Communities should be made aware of their environmental, economic, social and cultural rights and the various ways and strategies to claim and demand them. This can be done through community rights training. Some of the strategies that can be used by communities to claim their rights include public litigation, advocacy and conflict resolution.

#### 5.5 Engagement between mining companies, civil society, communities and government

In the event that the economy improves and the government and mining companies are willing to engage and openly discuss extractive sector issues with communities and civil society, there is need to develop a programme that promotes the establishment of a multi-stakeholder platform. Such a multi-stakeholder platform can be along the lines of the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) which includes all these stakeholders such as civil society, government and mining companies. In such cases there will be need to facilitate dialogue and actions that enhances transparency and accountability. The approach of engaging the mining sector may be collaborative as opposed to being combative or confrontational as civil society normally does. This may achieve better results.

In some cases there is need to facilitate direct contact and dialogue between mining companies and communities. This can work better if a programme is developed based on the United Nations (UN) Guiding Principles on Business and Human Rights, which will help institute and inculcate a culture of respect for human rights by mining companies. In this case, communities should be capacitated to monitor and report the implementation of the Guiding Principles by mining companies. Added to the human rights aspect will be the need for communities to be capacitated through training to monitor the implementation of Environmental Impact Assessment (EIA) commitments by mining companies. At the company level, there is need to ensure that workers are also targeted and trained on their rights. The approach can also include organizing



national dialogue meetings for mining companies, government and communities. The engagement of mining companies may also be vital as it may improve the capacity of mining companies and government to apply the UN Guiding Principles on Business and Human Rights and other extractive sector related international business and human rights standards/guidelines, for example, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, aspects of the Voluntary Principles on Security and Human Rights as well as aspects of the Extractive Industries Transparency Initiative (EITI).

In the event that all the collaborative approaches fail, civil society can still resort to a confrontational approach and carry out investigative researches and exposes' on the practices of mining companies and government to force them to take action.

## 5.6 Strategic litigation and advocacy

What may also be important in the coming years in advancing the rights of communities is to support programmes that test the justiciability and application of the rights contained in the new constitution. This can be done through public interest litigation as a key strategy to protect the economic, social and cultural rights of communities. Public interest litigation should be used since poor and vulnerable communities often lack the knowledge, resources and sometimes fear to challenge government or mining company actions that infringe their rights. This can be done through supporting public interest law groups that can offer legal advice to communities. In this respect only cases with a high impact can be litigated on.

## 5.7 Investigative and evidence based research

In order to unravel often sensitive issues in the extractive sector such as tax evasion, avoidance, poor contract negotiation, acquisition of mining rights, human rights violations and corruption, there is need for civil society to embark on investigative research as a key strategy in exposing the rot. Investigative research can include scientific assessments or even social research and economic analysis. Mapping of mining areas and hot spots where communities are most affected may also be part of

the equation to enhance improved information and data availability. The results and findings of investigative research can then be used to shape and offer policy and legal recommendations for improved management of the mining sector. All advocacy activities should be evidence based and guided by research. This will enhance the credibility of the actions of civil society.

## 5.8 Budget Tracking and Monitoring

What is also important to focus on in the coming five years is to adopt budget tracking and monitoring as part of efforts to track and understand how government is managing revenues from the mining sector. This is can include community and civil society groups participating in budget consultation meetings and calling for proper management of mineral resources revenue. Civil society should also work closely with the Budget and Finance committee of parliament and train the legislators on budget tracking and monitoring.

## 5.9 Protecting Human Rights Defenders

Given the sensitivity of the extractive sector especially diamond mining, the importance of developing a programme on Human Rights Defenders programme is more imperative. The objective of the programme will be to protect community activists, community based groups and civil society groups. The Human Rights Defenders programme can include provision of legal support services, safe houses where possible, training and or medical attention. In some cases, civil society groups and community activists may require training on data and information safety and personal security.

## 5.10 Use of regional and international multi-stakeholder platforms

Civil society and parliamentarians should be trained on how to effectively use principles derived from international and global initiatives that seeks to promote the respect of human rights and transparency and accountability in the extractive sector. Such initiatives include the Extractive Industries Transparency Initiative (EITI), the

Zimbabwe Mining Revenue Initiative (ZMRTI) and the Publish What You Pay Campaign (PWYP), the Kimberley Process Certification Scheme (KPCS), the OECD Due Diligence Guiding Principles on Responsible Sourcing of Minerals from Conflict-affected Areas, the UN Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights.

## 6.0 QUICK GUIDE ON THEMATIC RECOMMENDATIONS

The following constitutes a quick guide of thematic recommendations drawn from the analysis that future programmes to be implemented by civil society and community groups can focus on in the coming five years. These recommendations are a mix of thematic issues that can be implemented using the strategic interventions and innovative approaches identified in previous sections. The thematic issues are not exhaustive, but include some of the key aspects that civil society should prioritise.

- Acquisition of mining rights and negotiation of mining contracts: This means civil society and parliament should closely monitor or where possible review all mining contracts that are signed by government. This can include new contracts and those that were signed in the past.
- Mineral extraction processes and impacts: The processes, methods and systems of mining should also be closely looked at and assess the impacts on the environment and communities.
- Environmental pollution and degradation: Environmental pollution and degradation is one of the negative impacts of mining operations. Mining operations often result in pollution of rivers, dams and other water bodies. Mining can also degrade lands, thereby leaving mine dumps and pits as well as loss of forest.
- Human rights violations: State security actors or private security companies may be used by mining companies to commit human rights violations. The human rights violations can traverse the whole spectrum of human rights viz political, civil, environmental, economic, social and cultural rights. In some cases violations can come in the form of displacement, loss of land, beatings of villagers etc
- Poor labour practices: The working conditions at different mining sites should also be closely monitored. Some of the elements to look at include salaries, health, safety and environment, recruitment and retrenchments, collective bargaining and trade unionism, working hours etc

- Marketing, Revenue generation, management and use including transparency and accountability issues (this will include disclosure of contracts, payments and revenues, access to information, public consultation, work on PWYP, EITI, ZMRTI, etc.)
- Tax Justice campaigns: There is need to focus on mining taxation, assessing the challenges in collection of taxes, tax evasion and avoidance, tax havens, illicit financial flows, tax reforms, institutional capacities, etc.
- Curbing corruption in the extractive sector: Corruption in the extractive sector come in various ways. It may relate to activities that benefit a few individuals who deprive the country of benefits and this may be across the whole mining supply chain starting from allocation of mining rights, extraction, sale and exportation of gold and diamonds in Zimbabwe.
- Implementation of the Indigenisation and Economic Empowerment especially the community share ownership schemes: focus should be on assessing the use of funds, auditing, identifying beneficiaries etc
- Corporate social responsibility or investments: assessing the financial aspects or costs of CSR actions taken by mining companies and their impacts.
- Business and Human Rights and other private sector voluntary initiatives to enhance respect of community rights and transparency and accountability (mining companies should be encouraged to join voluntary systems such as the ICMM principles, Global Reporting Initiatives, Equator Principles, EITI, Business and Human Rights, OECD)
- National and local authority budgets: assessing the allocation and use of revenues and monitoring the management and application of the Sovereign Wealth Fund when it is eventually established.

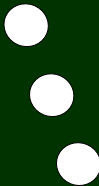
- Implementation and enforcement of provisions of the new Constitution; assessing the implementation and enforcement of all provisions of the new constitution especially the Bill of Rights and even testing them in the courts. Notably focus should be on testing the environmental, economic, social and cultural rights and all the provisions related to good governance and public accountability by public bodies.
- Improving the implementation and enforcement of access to information and disclosure laws
- Implementation of regional and international treaties and initiatives; encouraging the adoption of EITI, Kimberley Process Certification Scheme (KPCS), UN Principles on Business and Human Rights, OECD Guidelines etc.











*Zimbabwe Environmental Law Association (ZELA)*

*No. 26B Seke Road, Hatfield, Harare*

*Tel: 573601; 573602; 573603*

*Email: [zela@mweb.co.zw](mailto:zela@mweb.co.zw)*

*Website: [www.zela.org](http://www.zela.org)*