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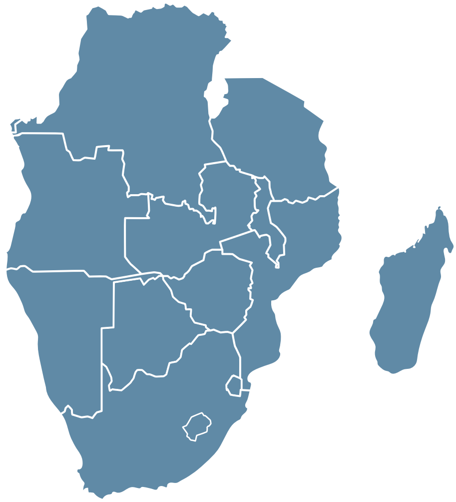

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SADC governments tighten rules on unused land

In many African countries, the governments favour foreign direct investment in the large-scale mining (LSM) sector over local artisanal and small-scale mining (ASM), leading to significant power imbalances and clashes over claims.[1] The dominant position of the large-scale mining companies in the political, legal and financial spheres gives them a greater advantage to access many claims covering large tracts of unutilised lands (based on geological knowledge) which can further be developed into mining operations.[2] Often challenges and conflicts erupt between LSM and ASM competing over limited land as well as overlapping concessions and poorly managed mining rights allocation programmes.

In many countries, there have been calls to de-notify unused mining land and give it to ASM or to people to use for agriculture and other activities. The suggestion is that land notified or acquired under the mining Act but not required (or that cannot be used in medium to long term) should be de-notified. SADC governments now seem inclined to follow this route.

Zimbabwe to review regulations on exclusive prospecting orders

The Zimbabwean government, through its Ministry of Mines and Mineral Development, plans to tighten rules and regulations controlling the administration of exclusive prospecting orders (EPOs).[3] This move is meant to expedite the up potential mining titles that are being speculatively held by unproductive exploration orders.[4] The need to upscale activities on the EPOs is part of government 's efforts to stimulate production in the mining sector as it is one of the key pillars expected to anchor the attainment of an upper middle-income economy by 2030. An EPO is a mining right for the field search of mineral deposits to ascertain their economic viability. The Ministry of Mines and Mining Development together with the Mining Affairs Board are currently saddled with the legacy of EPO applications, including non-productive ones. As part of efforts to foster growth in this lucrative sector, such regulations on EPOs should be in line with the "use it or lose it" principle, whereby those who fail to meet deliverables to which they have committed themselves would lose their exclusive access. According to Winston Chitando, Minister of Mines and Mining Development, his ministry and the Mining Affairs Board are working frantically to review all the EPOs. A major criterion in the review process of existing EPOs will be for the holder to demonstrate financial and technical capacity. In addition, the EPO applications will have targets on which they will be assessed at the time of granting.

> The tightening measures on EPOs comes after long years of criticism for the speculative accumulation they are subjected to by private mining companies.

Many local Zimbabweans who have an interest in artisanal and small-scale mining are unable to do anything because large tracts of land are subject to unused claims under existing EPOs. The failure by mining companies to work on their claims is depriving the country of timely and significant amounts of revenue that can contribute to economic development.[5]

> It therefore makes sense for the government to ensure that mining companies fully comply the Mines and Minerals Amendment Bill, which stipulates that those mining companies that are holding claims and titles without working on them run the risk of losing those claims.

For a country struggling economically, this will result in more ground being opened up for mining activities and the generation of revenue, particularly by artisanal and small-scale miners who have been complaining that they are crowded out of mineral-rich areas by speculators who are not using the land.[6] The Ministry of Mines and Mining Development wants to clear all outstanding EPO applications by June 2020, with those that could have been successful expected to immediately go on the ground. It is government's desire that EPO holders can discover new minerals for the future since mining is currently confined to known

1 International Institute for Environment and Development (IIED) for the Intergovernmental Forum (IGF) on Mining, Minerals and Sustainable Development, "Global Trends in Artisanal and Small-Scale Mining (ASM): A review of key numbers and issues Report."
2 ibid, IIED.
3 Ishemunyoro Chingwere, Business Weekly, https://www.ebusinessweekly.co.zw/govt-gets-tough-on-epos/.
4 ibid, Ishemunyoro.
5 Mutuso Dhliwayo. "The Mines and Minerals Amendment Bill: Its Promises and Pitfalls", Zimbabwe Environmental Law Association (ZELA).
6 Laurence M. Stevens, Africa Mining Market, https://africanminingmarket.com/epos-pushing-small-scale-miners-from-mining-business-zimbabwe-mps/5211/, Accessed April 3, 2020.

minerals. While it is important that government capitalises on private mining companies to carry out mineral explorations, there is a need for it to undertake its own geological and mineral information surveys. The Africa Mining Vision (AMV) emphasises the strategic importance of geological and mineral information for informed broad-based mineral governance, particularly in the awarding of mining rights, instead of relying on data provided by companies. In order to ascertain the mineral wealth of Zimbabwe, and particularly of undiscovered minerals, the government needs to prioritise capital for carrying out an extensive geological and mineral mapping. Such an exercise will provide a clear trajectory on the much-anticipated $12 billion economy by 2023, which will be realised from both discovered and yet to be discovered resources.[7]

Tanzania dispossesses companies' retention licences

The mining sector in Tanzania has been dominated by disputes between the government and three mining companies (Winshear Gold, Indiana Resources and Montero Mining and Exploration Ltd) following the entry into force of new amendments to the 2010 mining law. At the root of these disputes is government's decision, as part of the mining reforms of 2018, to dispossess mining companies of their "retention licences" granted before 2018, without compensation for the cost incurred, and without consideration for the 10 years allocated by law for such retention. For mining companies, government will be violating its own Mining Act which provides that the "retention licences" can be held for a period not exceeding 10 years.[8] The retention licence is a mining permit that is granted after a deposit is found and is not immediately exploitable due to technical constraints or unfavourable trading conditions. This attests that the holder of such a licence has invested finances for the deposit. In such situations, any dispossession by the state, in order to be regular, has to be accompanied by compensation for the revoked permits.

> The companies accuse the Tanzanian government of violating the provisions of the bilateral investment treaties and international law by unilaterally revoking [licences] without compensating holders of the "Retention Licenses"[9] granted before January 2018.

[7] The targeted $12 billion mining sector is provided for in the Strategic Road to the Achievement Plan.
[8] The Mining Act, 2010, 38.1.
[9] A retention licence is an optional licence between the exploration and mining stages. It gives the licensee (licence holder) tenure over the land before progressing to a mining licence.

The companies had no option but to use all the legal means at their disposal to defend their cause. The first company to file a complaint with the Prosecutor's office against the Tanzanian government was Winshear Gold, relating to the SMP Gold project.[10] On 6 January 2020, Indiana Resources Ltd published a press release in which it announced its intention to sue the government of Tanzania in the event of breach of contract following the new provisions of its mining law revised in 2018 by canceling the "retention licenses" issued before January 2018. This company holds a majority stake in Ntaka Nickel Holdings Ltd (NNHL).[11] The third company to file a note of intent to seek arbitration with the Attorney General (on 17 January 2020) is Montero Mining and Exploration (TSX-V: MON).[12]

> While the government has acknowledged the companies' complaints and stated that it is looking into them, it moved quickly to table, on January 28, a bill revising the law on arbitration. Among the innovations brought by this project, we note the assertion of Tanzania's sovereignty over its natural resources, public-private partnership (PPP) contracts with foreign companies, national and international trade arbitration.

Regarding the arbitrations, in the event of disputes within the framework of the execution of the PPP contracts, the bill allows for the possibility that disputes may be brought before international arbitration bodies, but on condition that the proceedings take place on Tanzanian soil. The government has undertaken to build an Arbitration Center to host all mediations and to deal with the accreditation of arbitrators.[13] The establishment of an Arbitration Center in Tanzania in which international arbitration procedures will be applied is the result of a balanced approach between President John Magufuli's nationalism and investors' demands regarding guarantees for their investments. Indeed, by insisting on Tanzania's permanent sovereignty over its natural resources, it is logical that the conflicts arising from the exploitation of these resources should also be resolved on Tanzanian territory. Being aware that judicial bodies in Africa are not entirely independent from the executive power (with only few exceptions), investors have de-

[10] Kenneth Karuri, "Mining Companies Threaten Action Against Tanzania Over New Law", https://www.bloomberg.com/news/articles/2020-01-16, Assessed 22 January 2020.
[11] Kenneth Karuri, "Mining Companies Threaten Action Against Tanzania Over New Law", https://www.bloomberg.com/news/articles/2020-01-16, Assessed 22 January 2020. See also "Tanzania government faces second mining dispute", https://www.thecitizen.co.tz/news/Tanzania, Assessed 22 January 2020.
[12] Sarah Mughal, « Tanzania revokes retention license for Barrick, Glencore nickel JV", https://www.spglobal.com/marketintelligence/en/news-insights/trending/, Assessed 24 January 2020).
[13] The Mining Act, 2010, 38.2.

manded international arbitration administered by independent and competent persons. The Tanzanian president acceded to this demand, having accepted that international referees come in and officiate in this Arbitration Center. According to Bob Karashani, this clause is already present in the new contract concluded between the Tanzanian government and the Canadian company Barrick Gold Corp concerning three gold mines.[14] Tanzania's president continues to set precedents with changes that he is introducing to the mining sector, with great implications for the rest of the continent.

Zambia revokes dormant mining licenses

The Zambian Ministry of Mines and Mineral Development has announced the cancelation of a total of 817 dormant mining licenses. These include 274 large-scale exploration licences, 240 small-scale exploration licences, 195 small-scale mining licences, 96 artisanal mining rights, and 12 large-scale mining licences.[15]

> This is in exercise of the provisions of the Mines and Minerals Development Act No. 11 of 2015, which provides for the revocation of mining licences where the ministry deems certain parts of the Act have not been adhered to by the license holder.

For the Zambian government, as in the case of Zimbabwe and Tanzania, it is the application of a "use it or lose" principle which many African governments fail to implement despite providing for it in their legislation. The Permanent Secretary Mr Mulenga puts it this way: "It is good for us to encourage people to own these licences but on the other hand we want to emphasise to them that if you don't want to operationalise your licenses, we shall grab them from you and give to others who will make use of them."

While observers are in support of the government decision, they think the government should not have been so harsh on ASM. Treating ASM as you treat a big corporation is not justifiable. They question the impact the decision could have on Zambians who want to engage in artisanal and small-scale mining. They think the decision has the potential to destroy ASM in the country, pointing to the fact that

[14] Bob Karashani, "Tanzania reviews law on mediation for investors", https://www.theeastafrican.co.ke/business/Tanzania-reviews-law-on-mediation, accessed 10 February 2020.

[15] Daily Nation Newspaper, 800 mine licences revoked, https://www.dailynation.info/800-mine-licences-revoked, accessed on 20/01/2020.

out of the 817 licences targeted, 531 are ASM and prospecting licences. It seems that while trying to promote more mining, the government is also excluding Zambians without due consideration to challenges that they face to participate in the business of mineral exploitation and extraction. Miners involved in ASM face immense challenges of mobilising finances and tools. They work in difficult environmental conditions with no funding and inadequate materials. Sometimes they abandon their activities because of sickness from using unsound environmentally hazardous methods which put them out of work. While the cancellation of these licenses could have been done in good faith, if not properly handled it will create further conflicts between new allocatees and the former rights-holders.

There are suspicions that government is in a hurry to grab these licenses from the local people and re allocate them to the Zambia Consolidated Copper Mines-Investment Holdings (ZCCM-IH). This is perceived among the people as a politicisation of the issuance of licences, and risks undermining the stability of the sector with an increase in illegal exploitation of minerals, as we have seen in other countries. In fact, despite revoking the licences for PCB and Kampoko Mineral Resources, which were carrying out gold mining exploration in Kasenseli in Mwinilunga district, these companies have continued to engage in the illegal mining of the gold. Their licences have been transferred to ZCCM-IH which has created ZCCM-Gold Company to extract gold. In an effort to avoid dispute, the government has proposed that ZCCM-Gold Company partner with the previous licence holders in exploiting the mineral in Kasenseli.[16] This remains to be seen. The government of Zambia must quickly engage and come up with clear regulations and policies on artisanal and small-scale mining. The issue is not just about issuing licenses; it is also about how to organise artisanal miners and ensure that they are not super-exploited by unscrupulous traders.

It is also about giving miners a clean and safe working environment. The government of Zambia must avoid the mistake made by many governments of not formalising the sector. In many countries politicians get involved in ASM, and they frustrate every effort to formalise the sector. Zambia must ensure that politicians are not allowed to get involved in ASM to avoid this conflict of interests.

[16] Tumfweko News, Mwinilunga Gold Explorers Lose Licences ,https://www.operanewsapp.com/zm/en/share/detail?news_id=d190e2c118abc465f1d3523a45405f29&news_entry_id=618dd786200411en_zm&open_type=transcoded&request_id=HOME_PAGE_3abf78e1-8e07-4bd6-9311-7a13778259f4&from=news, Accessed on 12/04/2020.

Controlling artisanally produced minerals: a key strategy for governments

SADC governments, in an unprecedented move, have started to design strategies to control the trade of minerals produced by artisanal miners. The intention is to curb illicit trade which contributes to illicit flows of money and deprives states of enormous revenue. Firstly, a number of SADC countries have declared ASM strategic, and secondly, governments are putting structures in place to control, buy and add value to these minerals. Artisanal mining is a lifeline for millions of people in the SADC region. These efforts are not just about capturing finances, but are also about dealing with significant health and environmental risks. These are efforts towards the formalisation of the sector, which has eluded most African countries.

Artisanal gold as a strategic mineral in Zambia

Gold in Zambia, until recently, has always been produced by industrial mining on a relatively small scale, with the twenty larger deposits having produced slightly more than two tonnes of gold since modern mining began in 1902.[17] Kansanshi mines gold alongside copper, Mopani Copper Mines and Konkola Copper Mines produce slimes containing gold, and Kalumbila produces copper anodes containing gold.[18]

The discovery of gold in Kasenseli village of Mwinilunga district in North-Western Province in 2019 created a gold rush, with residents defying state police to mine the precious mineral resource.[19] The Zambian government quickly intervened to protect the areas against gold smuggling. The discovery came as a blessing as the country has been looking to diversify its mining economy from a single commodity (copper). In an effort to prevent the situation from getting out of hand, as we have seen in many countries, the government declared gold a strategic mineral and moved to set up the ZCCM Gold Company Limited (ZCCM Gold) as a mining investment arm of Zambia Consolidated Copper Mines Investment Holdings (ZCCM-IH), which will buy gold directly from artisanal and small-scale miners in a bid to formalise the unregulated sector.

[17] Zambia Mining, Mining in Zambia, https://zambia-mining.com/mining.html, accessed on 13/04/2020.
[18] News Diggers, Illegal gold mining makes it hard to quantify production

Wina ,https://www.google.com/search?q=gold+mining+in+zambia&oq=gold+mining+in+zambia+&aqs=chrome..69i57.7559j0j1&-sourceid=chrome&ie=UTF-8, Accessed on 13/04/2020.

[19] Zambia Daily Mail, Gold rush: Scavengers won't budge – Zambia Daily Mail, Accessed on 13/04/2020.

ZCCM-gold will not just buy gold but will also participate in the country's gold value chain.[20] ZCCM-IH has prioritised investments in the mining sector, particularly in minerals such as gold and manganese. As mandated by government to harness the gold potential in the country, ZCCM-IH strategy is to forge partnerships with any industry player within the gold value chain. It has partnered with Karma Mining Services and Rural Development of Sudan, which the government claims to be one such partnership where the joint venture is entirely focused on gold processing. To ensure that ZCCM Gold participates in the entire gold value chain, the government has also built 10 milling plants to process gold. Using a model similar to how the Botswana government participates in mining, ZCCM Gold will be owned 51 per cent by ZCCM-IH and 49 per cent by the Government of the Republic of Zambia through the Minister of Finance. According to ZCCM Board Chairman, Eric Silwamba

> the establishment of this new company clearly elaborates the strategic intent that now seeks the investment group focus, through partnerships, on a sector that has hardly been exploited in Zambia. ZCCM Gold will spearhead and manage gold mining activities in Zambia.

ZCCM-IH has already entered into a joint venture with mining services firm Array Metals to process gold. ZCCM-IH subsidiary Consolidated Gold Company Zambia (CGCZ) will hold 65 per cent of the project processing gold in Mumbwa, west of Lusaka, with Array Metals Zambia holding 35 per cent. The project is expected to produce 40 000 kg of gold in 2020 from primary and secondary sources, including gold bought from small-scale miners.[21] SARW is concerned that state companies have not performed well in Africa in general and in Zambia in particular, as the case of ZCCM itself shows. The Zambian government has not given guarantee that ZCCM Gold will be run as an independent business with no interference from politicians. With the shrinking civic space and high political interference in the management of most parastatals, there is still a dark cloud over the success of this initiative for the benefit of the country's economy.

[20] ZCCM-IH , ZCCM IH confirms Gold as a 'strategic focus area' https://www.zccm-ih.com.zm/2020/01/14/zccm-ih-confirms-gold-as-a-strategic-focus-area, Accessed on 15/01/2020.
[21] Reuters, Zambia partners with Array Metals to process gold, https://www.nasdaq.com/articles/zambia-partners-with-array-metals-to-process-gold-2020-05-20, Accessed 20/05/2020.

DRC creates the General Cobalt Company (EGC) to purchase and commercialise artisanal cobalt

The DRC declared cobalt a strategic mineral and increased tax from 2.5 to 10 per cent in its 2018 new mining code. Cobalt is one of the minerals essential for advanced technology. The importance of cobalt has been increased by the exponential demand for rechargeable phone batteries (smartphones) and for electric cars. DRC holds 65 per cent of the world's cobalt reserves and alone produces 61.3 per cent of the cobalt consumed in the world each year.[22] Artisanal mining produces one third of the country's total cobalt production. Despite the dizzying rise in the price of cobalt on the international market between 2017 and 2018, artisanal miners have not benefited from the fruits of their production.[23] Their super-exploitation has worsened now that the price has sensibly declined. Artisanal cobalt miners are exploited by traders and buying centres mainly owned by foreigners, especially the Chinese. In fact, the Chinese control the whole of the production of Congolese cobalt, whether industrial or artisanal.[24]

In response to this situation, state company Gécamines has created the General Cobalt Enterprise (EGC). This is its subsidiary in which it holds 95 per cent of the shares, and the remaining 5 per cent has been left to the Congolese state. The objective is "to supervise production by artisanal miners united in mining cooperatives" and this, in accordance with the spirit of the Mining Code, consists in promoting Congolese entrepreneurship in the exploitation of minerals.[25] For Gécamines, the mission of this company will consist in helping to "control and monitor the artisanal production of cobalt in the DRC" and to "... offer sound working conditions to the artisanal miners, to put an end to the loss of human life in the mining sites".[26] The creation of the EGC was preceded by two decrees issued by the Congolese prime minister regulating and controlling strategic mineral substances and creating regulating and controlling authorities over these mineral substances, so as not to leave them in the hands of foreign stakeholders.

[22] BGR, Fiche de synthèse sur la criticité des métaux- Le cobalt -Août 2015.
[23] Audrey Gaughran, « Tirer profit de la misère au Katanga », https://www.amnesty.org/fr/latest/campaigns/2013/08/, (Consulté le 25 février 2020) et « Congo: les mines de cobalt, scandale écologique et désastre sanitaire », https://plus.lesoir.be/277428/article/2020-02-04, (Consulté le 25 février 2020).
[24] Claude Kabemba et Georges Bokondu, Surexploitation et injustice contre les creuseurs artisanaux dans la chaine d'approvisionnement du cobalt congolais, Resource Insight, Issue N° 18, January 2020.
[25] https://www.radiookapi.net/2019/12/20/emissions/parole-aux-auditeurs, (Consulté le 15 janvier 2020).
[26] Prince Mayiro, « RDC - Pour maîtriser la production artisanale de cobalt : sur instruction du président Tshisekedi le gouvernement crée ''Entreprise générale du cobalt'' (A. Yuma) », https://www.7sur7.cd/2019/12/20/rdc-pour-maitriser, (Consulté le 20 janvier 2020).

> The creation of the EGC is a good initiative, but some challenges must be met in order to ensure positive returns. It is imperative for EGC or Gécamines to set up mechanisms to support artisanal miners or mining cooperatives for the sustainability of artisanal mining activities by making the various sites accessible, and to ensure that geological studies are conducted.

SARW is also concerned that the management of Gecamines itself has not been exemplary, with serious accusations of mismanagement and corruption. How would a state company that is barely fighting to survive manage another company? The DRC government must also consider protection of artisanal miners in other sectors, such as gold and diamonds.

Mistrust among stakeholders undermines the stability of the mining sector

It is now an established axiom that natural resources, when well managed, can drive growth and development, create jobs and reduce poverty in producing countries. In SADC, despite abundant mineral resources, a number of countries are failing to transform minerals into development. One characteristic that is common to countries that have managed to turn minerals endownment into development is the promotion of trust between the key stakeholders. Many projects experience loss and delay due to conflicts and tension among the stakeholders. One of the factors that has made Botswana stand out has been the trust that has been built between De Beers, the government, and other stakeholders in the management of the country's diamonds.

Building trust between key stakeholders is imperative. A number of SADC countries are failing to achieve this. During the period under examination (January to April 2020), there were growing tensions and conflicts between communities and companies or between companies and government in Malawi, DRC and Zambia, which have impacted negatively on the performnace of the sector.

Mchenga Coal Mine in Malawi: activities interrupted by the commnity

In Malawi, disagreement between the local community and Mchenga Coal Mine over corporate social responsibility activity pushed the host community to stop mining operations.[27] The mine is located in Chiguliro village in Traditional Authority Njikula, covering an approximate area of 17.5 hectares. At the centre of the dispute was the failure by the company to honour an agreed corporate social investment pledge. The community accused the company of failing to complete the construction of Mphula Primary School ground. The company's management, in consultation with the community, approved the work. It even started to work on it in November 2019 but stopped before it was completed. The company failed to communicate why it stopped the work. The action by the company did not please the beneficiaries, who resorted to setting up roadblocks across feeder paths to mines and chased employees, leading to the closure of the operations. This prompted management at the coal mine to call police who mediated peace talks between them.

After mediation, the two parties reached a consensus of resuming operations and quick completion of the said project. When asked why the company stopped the work at the school, the company manager, Munashe Disha, said the company ran out of engine oil. If this is what led to the community stopping the mining operation, then the company must work on its communication strategy. It is not surprising that the community, through its leader Principal Group Village Headman Yambayamba, appealed to the company management to resolve the communication gap that existed.

While the action of the community is commended as it has paid off, there is a need for communities in similar situations to draw some lessons from this experience. The courage and resilience exhibited by this community should be emulated by other mining host communities around Southern Africa. Most of the disputes between companies and communities are due to bad communication by the companies.

Oil company Perenco's activities interrupted by DRC communities

In the DRC, conflict has become common between Perenco, a Franco-British oil company, and the population of Muanda in the province of Kongo Central.

The DRC has huge oil and gas potential, divided between three sedimentary ba-

[27] Malawi 24, Police mediate between Mchenga Coal Mine and community, https://malawi24.com/2020/02/01/police-mediate-between-mchenga-coal-mine-and-community/3/2/2020.

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sins including the Atlantic coastal basin (6,000 km2), the only one where oil is exploited both off- and on-shore by Perenco. The petroleum sector is currently governed by Law No. 15/012 of August 1, 2015 on the general hydrocarbon regime. This law was designed to resolve two major energy challenges: the development of hydrocarbon resources to satisfy the growing energy need of communities, and the diversification of economic activities. This legislation is strong on local content and on the social responsibility of oil companies. It obliges oil companies to take care of the well-being of local communities.

> Five years after the entry into force of this law, governance of the petroleum sector has not improved. Since its started production in 1973, Perenco's daily production of 20 000 to 25 000 barrels[28] has not changed, but Perenco has failed to fulfill its promises to communities.

February 2020 marked the beginning of protests against Perenco. People from two communities (Nsiamfumu II and Tshiende) blocked the road leading to Perenco facilities so that workers and managers could not access the facilities. Nearly 100 men and women, who were claiming their rights (including the right to be given employment by this company) confiscated seven Land Cruiser jeeps to express their dissatisfaction.[29] As in Malawi, the police had to intervene to disperse community members and ensure access to the company's' facilities.[30]

At the heart of the conflict is the company's non-compliance with the provisions of articles 76 and 77 of the law establishing the general hydrocarbon regime, relating to local content and corporate social responsibility (CSR). Young people claimed the right to training (article 76) to work in the oil companies established in their communities. In accordance with article 77, Perenco should initiate social interventions in order to contribute to the socio-economic development of the communities impacted by its activities. The company is failing to fulfill its social obligation. This is not the first time that protests like these occur. In 2011 and 2016 SARW needed to intervene for the release of community members who were arrested and imprisoned in the city of Boma for protesting against the same company.

[28] Joseph Pilipili Mawezi, Le pétrole de la République Démocratique du Congo, SARW, 2010.
[29] RENAD, Bulletin d'information n°01/2020, Muanda, le 13/02/2020.
[30] [Muanda] Atou Matubuana : "le message de paix de Fatshi réconforte les parties en conflits, communautés locales, Perenco et Socir vivent ensemble", https://legrandcongo.com/muanda-atou, Assessed 08 march 2020.

Despite police intervention, the situation remains fragile. To resolve such repeated types of conflicts, it is important that the company and the government correctly fulfill their social obligations in accordance with the hydrocarbon law of 2015.

Wage disputes between Glencore and labour in Zambia

On 4 February 2020 More than 200 Irate miners from Mopani Copper Mines marched to Katilungu House in Kitwe, headquarters of the Mineworkers Union of Zambia (MUZ), to protest about seven per cent salary increments that the giant mining firm offered them. This increase is far below the 15 per cent and additional 3 500 ZMW cushion allowance per month that workers want. The workers' leaders, without consultation with their members, have agreed to the seven per cent increase proposed by the company. It is clear that the problem is not just with the company or the government, but with trade unions themselves. Those in leadership forget that their mandate is to protect workers' interests and not their own. Workers accuse the union leaders of having betrayed their fight by signing for the seven per cent salary increment, which they said meant nothing to them.

The workers have continued to threaten to go on strike and warned that they will camp at Mopani head offices in protest against poor working conditions. Declarations by the MUZ president Joseph Chewe, such as "don't engage in any illegalities, it will cost you your jobs" is testimony that he has abandoned the workers' fight. The disappointed miners asked the district commissioner, Binwell Mpundu, to intervene. This example illustrates why it is not good to have only one labour union in a company. It also exposes the government's total absence on matters of workers' rights that threatens to further collapse the national economy. This turn of events also raises the question of the relevance of labour representation; do the workers need union representation which they subscribe to on a monthly basis? Or should all of them go for personal negotiations?

Surprisingly, during this dispute Glencore declared force majeure at its Mopani Copper Mines unit (which operates the Nkana and Mufulira mining sites) and announced that it planned to suspend operations in the country for three months. This is contrary to the position taken by other mining companies in Zambia, such

as Barrick Gold Lumwana Mine,[31] Konkola Copper Mine, and First Quantum Minerals,[32] who are busy complementing government efforts in the prevention of the Covid-19 pandemic. This decision would make over 11 000 employees jobless. The problem is that Glencore is running away from its responsibility; the company has not threatened to close its mines in the DRC.

Glencore's position has created a lot of tension among key stakeholders, including the government, labour unions, contractors and suppliers, and the community in general. For the government of Zambia, through its Minister of Mines and Minerals Development, Richard Musukwa, the steps outlined by Glencore are unjustified and illegal.[33] Glencore said that Covid-19 restrictions had placed unsustainable pressure on the copper mines. According to the Minister "The ministry is not aware of any event that has happened that is beyond the reasonable control of Mopani Copper Mines and which makes mining impossible".

Government has written to Mopani Copper Mines chief executive officer Nathan Bullock, informing him of its intentions to the revoke the mining license for its two units in Kitwe and Mufulira. This is in retaliation to the mining giant's decision to defy government's directive by placing its Nkana and Mufulira mines on care and maintenance.[34] According to the letter delivered to Mopani, the mining company has breached Section 37(3)(c) of the Mines and Minerals Development Act of 2015 by defying the directive of government. The Glencore saga is an example of what happens when trust does not exist among the key stakeholders. The only way to restore trust is through dialogue that government, Glenore and MUZ must engage in.

AngloGold closes its doors in South Africa

Mining giant AngloGold Ashanti sold the last of its South African businesses in a R4.4 billion transaction with Harmony, that includes the world's deepest gold

[31] Mining Journal, https://www.mining-journal.com/covid-19/news/1384584/barrick-donates-to-covid-19-fight-in-zambia , Accessed on 9/04/2020 Zambia News and Information Services (ZANIS), KCM Joins Covid 19 Fight, https://www.znbc.co.zm/news/kcm-joins-covid-19-figh, Accessed 5/04/2020.

[32] Zambian Mining Magazine , FQM HEALTH TEAMS EXTEND SAFETY PROTOCOLS TO COVID-19, http://www.miningnewszambia.com/fqm-health-teams-extend-safety-protocols-to-covid-19.

[33] Miningmx.com, Zambia says Glencore unjustified and illegal in planned shuttering of Mopani Copper,https://www.operanewsapp.com/zm/en/share/detail?news_id=505b247bc0affc22c72cceefd8db8755&news_entry_id=360beb16200408en_zm&open_type=transcoded&request_id=DETAIL_EXPLORE_cd222d6e-5ba7-40d2-bfe0-59e08555d08e&from=news, Accessed on 8/04/2020.

[34] News Diggers, Govt moves to revoke Mopani mining licence, https://diggers.news/business/2020/04/14/govt-moves-to-revoke-mopani-mining-licence.

mine, Mponeng mine.[35] The process of changing ownership is still ongoing after Harmony Gold entered into a definitive agreement with AngloGold Ashanti.[36] This deal ends the long history that the firm and its predecessors have had in South Africa. AngloGold has its roots in multinational mining company Anglo American, started by Ernest Oppenheimer in 1917. The company cited operational problems, particularly labour strikes, load-shedding, and political (in)stability as part of the reasons behind its exit from South Africa. However, the CEO Kelvin Dushnisky insisted that the company's decision to sell its last remaining South African gold mining assets was "not an indictment" of SA.[37] He said that the exit will not result in any job cuts, although there is no guarantee for this as the new owner has its own plans for the mine which cannot be dictated by the former owners. The exit by AngloGold forces us to reflect on the lack of trust that sometimes exists between government and companies. AngloGold leaves a mixed legacy in the country, having been part of a gold sector that propelled the SA economy, and is also part of a group of gold companies responsible for the many deaths and suffering of gold miners from silicosis and tuberculosis.[38] AngloGold will retain its interest in Rand Refinery, as well as its obligations relating to the post-retirement medical cost for its applicable retired and remaining employees, and its obligations under the Silicosis Class Action Settlement Agreement.

> The company leaves at a time when the SA Gold sector is on a gradual decline. AngloGold has exhausted some of the best minerals in the country, and now leaves with little or no responsibility for several issues caused collectively by the gold mining sector such as acid drainage, water pollution and environmental degradation.[39]

Due to the lack of revenue transparency in the sector, one is unable to effectively and accurately measure or assess what the company's actual contribution to the South African economy has been. It is important for the government to engage in such evaluation to ensure that, before leaving the country, companies do not

[35] Andrew Thompson, Business Insider SA, Feb 12, https://www.businessinsider.co.za/anglogold-south-africa-20202?fbclid=IwAR1CkDfhy94CvX8NlEwJ2P2fBn4VZ1MCeXuPzyzTJqXQPvzkIZU1WSyvB3s (accessed 13 February 2020).
[36] Harmony Company Announcements, 12 February 2020, https://www.harmony.co.za/invest/company-announcements/2020/item/1089-harmonys-acquisition-of-mponeng-and-mine-waste-solutions-from-anglogold-ashanti.
[37] Allan Seccombe, "AngloGold Ashanti draws a line under SA gold mining" https://www.businesslive.co.za/bd/companies/mining/2019-05-09-anglogold-to-exit-its-last-sa-assets/.
[38] Tehillah Niselow,"Everything you need to know about the R5bn silicosis settlement as mining companies prepare to pay out", https://www.fin24.com/Companies/everything-you-need-to-know-about-the-r5bn-silicosis-settlement-as-mining-companies-prepare-to-pay-out-20190803 (accessed on 13 February 2020).
[39] Harvard Law School International Human Rights Clinic, "The Cost of Gold: Environmental, Health, and Human Rights Consequences of Gold Mining in South Africa's West and Central Rand" (accessed 15 February 2020).

escape paying for their post-mining environmental liabilities.

Unstable and unpredictable mining legislation: a threat to stability of the sector

Mining sector predictability is built on the stability of a country's legislation. Mining legislation and regulations help all stakeholders, including investors, know how they will be treated, participate, contribute and benefit from the sector. When a country keeps changing its legislation or cannot agree on the final legislative framework, it creates a negative perception not just about the sector but also about the country. In SADC, there are countries that continue to struggle to have mining legislation that is acceptable to all stakeholders.

Consensus difficult to reach on the mining code in Madagascar

The most pertinent case is Madagascar, which has been reviewing its mining legislation for the past eight years without an end in sight. The first quarter of 2020 saw intense work on the revision of the mining code. The current mining legislation has been in place since 2005. The mining code is criticised for giving too many advantages to mining operators to the detriment of the state. The need to revise some provisions of this code to allow the Malagasy state to derive maximum benefit from its mineral resources has therefore become imperative. The first attempt to revise the mining code was initiated in 2015, but failed. The current revision of mining legislation comes in a political context dominated by the coming to power of a new president enjoying broad legitimacy.[40]

> The key innovations[41] in the revisions being proposed include: the right of the state to participate in any mining project at least 20 per cent; the granting of mining permits on competitive basis (replacing the principle of "first come, first served") and the payment of "availability fees"; the creation of a "mining participation to national development fund" to be fuelled by fees paid by holders immediately after obtaining the permit, and amounts of approximately 500 000 Euros for exploitation and 50 000 Euros for exploration;

[40] R Edmond, « Code minier : Deuxième modification en seulement 5 ans », http://www.midi-madagasikara.mg/economie, (Consulté le 15 mars 2020).
[41] *Emre Sari, « Mines à Madagascar : la révision du code minier préoccupe le secteur »https://www.jeuneafrique.com/872730/economie/mines, (Consulté le 30 mars 2020).*

> increase in the mining royalty rate from 2 per cent to a proportion of between 4 and 8 per cent, depending on the products; and the creation of a Mining Fund whose legal status remains to be determined.

Mining companies in exploitation or exploration will have six months from the promulgation to comply with the new provisions of the revised Mining Code under penalty of forfeiture of their titles. Against these proposed revisions, critics come from among all stakeholders, in particular mining operators and civil society. The Chair of the Madagascar Chamber of Mines considers these reforms to be "... anti-economic measures".[42] The chamber criticises government for its unilateralism in drafting and taking most decisions, and is very critical of government plans to increase the mining royalty from 2 to 4 per cent on nickel, metals, precious stones and cobalt. For the chamber such a move will damage the attractiveness of the Madagascar mining sector for national and foreign investors. It is also critical of the 20 per cent state shareholding in each mining project.[43]

Civil Society Organizations on the Extractive Industries (OSCIE) in Madagascar has, surprisingly, supported the Chamber of Mines' position. One would have expected civil society to back measures that will increase benefits for the people of Madagascar. OSCIE is of the view that the touted innovations in the bill are "a masquerade" since all of them are financial; the bill is silent on the environmental and social rights of local populations, and it is timid on the need for the sector to be transparent and accountable.[44] Civil society is right on these two accounts. In response to civil society criticism, the Minister of Mines and Strategic Resources argues that

> We are not masquerading anything, it is not the style of this government. We were looking for exactly the current reaction, that everyone participates in this revision... designed to streamline the mining sector. It is essential to strengthen the trilogy, state - investors - local communities, without departing from the win-win spirit.[45]

[42] Laure Verneau, « A Madagascar, semaine décisive pour le nouveau code minier », https://www.lemonde.fr/afrique/article/2020/01/14/a-madagascar-semaine, (Consulté le 20 janvier 2020).

[43] John Ndinga Ngoma, « Madagascar : l'exploitation minière à l'épreuve de nouvelles redevances », https://fr.africanews.com/2019/12/17/madagascar, (Consulté le 27 février 2020). Voir aussi R. Edmond, « Code minier : Deuxième modification en seulement 5 ans », http://www.midi-madagasikara.mg/economie, (Consulté le 15 mars 2020) soutient : *« l'intérêt croissant que Madagascar avait suscité dans les années précédentes mais que l'appétit subi du gouvernement serait un signal fort dissuasif pour tout investisseur sérieux, menacé par autant d'incertitudes que des risques liés à un environnement trop volatile alors qu'il s'agit d'une industrie demandant beaucoup de stabilité au regard des investissements lourds qu'elle exige »*.

[44] Emre Sari, « Mines à Madagascar : la révision du code minier préoccupe le secteur »https://www.jeuneafrique.com/872730/economie/mines, (Consulté le 30 mars 2020).

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In the finalisation phase of the code, civil society (including unions) has been included into the steering committee on mining code reform. This steering committee is made up of five groups alongside the public administration of the Ministries in charge of Mines and Strategic Resources, Decentralization, Finance and Budget, Environment and the State Secretariat responsible for Gendarmerie, mining operators and local authorities.[46]

Malawi's new mining legislation not known to communities

After almost five years of back and forth, the mining legislation was finalised in 2018, with very minimal participation of civil society. Now the people want government to help them understand the content of the new legislation. Civil society organizations (CSOs) in Karonga have expressed concern over delays by government in disseminating the revised Mines and Mineral Act of 2018 to communities across the country through sensitization campaigns. This is necessary because of widespread lack of basic understanding of the provisions of the law on mining among host communities in Malawi, and this situation is prone to manipulation and abuse by either the government or mining companies.

Reacting to the CSOs' concern, Ministry of Mines, Energy and Natural Resources Public Relations Officer (PRO) Sangwani Phiri, while admitting that there is a lack of awareness on the new Act, said that government was in the process of launching awareness campaigns that will target district structures that are used by ward councillors and members of parliament. "It is true that not many people are aware of this new and revised Act [and] as such the department of mines is taking necessary steps to have it disseminated to all Malawians so that they can be aware of the new law."[47] However, Focus Malawi, a local civil society organisation, has lamented that Africa is not for sale; apart from lack of participation and

[45] Emre Sari, « Mines à Madagascar : la révision du code minier préoccupe le secteur »https://www.jeuneafrique.com/872730/economie/mines, (Consulté le 30 mars 2020).

[46] R Edmond, « Nouveau code minier : Début des travaux du Comité de pilotage », http://www.midi-madagasikara.mg/economie/2020/03/06/nouveau-code-minier, (Consulté le 16 mars 2020) et Navalona R, Réforme du Code minier : Les parties prenantes à la recherche d'un compromis », http://www.midi-madagasikara.mg/economie/2020/02/21, (Consulté le 30 mars 2020).

[47] Malawi 24, CSOs concerned over lack of awareness on new mining laws, https://malawi24.com/2020/01/09/csos-concerned-over-lack-of-awareness-on-new-mining-law , Accessed on 11/01/2020.

consultation, there are a lot of contentious issues that require an honest analysis and broad consultation by key stakeholders, most importantly parliament. According to Jomo Kossam the Executive Director,

> Section 38 of the Act requires a lot of serious attention and bench marking, it is not in line with best practices as it provides for access to reports, information and data of mining activities by the public only after two years. The same clause provides for benefits to the community at 0.45% of annual gross sales revenue, which is unrealistic and negligible when the community is advocating for shared ownership.[48]

It is clear that there is much work to be done by government to engage various stakeholders to iron out these differences. It is not helpful to implement policies which are not supported by the people you are trying to help.

No consensus on the MPRDA in South Africa

The South Africa government is facing difficulties in making amendments to the Mineral and Petroleum Resources Development Act (MPRDA) accepted by other stakeholders. The Minister of the Department of Mineral Resources and Energy (DMRE), Gwede Mantashe, published the new highly contested amendments to the MPRDA on the first day (27 March 2020) of the Covid-19 emergency lockdown in South Africa. The new amendments require mines to consult one step further on their environmental impacts, social and labour plans, to include “meaningful” consultation. The amendments also introduce the long-awaited alignment with the One Environmental System, and new details on the appeals process.

This has been widely criticised by communities and mining activists, as a “well-beaten pattern of underhanded dealings with the public dating back to the first attempt to amend the MPRDA in 2012.”[49] The public participation process was flawed, and the draft bill represents a further disregard for mining communities.[50] The public consultations were not held in certain important mining areas in South Africa, and in some areas (such as in Newcastle, Kwa-Zulu Natal) the consultations were abandoned by the DMRE. Where they were held, people overwhelmingly rejected the amendments on the grounds of the exclusion of the “free, prior and informed consent” (FPIC) principle.

Section 23 (2A) of the MPRDA, which gives the minister of mineral resources the power to impose conditions to promote the rights and interests of communities in the event of an application (Granting and Duration of Mining Right) that affects their land, the Department of Mineral Resources (as it was then) proposed the deletion of this specific mandate, including conditions requiring the participation of the community, from the existing clause.[51]

> The deletion of this key section would silence mining communities further and is a regressive step in the realisation of the right of mining communities to consent to mining. The DMRE must recognise mining communities as important role players in the mining value chain, and ensure that mining communities are not adversely impacted by (future) mining activities.

Mining Affected Communities United in Action have slammed the amended regulations and guidelines as showing a clear disregard for communities since neither recognises the right to free prior and informed consent (FPIC), despite successive court victories won by communities (Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another, Baleni and Others v Minister of Mineral Resources and Others as well as the Xolobeni judgment).[52]

State Mining Companies’ Performance

There have been recent calls for African countries to consider creating state companies that will exploit mineral resources, instead of leaving the entire business to foreign mining companies. A number of SADC countries have set up state mining companies, and others have been working to revive collapsed state mining companies. State-owned enterprises can be defined as business-oriented majority government owned institutions that sell goods or services or manage state

[48] Focus Malawi, Africa is not for sale, interview with SARW 26/05/2020. [67] See https://www.irishtimes.com/topics/topics-7.1213540?article=true&tag_company=Kenmare+Resources.

[49] Christopher Rutledge, “Mantashe uses State of Disaster to escape accountability” https://bit.ly/3b9aq9T (accessed on 7 April 2020).

[50] Statement from the Centre for Applied Legal Studies, “Communities speak out on regulations and resettlement guidelines”, https://miningreview.com/environment/communities-speak-out-on-mining-regulations-and-resettlement-guidelines/ (accessed 30 April 2020).

[51] Christopher Rutledge, “Mantashe uses State of Disaster to escape accountability”https://bit.ly/3b9aq9T.

[52] MACUA Press Statement, 30 January 2020, https://macua.org.za/2020/03/10/macua-to-mobilise-thousands-of-members-to-call-for-community-consent-in-mining-legislation/.

equity and keep their own balance sheets.[53]

Mineral resources, as part of a nation's natural heritage, have historically been considered a legitimate interest of the state.[54] In cases where the state is involved in the extraction and management of the mineral resources in different stages of the value chain, such national interests should always be exercised responsibly. Previous experience with state-owned companies should give us a sense of their performance and the likely future of such companies.

DRC's Gécamines involved in 200 million Euro debt dispute

La Générale des Carrières et des Mines (Gécamines or GCM) is a government portfolio company transformed into a trading company since the reform of public companies in 2008, and holding several mining partnerships with foreign companies such Glencore, Ivanhoe and China Molybdenum Inc. (CMOC). A 200 million Euro loan agreement signed in 2017 with Fleurette Mumi Holding Limited, which became Ventora Development after its main shareholder, Dan Getleret,[55] was hit by US economic sanctions, has come back to haunt the state in 2020. A group of civil society organisations, led by the Congolese Association for Access to Justice (ACAJ), have accused Gecamines and Dan Getleret of putting together a fake debt, a fictitious loan, designed to mask fund misappropriation or money laundering.

> For the past decade, Gécamines has been involved in a number of financial scandals. These scandals have raised questions about the management of this state company.

Gécamines' refusal to repay the loan, Ventora Development took GCM to a DRC (Lubumbashi) commercial court to claim its rights. In its judgment rendered on 15 October 15 2019, the court ruled in favor of Ventora, ordering Gécamines to

[53] Upstream Oil, Gas and Mining State-Owned Enterprises Governance Challenges and the Role of International Reporting Standards in Improving Performance, Andrew Bauer, EITI.

[54] State Participation and Privatization in the Minerals Sector, Report by the UNCTAD Standing Committee on Commodities Ad Hoc Group of Experts on State Participation and Privatization in the Minerals Sector Geneva, 26 October 1995.

[55] Dan Gertler is an Israeli businessman ranked by Forbes as 1476th billionaire in the world and 14th in Israel (2016). His estimated wealth is $1260 billion dollars, and was built mainly on various activities in the DRC (including mines, hydrocarbons, agriculture, banking) since the Kabilas came to power. Some of his economic activities have been deemed illegal and facilitated by corrupt practices and influence peddling through his relationships with both Kabilas (father and son). It was during the reign of Joseph Kabila that Dan Gertler had his hands on Congolese mineral resources. Dan Gertler, owner of the company Ventora or Fleurette, is known for his involvement in low-cost purchases and sales of public companies' assets in the DRC.

reimburse the loan and pay the damages. Against this judgment, GCM appealed to the Lubumbashi Court of Appeal, under RCA registration number 16748. The judgment is still pending.

For ACAJ and its supporters all this is part of a scheme to steal state money through Ventora. A critical question that they have raised is how it is possible for Gecamines, which is in a difficult financial situation, to have borrowed money to prepay taxes on profits it has not made. In response to these accusations, the government has suspended Albert Yuma, chairman of the Board of Directors of GCM, as well as members of his management committee from travelling internally or internationally. Yuma is a close confidante of former President Joseph Kabila, who still commands a lot of influence in the Congolese political space.

This Gécamines case has turned into a political ball game, dividing people along ethnic and political lines, with those that support ACAJ (which is said to be close to the new president, Felix Tshisekedi) and those that support Yuma (and indirectly Joseph Kabila). The first group is of the view that Mr Yuma and Ventora are trying to rob the state using a fake debt agreement. The second group think that the deal exists between Gécamines and Ventora, and Gécamines must behave responsibly and repay the loan it contracted. The former ruling party (Kabila's party) through its Secretary General, has threatened to paralyse the country if a misfortune happens to Albert Yuma, who is already under legal actions and travel bans. This group argues that Gécamines has shared a contract binding it to Fleurette and demonstrates that the money was used to pay tax advances for the benefit of the Congolese state, money which went into the organisation of 2018 general elections, which brought to power President Felix Tshisekedi Tshilombo. The ethnic dimension is strong in this case, with supporters of Yuma being mostly Katangese (to which group he belongs), and ACAJ with its president and most behind it coming from the Kasai community, which is also President Thsisekedi's ethnic group. The case is a reflection of the current paralysis of the state in the DRC with two centres of power (Tshisekedi and Kabila).

> Since Mobutu's regime, the management of Gécamines has always been interfered with by politicians. If there is a problem with Gécamines today, the blame should sit squarely on the doorstep of government (former and current). It seems that at the heart of this dispute is the control of Gécamines. Gécamines is a conduit

> of significant state revenues which come from the partnerships it has entered into with multinational companies in the copper and cobalt sector.

Whoever controls Géecamines controls a big chunk of the countries' mineral revenues. The management of Gécamines reflects the management of the Congolese state. Until national politics change, we should not expect changes in the way Gécamines is managed.

Corruption and misrepresentation in the sale of Sokimo's shares in the DRC

As in the case of Gécamines, another Congolese state company, Sokimo, is also under scrutiny. Sokimo is a state portfolio company that owns mining rights mainly in the gold sector in the provinces of Ituri and Haut-Uélé. Like Gécamines, Sokimo has entered into partnerships with a number of gold companies. Recently, Sokimo, unilateraly, sold shares of one of its partners (Kibali Gold Mines, which is part of Barrick Gold Corporation), and three other operating permits (of Zani Kodo Project, PE5078, 5080 and 5081) to AJN, an unknown junior company with no history in gold mining. The last three permits are mineral rights, which involve nearly 3 million ounces of gold, according to ASA Resource Group, the parent company of Mwana Africa Congo Gold, which is challenging the sale because it alone invested nearly US$60 million to certify these gold deposits.

Normally in a case like this, Kibali Gold Mines should have been afforded the right of pre-emption before any share is sold, in accordance with the association agreement which binds Sokimo, AngloGold Ashanti and Randgold (Barrick Gold). In a press release issued in Toronto on 20 February 2020, Barrick Gold Corporation reported that its attention had been drawn to media reports that Kilo-Moto Mining Corporation SA (Sokimo) had signed a memorandum of understanding with AJN Resources to sell its 10 per cent interest in Kibali Goldmines SA.

> Barrick wishes to clarify that Sokimo is contracted to Barrick and AngloGold Ashanti, its joint venture partners, and as a result it cannot sell or transfer its shares in Kibali Gold mines SA, owner of

> the Kibali gold mine, without their approval. This approval has not been sought and will not be granted.[56]

For its part, Mwana Africa Congo Gold and its parent company opposes and has already formally challenged before the Congolese government the sale of these three titles to AJN, and promises to refer them to the Court of Arbitration in Paris. Civil society, on the other hand, is calling for the outright cancellation of these transactions, accusing Sokimo's new partner of having neither the technical nor the financial capacity to develop the mines.

Four press releases have already been made public by civil society concerning the referral of the Canadian Securities Exchange and the Securities and Exchange Regulator of Canada as of April 30, 2020.[57] What is interesting is that there is absolute silence on the part of the Kinshasa government on the matter. There is strong speculation that the relationship between Sokimo and AJN is built on corrupt business practice. If this is correct, it is likely that one of the two centres of power (Kabila or Tshisekedi) are implicated.

Namibia's state-owned NAMDIA declares N$80 Million dividend to government

While in the DRC state mining companies are involved in activities that expose their inefficiency and corrupt relations, in Namibia the situation is different. Desert Diamonds (NAMDIA) declared on 12 December 2019 a dividend of N$80 million (the equivalent of UUS$ 4 596 118) to the government as a shareholder, an increase from the N$50 million declared in 2018.[58] NAMDIA is a state company established and licensed in 2016 by the Ministry of Mines and Energy as a rough diamond trader with business operations focused on the purchase of rough diamonds and the sale of these diamonds to the international diamond industry. Primarily, NAMDIA is expected to leverage on the high quality and corresponding premium pricing of its Namibian diamonds to generate economic benefits for the state, thereby supporting national development goals and policy in the diamond sector.[59] This is to be achieved by participating directly in the diamond value

[56] Barrick Gold Corporation press release of February 20, 2020, (NYSE:GOLD) (TSX:ABX), Toronto.
[57] Complaint from the All For DR Congo Coalition to the Canadian Securities Exchange and Securities Trading Regulator of Canada, April 30, 2020.
[58] Economist, https://economist.com.na/49667/mining-energy/namdia-declares-n80-million-dividend-to-government/, Accessed January 15, 2020.
[59] Namibia Desert Diamonds (PTY)LTD | ANNUAL REPORT 2017/18 https://www.namdia.com/wp-content/uploads/2018/11/NAMDIA_Annual_Report_2018_DTP_Web.pdf.

chain through trading and distributing its allocation of Namibian rough diamonds and creating a Namibian footprint on the downstream market.

The price discovery mechanism ensures that the nation receives its full, fair share of revenue from the development of its upstream deposits and that the government of Namibia decision-making on upstream and mid-stream tax, investment, promotion and other diamond policies is fully informed.

According to the outgoing NAMDIA chairperson, advocate Shakespeare Masiza, despite a challenging economic landscape the company saw a gross profit increase of 17 per cent which accumulated to N$161 million. Masiza revealed to the public how NAMDIA purchased and sold 303 033 carats in 10 sales transactions.[60]

> The revenue maximisation for Namibian diamonds was attributed to the optimisation of the sales strategy, and robust internal processes. The Board commended the company for contributing meaningfully to the country's socio-economic development. The achievement by NAMDIA was also recognised by Mines and Energy Minister Tom Alweendo, who said that the company is one of the few state-owned enterprises that has been declaring dividends to government as a shareholder.[61]

Many state-owned mining enterprises across the region have been linked with poor performance resulting in lack of profits. Financial and governance challenges are common among the many others. State-owned enterprises are associated with poor performance in the oil, gas and mining sectors.[62] These sectors are likely to be characterised by natural monopolies, are particularly secretive, and are engaged in high-value procurement projects, which makes them targets for rent seekers. Similar concerns were echoed during the Civil Society Africa Mining Vision Conference which was held in October 2019 to review progress on implementation by African states 10 years since the continental broad-based economic framework was adopted. The poor performance of most state-owned mining enterprises was attributed by civil society to the lack of clearly defined grounds on which they should venture into mining activities given the major losses they are incurring, draining treasuries.

[60] Albertina Nakale, Namdia declares N$80m dividend https://neweralive.na/posts/namdia-declares-n80m-dividend, Accessed January 15, 2020.
[61] Supra Namibia Desert Diamonds Pvt Ltd Annual Report.
[62] Supra Andrew Bauer note 4.

Governments and the public need to ensure clear grounds for investments and transparent processes in joint venture agreements. These must be incorporated into laws, and institutions conferred with their establishment and management. The mismanagement of SOEs short-changes the country, compromising its ability to improve social services and develop infrastructure from public resources. On the contrary, the performance of NAMDIA showcases a state-owned mining enterprise that is managed in line with a viable business strategy, committed to ensuring that the comparative value of its diamonds is translated into competitive advantage, ultimately optimising on revenue rents for its country.

Can ZCDC achieve 3 million carats production in 2020?

The Zimbabwe Consolidated Diamond Company (ZCDC) expects to increase its diamond production to 3 million carats in 2020, up from last year's 1,6 million carats.[63] The company failed to move eight million tonnes to the processing centre due to incessant power cuts and fuel shortages.[64] According to the state-owned enterprise, a number of initiatives have been put in place to improve operational efficiency and productivity after failing to meet the anticipated production target in 2019. Initiatives to boost production capacity include improving access to international markets. However, one wonders how this is possible since the country is still under sanctions. The company has also invested in sustainable alternative power solutions, enhanced investment in exploration, business processes optimisation, and capacity optimisation and utilisation.[65] The company has installed a 450 tonnes per hour plant for optimisation to make sure that power is there (whether from the grid or generators) and thus increase carat production. Other plans tied to boosting diamond production are investments in solar plants to complement power from the national grid.

ZCDC has been on a drive to seek investments in exploration projects across Zimbabwe. Some strategic partnerships have been forged through joint ventures to undertake exploration and development projects in the country, such as the one concluded with Alrosa in 2019.[66] Mr De Pretto, the ZCDC Chief Executive Officer, indicated that in 2019 the company completed an airborne survey in Mwenezi

[63] Dumisani Nsingo, The Sunday Mail https://www.sundaymail.co.zw/zcdc-eyes-3m-carats/amp?__twitter_impression=true, Accessed February 12, 2020.
[64] Mining Zimbabwe https://miningzimbabwe.com/zcdc-to-increase-diamond-production-in-2020/, Accessed February 12, 2020.
[65] Supra The Sunday Mail.
[66] Alrosa invests $12m in diamond exploration in Zimbabwe https://www.businesslive.co.za/bd/world/africa/2019-07-16-alrosa-invests-12m-in-diamond-exploration-in-zimbabwe/, Accessed February 13, 2020.

during a kimberlite mapping exercise. In addition, several exploration targets have been identified across the country and are at various stages of evaluation.[67] The company is working on a feasibility study which they advertised, and a consultant has been engaged in line with corporate governance systems.

Financially, the diamond mining firm has been struggling to offset the huge legacy debt it assumed from the seven diamond mining companies that operated before its establishment in 2016. A comprehensive legacy debt management framework has been submitted by ZCDC to the Ministry of Mines and Mining Development to deal with legacy debts incurred before the establishment of the company.

> These efforts by the company to improve diamond production, and ultimately revenue to the national treasury, will be futile without transparency and accountability across the whole diamond mining value chain. Zimbabwe's diamond sector, particularly the Marange diamond fields, has been marred by controversy involving limited transparency and accountability.

In a bid to address this challenge, Ministers of Finance and Economic Development since 2011 have urged government in national budget statements to join the Extractive Industry Transparency Initiative (EITI) to improve the country's anticipated growth from its minerals.

EITI: How SADC countries are responding

The Extractive Industry Transparency Initiative (EITI) is a global standard for the good governance of oil, gas and mineral resources. There are currently 52 implementing countries according to the EITI website. Africa has 23 implementing countries.

There is an increasing commitment by African governments to transparency and accountability in the extractive sector, although in Southern Africa, out of the 15 SADC countries, only six countries (DRC, Madagascar, Malawi, Mozambique, Tanzania and Zambia) are implementing the initiative. In recent years, the EITI Secretariat has made efforts to attract countries such as Angola, South Africa and

[67] Supra The Sunday Mail.

Zimbabwe. All three countries have shown interest without fully committing. In recent months, the pressure has been on Zimbabwe to join. What is interesting is how countries in the same economic bloc have reacted so differently to an initiative which is supposed to advance economic development. In the quarter under review, two countries (Zambia and Zimbabwe) have attracted particular attention.

The Zimbabwean government declines to join the EITI

Efforts by the EITI Secretariat and other organisations (such as ZELA and GIZ) to convince the Zimbabwean government to join the EITI recently met a dead end, as the Zimbabwe government declined to join the initiative. These efforts followed encouraging signs that the Zimbabwean government sent in 2019. It participated at the 2019 EITI Global Conference where it was one of the four countries that made commitments to consider making applications to join the EITI. This participation was followed by a visit to Zimbabwe by the chair, Right Honourable Helen Clarke, the Africa Director, Bady Balde, and its Executive Director, Mark Robinson.[68] The Zimbabwean government through its Ministry of Mines participated in a number of dialogues organised by local organisations to prepare for its accession to the initiative. Things were looking even more positive when the Minister of Finance, Professor Mthuli, indicated in his budget speech in 2020 that he will be allocating resources to ensure that Zimbabwe joins the EITI. Plans were underway for the Zimbabwe government to make an official announcement at the 2020 Africa Mining Indaba in Cape Town.

However, at a cabinet meeting the idea was shot down by Zanu-PF radicals. Using an argument reminiscent of President Robert Mugabe, one after another minister argued against the initiative and accused it of being a western tool to spy on the Zimbabwe government.[69] The Zimbabwean government is now attaching conditions to joining the EITI. One such condition is the removal of sanctions by western governments. The position adopted by the government could undermine the trust that has been built between the government and civil society organisations.

[68] The objective was to meet stakeholders that included government officials, civil Society organizations, development partners, embassies and business to discuss the possibility of Zimbabwe joining the EITI and how this can help Zimbabwe achieve sustainable development goals (SDGs).

[69] Andrew Kanambura, Zimbabwe Independent, 31 January 2020 Ncube's EITI move sparks cabinet rift https://www.theindependent.co.zw/2020/01/31/ncubes-eiti-move-sparks-cabinet-rift/, Accessed February, 13 2020.

government officials as western initiatives, it is important to note that principles of transparency and accountability are the foundations of the Zimbabwean constitution.

It is essential for the government of Zimbabwe to realise that any efforts to revitalise the country's mining sector hinge on domestic legal and institutional frameworks provided by the country's constitution and initiatives like the EITI. Political will is, therefore, needed from the government to show solid steps and commitment to real change in the governance of the sector from an internal national position, which will extend to global standards such as the EITI.

Zambia moves one step forward in legislating the EITI

Going in the opposite direction is Zambia, where on 23 March 2020 the cabinet unanimously approved a memo for a bill to be taken to parliament for the enactment of a transparency law in the extractive industries sector, so as to ensure maximum benefit from the country's mineral resources.

Zambia joined the EITI in 2008. It received an award as Best (EITI) Implementing Country, for Adopting Financial Modelling and Beneficial Ownership by both Industry and Government during the EITI Global Conference in France in 2019.[70]

For the Zambian government, the decision to legislate the EITI was long overdue. According to the head of Zambia EITI Secretariat, Ian Mwiinga, the process of undertaking public and stakeholders consultations will commence as soon as possible as this will be a build-up to the layman's bill, and the cabinet memo has been anonymously endorsed by all the key ministries.[71]

This window of opportunity for both the government and companies through the Chamber of Mines could not have come at a better time, when the government and mining companies are at loggerheads, mostly due to unreliable data on production figures, community support, environmental management and fiscal stability.

[70] EITI, Winners of the 2019 EITI Chair Awards Announced , http://mines.org.zm/zambia-awarded-at-eiti-conference-in-paris, Accessed January, 2020.
[71] Interview with Ian Mwiinga, EITI Coordinator, 25 April, 2020.

Having a law in place will bring sanity to the sector and ensure maximum benefit to local communities. But the challenge is how to make good use of this opportunity and ensure that the concerns from all interested parties are considered and become part of this progressive law.

For Zambian civil society, it is now time to invest in this process and ensure that it is as inclusive and participatory as possible. This creates ownership of the initiative and takes away the stigma of donor-dependence. If well managed, it will bring about a sense of ownership and belonging of the initiative, which will ultimately translate into sustainability.

SARW Objectives

Monitor corporate and state conduct in the extraction and beneficiation of natural resources in Southern Africa, and assess to what extent these activities uplift the economic conditions of the region's communities.

- Generate and consolidate research and advocacy on natural resource extraction in Southern Africa.
- Create informed awareness of the specific dynamics of natural resources in Southern Africa, building a distinctive understanding of the regional geo-political dynamics of resource economics.
- Provide a platform of action, coordination and organisation for communities, activists, researchers, policy-makers, corporations, regional and global governing bodies in the watching and strengthening of corporate and state accountability in extractive industries.
- Engage with and support government on building accountable and transparent management of extractive resources.
- Build capacity for communities, civil society, parliaments, and media to hold governments and corporations to account, and to participate in decisions about resource management.
- Advocate and promote human rights and environmental protection in resource extraction activities.
- Support eff orts to legislate mandatory public disclosure of and access to financial, social, environmental and regulatory compliance information in the extractives industry.
- Promote extractive industries that create wealth for local communities.

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