

ZIMBABWE ENVIRONMENTAL LAW ASSOCIATION (ZELA)

Using the Law to Protect and Conserve the Environment



No. 6 London Derry Rd, Eastlea, Harare, Zimbabwe. Tel: 253381; 252093; 250971; Email: zela@mweb.co.zw,
Website: www.zela.org

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THE EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE (EITI) MAY PROMOTE TRANSPARENCY AND ACCOUNTABILITY IN ZIMBABWEAN MINING SECTOR

Following concerns raised by civil society organizations, the media, members of the Parliamentary Committee on Mines and Energy, Minister of Finance and the public on the pittance that the mining sector is contributing to the national fiscus, the Zimbabwe Environmental Law Association (ZELA) recommends the adoption of strategic national decisions and initiatives that may help to unlock the value of minerals for the benefit of the country and not a few individuals or mining companies. While a lot has been written and said about the Chiadzwa diamond circus it is important for people to know that the problem is not limited to Chiadzwa only but permeates the whole mining and resource extraction sector in Zimbabwe.

The following issues are pointers to a troubled sector. Broadly government owned and private mining companies have not been complying with applicable legislation in terms of mining, exploration, marketing, selling and management of mineral resources. For instance some mining agreements give exclusive marketing and selling rights of minerals contrary to the Minerals Marketing Corporation of Zimbabwe (MMCZ) Act (Chapter 21:04) which stipulates that the MMCZ has the sole responsibility for marketing and selling minerals in Zimbabwe. Mining companies can only sell or market minerals after approval by the MMCZ. Additionally, while some mining agreements provide for payment of natural resources depletion fees to government owned companies, this fee is not paid directly to government for the benefit of the people of Zimbabwe who own the minerals/natural resources. Until recently, government owned companies like ZMDC have not been declaring dividends to government from mining operations around the country. The same may befall the resource depletion fee. In the same vein, the royalties paid by mining companies are very insignificant and have not resulted in any significant community and national economic development.

The other problem in the mining sector is that the selection of investors has been shrouded in secrecy. This has led to the selection of foreign companies with no previous experience in the mining sector like Grandwell Holdings, a South African based waste reclamation company that was chosen to partner ZMDC to mine diamonds in Chiadzwa. Moreso, some mining concessions and contracts effectively entail the mortgaging of natural resources as they are tilted in favour of the foreign mining companies. Failure by mining companies to comply with environmental laws is another concern as some start operations without carrying out environmental impact assessments (EIAs) contrary to what would have been stated in agreements signed with government. The EIA is an important planning tool for assessing the potential impacts of activities on the environment, economy and social aspects and adjacent communities and the possible mitigatory measures that will be adopted. The joint venture company set up between the ZMDC owned Marange Resources (Pvt) and Grandwell Holdings to mine diamonds in Chiadzwa commenced operations without carrying out an EIA despite the fact that the agreement clearly provided for compliance with all national laws.

The cause of some of the above problems in Zimbabwe is that the mining contracts and agreements between government and mining investors have not been made public to ensure that the people know the revenue and expenditure streams as well as the obligations of the parties and whether the mining concessions are in favour of the country. There is need for people to be aware of the shareholding structures of the mining companies to see where the profits eventually go and what each investor or shareholder has brought to some of the mining partnerships. Restrictive access to information laws and practices by government is promoting the decay in the mining sector that resulted in the mining sector contributing a mere US \$ 4 million in royalties to government in 2009.

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Given the above situation, it is recommended that one of the ways of promoting transparency and accountability in the mining sector is for the country to consider joining the Extractive Industry Transparency Initiative (EITI) which other countries in Africa endowed with minerals, gas and oil are joining. The Extractive Industry Transparency Initiative is a process that was started in 2003 and has a set of principles and actions which candidate countries have to agree with and adopt before they are considered as compliant. The key principles are that natural resources wealth should be used for economic growth and poverty reduction, the public should understand government revenues and expenditure to help public debate, need for transparency by governments and companies involved in extracting natural resources, enhance public financial accountability, respect for laws and contracts, practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure, disclosure of payments and revenues by extractive industry companies and the need for all stakeholders (governments, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations and the public) to contribute to this process.

In terms of implementation actions, the EITI expects the regular publication of payments made by mining companies to governments and revenues received by governments from mining companies to a wider audience in a publicly accessible, comprehensive and comprehensible manner. Secondly, the payments and revenues should be independently audited. Thirdly, the payments and revenues should be reconciled by a credible, independent administrator, whose opinion regarding the reconciliation and discrepancies if any will be published. Fourthly, civil society should be actively engaged as a participant in the design, monitoring and evaluation of this process. Fifthly, a work plan to implement the above with set measurable targets and a timetable for implementation should be developed by the country. These actions of government will then be validated and the country will be assessed as compliant or not with the EITI. Some of the African countries that are candidates include Zambia, Mozambique, Tanzania, Sierra Leone, Gabon, Ivory Coast, Ghana, Nigeria, DRC, Cameroon and Burkina Faso among others.

The importance of joining the EITI is that it promotes transparency and accountability in the mining sector. The initiative will also promote access to information, open debate and dialogue on natural resources use to ensure that resources are used to develop the country and not just to benefit a few people or companies. Transparency and accountability are essential elements for effective management of natural resources for poverty reduction, economic growth and sustainable development. In Zimbabwe, the government and private companies should be obliged by law to disclose, publish and subject to public scrutiny all mining contracts and agreements. People should access information on the revenue generated, its distribution, the names and ownership structures of private companies given mining contracts.

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