

ZIMBABWE ENVIRONMENTAL LAW ASSOCIATION (ZELA)

Using the Law to Protect and Conserve the Environment



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MINING REVENUE AND PAYMENTS: COMMENTS ON THE ZIMBABWE MID-TERM FISCAL POLICY REVIEW STATEMENT

The Minister of Finance presented the Mid-Term Fiscal Policy Review Statement to Parliament on the 13th of July 2010. In his statement, the Minister raised a number of important issues related to transparency and accountability in the mining sector around revenue generation, management and distribution. Without doubt the mining sector is one of the key sectors that can meaningfully contribute to national economic development over the coming years if the right policies, laws and institutional mechanisms are put in place. The potential of the sector has further been brought to the fore in the national discourse and so much expectations were raised after the discovery of diamonds in Marange. The purpose of this short analysis of the Mid-Term Fiscal Policy Review Statement is to further unravel and discuss a few of the positive and negative aspects arising from the issues raised in the statement and state the Zimbabwe Environmental Law Association (ZELA's) observations. In particular, ZELA's observations are anchored on the following aspects raised in the Fiscal Policy Statement; the position on the Kimberly Process Certification Scheme on Marange diamonds, the proposal to pass a Diamond Act, proposed amendment to mining legislation, mining taxation and the proposed Inter-Generational Fund.

The Kimberly Process and Marange Diamonds

In his statement the Minister of Finance reaffirmed Zimbabwe's commitment to the Kimberly Process Certification Scheme (KPCS) and its principles. The Minister also stated that if the country has complied with the KPCS standards then it should be allowed to sell the diamonds and failure to do this is contrary to due process and to the interests of ordinary Zimbabweans. As the statement clearly shows the trading of the diamonds is necessary even though allegations of human rights abuses still linger. In that regard, our recommendation has always been that given the concerns that have been raised around the smuggling of diamonds, unaccounted selling of the gems and human rights violations, the KPCS should within its existing mandates seek ways of ensuring that the trading of diamonds and mining operations at Marange are closely monitored through adoption of a comprehensive set of mechanisms. Such mechanisms include the expansion of the team of monitors to ensure minute compliance with the KP standards instead of relying on one monitor. Further, the monitor should establish a secretariat in Zimbabwe to continuously monitor what is happening and to show permanent presence than shuttling between Zimbabwe and South Africa. ZELA's position has always been that the country should be allowed to trade the diamonds under very comprehensive and strict conditions that eliminate leakages and smuggling of diamonds. Further, we are still opposed to monitors who stifle the operations of civil society organizations seeking to promote transparency and accountability in the diamond mining sector. The Minister should have started to talk about measures that the country should adopt to ensure transparency and accountability within the framework of the Kimberly Process.

Proposed Diamond Act

The Minister also proposed the passage of a Diamond Act. The Act will require all alluvial diamond mining to be conducted by and through the state, eliminate issuance of multiple mining licences that facilitate proliferation of small diamond mining operations and deal with the issue of compensation and relocation of displaced communities in Marange. Further, the proposed Act will provide for the establishment of a Diamond Fund which will form part of the overall National Mining Fund.

The passage of a Diamond Act will be a positive step to ensure that appropriate legislative and institutional measures are put in place to trigger proper exploitation and management of this important national resource. The passage of a diamond specific legislation will not be unique to Zimbabwe. There are many African countries that have passed legislation to regulate the exploitation and trade of diamonds including their exportation and importation. Examples include Ghana which has a

exploitation and trade of diamonds including their exportation and importation. Examples include Ghana which has a Diamond Act, Botswana has Export and Import of Diamonds Regulations and a Diamond Cutting Act while South Africa has a Diamond Export Levy Act and a Diamonds Act. However, what is critical in Zimbabwe is to put in place legislative measures and enforce them. It has always been the case that laws are put in place, but are not implemented. There will be need to build the human and financial resources to implement these legal measures.

While the need to remove multiple applications and allocations may be noble, it will also be vital to balance this with the need to ensure that small scale miners participate rather than giving most claims to government owned companies and multinational companies that have not been doing enough to plough back to the communities in which they are extracting resources. It is vital that the community itself gets a share of the mining business either through adoption of the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) model or through allocation of community land that the community can lease to a private operator and get a huge share from the profits. People should be empowered and derive immediate benefits and not wait for investment in infrastructure by the state, which may not come or may take many years to come. The inspiring example of the Royal Bafokeng Community which derives benefits from Platinum mining and is the richest indigenous community in South Africa comes to mind.

The creation of a Diamond Fund will also be a good idea if the right conditions for the management and distribution of the revenue are put in place. What is important is to ensure that this will not result in the creation of a fund that will be pillaged. The necessary measures to eliminate corruption and mismanagement of such funds will be vital. The long term and short-term purpose for which the funds will be used should be clearly defined.

The issue of compensating relocated families is of paramount importance in the mining sector. ZELA shares this concern and applaud the Ministry for including this aspect. However, what is important to focus on as well is the position of families or communities that would have been relocated before the Diamond Act is passed. This is important because 11 families have already been relocated from Chiadzwa. ZELA's fear is that these people may soon be ignored by the government and the mining companies that were instrumental in relocating them. The companies should have a continual obligation to support those who were relocated before the Act is passed. The area should not be left to be a squatter camp. Therefore, the Diamond Act should also provide scope for the application of the concept of corporate social responsibility investment which means that diamond mining companies in Zimbabwe should be obliged by law to give back to the adjacent community from which they are extracting the minerals. This responsibility should also extend to those relocated far from the mining area. While the issue of relocation and community compensation is generally covered in other laws, it should not be limited to the diamond mining sector alone, but should be broadened to include relocation of communities affected by the extraction of other minerals.

Amendments to the ZMDC Act

The Minister also proposed to amend the Zimbabwe Mining Development Corporation Act to ensure that all net income be transferred immediately to Treasury. The Act establishes ZMDC to be the investment vehicle of government in the mining sector. The ZMDC receives revenue from mining operations and this is treated as normal revenue. ZELA shares the concerns of the Minister and has always recommended that in the prevailing economic and political environment the resource depletion fee which is envisaged in some mining contracts should go directly to a special government fund established for that purpose rather than being treated as income for the state entity which may not be remitted to government. After all the state entities have been failing to pay dividends to government until recently thereof depriving government of income from natural resources.

Mineral Taxation

The Minister further touched on mining taxation. He attacked the current mining legal regime which limits mining taxes to only corporate tax and royalties from the mining sector as unsustainable. He recommended the adoption of a more equitable mining taxation model that is not offensive to market principles. In that regard, ZELA shares the same concern that some tradeoffs should be made between different objectives such as the desire to attract investment, maximize government revenue and enhance developmental impact of mining. However, the overriding principle in mining taxation should be national economic and community development. A balance is needed because if mining taxes are too high the investors may not come and if taxes are too low, government may not get enough revenue from mining operations. State involvement in mining has been used as another way of ensuring that besides relying on mining rents the state also holds shareholding in mining companies. The current 50% shareholding in diamond mining sector demonstrates the application of such an approach.

Inter-Generational Fund

The Minister also stated that there is need for the country to set up an Inter-Generational Fund into which some proceeds from the mining sector will be deposited for future generations. ZELA applauds the Minister for making such a proposal. The world over many natural resource rich countries have established what are called Sovereign Wealth Funds (SWF) that are meant to support government savings and promote an intergenerational transfer of resources or to build savings for future generations. The sovereign fund is a state owned investment fund. The concept is therefore not new and some lessons should

generations. The sovereign fund is a state owned investment fund. The concept is therefore not new and some lessons should be learnt from different countries such as Botswana and its Pula Fund made up of revenue from diamonds and other minerals, Norway which used oil revenue to create the Norway Government Pension Fund Global, Kuwait has a Reserve Fund for Future Generations from oil revenue, Libya has an Oil Reserve Fund, while Nigeria has an Excess Crude Account from oil revenue.

However, what should be noted is that while the idea of creating an Inter-Generational Fund from mining revenue and payments is noble, in most cases such funds are created in situations where the government has budgetary surpluses and have little or no international debt. Creating the Fund in the immediate future may not work properly in Zimbabwe, until the macro-economic environment has improved and government has managed to effectively manage the economy with budgetary surplus and having cleared the huge international debt. The other potential problem with the creation of such a fund is that in many countries where they have been created, there is lack of transparency and accountability on investment decisions and the purpose of investment. The challenge for Zimbabwe is to ensure that the country does not create a fertile ground for corrupt elements to loot funds from mineral resources.

Transparency and Accountability

The Minister also recognized the need to promote transparency and accountability in the mining sector. He stated that it is important that any revenue from Marange is accounted for transparently in terms of the law with the Consolidated Revenue Fund receiving its dues in full under Parliamentary oversight in terms of the Constitution. He stated that this would avoid the opaqueness and suspicion over actual value of diamonds from Marange. In his statement the Minister stated that according to the KPCS Monitor Zimbabwe has so far sold U\$30 million worth of diamonds from Marange which Treasury and ZIMRA have no record or knowledge of.

The above statements by the Minister paint another dark picture on the generation and distribution of revenue from diamond mining operations in Marange. Our contention is that the laws promoting transparency and accountability in Zimbabwe are not adequate in as much as they make it difficult for the generality of the people to access information in all sectors of the economy including the mining sector. Further, information that can enhance transparency and accountability in the mining sector is often treated as confidential information. This situation makes it difficult for the public to know the amount of revenue generated and payments being made by the mining sector and how they are being utilized by government for economic development and poverty reduction. There is also failure to respect the Parliament as it is being denied the opportunity to see what is happening in Marange. What ZELA recommends is that the exploitation of minerals in Zimbabwe should be in line with the Africa Mining Vision developed by the African Union in February 2009. In essence the vision calls for *“transparent, equitable and optimal exploitation of mineral resources to underpin broad based sustainable growth and socio-economic development”*. Further, we also propose that the laws on access to information and the mining legislation should be reformed to ensure all mining contracts signed by government with mining companies are made public. The ongoing constitutional reform process also presents an opportunity to include as founding principles of aspects of transparency and accountability by all Zimbabweans in the management of revenue and payments from natural resources. In practice all revenue generated by mining companies as well as payments made to government by mining companies and how it is distributed should be disclosed. As ZELA has always been saying the country can benefit more if it joins the Extractive Industries Transparency Initiative (EITI) which calls for the disclosure of mining revenues earned by governments and payments made to government by mining companies. What is also vital for the country to benefit from minerals is to ensure that those who negotiate mining contracts are full capacitated to do so. It is often the case that many transnational companies have highly skilled negotiators and are highly resourced while the developing states are poor and have limited expertise. In the end the country ends up signing bad deals.

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