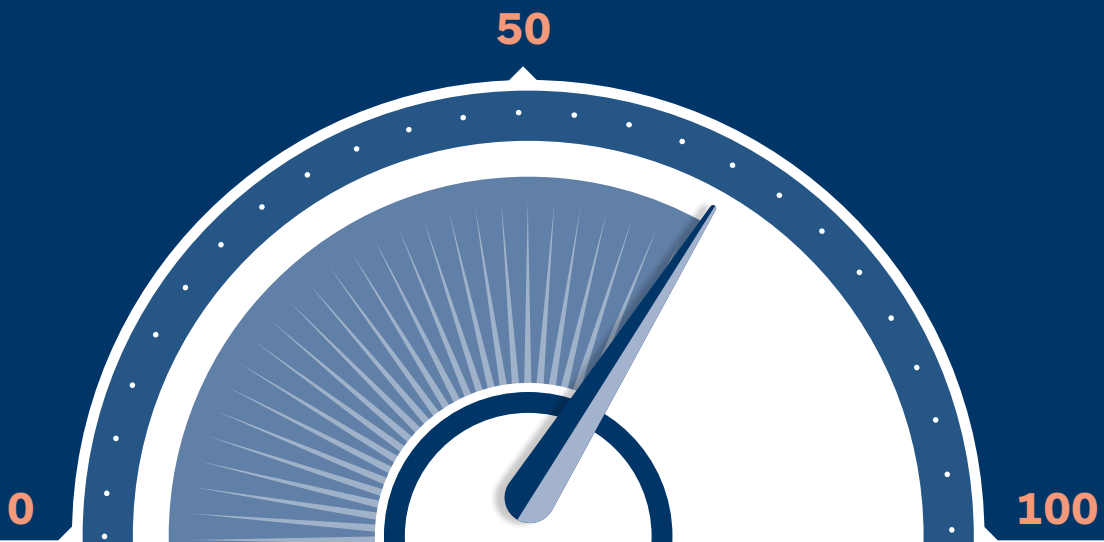

SOUTHERN AFRICA RESOURCE BAROMETER





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ACRONYMS

AfDB	Africa Development Bank
AMV	African Mining Vision
CDAs	Community Development Actions
CSR	.....	Corporate Social Responsibility
ECOSOC	.....	International Covenant on Economic, Social and Cultural Rights
EIA	.....	Environmental Impact Assessment
EITI	.....	Extractive Industries Transparency Initiative
EMP	.....	Environmental Management Plan
IDASA	.....	Institute for Democracy in Africa
ILO	.....	International Labour Organisation
MISA	.....	Media Institute of Southern Africa
PIL	.....	Public Interest Litigation
RECs	.....	Regional Economic Communities
SADC	.....	Southern Africa Development Community
SADC-PF	.....	Southern Africa Development Community Parliamentary Forum
SARB	.....	Southern Africa Resource Barometer
SARW	.....	Southern Africa Resource Watch

PREFACE

Since 2000, oil and mineral commodity prices have been undergoing a strong and steady rise, mainly due to increasing demand from China, India and other emerging economies. However, while the profits of big international corporations have sharply increased,¹ commodity-producing African countries have not witnessed similar increases in revenues and have not experienced any significant additional progress in terms of socio-economic development. Southern Africa is an important player in the global resources industry. All Southern Africa Development Community (SADC) countries are endowed with minerals and natural resources, which – if properly extracted and harnessed – could contribute to sustainable social and economic development.

The Southern Africa Resource Watch (SARW) and the Southern African Development Community-Parliamentary Forum (SADC-PF) are pleased to introduce the Southern Africa Resource Barometer (SARB) as part of their contribution to already existing efforts to promote better management of natural resources for the benefit of all SADC citizens. Several approaches are being pursued at the national level in a number of countries, such as the renegotiation of contracts with private companies, value added strategies, policies to favour reinvestment of revenues from commodities into the local economy, and debates about various ownership models, including the creation of state mining companies. At the regional level, efforts by the Regional Economic Communities (RECs) to harmonise mining policies such as the SADC Mining Policy are at an advanced stage. Meanwhile, at the continental level, the endorsement of the African Union Mining Vision (AMV) and its plan of action by Heads of State and Government is intended to reverse the trend whereby Africa produces minerals but its people do not benefit as substantially as they should. This SARB is a critical support instrument to the AMV and the SADC Mining Policy.

THE NEED FOR A BAROMETER FOR RESOURCE GOVERNANCE

Globally, the scramble for access to, and development of, natural resources has intensified, partly due to rising demand from emerging economies. This trend has been reflected in commodity prices, which are at historic highs, and in terms of trade, which have altered in favour of commodities. Africa in general and Southern Africa in particular are caught up in what some have termed the second 'Scramble for Africa'. However, a historic opportunity has also opened up for Africa to effectively utilise its natural resources to fuel socio-economic development. This opportunity is enhanced by positive developments on the continent, including good governance gains, more space for policy debate, increased interest in exploring better platforms for development and heightened aspirations among the citizenry for a better future. This is, therefore, an opportune time to put in place instruments that will allow the region to benefit more from its resources – such as this Resource Barometer.

Sustainable natural resource use and management make novel demands on governance arrangements – the design of which requires normative guidance. The use of barometers has expanded from the original scientific concept of a barometer that was used to measure atmospheric pressure. Today, barometers are used in many social research projects to measure economic planning, public attitudes and perceptions, ownership and accountability. One notable measure, the Global Anti-Corruption Perception Index, was launched in 1995 and has put anti-corruption issues on the global agenda. It measures the perceptions of corruption, rather than the actual evidence of corruption, based on some accepted indicators. It has become a very useful tool to determine whether to invest in a country or not. It was followed by the Bribes Payers Index, which investigates how companies pay bribes to get things done. It measures both the demand and supply side of corruption, and is used by global firms to channel business. More recently, the Global Corruption Barometer was launched and is being used to measure the experience of corruption in a country.

SADC has also recently developed a Gender Protocol Barometer, which measures various commitments countries have made towards gender equity. Another tool, the African Media Barometer, was developed by the Media Institute of Southern Africa (MISA) to determine the environments in which media in the region are operating. The Afrobarometer, developed by the Institute for Democracy in Africa (IDASA), is used in researching political attitudes and behaviour across the region. A final instrument, the Private Equity Barometer, is used by companies to measure the strengths of financial markets in Europe.

Although governance principles have been developed for diverse contexts, their availability for sustainable natural resource governance is very limited. The resource barometer will be unique in the sense that it will measure, monitor and evaluate countries' extractive industries' performance along the entire value chain. These principles could also be used to direct the design of governance institutions that are legitimate, transparent, accountable, inclusive and fair and that also exhibit functional and structural integration, capacity and adaptability in the management of natural resources.

Against this background, the SARB, with its guiding principles, will be an instrument that Parliaments, civil society groups, labour organisations, the media and communities can use to monitor how governments and companies are managing natural resources. It will increase transparency, accountability, respect for human rights and protection of the environment and promote real and sustainable development that will benefit all SADC citizens.

Most SADC member states are mining countries. Mining contributes between 40-90 percent of some countries' national budgets. If properly managed, mining can contribute positively to poverty reduction in a variety of ways, mostly through generating income and creating opportunities for growth for lateral or downstream businesses.

The extraction of natural resources – namely oil, gas, timber or any other minerals – is also regulated by international legal provisions to protect human rights and the environment. The United Nations – through resolution 1803, which established the Principle for Permanent Sovereignty – recognises the existence of states' sovereignty over their resources. While it affords states wide discretion to dispose of their resources as they see fit, it does prescribe the context within which states must act. It requires states to exercise this sovereignty in the interest of the people. It states that the 'rights of the people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned'.² This is a permanent sovereignty doctrine, which can also be found in the Charter of Economic Rights and Duties of States, passed by the UN General Assembly in 1974 as a centrepiece of what came to be called the 'New International Economic Order'.³ Article 2 of the Charter reads:

1

Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.

2

Each State has the rights:

(a) to regulate and exercise authority over foreign investment within its national jurisdiction and take measures to ensure that such activities comply with its laws and regulations and conformity with its national objectives and priorities...

(b) to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies.

It is clear that the General Assembly reinforces a state's authority against unlawful exploitation of its resources. The International Covenant on Economic, Social, and Cultural Rights also stipulates that the misuse of a nation's resources is a violation of human rights.⁴

Citizens – who are the ultimate beneficiaries of natural resources in most African constitutions – are increasingly putting political elites in the region under pressure to tax resource rents transparently and distribute the revenue equitably based on the development goals shared by society. Ultimately, it is the quality of national legislative and policy processes, state institutions and individual political leadership that will determine whether sufficient revenue is raised from mining activities and whether potential wealth goes towards financing national development or lining the pockets of political and business elites.

The Resource Barometer principles will help guide key stakeholders, especially Parliamentarians, to carry out more efficient oversight of the resource sector. However, these principles will not only enhance Parliamentarians' oversight role, they will also increase interaction between governments, companies and Parliaments on the one hand and between Parliaments and citizens on the other hand. The SARB will also help the region and each specific country to measure progress, and to identify threats and opportunities in the governance⁵ of natural resources. The principles will also help countries and the region to predict, on a continuous basis, the key resource governance trends.

EXECUTIVE SUMMARY

The Resource Barometer principles are designed to assist key stakeholders, particularly Parliaments in Southern Africa, to effectively discharge their oversight of the extractive industries with the aim of ensuring that minerals benefit all citizens. The principles are informed by SADC countries' national legislations and regulations, international best practices and conventions, and inputs from practitioners. A wide range of civil society organisations, Members of Parliament, mining companies, human rights defenders and gender activists from across the region have contributed to the drafting of these principles. The principles have also benefited from the vast field experience of SADC civil society organisations that work in the extractive industries. The principles are the culmination of two years of research and consultations undertaken by SADC-PF and SARW.

6 The idea of a Barometer for Natural Resources emerged at a consultative meeting organised by SARW and the SADC-PF with Members of Parliament from six SADC countries – Angola, the Democratic Republic of Congo (DRC), Malawi, Swaziland, Zambia and Zimbabwe. The meeting took place on the 30th October 2010 in Johannesburg at the Birchwood Hotel on the Theme: Towards Enhancing Parliamentary Legislative and Oversight Role on the Extractive Industries Sector. The overall aim of the consultative meeting was to critically review extractive industries in Southern Africa in order to identify issues pertaining to raising parliamentary awareness and building capacity in providing effective oversight of the Extractive Sector. Among other issues, the meeting dealt with contract negotiations, regional policy harmonization, revenue transparency, environmental protection, sustainable development and social empowerment through Corporate Social Responsibility. At the end of the meeting, the MPs recommended that best practices in resource governance be identified that could provide a sound basis for ensuring optimal benefit from the region's finite natural resources. SARW was tasked with the responsibility of coming up with an instrument that would help enhance parliamentary oversight capacity in the quest for resource justice in Southern Africa (See Annex 1).

In March 2011, SARW assembled a group of experts (see Annex 2) to start reflecting on the nature and the form that the principles would take. The meeting came up with a recommendation for six country studies (Angola, DRC, Malawi, Namibia Zambia and Zimbabwe). These studies were summarised by a smaller team and integrated into one document, which was then submitted for discussion in Zambia during the Civil Society Social Forum in 2011. Over 100 people took part in the discussion. The document was refined and comments inserted. The document was then scrutinised again by representatives from civil society, companies and Parliaments from across SADC from 12-13 December 2011 in Johannesburg (see Annex 3).

While these principles make reference to mining, they provide guidance on all types of extractive industries, regardless of their size and each country's way of doing business. In addition, while the principles are not intended to be applied retroactively, they are expected to be applied to all extractive industry projects covering the expansion or upgrade of an existing facility where changes in scale or scope may create significant environmental and/or social impacts, or significantly change the nature or degree of an existing impact. The proposed principles and guidelines are of a general nature. They are comprehensive since they refer to the entire value chain. They take cognisance of the fact that there is no such thing as 'standard governance' or a one-size-fits-all policy option leading to better development. Policy options and recommendations must be country specific and must be adapted to the local economic, social and cultural environments. In addition, while short and long-term impacts have to be considered, short to medium-term initiatives are of more relevance to the issues at stake.

Minerals represent potential wealth for the region's economies, with a variety of benefits, including job creation, export earnings, knowledge and skill transfer, and industrialisation through forward and backward linkages to the rest of the economy and resource transformation. However, minerals have not produced the expected outcomes in SADC so far. Indeed, it is noteworthy that most SADC economies have posted lacklustre performances over the past two decades - with the exception of Botswana. The biggest problem in the region with regard to the management of its resources has not been commodity price fluctuations but the inability to effectively monitor the performance of the sector. There is an urgent need to begin to put in place instruments that will allow for an easy and correct assessment of the manner in which resources are being managed in the region. The SARB is one such instrument and will be used by Parliaments and civil society to monitor and assess the performance of the extractive industries in the SADC region.

The statement following the Birchwood meeting made it clear that Southern Africa must urgently transform the 'resource curse' into a blessing for SADC citizens - and that the role of Parliaments in this endeavour is indispensable. Parliaments are particularly important because of their oversight role on budgets, their management of the legislative process, and their capacity to facilitate public engagement with civil society organisations and communities. This barometer will be critical as it will support the creation of knowledge-based Parliaments and influence regional thinking around, and interpretation of, trends in the extractive industries.

GENERAL PRINCIPLES AND GUIDELINES

Minerals are strategic for any country. They are finite, non-renewable and a major source of revenue for development. The management of these precious resources and their optimal and economical use are matters of national importance and interest. Therefore their exploitation must be incorporated into national development plans and strategies. These general principles will guide the extractive industries' value chain at the country and regional level.

Country level principles and guidelines

- i. The development of a country's natural resources must be driven by national development priorities that are people-centred, locally-driven and sustainable;
- ii. A country must have put in place all necessary institutions and regulations before extraction activities start;
- iii. Extractive industry policies must be long-term but flexible to cater for changing internal and external conditions;
- iv. The development of extractive industries must be within the context of promoting and enhancing economic diversification, development, growth and poverty reduction;
- v. All SADC member states must adhere to the rule of law and promote good governance and democratic principles, which must permeate through natural resource management;
- vi. The safety and health of workers and mining communities as well as the security of human rights defenders and activists working on the extractive sector must be protected and guaranteed;
- vii. SADC governments must promote local beneficiation in order to unlock the intrinsic value of mineral resources and enhance value addition;
- viii. SADC governments must strengthen their legal provisions relating to contracts to ensure that all mining contracts comply with a predetermined national legislative format, including measures to override stability agreements that prevent future governments from re-negotiating contract provisions to the disadvantage of the citizens (possibly including limits on the length of the contracts);
- ix. SADC governments must invest in research and development throughout the extractive industry value chain;
- x. SADC governments must promote a people-centred approach that creates a more conducive political and socio-economic environment for developing the extractive industry;
- xi. The corporate practice of hoarding mining revenues outside the borders of a country where mining is taking place militates against the balance of payments of that country and should be discouraged; and
- xii. Governments must legislate that foreign-owned extractive industry firms should list on the local stock exchange as a mechanism for encouraging local participation and ownership in the extractive industry.

Regional level principles and guidelines:

- i. All SADC member states must ratify, domesticate and implement the SADC Mining Protocol;
- ii. SADC countries must adhere to the African Union Mining Vision;
- iii. The SADC Secretariat must be mandated to facilitate the exchange of information on extractive industry companies and their behaviour among member states;
- iv. SADC countries must desist from entering into negotiations with mining companies when the country is experiencing civil war or local conflict or where the legitimacy of the government is being disputed;
- v. In a country experiencing civil war or local conflict, all mining companies must desist from entering into an agreement to conduct mining operations or, if already operating, they must temporarily stop their activities;
- vi. Extractive companies must abstain from using mineral resources to undermine constitutional order and political stability in the countries in which they operate;
- vii. Pressure should be exerted on international companies that fail to adhere to these standards by civil society groups, international institutions such the World Bank, and foreign states where they are listed or at general shareholder meetings, or any other avenues that are available in order to ensure that companies desist from violating these principles;
- viii. SADC governments should agree on issues around migrant working conditions, including health and lodging; and
- xi. SADC must create provisions for the after work life of migrant workers, including insurance payable in their host country.

INSTITUTIONAL CONTEXT OF NATURAL RESOURCES MANAGEMENT

LEGISLATIVE FRAMEWORK

The legislative framework of a country must make bold statements on the way natural resources should be perceived. Mineral resources should be extracted in accordance with the legislative provisions and national regulations. A national mineral policy is the primary tool through which a country enunciates the role of all players in minerals exploration. Mineral policy defines how minerals will be extracted and states clearly the socio-economic and environmental responsibilities of both the companies and the government.

Recommended principles and guidelines on the legislative framework

- i. The Constitution must provide a broad guide that promotes people-centred development through the exploitation of natural resources.
- ii. Extractive industries must be legislated for by Parliament.
- iii. SADC countries must update and modernise all their laws related to extractive industries to ensure that they increase state revenues, protect people's rights and the environment, and contribute to sustainable development.
- iv. The laws and regulations must protect the rights of all people as articulated in international conventions, such as the UN Declaration on the Rights of Indigenous Peoples and the International Labour Organisation Convention.
- v. Special laws and regulations must be put in place to support the empowerment of previously marginalised and excluded groups, such as the promotion and empowerment of women at all levels of the extractive industries value chain.
- vi. Government must adopt laws, policies and penalties to restrict the direct involvement of public servants and politicians in their private capacity, in the extractive industries to avoid conflicts of interest.
- vii. Government must develop a national land use plan that is complimented by other laws at the relevant administrative levels, which defines land use plans according to the suitability of the land and the quantity and quality of resources, in order to guide investments.
- viii. Government must develop mandatory and clearly defined environmental policies and regulations to avoid negative impacts on ecosystems, and monitor, evaluate and enforce them. The policies and regulations must contain provisions for ecological compensation.
- ix. Government must put in place policies and regulations that oblige companies to have internal policies that ensure that they demonstrate responsibility for the environmental impact of their production processes throughout the life-cycle of their operations.
- x. Government should require companies, through legislation, to report on their profits, expenditures, taxes, fees and community grants paid in each financial year on a project-by-project basis.
- xi. The legislation must give government the power to suspend, revoke or cancel a mineral concession where the holder fails to comply with the provisions of the law or with the conditions of the concession.⁶
- xii. Government must have empowerment policies that make provision for previously disadvantaged groups to have access to opportunities based on mineral resources – for example by reserving industrial mineral concessions for its citizens or for nationally-incorporated companies with more than 51 percent local shareholding, and then empowering these concession title holders to adequately and profitably mine these minerals.
- xiii. The law should allow for public interest litigation (PIL) and move away from the judicial process, *locus standi*.⁷ When it comes to extractive industries, citizens' rights should be reinforced through the adoption of PIL principles, and non-governmental organisations (NGOs) and human rights lawyers should be afforded the *locus standi* to represent affected persons, communities or classes of persons.⁸
- xiv. The law should allow for mining development agreements to be overseen by Parliaments.⁹

CAPACITY FOR NATURAL RESOURCE MANAGEMENT

The natural resource sector is complex and sophisticated and requires high-level technical and managerial capacity. Policy-makers in African countries endowed with natural resources often lack the organisational capacity, sufficient expertise and analytical skills required to elaborate sound, progressive, legislative and fiscal policies as well as industrial and

sector development strategies, which are adapted to the local context and aim to maximise development potential. This can notably lead to imbalances during contract negotiations, resulting in inequitable deals being struck between multinationals and governments of commodity-rich countries to the detriment of the latter and their people.

Due to the critical importance of the extractive sector to the economy, the public budget and the environment, African countries rich in natural resources must develop adequate institutions with the relevant capacity to engage with well resourced, highly-efficient and extremely sophisticated foreign company interests.

Recommended principles and guidelines for natural resource management

- i. Countries must put in place 'world class' public mining administration by addressing capacity constraints and developing adequate human and material capacities and skills¹⁰ for all state agencies involved in the extractive industry.
- ii. All government ministries and departments involved in resource management must have the necessary human and logistical capacities to undertake technical, social, environmental and economic evaluation and regulation of their respective sector. The following are necessary:
 1. Revised system of merits and incentives to retain skilled staff;
 2. Revised terms and conditions of employment to allow the recruitment of competent staff and retention of the best officials in key positions in the public service; and
 3. Enhanced staff working environment (vehicles, computers, exposure to international environment, training, twinning with other countries administrations, on the job training, etc.).
- iii. Relevant government departments (oil, mining, labour, gender/women, finance, local government, economic development, land and environment) must have sufficient capacity to manage key information, such as production figures, statistics, sales, pollution, land, taxes and other data in order to track the sector's performance.
- iv. A community consultation framework must be established, which assigns the roles and responsibilities of the government, company, NGOs, donors and local communities in relation to addressing the environmental, social and economic impacts of mining activities.
- v. Public office bearers (including politicians, senior civil servants and government representatives) should declare their business interests.
- vi. Anti-corruption agencies – such as those institutions charged with tax collection as well as the Office of the Auditor General, the Office of the Ombudsman and the Finance Department – must be strengthened. The independence of these institutions should be enhanced to ensure that mineral revenues do not end up in the hands of corrupt officials or criminals.
- vii. One-stop mineral administration systems should be established and provided with sufficient capacity to deliver on their critical mandate.

EXTRACTIVE COMPANIES

Extractive companies, big or small, must abide by the laws of the country in which they operate. In most African countries, some companies behave like states within states. Therefore, it is important to guide both national and foreign companies on how they should behave.

Recommended principles and guidelines for extractive companies

- i. All extractive companies must respect the political jurisdiction of the country in which they operate and in no way attempt to undermine the constitutional, regulatory and legislative environment by means of secretive, non-transparent, international or global contracts and agreements in line with certain voluntary principles such as the OECD guidelines.¹¹
- ii. SADC countries must enhance the rule of law and good governance at national and local levels to make sure that extractive companies respect national policies and are transparent.
- iii. Extractive companies must not discriminate on any grounds when employing local people.
- iv. Extractive companies must be guided by the laws of the country they are operating in when employing foreign citizens.
- v. Extractive companies' obligation to support local communities must be mandatory and form part of national regulations.
- vi. Extractive companies must prioritise the procurement of local goods and services in a transparent manner in order to promote local development.
- vii. Extractive companies must publish annual financial reports or account statements in line with international best practice on good corporate governance.

NEGOTIATION OF CONTRACTS

In many SADC countries, revenues from extractive companies are not equally distributed. Many times concession agreements are biased in favour of extractive companies due to the weak negotiating capabilities of the host governments of the countries in which they operate. Mining contracts are sometimes negotiated for the benefit of individuals. Contract transparency is essential for the responsible management of natural resources and the potential for growth and economic development that those resources offer. The process for allocating contracts by the government amongst competing mining companies needs to be carefully designed and rigorously followed.

Recommended principles and guidelines on the negotiation of contracts

- i. Contract negotiation must be led by a legitimate institution of the state.
- ii. The principle of complete public transparency must operate prior to the awarding of contracts and the contracts themselves must be made public.
- iii. Government must develop the human capacity to negotiate contracts effectively. Where capacity is lacking, governments should source technical and financial support from relevant institutions, such as the African Development Bank.
- iv. Government must create conditions for competitive tendering (auction)¹² in the allocation of contracts.
- v. Contract negotiation must be all inclusive¹³ and cover areas such as environmental mitigation and protection measures, land use and rights, displacement and resettlement of local communities and their rights, mining closure, corporate social responsibility, disaster management and water use.
- vi. Governments must be in possession of correct geological data on the quantity and quality of its resources before entering into negotiations.
- vii. Negotiations can only start after due diligence studies have been conducted to ascertain whether the company has the technical and financial capability to actually mine.
- viii. Equally, the true beneficiary owners of each company must be known to prevent conflicts of interest.
- ix. Mining contracts and rights cannot be resold. If they are not exercised by the original company, they must revert to government and the awarding and negotiation process must begin again.
- x. Citizens have the right to know how their Government is negotiating and selling their resources.¹⁴
- xi. Government must consult civil society and labour unions with expertise on key areas such health and safety, human resource development, technology transfer, skills development, corporate social responsibility, community resettlement and environment protection during the negotiation of contracts.
- xii. Appropriate and effective oversight by Parliament is paramount. Parliament must ratify all major extractive contracts to safeguard against unsound deals and ensure that the nation's interests are protected.

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- Xiii.** The number of licenses awarded to a company and the size of the concession must be limited so as to avoid monopolistic tendencies by multinational companies.
- Xiv.** Contracts must have flexible mechanisms for resolving disputes and adjusting for changed circumstances, including adjustment of the tax regime.
- Xv.** Government must develop the capacity of local communities to bid during the tender process for extractive rights.
- Xvi.** Government must develop specific contracts for specific resources¹⁵ based on the specific environmental, geological, social/cultural, economic, infrastructural and political conditions relating to each resource.¹⁶
- Xvii.** Each contract must include a clause on termination with clear circumstances under which the agreement can be terminated, for example, repeated environmental violations, lack of capacity to develop the site, etc.
- Xviii.** Stabilisation provisions must be avoided as these are extremely disadvantageous for the government because it freezes the legal and regulatory situation of the country for an extended period of time and requires government to pay compensation if changes affect an investor.
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OPERATIONAL PHASE

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While extractive companies can play a positive role in development through investment of financial resources, job creation, transfer of technologies and skills development, the potentially damaging aspects of their activities must be mitigated – such as environmental degradation, poor working conditions, displacement of local communities, corruption and fiscal evasion, etc. particularly in developing countries with weak state administration.

Poverty, especially in mining communities, is accelerated by the damage caused by mining activities to the environment and the health of workers and community members. SADC countries are very complaisant in terms of protecting the environment and people's health. Mining increases water and air pollution, degrades the land and destroys biodiversity – all of which have an adverse effect on the health and livelihoods of poor and vulnerable groups.

OPERATIONAL PRINCIPLES REGARDING FINANCING

Mining companies are funded by banks to undertake their extractive activities. They also raise funds on stock exchanges. Banks are required to do due diligence before funding mining activities to ensure that the companies have a genuine environmental impact assessment, which has been accepted by the government.

Recommended principles and guidelines regarding financing

- i. Banks and financial institutions must be required by law to do proper environmental, social, economic and geological assessments in relation to any application for funding of mining projects.
- ii. Banks and other financial institutions must publish the lending practices and mechanisms used in the monitoring and evaluation of the mining projects they fund.
- iii. Banks and other financial institutions must publish information about which mining projects they are funding in each country.

OPERATIONAL PRINCIPLES REGARDING THE ENVIRONMENT

Environmental consequences are substantial throughout the life-cycle of a mine. Each stage of the value chain (reconnaissance, prospecting, conceptualisation, exploration, drilling, mining construction, operationalization, processing, transportation and closure) poses serious risks to the environment and public health not only of the employees but also of the communities living in the surrounding areas. Every environmental medium – air, water and land – is affected.

Recommended principles and guidelines regarding the environment

- i. As a standard requirement in minerals legislation, the state should compel each extracting company to produce an Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) before a licence can be issued. These assessments and plans should be updated annually throughout the life of each project until closure and beyond.
- ii. Local community consultation should be ongoing during the drafting and implementation of the initial EIA and EMP and throughout the life of the mine.
- iii. Local communities and the government must be directly involved in disaster management committees and planning.
- iv. Parliamentarians must ensure that EIAs are mandatory and part of mineral legislation, mineral concession contracts and mineral development agreements, and that they include obligatory social and environmental remediation funds.
- v. Social management plans and EMPs should include obligatory social and environmental rehabilitation .
- vi. Extractive companies must always go beyond basic compliance based on legislation in any specific country and adopt the highest possible standards with regard to the environment and ensure that such standards are implemented universally, and should continually seek to improve their performance in this regard.
- vii. Every extractive operator must accept full responsibility for the social and environmental impact of their operations throughout the life-cycle of their project and beyond the perimeter of their direct operations, including the negative footprint in terms of air and water quality, radiation or toxic impact.

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- Viii. Governments and Parliaments must adopt the polluter pays principle and legislate for it.
 - ix. Every extractive operator is subject to the polluter pays principle in full and shall not seek to externalise its impact costs onto individuals, communities, government or the wider society.
 - X. Every extractive sector operator is subject to the precautionary principle, according to which if there are threats of serious or irreversible environmental damage, lack of full scientific knowledge must not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
 - xi. Government must establish standards to evaluate and estimate environmental externalities and their economic cost (and impact on GDP) when deciding whether to exploit a certain mineral in a particular area.
 - xii. Mining companies must disseminate full environmental and social cost information to the general public as well as impacted communities before commencement, during operations and after closure of a mining project.
 - Xiii. Government and mining companies must disseminate full information about environmental and social best practices to raise public awareness and encourage companies to follow these examples.
 - Xiv. Mining companies must be compelled by Government to put in place an integrated environmental and social management plan, which incorporates land-use planning and post-mining closure.
 - Xv. Where a mining operation is sold, the mine closure plan, the environmental and social mitigation plans and the mine closure funds must be handed over to the new owners.
 - Xvi. Government must include provision for a mandatory environmental tax to be paid by mining companies during the lifespan of their projects.

LABOUR, WORKING CONDITIONS, SAFETY AND HEALTH ISSUES

Mining can affect the health, safety and security of workers and mining communities. The negative impact of the exploitation of nature resources in Africa is very pronounced on workers and communities. Mining companies have been criticised for neglecting the working conditions of their workers and focussing solely on profit making. Accidents often result in the loss of life or limbs. Efforts must be directed towards the development and adoption of mining methods that will increase the safety of workers and communities and reduce the number of accidents. Towards this end, the participation and co-operation of mine workers and communities is essential. Steps must also be taken to minimise the adverse impact of mining on the health of workers and the surrounding populations.

Recommended principles and guidelines on labour, working conditions, safety and health issues

- i. All mining companies must adhere to internationally recognised human rights conventions and standards as articulated in the declaration of the International Labour Organisation (ILO).¹⁷
- ii. All mining companies must fully comply with the various ILO standards in their employment practices and human resource management.
- iii. Mining company labour laws should be reviewed to conform with the hazardous conditions of extractive industries.
- iv. All mining companies must accept and implement the principle of equal pay for equal work.
- v. All mining companies must accept the right of workers to assemble, organise, belong to trade unions and political parties of their own choice, and strike.
- vi. All mining companies must agree to take full responsibility for, and pay meaningful compensation to, workers injured at work or suffering from occupational diseases and ill health.
- vii. All mining companies must accept the rights of an employee to refuse to work in an unsafe environment.
- viii. All mining companies must promote the establishment of effective procedures to guarantee the rights of workers and their representatives to be consulted on all matters and to participate in measures relating to safety and health in the workplace.
- ix. Mining companies, on the basis of general principles of occupational health and in accordance with national laws and regulations, must provide regular health surveillance of workers exposed to occupational health hazards specific to extractive industries.
- x. Governments must establish competent Mining Health and Safety Commissions that can suspend or restrict mining activities on safety and health grounds, until the conditions that gave rise to the suspension or restriction have been addressed. The Health and Safety Commission must:
 - a. Conduct regular monitoring and assessments of the working environment to identify any hazards to which the workers may be exposed and to assess their level of exposure; and
 - b. Inform the workers, in a comprehensible manner, of the hazards associated with their work, the health risks involved, and relevant preventive and protective measures
- xi. All mining companies must desist from introducing productivity bonuses and incentives that might undermine workplace safety.
- xii. Mining companies must implement safety and health management systems for workers based on internationally recognised principles and standards as articulated in the ILO's Declaration on Fundamental Principles and Rights at Work and the UN Global Compact¹⁸ and assess the effectiveness of these systems through periodic audits.
- xiii. Government and industry must invest in community safety, awareness and preparedness to respond appropriately to accidents and emergencies that have serious impacts on health and the environment.¹⁹

ARTISANAL AND SMALL-SCALE MINING

Small and isolated deposits of minerals are scattered all over SADC countries. These often lend themselves to economic exploitation through small-scale mining. With modest demand on capital expenditure and a short lead-time, they also provide employment opportunities for the local population. In certain countries, artisanal miners are exploited by companies who buy their produce cheaply. Artisanal mining in its current form in most SADC countries is poorly regulated and often not taxed.

Recommended principles and guidelines for artisanal and small-scale mining

- i. Promote small-scale mining of small deposits in a sustainable manner while safeguarding social, environmental, safety and health concerns.
- ii. There should be strict conditions on this sector, including:
 1. Creating an appropriate regulatory policy framework to promote small-scale mining;
 2. Decentralising the issuing of mining rights and taxation;
 3. Introducing preferential rights, which give local companies preference in the granting of licences, but which also give them strong negotiating powers to enter into third-party agreements. The third party shall be equally bound by the conditions governing the licence, which supersedes the third party's country agreements or laws;
 4. Passing strong legislation on the safety of vulnerable populations, especially women and children; and,
 5. Formalising artisanal mining and legislating for the creation of small enterprises, such as cooperatives or companies, which can be properly managed.
- iii. Governments must create mechanisms to enforce good environmental practices in artisanal mining so that the sector contributes to the formal economy and reduces its negative environmental impact.

GENDER AND THE EXTRACTIVE INDUSTRIES

Experience and research have shown that extractive industries have not benefitted local communities much in Africa. Women and girls tend to suffer both directly and indirectly from the negative impacts of such industries. Due to historical reasons, women and girls tend to be more economically disadvantaged thus putting them at a higher risk of exploitation and underpayment. Evidence from research also shows that extractive industries undermine their natural environment, health and other rights.

Recommended principles and guidelines on gender and the extractive industries

- i. Government mining legislation and policies must include specific provisions on gender equality and equity to empower women in the mining sector.
- ii. Government must develop and implement programmes to increase women's participation in the extractive sector and ensure the retention of skilled women in the sector, including through affirmative action.
- iii. Government must introduce communication and sensitisation programmes to remove cultural barriers preventing women's effective participation in, and contribution to, the mining sector in line with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979).
- iv. Government must involve women in the adoption of extractive policies and introduce punitive policies aimed at discouraging gender discrimination.
- v. Government must ensure that existing associations of women in mining are given adequate support, such as organisational and financial resources, including direct funding by Government. These groups must also include rural women's groups.
- vi. Women miners must be provided with extra security measures against violence and sexual abuses and harassment.
- vii. Government and companies must promote capacity building by deliberately targeted women and girls.

CORPORATE SOCIAL RESPONSIBILITY

In most SADC countries the law is silent on how the communities in the areas where mining takes place should be developed, or how an investor should contribute to the development of affected communities. Therefore, it is not surprising that Corporate Social Responsibility (CSR) in most SADC countries is voluntary and mostly a public relations tool for the largest mining companies. The cost and effects of CSR activities are often negligible and seldom assist the communities in which they are undertaken since CSR policies do not often take into consideration, or genuinely seek to address, the negative impact of mining operations. Most mining companies have limited interest in CSR.

Recommended principles and guidelines for corporate social responsibility

- i. Mining companies must ensure that Corporate Social Responsibility (CSR) applies to their core activities and create policies that encourage local communities to provide goods and services so as to promote sustainable development in the area they operate.
- ii. Mining companies must have a legal obligation to invest in the communities where they operate over and above royalties they are contracted to pay.
- iii. Monitoring and oversight mechanisms, involving Government, Parliament and civil society, need to be put in place to review the performance of CSR projects.
- iv. CSR projects must directly involve the communities surrounding the mine through genuine community participation in project design, implementation and monitoring throughout the life of the mine.
- v. Government must establish a comprehensive CSR policy for extractive companies by consolidating existing voluntary CSR initiatives and guidelines that have a proven track record in terms of concrete contributions to local development (environmental protection, decent working conditions, promoting human rights, enhancing relations with local communities, developing local companies, conducting effective training programmes, reinvesting profits, etc.).
- vi. The CSR model should be finalised through a multi-stakeholder process, which includes civil society, communities, mines and state representatives.
- vii. While respecting basic principles, CSR projects must be tailor-made and must meet the needs of all stakeholders – shareholders, communities, suppliers and customers.
- viii. All mining companies must contribute to a centralised, independently-administered fund that communities can draw from to access independent expertise in any dispute with extractive companies.

REVENUE TRANSPARENCY, SHARING AND UTILISATION

Governments collect revenues from mining activities through various forms of taxes and use these revenues to fund social services, infrastructure and other national development initiatives. The fiscal regime applied in the extractive sector is of major importance in the realisation of national objectives. The extraction of minerals lowers the wealth of a country – unless the funds generated are invested in other areas. Extraction makes a country poorer because resources such oil, gas and minerals are not

renewable. Once they are out of the ground and sold they cannot be replaced. It is only the subsequent reinvestment of resources into capital (physical or natural) that can offset the loss of this natural wealth and make a country richer. It should also be noted that the resources belong to the people and the people should benefit.

Just as extractive industry companies are in business to generate wealth for their shareholders and are concerned

about the level of profits and growth in shareholder value, Governments are also in the mining business to make money and must be concerned about the revenue they collect for their citizens. In terms of revenue collection, it is important for Governments and mining companies to be transparent and accountable to the people in relation to the generation, use and management of the revenue. Therefore, the price of extracted mineral resources must reflect their value since they are non-renewable.

Recommended principles and guidelines for revenue transparency, sharing and utilisation

- i. Citizens through their Parliamentarians and representative structures must be allowed to have complete access to information and be informed about their mineral resources and the manner in which they are managed, especially contracts entered into and revenue generated. Confidentiality clauses must be eliminated in all contracts.²⁰
- ii. A clear revenue sharing formula must be put in place before exploitation starts. Progressive fiscal policies and contractual terms are necessary to ensure that the country gets maximum benefit from its resources.
- iii. Mining companies must publish what they pay to Government and Government must publish what they receive from companies as required by Publish What You Pay (PWYP).
- iv. Government must have put in place an effective revenue collection system. This requires flexibility of approach, as well as capacity and expertise in the different phases of mineral exploitation.
- v. Government must stop the practice of granting tax exemptions to extractive companies unless these subsidies are part of a carefully considered development plan. Tax systems must be more flexible and each country must develop the capacity to know the quality and quantity of its minerals in order to accurately determine or project the tax that will be paid by mining companies to Government.
- vi. Government must take measures to curb illicit financial flows, tax evasion and avoidance in the extractive sector. In addition, Governments must try to avoid dealing with companies that are registered in tax havens.
- vii. Any company that is involved in mining should be listed on the stock exchange in each country where it operates.

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- viii. All mining tax rates and terms should be legislated for and used in all mining agreements.
 - ix. The tax administration must be strengthened, reflect international standards and conducted in a way that ensures that mining companies understand their obligations, entitlements and rights.
 - x. Government must put in place revenue auditing mechanisms that are transparent and efficient. This initiative must be anchored in the Extractive Industries Transparency Initiative (EITI)²¹ and involve ratification of the UN Convention Against Corruption.
 - xi. Government must put in place budgets that clearly differentiate between all the various sources of revenue to provide an accurate picture of the contribution of the mining sector.
 - xii. Taxes alone are not sufficient for the country to benefit from its resources. There is need for government to increase its share in the ownership of mines (for example, through joint ventures with the private sector) in order to ensure that the country does not only benefit through royalties and taxes.
 - xiii. International and national resource companies must comply fully with national and internationally accepted standards for accounting, auditing, reporting and publishing of accounts.
 - xiv. The Auditor General (or equivalent office) must report regularly to Parliament on the revenue flows between international and national mining companies and the Government.
 - xv. Royalties are a depletion allowance and should be paid regardless of profit levels. They can be suspended if mining companies experience financial stress. Royalties should be based on gross sales rather than levels of profitability. Forgone royalties or other tax income streams can be used to increase government shareholding in mining companies.

HUMAN RIGHTS, COMMUNITIES AND MINING OPERATIONS

Mining operations tend to be capital intensive and use little unskilled or semi-skilled labour. They are geographically concentrated and create small pockets of wealth that typically fail to spread. They produce social and environmental problems that fall heavily on the poor. And they follow a boom-bust cycle that creates insecurity for the poor. This is why the active involvement of citizens

is an integral part of improved management and why stakeholder engagement, consultation and empowerment – especially of local communities which are the stakeholders in closest proximity to the mine – are so critical. Engagement with communities must continue throughout the life of the mine on all issues of possible concern or interest to people in those communities. Current

arrangements where affected communities are excluded and not consulted are outdated and cannot continue. Lack of consultation and participation in policy making and decision making have led to an increase in social unrest among communities that feel excluded and believe they are not benefiting from the extraction of the minerals from their land. This state of affairs may lead to human rights violation.

Recommended principles and guidelines on human rights, communities and mining operations

- i. All mining operators must accept the principle of continuous free, prior and informed consent throughout the life of their operations and ensure that affected communities are fully informed of both hidden and visible impacts as well as both direct and indirect costs at all stages of the mining project.
- ii. Mining companies must consult and involve communities in risk mitigation.
- iii. Governments must take measures to ensure that extractive companies adopt human rights risk assessments in communities likely to be affected by mining, particularly in relation to the activities of private and state security services in protecting the mines. Government must also take measures, through Human Rights Commissions, to investigate and monitor the human rights situation in mining areas.
- iv. Communities have the right to organise in any form to monitor the activities of mining companies, which must desist from creating obstacles to such initiatives.
- v. Mining companies must be fully aware of the social, civil, political, environmental and economic impact of their projects on community rights, and accept full moral, physical and financial responsibility for any related costs.
- vi. Communities should not only be compensated for the loss of their homes, fields, grazing lands and graveyards, but should also receive development funds so that they can cope with the huge changes resulting from loss of their land to mining operations.
- vii. Government must act as fair intermediary between local communities and the mining companies through balancing local rights with national needs.
- viii. Mining companies must recognise and respect local culture and decision-making processes and avoid trying to divide communities on the grounds of gender, class, race, ethnic origin, political allegiance, caste, sexual orientation or disability.
- ix. Mining companies must respect the rights of each individual affected by their activities and not base decisions on the 'rights of the community'.
- x. Mining companies must recognise the primacy of community, environmental and human sustainability over the sustainability of their own projects – and not take any actions that will undermine the integrity of human beings, culture, society, environment and the way of life of the local community.
- xi. Mining companies must ensure that they give preference to local people with the required skills before bringing in people with the necessary skills from outside the area. Local unskilled labour should be given pre-eminence in terms of employment where necessary and required. Government and mining companies must take measures to ensure the availability of resources and skills training for locals.
- xii. Governments must define resettlement policies and strategies. Any resettlement process must be preceded by an environmental, economic, social and cultural impact assessment before any decisions are taken to relocate people.
- xiii. Relocation and resettlement must be based on the understanding that resettled communities will be better off after resettlement and must take into consideration the social and anthropological spatial cosmology of the communities so that the social fabric and cultural identity of the communities are not destroyed.
- xiv. The right of communities to participate in, and benefit from, the extraction of minerals on their land cannot be denied on the basis of relocation from the mining area.

CLOSURE AND COMPLETION PHASE

Mine closure design and planning (including the setting of objectives) must be developed and updated throughout the project, including during exploration, pre feasibility, feasibility, approval, construction, operation, decommissioning, closure of operations, and post closure biophysical and social monitoring. The mine closure process must be an on-going process that incorporates frequent reviews and adjustments in recognition of the changing social, economic and environmental situations. Where mining activities have continued for decades, mining communities get established and closure of the mine means not only a loss of jobs but also serious disruption to community life. Whenever mine closure becomes necessary, it should be orderly, systematic and planned to help the workers and dependent communities to cope without undue hardship.

Recommended principles and guidelines on the closure and completion phase

- i. Mining companies must accept the principle of mine completion beyond closure since many social and environmental impacts continue long after closure.
- ii. Government must accept the principle that they can hold mining companies responsible for impacts beyond closure.
- iii. Government must take appropriate measures to monitor the mine closure activities of companies.
- iv. The concept of 'design for closure' (and completion) must be applied in the design of all mining projects.
- v. Design for closure requires that the full mine-life cycle - from development to closure - be considered in the design of mine components so that the desired mine closure conditions are achieved.
- vi. Design for closure must also consider the potential, practical and financial implications of temporarily halting operations or early closure of the mine.
- vii. A detailed geological survey must be carried out to ascertain mine life spans in order to put in place contingency measures for closure.
- viii. Rehabilitation work must be undertaken during all phases of the operation rather than defer all these costs to the end of the project.
- ix. Protective measures to secure abandoned mine sites must be implemented to eliminate or minimise risks to the health and safety of the community.
- x. The buyer of a mining right accepts full responsibility for all impacts of the extractive operation, including those of any previous companies. The bad practices of a previous operator should not be used as an excuse by the current operator.
- xi. Governments must put in place post-mining regeneration priorities, which include restoration of land surface to a sufficient quality to support pre-mining land use activities and the restoration of the ecological function of mined land. In the case of

previously-degraded land, the ecological function of the land must be improved.

- xii.** Mine closure planning must be linked to local economic development plans to ensure that post mining land uses are compatible with surrounding development initiatives.
- xiii.** Every mining project must consider the contribution required to create a sustainable community and environment on closure and how to minimise dependency on the mine during the life of mine so that alternative economies are promoted before closure.
- xiv.** Revenues from mining must be used for diversification of the economy to ensure sustainability of livelihoods after the end of mining activities.
- xv.** Communities (and all other stakeholders) have a right to participate in decisions that affect their lives. Therefore, closure plans must respect the rights of communities and individuals.
- xvi.** There must be transparent and full consultation between all stakeholders during closure planning and implementation processes. Local authorities must be mandated by law to oversee mine closure and the subsequent land rehabilitation process.
- xvii.** The full range of impacts – negative, positive and cumulative – of mining activities must be taken into account in the combined project management and risk management approaches to mine closure.²²
- xviii.** Closure funds must be jointly and transparently managed by the mining company, Government and affected communities.
- xix.** Government must regulate that all companies create a fund for the rehabilitation or restoration of the ecosystem upon closure of the resource extraction activity.
- xx.** Mining companies must implement best practices in their operations, including ecosystem restoration.
- xxi.** Mining companies must generate financial resources that – after the closure of the mine – are invested into economic and social activities for local communities, and ecosystem restoration.
- xxii.** Mining sites must be transformed at closure into something that can contribute to local communities, that is, either restored to agricultural or grazing land, or turned into recreational sites or even national parks.
- xxiii.** Mine site reclamation and rehabilitation is a multidisciplinary process that is very site-specific and must be adapted to local conditions and environmental and social characteristics. The clear definition of the future land use is an essential requirement that must be addressed prior to initiating any reclamation activities.
- xxiv.** Acid mine drainage is one of the main environmental issues associated with closure activities and it is critical to have reliable and accessible mine waste characterization procedures in place so as to correctly predict this problem.
- xxv.** Government should mandate and verify that mining companies produce due diligence reports on the state of the mines in cases where a company intends to sell mining rights in an operating mine. This is important to prevent locals or indigenous players from buying or investing in shells/exhausted mines.



USE OF THE RESOURCE BAROMETER

Given the impact of mining, both positive and negative, and the potential of the Region's natural wealth to drive economic development and diversification in SADC countries, constant and effective evaluation and monitoring of this sector is paramount. The Barometer will be used to evaluate the performance of the mining sector in two ways.

Firstly, the Barometer will be used to publish country Parliamentary Reports every year for each SADC country on the state of the extractive sector. The country reports will be consolidated into one Regional Report.

Secondly, Parliaments will use these principles and guidelines in their day-to-day oversight of the Executive. Members of Parliament will have to familiarise themselves with these principles and use them along with all the other tools at their disposal, such as committee hearings, requests for documentation, parliamentary debates, etc., to keep a close watch on mining activities to ensure that the country's mineral wealth benefits the country and all its citizens.



ANNEXES

ANNEX 1:

**Parliamentary Statement, Birchwood Hotel Johannesburg, South Africa,
30 Oct, 2010**

Parliamentary statement

'TOWARDS ENHANCING PARLIAMENTARY LEGISLATIVE AND OVERSIGHT ROLE IN EXTRACTIVE INDUSTRIES SECTOR'

Saturday, 30th October 2010, Birchwood Hotel, Johannesburg, South Africa

Preamble

Sub-Saharan Africa continues to be resource rich but paradoxically remains unlikely to meet most of the United Nations' Millennium Development Goals (MDGs), and more especially the goal on Eradicating Extreme Poverty. In line with their representational, law making and oversight function, Parliamentarians from Angola, Democratic Republic of Congo, Malawi, Swaziland, Zambia, Zimbabwe assisted by Southern African experts, met under the auspices of the SADC Parliamentary Forum and the Southern Africa Resource Watch (SARW) at Birchwood Hotel, Johannesburg, South Africa. The overall aim of the consultative meeting was to critically review extractive industries in Southern Africa in order to identify issues pertaining to further parliamentary awareness and capacity development.

The Meeting, amongst other things, dealt with important matters such as Contract Negotiations, Regional Policy Harmonization, Revenue Transparency, Environmental Protection, Sustainable Development and Social Empowerment through Corporate Social Responsibility.

The resolutions emanating therefrom are:

1. There is great urgency in Southern Africa to turn the 'resource curse' into a blessing for the benefit of the SADC

citizenry, and the role of Parliament in this endeavour is indispensable;

- 2.** Whilst the enhanced China-Africa relations seem to have created new opportunities and alternatives to the traditional trade with the West, African countries are urged to prioritize their own development needs and zealously guard national interest and sovereignty. The foregoing paradigm must be cognizant of an overarching regard for human rights and human dignity in every respect;
- 3.** The legislative and institutional environments currently obtained are weak and urgently require strengthening to ensure greater returns from the extraction of natural resources;
- 4.** It is imperative that Strategic Environmental and Social Impact Assessments be prepared by reputable experts, who are independent of both Government and private sector interests, after due consultation with local communities and other stakeholders prior to commencement, to be adhered to and reviewed throughout the lifespan of any extractive operation and beyond;
- 5.** Local communities living adjacent to extraction areas, including those who are moved from their traditional lands, are often neglected and there is a need to ensure that they become ultimate beneficiaries through participation and overall empowerment;
- 6.** Environmental degradation resulting from the mining activities adversely affects local communities and the country at large, but the burden of consequent

rehabilitation is normally left to Governments instead of the operators. Mining companies should be held liable for remediation for the entire operation;

7. The oversight role of Parliament must be strengthened through legislative review, gathering more information, enhanced interaction between the relevant Portfolio Committees and concerned stakeholders, tracking contributions of the extractive industries to the national budgets and audit thereof. This can be achieved through requisite training and capacity building exercises with development partners and Civil Society;

8. Research into the activities of the extractive industries with, amongst other objectives, the aim of identifying best practices in resource governance such as fiscal regimes in SADC, will provide a sound basis for ensuring optimal benefit from our finite precious resources;

9. Our Governments are deemed to be lenient towards Foreign Direct Investors (FDI) whereas it is necessary to uphold stringent standards prevalent in their respective countries of origin;

10. The corporate practice of hoarding mining revenues

outside the borders of a country where mining is taking place, militates against the balance of payments of that country and should thus be discouraged;

11. The creation of common benchmarks/standards and best practices for policy and legislation on environment and natural resources management for extractive industries must be pursued with ardent diligence;

12. There is thus a need for a SADC Parliament that, amongst other objectives, would ensure harmonization of legislation and lead to greater regional oversight of extractive operations; and

13. The role of civil society including media is crucial in providing a sound partnership in tracking, raising public awareness on critical issues as well as assisting in the oversight function.

Finally, the meeting highly commended the SADC Parliamentary Forum and Southern African Resource Watch (SARW) cooperation, and urged its continuation for the benefit of greater parliamentary awareness, oversight and capacity development in the quest for resource justice in Africa.

List of Delegates who attended the meeting on the 30th October 2010, Birchwood Hotel, Johannesburg, South Africa

DELEGATE	ORGANISATION
Madalena Da Costa Narciso	Member of Parliament, Angola
Musendu Flungu	Member of Senate, DRC
David Kaweche	Member of Parliament, Malawi
Ncengcenge Dlamini	Member of Parliament, Swaziland
Charles Kakoma	Member of Parliament, Zambia
Percy Chanda	Member of Parliament, Zambia
Robert Kenneth Sichinga	Member of Parliament, Zambia
Edward Chindori	Member of Parliament, Zimbabwe
Maxwell Dube	Member of Parliament, Zimbabwe
Dr. Esau Chiviya	Southern Africa Development Community Parliamentary Forum
Lidia Alexandre	Member of Support Staff, Angola
Rafiq Hajat	Institute for Policy Interaction (IPI), Malawi
David van Wyk	Bench Marks Foundation, SA
Claude Kabemba	Southern Africa Resource Watch
Masego Madzwamuse	Environmental Consultant
Dennis Gondwe	
Raphael Karuaihe	

ANNEX 2:

Delegates who attended the SADC Resource Barometer Meeting, Johannesburg, 30 April 2011

DELEGATE	ORGANISATION
Claude Kabemba	Southern Africa Resource Watch
Deprose Muchena	Open Society Initiative for Southern Africa
Masego Madzwamuse	Open Society Initiative for Southern Africa
Albertina Delgado	Open Society Initiative for Southern Africa
Nixon Kariithi	Consultant
Paul Msoma	Southern Africa Development Community Parliamentary Forum
Farai Maguwu	Centre for Research and Development
Hilma Mote	Labour Resource and Research Institute
Rafiq Hajat	Institute for Policy Interaction
Jean Losango	Consultant
Jacinto Rocha	Mineral Law and Management Consultant
David van Wyk	Bench Marks

ANNEX 3:

Delegates who attended the Review of the Principles and Guidelines for Resource Management, Accountability and Monitoring in the SADC Region, Crowne Plaza Hotel, Johannesburg, South Africa, 12-13 Dec, 2012

DELEGATE	ORGANISATION
Morgan Katati	Zambia Institute of Environmental Management
Kabaso Bwalya	Zambia Council for Social Development
Edward Lange	Southern Africa Resource Watch
Claudia Manjate	World Wide Fund Mozambique
Camilo Nhancale	Kuwuka Juventude Desenvolvimento e Advocacia Ambiental
Lehlohonolo Chefa	Melupe Consultancy
Lucia Leboto	Catholic Commission for Justice and Peace
Mabusetza Lenka	Transformation Resource Centre
Jean Pierre Muteba	Nouvelle Dynamique Syndicale (NDS), DRC
Joelle Mukungu	OCEAN, DRC
Georges Mukuli	Southern Africa Resource Watch, DRC
Mutuso Dhliwayo	Zimbabwe Environmental Law Association (ZELA), Zimbabwe
Chiedza Matimba	Environment Africa
Jennifer Mufune	Gender and Media in Southern Africa
Dorcas Hove	Federation of African Media Women-SADC
Gertrude Mutsweni	Congress of South African Trade Unions
Hon Billy Mwaningange	Member of Parliament Namibia
Aaron Slargwer	Parliamentary Clerk - Namibia
Franck Fwamba	Journalist
Irene Wabiwa	Greenpeace
Jean Didier Losango	Corporate Social Responsibility specialist
David van Wyk	Bench Mark Foundation
Hassen Logat	Bench Mark
Professor Freek Cronje	North West University
Mosa Mabuza	Anglo American
Charlotte Mosiane	Anglo American
Mohamed Habibu Juma Mnyaa	Member of Parliament Tanzania
Situmbeko Musokotwane	Member of Parliament Zambia
Sisonke Msimang	Open Society Initiative for Southern Africa
Abram Kesupile	Member of Parliament Botswana
Tiego Mpho	Tlhare Segolo
Emmanuel Umpula	L'Action Contre l'Impunité pour les droits Humains
Paul Msoma	Southern Africa Development Community Parliamentary Forum
Chisomo Phiri	Catholic Diocese of Ndola
Claude Kabemba	Southern Africa Resource Watch
Brown Motsau	Gold and Uranium Belt Impact Censoring Organisation
Barry Nkomo	Environmental Consultant
Janet Munakame	Africa Diaspora Worker's Network

ANNEX 4:

Delegates who attended the Consolidation of the Principles for Resource Governance and Monitoring in Southern Africa, Holiday Inn, Sandton, South Africa, 14-15 August 2012

DELEGATE	ORGANISATION
John Lungu	Lecture -Copperbelt University, Zambia
Tenadai Makanza	Alternatives to neo-liberalism in Southern Africa (ANSA)
Wilfred Lombe	United Nations Economic Commission for Africa (ECA)
Reinford Mwangonde	Citizens for Justice, Malawi
Paul Msoma	Southern Africa Development Community Parliamentary Forum
Theresa Moyo	Lecture University of Limpopo
Rongai Chizema	Southern African Parliamentary Support Trust, Zimbabwe
Jennifer Clare Mohamed-Katerere	International Union for Conservation of Nature
Timothy Michael Healy	International Union for Conservation of Nature
Unaro Mungendje	Southern Africa Development Community Parliamentary Forum
Jean Losango	Independent Consultant
Deprose Muchena	Open Society Initiative for Southern Africa (OSISA)
Masego Madzwamuse	Open Society Initiative for Southern Africa (OSISA)
Claude Kabemba	Southern Africa Resource Watch
Moratua Thoke	Southern Africa Resource Watch
Anne Meyher	International Alliance on Natural Resources in Africa (IANDRA),
Cecilia Njenga	United Nations Environment Programme
Stephanie Brockerhoff	Studies in Poverty and Inequality Institute
Isobel Frye	Studies in Poverty and Inequality Institute
Hon. Abram Kesupile	Member of Parliament Botswana
Hon. Mohamend Habib Juma Mnyaa	Member of Parliament Tanzania
Hon. Dube Maxwell	Member of Parliament Zimbabwe
Hon. Mwaningange Billy	Member of Parliament Namibia
Hon. Robert Magongo	Member of Parliament Swaziland
Hon. Vitus Gomamtunda Dzoole Mwale	Member of Parliament Malawi
Hon Frederick Gona	Member of Parliament South Africa
Dr Situmbeko Musokotwane	Member of Parliament, Zambia
David van Wyk	Bench Mark Foundation

ENDNOTES

- 1** The cumulated profits of the three main extractives corporations (Rio Tinto, BHP Billiton, Anglo American) increased from US\$4.3 billion in 2002 to US\$26.9 billion in 2006.
- 2** Permanent Sovereignty over natural resources, G. A. Res.1803 (XVII),art.1,17UN.GAOR Supp. (No.17) at 15,U.N.Doc.A/5217(1962)
- 3** Ibid
- 4** International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, General Assembly Res.2200A (XXI), 16 December 1966, entry into force 3 January 1976
- 5** By governance, we mean the interactions among structures, processes and traditions that determine how power and responsibilities are exercised, how decision are taken and executed and how citizens or stakeholders have their say.
- 6** The laws must ensure that there are harsh punishments for companies and individuals who decide to be on the wrong side of the law. Companies that are granted mining licences should meet all requirements, especially legal, safety and environmental standards.
- 7** Under common law (and most SADC countries are common law countries), only persons who have a direct interest in a matter can institute litigation on it. This is premised on the view that the public or other bodies should not be allowed to champion the cause of others through the judicial process, locus standi.
- 8** Sometimes the rights of the affected communities are violated by the state or by giant multinational companies where matters often become too technical or expensive for ordinary citizens to handle.
- 9** This happens in Ghana and Sierra Leone, where they are made public.
- 10** Some Key Features: Retention of public servants is a critical issue in building institutional capacities. Several suggestions (see above) can be made to ensure that qualified staff remain in their posts. Financing of such reinforcement must come from public budget to ensure transparency and independence of the Administration. Financing principles can be devised so as to ensure that sufficient amount of funds are allocated to allow smooth running of the Administration and financing of needed investment. Performance evaluation systems can be set up linking budget available for the reinforcement schemes to mineral commodities revenues collected (in percentage of total export, percentage of GDP, of countries revenues etc.). This will require continuous reinforcement of the capacity of public administrators to ensure an effective administration of the extractive industries, in particular revenue management and enforcement of mining policies, laws and regulations. The availability of domestic capacity and expertise will determine whether a country can overcome many of the other challenges involved in resource management.

- 11** The OECD Guidelines provide a set of principles for multinational companies on social and environmental performance, and adherence to host countries' laws and tax regulations, and anti-bribery measures.
- 12** Where practical, auctions are generally the preferred mode, both on grounds of transparency and securing maximum value.
- 13** Governments must be held accountable for all contracts they enter into. The need for scrutiny is even more pressing when the contracts concern non-renewable resources.
- 14** In most countries around the world, sub-soil resources such as minerals, oil, and gas are the property of the nation, not of the individual property owner of the surface rights.
- 15** For instance, the Mozambican government argues that if citizens want to know about the contracts signed between the government and companies, they should consult the model contract. But is the model contract used for all kinds of resources?
- 16** Well designed regulations or contractual terms must specifically identify the nature of these impacts, how to avoid or mitigate them, and how to compensate those affected.
- 17** The Declaration covers four fundamental principles and rights at work: Freedom of association and the effective recognition of the right to collective bargaining; Elimination of all forms of forced or compulsory labour; Effective abolition of child labour; and Elimination of discrimination in respect of employment and occupation.
- 18** It was launched in 1999 by UN Secretary General Kofi Annan. It is based on 10 broad principles which cover four key areas: human rights, labour, environment, and anti-corruption.
- 19** Awareness and Preparedness for Emergencies at Local Level (APELL) could be used. APELL is a process which helps people prevent, prepare and respond appropriately to accidents and emergencies. APELL was developed by the United Nations Environment Programme (UNEP) in partnership with industry associations, communities and governments following some major industrial accidents that had serious impacts on health and the environment.
- 20** This will help to avoid important accountability information being declared confidential when it could inform the public about mismanagement of resources.
- 21** The EITI aims to promote transparency as well as social and economic benefits from oil, gas and mineral extraction.
- 22** Typical social risks include conflict over land use and ownership, effects on historic remains or culturally valued landscape elements, obstruction or changes in the local community's use of natural resources through physical impairment of the land (such as subsidence) or through contamination of soil, air or water resource. Extractive companies must collaborate with interested and affected communities and individuals.



The mission of the Southern Africa Resource Watch (SARW) is to ensure that extraction of natural resources in southern Africa contributes to sustainable development, which meets the needs of the present without compromising the ability of future generations to meet their needs.

SARW aims to monitor corporate and state conduct in the extraction and beneficiation of natural resources in the region; consolidate research and advocacy on natural resources extraction issues; shine a spotlight on the specific dynamics of natural resources in the region and building a distinctive understanding of the regional geo-political dynamics of resource economics; provide a platform of action, coordination and organization for researchers, policy makers and social justice activists to help oversee and strengthen corporate and state accountability in natural resources extraction; and, highlight the relationship between resource extraction activities and human rights and advocate for improved environmental and social responsibility practices.

SARW focuses on 10 southern Africa countries but is also working to build a strong research and advocacy network with research institutions, think tanks, universities, civil society organizations, lawyers and communities in southern Africa, the African continent and beyond that are interested in the extractive industries as it relates to revenue transparency, corporate social responsibility, human rights and poverty eradication.

www.sarwatch.org



The Southern African Development Community Parliamentary Forum (SADC PF) was established in 1997 as an autonomous institution of SADC. It is a regional inter-parliamentary body composed of thirteen parliaments representing over 3,500 parliamentarians from Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, South, Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

The Forum seeks to bring regional experiences to bear at the national level, to promote best practices in the role of parliaments in regional cooperation and integration. Its main aim is to provide a platform for parliaments and parliamentarians to promote and improve regional integration in the SADC region, through parliamentary involvement.

The vision of the SADC PF is a delivery-focused, people-centered institution that accelerates and promotes parliamentary participation in regional decision making for the benefit of the citizens of SADC. Its mission is to facilitate strategic partnerships within the SADC region, promote information sharing, initiate and implement projects that enhance regional integration and promote effective and professional parliamentary practice.

The realisation of both its vision and mission are underpinned by the following values: respect for basic human rights; effective service delivery; responsiveness to the electorate/voters/people; promotion of democracy and good governance; promotion of gender equality and equity; respect for individual freedoms and group rights; tolerance and inclusiveness; and transparency and accountability.

www.sadcpf.org