



# AN ASSESSMENT OF THE NATIONAL MINING LEGAL FRAMEWORKS AND POLICIES OF SADC COUNTRIES AGAINST THE AFRICA MINING VISION

(CLUSTER 1: MINING REVENUES AND MINERAL RENTS MANAGEMENT)



## THE CASE OF ZIMBABWE

## ABOUT AFRODAD

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### VISION

A prosperous Africa based on an equitable and sustainable development.

### MISSION

To contribute to Africa's inclusive economic growth and sustainable development through influencing policy change on debt management and development finance anchored on a right based approach.

### AFRODAD OVERALL STRATEGIC GOAL

The overall goal of AFRODAD is 'to influence African Governments to institute and implement policies and practices for sustainable development and eradication of poverty'.

### THEMATIC FOCUS AREA 1: DOMESTIC RESOURCE MOBILISATION

Thematic Goal: To contribute to the development and implementation of transparent, accountable and efficient mechanisms for mobilization and utilization of domestic resources in Africa.

### THEMATIC FOCUS AREA 2: DEBT MANAGEMENT

Thematic Goal: To contribute to the development and implementation of sustainable debt policies and practices in Africa.

### THEMATIC FOCUS AREA 3: INTERNATIONAL PUBLIC FINANCE

Thematic Goal: To influence the quality, impact and effectiveness of international public finance, in line with the agreed development cooperation effectiveness principles.

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# ACRONYMS

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AMV	Africa Mining Vision
AU	African Union
BIT	Bilateral Investment Treaty
CSR	Corporate Social Responsibility
DTA	Double Taxation Agreement
EITI	Extractive Industries Transparency Initiative
GDP	Gross Domestic Product
IFF	Illicit Financial Flows
MMCZ	Minerals Marketing Corporation of Zimbabwe
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
SADC	Southern African Development Community
SARS	South African Revenue Service
SWF	Sovereign Wealth Fund
ZIMRA	Zimbabwe Revenue Authority

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## THE CASE STUDY OF ZIMBABWE

This report is an assessment of the extent to which the mining policies and legal frameworks of Zimbabwe are in line with the aspirations of the 2009 adopted Africa Mining Vision (AMV), whose goal is to promote “transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”. This national study contributes to a broader regional study focusing on eight SADC countries, i.e. Angola, Botswana, Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe. Given the significant role of the mining sector in the economies of these countries, particularly mining exports and mining revenue contributions to total government tax revenue, the assessment was solely focused on the fiscal issues of mining as guided by the AMV Action Plan Cluster One on Mining Revenues and Mineral Rents Management. This cluster aims “to create a sustainable and well-governed mining sector that effectively garners and deploys resource rents”. It identifies a variety of activities and monitoring indicators for promoting two expected outcomes namely an enhanced share of mineral revenue accruing to African mining countries and improved management and use of mineral revenue. It is against these activities and/or monitoring indicators that the mining policies and legal frameworks of Zimbabwe are evaluated in this study.

The study used a qualitative analysis approach to address the objectives set out in the Terms of Reference. The main findings of the assessment for Zimbabwe are summarised below.

The Zimbabwe mining fiscal regime has been under review since 2013. The same also applies to the country’s principle mining legislation, the Mines and Minerals Act of 1961, where efforts are also underway to amend and modernise it through the Mines and Minerals Amendment Bill (2015). The old mining fiscal regime that is under review is characterized by a multiplicity of taxes and uncoordinated collections by the local authorities and a number of government agencies such as Zimbabwe Revenue Authority (ZIMRA), Environmental Management Agency (EMA), Ministry of Mines & Mining Development and Rural District Councils (RDCs), which have all hindered efficient revenue collection from the mining sector.

National capacity to physically audit mineral production and exports remains constrained, with regular claims that mining companies withhold information of their revenues and payments from government. In terms of promoting the principle that minerals should be taxed at point of extraction as a means of enhancing the share of mineral revenue accruing to the country, it is notable that the Zimbabwe Income Tax Act specifically requires that minerals be taxed at source. ZIMRA requires the Minerals Marketing Corporation of Zimbabwe (MMCZ) to deduct royalties on precious stones, precious metals (other than gold), base metals, industrial metals, coal bed, methane and coal at source and also requires the Reserve Bank of Zimbabwe and Chamber of Mines to deduct royalties on gold at source.

Following the declining commodity prices, the Zimbabwe government realised the importance of establishing a stabilisation fund in the form of a sovereign wealth fund. The Sovereign Wealth Fund of Zimbabwe Act [Chapter 22:20] (No.7 of 2014) was gazetted on 10 November 2014 and puts in place the Sovereign Wealth Fund of Zimbabwe. However, the fund has not been fully operationalised and structures are still being put in place.

The country has no specific policy or rent distribution system for allocating part of mineral revenue directly to communities near mining areas. However, the Mines and Minerals Act requires any miner of a registered mining location to pay a specified sum at specified intervals to any local authority within whose area the registered mining location is situated. The Minister responsible for mines may specify the sum as a lump sum or as a percentage of the value of the output of the mining location concerned or in such other manner as the Minister may think appropriate. The Zimbabwean law is silent on how such payments are to be utilised by the local authorities or district secretariat.

In terms of the need to develop mechanisms to facilitate local communities' access to jobs, education, transport, infrastructure, health services, water and sanitation, the Mines and Minerals Act has no specific provisions for these. It is only through the 2008 Indigenisation and Economic Empowerment Act (IEEA) that this can be deduced. The IEE policy requires that at least 51 percent of shares in every foreign owned company (including mining companies) be owned by indigenous Zimbabweans. Of this 51 percent, at least 10 percent must be disposed to local communities through a Community Share Ownership Trust (CSOT). A further 10 percent can also be availed to employees through a qualifying Employee Share Ownership Scheme/Trust (ESOS/T). Money accruing to CSOTs is expected to be used for social and economic infrastructure in accordance with community priorities which include provision, operation and maintenance of schools and other educational institutions, hospitals, clinics & dispensaries and provision, development and maintenance of roads and water works.

## INTRODUCTION AND BACKGROUND

Given the huge mineral resource endowment of Sub-Saharan Africa, it is undisputable that revenue mobilisation from the mining sector is key in the ongoing domestic resource mobilisation efforts aimed at making the continent more self-reliant financing its own development. However, there are concerns that the legal and regulatory frameworks governing the exploitation and management of mineral resources in Sub-Saharan Africa are still poor and weak. These are mainly characterised by lack of independent enforcement and oversight bodies, lack of transparency which results in poorly negotiated mineral concessions with fiscal terms that are sub-optimal and do not maximise the revenues from mineral investments, weak accountability of resource revenue use, inequitable distribution of mineral revenue and neglect of local authorities and communities living near mining areas.

Substantial portions of mining revenue and benefits tend to accrue to privately owned foreign companies and a small subsection of local elites at the expense of broad based benefits such as employment creation, human and physical development, and overall economic transformation. Inevitably, resource wealth has in many cases resulted in increased income inequality and economic distortions, and even triggered social and political instability, a situation that has been widely described as the ‘resource curse’.<sup>1</sup>

Recognising all these gaps and the need to improve mineral resource policies, legal, regulatory and administrative frameworks so as to maximise the development outcomes of mineral resources exploitation, in 2009, African Union Heads of State and Government adopted the Africa Mining Vision (AMV) whose goal is to promote **“transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”**.

To enable the attainment of the AMV goal, the African Union Heads of States and governments requested the AU Ministers in charge of mineral resources development to develop a concrete action plan for the realisation of the AMV. This culminated into an AMV Action Plan that was approved in 2011. The Action Plan comprises nine programme clusters of activities and indicators constructed around the following key pillars of the vision: Mining Revenues and Mineral Rents Management; Geological and Mining Information Systems; Building Human and Institutional Capacities; Artisanal and Small Scale Mining; Mineral Sector Governance; Research and Development; Environmental and Social issues; Linkages and Diversification; and Mobilising Mining and Infrastructure Investment.

### 1.1 Cluster 1 - Mining Revenues and Mineral Rents Management

Given the potential of the African mining sector in financing development in the continent with adoption of the AMV being the first step, the need to assess the progress that African countries have made in aligning their mining policies and legal frameworks to the AMV is of necessity. This study attempts to do this evaluation by focusing mainly on the “Mining Revenues and Mineral Rents Management” cluster whose main goal is **“to create a sustainable and well-governed mining sector that effectively garners and deploys resource rents”**.

1. Collier, Paul. 2003. ‘Natural Resources, Development and Conflict: Channels of Causation and Policy Interventions’. Washington D.C.:The World Bank



This goal was driven by the vital need to address observed fiscal regime challenges along the entire mineral value chain such as lack of transparent and competitive allocation of concessions for known mineral assets, the spending of mineral revenues disproportionately on current consumption which compromises inter-generational equity, inequitable distribution of mineral revenue and neglect of local authorities and communities living near mining areas and widespread tax evasion and avoidance schemes like transfer pricing (including over-invoicing of inputs costs).

The Mining Revenue and Mineral Rents Management cluster has two main expected accomplishments namely:

1. Enhanced share of mineral revenue accruing to African mining countries; and
2. Improved management and use of mineral revenue.

As shown in Table 1 below, each of the two expected accomplishments has a number of activities and indicators identified for tracking the achievement of the objectives and outcomes respectively. It is against these activities and indicators that the mining policies and legal frameworks of the four selected SADC countries will be assessed so as to determine the extent to which they are in line with the aspirations of the AMV.

**Table 1: Mining Revenues and Mineral Rents Management Cluster – Expected Accomplishments, Activities and Monitoring Indicators.**

Expected Accomplishment	Activities	Time Frame	Monitoring Indicators	Responsible Bodies and Main Actors	
Enhanced share of mineral revenue accruing to African mining countries	At national level				
	<ul style="list-style-type: none"> <li>Improve national capacity to physically audit mineral production and exports;</li> </ul>	ST	<ul style="list-style-type: none"> <li>Physical audit systems in place and implemented with trained inspectors;</li> </ul>	MS	
	<ul style="list-style-type: none"> <li>Review mineral regimes in terms of optimising revenues;</li> </ul>	ST ST-MT-LT	<ul style="list-style-type: none"> <li>Review of mineral regimes undertaken;</li> <li>Level of improvement in fiscal revenue collected by African mining countries;</li> </ul>	WB NGOs	
	<ul style="list-style-type: none"> <li>Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws;</li> </ul>	ST-MT ST-MT	<ul style="list-style-type: none"> <li>Increase in numbers of policy makers and other stakeholders participating in capacity building initiatives;</li> </ul>	CSOs	
	<ul style="list-style-type: none"> <li>Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls;</li> </ul>	ST-MT	<ul style="list-style-type: none"> <li>Degree of improvement in the design of fiscal terms;</li> </ul>	Bilateral	
	<ul style="list-style-type: none"> <li>Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance and evasion (e.g. transfer pricing);</li> </ul>	ST	<ul style="list-style-type: none"> <li>Extent to which tax leakages are reduced by evaluation systems as determined by independent audits of tax compliance;</li> </ul>	AfDB	
	<ul style="list-style-type: none"> <li>Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction; and</li> </ul>	ST	<ul style="list-style-type: none"> <li>Number of double taxation agreements signed and implemented by member states; and</li> <li>Extent to which competitive and transparent mineral concession systems are implemented.</li> </ul>	ECA	
	<ul style="list-style-type: none"> <li>Build capacity &amp; systems to auction mineral rights where applicable.</li> </ul>	ST			
	At sub regional and regional levels				
	<ul style="list-style-type: none"> <li>Review the current fiscal environment in African mining countries to develop guidelines &amp; standards for optimizing revenue (e.g. tax &amp; dividends) packages in a manner that does not discourage mining investment;</li> </ul>	ST	<ul style="list-style-type: none"> <li>Guidelines, standards and toolkits completed and distributed to RECs &amp; member states;</li> <li>Degree to which guidelines are used by members states;</li> </ul>		
	<ul style="list-style-type: none"> <li>Develop mineral taxation guidelines for implementation at REC and national levels; and</li> </ul>		<ul style="list-style-type: none"> <li>Guidelines, standards and toolkits completed and distributed to RECs and member states;</li> <li>Degree to which guidelines are used by members states; and</li> </ul>		
	<ul style="list-style-type: none"> <li>Develop typical financial models for mineral projects for member states and run training workshops at REC level.</li> </ul>		<ul style="list-style-type: none"> <li>Number of financing models that are developed and used by member states.</li> </ul>		

Table 1 Continued...

Expected Accomplishment	Activities	Time Frame	Monitoring Indicators	Responsible Bodies and Main Actors
	<p>At national level</p> <ul style="list-style-type: none"> <li>• Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds;</li> <li>• Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities;</li> <li>• Develop mechanisms to facilitate local communities access to jobs, education, transport infrastructure, health services, water and sanitation;</li> <li>• Develop the capacity of local communities to negotiate partnership agreements; and</li> <li>• Develop systems for strengthening capacities for national and sub-national bodies for revenue management.</li> </ul> <p>At sub regional and regional levels</p> <ul style="list-style-type: none"> <li>• Compile best practice guidelines on mineral revenue management and deployment for implementation at the REC and national levels.</li> </ul>	<p>ST</p> <p>ST</p> <p>ST-MT MT</p> <p>MT</p>	<ul style="list-style-type: none"> <li>• Number of SWFs established by African Mining countries;</li> <li>• Degree to which local authorities and communities improve their management of mineral revenues;</li> <li>• Best practice guidelines compiled; and</li> <li>• Extent to which guidelines are used by RECs and member states.</li> </ul>	

## 1.2 Snapshot of mining in SADC

The SADC region is home to a number of countries with a significant ownership of the world's major mineral resources. In terms of global reserves, over 90 percent of the platinum group of minerals (PGMs) are in South Africa and Zimbabwe, over 50 percent of diamond reserves are in Botswana, South Africa, DRC, Zimbabwe, Angola and Namibia and over 40 percent of chromite is in South Africa and Zimbabwe. Zambia and Mozambique are also known for their huge reserves of coal, with Zambia having rich deposits of copper and emeralds. Consequently, minerals together with other various commodities play a significant role in the economies of these countries.

As of 2014, mining revenue accounted for 37.4 percent of the government of Botswana's total tax revenue while mineral exports accounted for approximately 71.6 percent of total merchandise export receipts. In South Africa, mining also accounted for 26 percent and 20 percent of total merchandise exports and investment respectively. The same applies to Zimbabwe, where as of 2015, mining exports accounted for 50 percent of the total national exports. According to the 2013 and 2014 Mozambican Extractive Industries Transparency Initiative (MEITI) report, the extractive sector was the second sector that contributed most of the GDP growth in the order of 18 percent and 13 percent in 2013 and 2014 respectively.

Despite these high economic contributions, there have been concerns that the mobilisation and utilisation of proceeds from the mining sector have not translated into meaningful and tangible benefits such as poverty eradication and improved livelihoods in these countries. In this regard, the mining policies and legal frameworks for Zimbabwe are assessed against the aspirations of the Mining Revenue and Mineral Management cluster of the AMV to determine the extent to which they are designed to effectively garner and deploy mining revenue for development purposes.

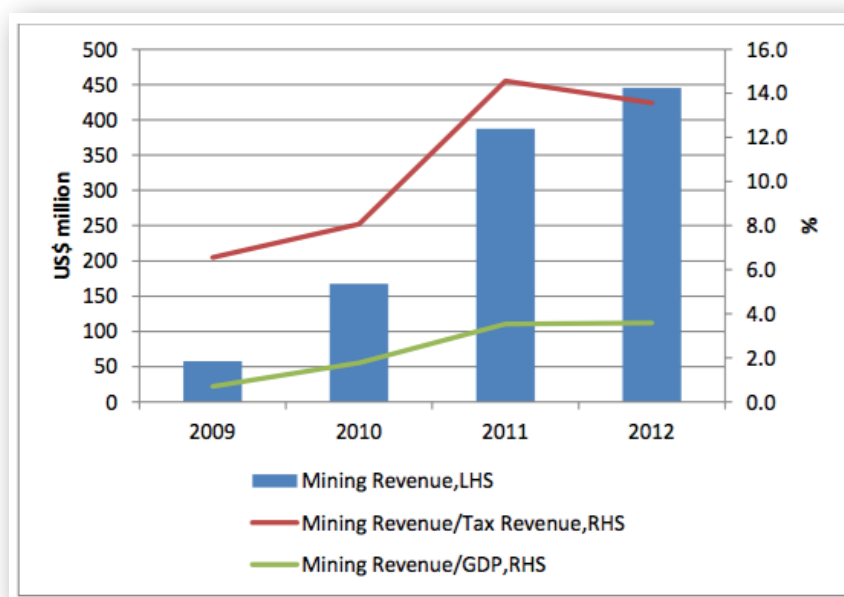
## ASSESSMENT OF THE MINING POLICIES AND LEGAL FRAMEWORKS OF ZIMBABWE

### 2.1 Overview of the mining sector in the economy

The Zimbabwean economy is estimated to have cumulatively declined by 50 percent between 2000 and 2008 due to challenges such as hyperinflation, massive currency devaluation and low capacity utilisation across all sectors of the economy. With the adoption of the multi-currency regime in 2009 and restoration of economic sanity, the economy enjoyed double digit growth rates of 11.4 percent, 11.9 percent and 10.6 percent in 2010, 2011 and 2012 respectively. However, economic growth has been slowing down since 2014 as currency shortages and the cost of capital have been increasing in the country.

With a vast range of mineral resources, inter-alia, diamonds, gold, platinum and chrome, the mining sector output recorded negative growth of -3.4 percent and -2.5 percent in 2014 and 2015 respectively. This was due to challenges such as low commodity prices and increasing/high operating costs. The sector's contribution to GDP is also estimated to have fallen to 9.0 percent in 2015, down from 9.2 percent in 2014 and 10 percent in 2013. Whilst the sector continues to account for over half of total national exports, its contribution is estimated to have declined from 57 percent in 2012 to 50 percent in 2015. As shown in Fig 1 below, mining revenue was generally on an upward trend between 2009 and 2012, increasing both in nominal terms and as percentage of total tax revenue and GDP respectively. However, ZIMRA reports indicate that mineral earnings, particularly mining royalties' collections for 2015 and the first quarter of 2016 were below their set targets on the back of depressed international mineral prices and less competitive mining fiscal regime.

**Fig 1: Evolution of Mining Revenue in Zimbabwe, 2009 – 2012**



**Source: Author's calculations from the Chamber of Mines and Reserve Bank of Zimbabwe Reports**

Generally, the mining tax system in Zimbabwe is a combination of royalties, corporate income taxes, withholding taxes, capital gains tax, additional profit tax and exploration fees among others. These are paid to different government departments with royalties being the major tax payment in the sector thereby contributing the most significant contribution of mining revenue to the state. Royalty rates in Zimbabwe range from 1 - 15 percent (diamonds 15 percent), platinum & precious stones (10 percent), gold (large scale - 3 percent on incremental output, cap of 5 percent, small scale 1 percent), other precious metals (4 percent), base metals and industrial minerals (2 percent) and coal (1 percent).

## **2.2 Laws and Policies governing mining and management of mineral revenues**

The main laws and policies that govern mining and particularly mining revenue management in Zimbabwe include:

### **Mines and Minerals Act of 1961**

The Mines and Minerals Act of 1961 is the main law that governs the exploitation of mineral resources in Zimbabwe. It vests all mineral rights in the President of the Republic of Zimbabwe. According to the Act, mining rights can be conferred to both local and foreign individuals and companies after acquiring a licence through an application to the Mining Commissioner. The draconian Act has been widely criticised by various stakeholders especially CSOs mainly because it supersedes all other legislations that might interfere with mining. Zimbabwe is currently working towards the Mines and Minerals Amendment Bill (2016), which aims at modernising the country's mineral and mining legislation. The amendments are also meant to provide for a computerised cadastre unit to manage mining titles.

### **The Minerals Marketing Corporation of Zimbabwe Act of 1982**

The Minerals Marketing Corporation of Zimbabwe Act established the Minerals Marketing Corporation of Zimbabwe (MMCZ) which began operating in 1983. It is a state owned enterprise under the Ministry of Mines and Mining development that is responsible for marketing and selling all minerals produced in Zimbabwe, with the exception of gold and silver.

### **The Base Mineral Export Control Act of 2001**

The Base Mineral Export Control Act prohibits or regulate and control the export of base minerals from Zimbabwe.

### **The Gold Trade Act of 2006**

The Gold Trade Act regulates dealings in gold and prohibits the unlawful possession of, or trading in gold.

### **The Indigenization and Economic Empowerment Act of 2008**

The Indigenization and Economic Empowerment (IEE) Act and the IEE policy respectively requires at least 51 percent of shares in every foreign owned company (including and particularly Mining companies) to be owned by indigenous Zimbabweans. Of this, at least 10 percent must be disposed to local communities through a Community Share Ownership Trust (CSOT) and money accruing to CSOTs ought to be used for social and economic infrastructure development in accordance with community priorities.

## **The Income Tax Act of 1967**

The Income Tax Act provides for the determination and taxation of income and other taxes from the mining sector.

## **2.3 Key institutions involved in the management of mining revenue**

Institutions that have a role to play in mining, collection and management of mining revenue in Zimbabwe include:

### **Ministry of Mines and Mining Development**

The Ministry of Mines and Mining Development is the parent ministry of the mining sector. Its responsibilities include regulating the sector, administering the mining laws, reviewing mining license applications and issuing respectively. This is mainly done through the Mining Affairs Board.

### **Ministry of Finance and Economic Development**

The Ministry of Finance and Economic Development is responsible for leading and guiding the formulation of the mining fiscal regime and managing all mining revenue deposited in the Consolidated Revenue Fund.

### **The Zimbabwe Revenue Authority (ZIMRA)**

The Zimbabwe Revenue Authority (ZIMRA) is responsible for administering and enforcing all taxes applicable to the mining sector. It also advises the Government on mining fiscal and economic matters such as mining revenue forecasting.

### **Minerals Marketing Corporation of Zimbabwe (MMCZ)**

As alluded to above, MMCZ is responsible for marketing and selling all minerals produced in Zimbabwe, with the exception of gold and silver. Thus, it is required by ZIMRA to deduct royalties on precious stones, precious metals (other than gold), base metals, industrial metals, coal bed, methane and coal at source. Royalties are charged based on the face value of the invoice and should be remitted to ZIMRA on or before the 10th day of the following month in which such deductions are made.

### **Reserve Bank of Zimbabwe**

The Reserve Bank of Zimbabwe or its subsidiaries such as Fidelity Printers and Refiners Pvt. Ltd are also required by ZIMRA to deduct royalties on gold at source.

### **Chamber of Mines**

The Chamber of Mines is also required by ZIMRA to deduct royalties on gold at source and remit to ZIMRA on or before the 10th day of the following month in which such deductions are made.

## **2.4 Assessment of the mining policies and legal frameworks**

As shown above, the mining sector in Zimbabwe is governed by several laws, policies and institutions. In this section these laws and policies will be analysed against the activities and indicators of the mining

revenues and mineral rents management cluster's two expected outcomes namely:

1. Enhanced share of mineral revenue accruing to African mining countries; and
2. Improved management and use of mineral revenue.

## **2.4.1 Enhanced share of mineral Revenue**

### **Improve national capacity to physically audit mineral production and exports**

Unlike countries such as Tanzania that have fully fledged Tanzania Minerals Audit Agency (TMAA) responsible for auditing the quality and quantity of minerals produced and exported by miners, there appears to be no similar institution in Zimbabwe. Between 2007 and 2009, the Reserve Bank of Zimbabwe is reported to have hired services of international minerals auditing firms like Alex Stewart International (ASI) to audit the mining industry, particularly the production and export of minerals from the country, which points to the nation's limited capacity to physically audit mineral production and exports. In fact, miners are required to report their production figures to the Ministry of Mines and Mining Development. However, there are reports that they have not been complying, thus contributing to worsening the mining data gaps in the country.

### **Review mineral regimes in terms of optimising revenues**

Following the observance that the Zimbabwe mining tax system is associated with inefficiencies, distortions, administrative challenges and multiplicity of taxes by government agencies such as local authorities, Zimbabwe Revenue Authority (ZIMRA), Environmental Management Agency (EMA), Ministry of Mines & Mining Development and Rural District Councils (RDCs), the review of mining fiscal regime has been ongoing since 2013 with the assistance of the Royal Norwegian Embassy and the World Bank. There have been indications by the Minister of Finance and Economic Development that lack of transparency and non-submission of data by mining houses was delaying the promulgation of the new mining fiscal regulations.<sup>2</sup> The aims of the new regime are to enhance the balance between revenue generation and attraction of investment into the mining sector by eliminating duplication in the collection of levies, addressing transfer pricing and thin capitalisations where high-g geared mining companies enjoy tax relief on interest charges and review some mining fees and charges which are observed to be relatively high compared to those obtained in the SADC region.

### **Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws**

ZIMRA Staff are reported to have received training from Adam Smith International in 2011 on a range of fiscal policy and mining taxation issues including windfall taxes, thin capitalisation, ring-fencing mineral rights, loss-carry forwards and depreciation, revenue modelling and the calculation of royalties. This was meant to capacitate the authority to monitor and assess revenues from the mining sector in view of its growth potential.

### **Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance and evasion (e.g. transfer pricing)**

Zimbabwe enacted new legislation on transfer pricing with effect from 1 January 2016, to augment the anti-avoidance sections of the Income Tax Act. The new transfer pricing legislation endorses the arm's length principle and imposes documentary obligations on taxpayers. These rules enable ZIMRA

2. <http://www.chronicle.co.zw/chinamasa-calls-for-transparency-in-mining-sector/>



to adjust transactions which are concluded on terms inconsistent with the arm's length principle with such adjustments having the potential to create additional tax liabilities.

### **Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction**

The Zimbabwe Income Tax Act requires that minerals be taxed at source. Consequently, the Zimbabwe Revenue Authority requires the Minerals Marketing Corporation of Zimbabwe (MMCZ) to deduct royalties on precious stones, precious metals (other than gold), base metals, industrial metals, coal bed, methane and coal at source and also requires the Reserve Bank of Zimbabwe and Chamber of Mines to deduct royalties on gold at source. Royalties are charged based on the face value of the invoice and should be remitted to ZIMRA on or before the 10th day of the following month in which such deductions are made.

Zimbabwe has signed double taxation agreements with more than 10 countries including United Kingdom, Netherlands, Sweden, Norway, South Africa, Bulgaria, Mauritius, Canada, Poland, France and Malaysia and Germany. Under the AMV Action Plan, the number of double taxation agreements and bilateral treaties signed and implanted between the African country and its investment partner states is the measurement indicator. However, it is not clear whether having a high number of signed agreements is good or not given that double taxation agreements can sometimes result in a country losing its tax rights which might also affect the ability of the country to tax minerals at the point of extraction as required by the AMV.

### **Build capacity & systems to auction mineral rights where applicable**

The Mines and Minerals Amendment Bill (2016) amends the principal Mines and Minerals Act by adding a new section 391H on auctioning of mining rights where the Ministry of Mines and Mining Development may put to auction, the right to mine certain minerals whenever there is need and in the interests of the nation.

## **2.4.2 Improved management and use of mineral revenue**

### **Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds**

The Sovereign Wealth Fund of Zimbabwe Act was signed into law in 2014. The Act states that the Fund will be driven primarily by 25 percent of all royalties on mineral exports, which will be deposited along with special dividends on the sales of diamonds, gas, granite and other minerals through the Zimbabwe Mining Development Corporation.

The objectives of the Fund are:

- to make secure investments for the benefit and enjoyment of future generations of Zimbabweans;
- to support the development objectives of the Government, including its long-term economic and social development; and
- to support fiscal or macroeconomic stabilisation, in particular to supplement the revenues of Zimbabwe when these are prejudiced by the fluctuation of prices payable for those minerals on which royalties and other taxes are collected for the benefit of the Consolidated Revenue Fund.

## **Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities**

The Constitution of Zimbabwe requires all fees, taxes and other sources of revenue (including all mining revenue) to be paid into the Consolidated Revenue Fund (CRF). There is no policy that communities near mining areas are given some allocation different from areas where there are no mines. However, Section 255 of the Mines and Minerals Act and /or Section 76 of the Mines and Minerals Amendment Bill, 2015 requires any miner of a registered mining location to pay a specified sum at specified intervals to any local authority within whose area the registered mining location is situated. The Minister responsible for mines may specify the sum as a lump sum or as a percentage of the value of the output of the mining location concerned, or in such other manner as the Minister may think appropriate.

## **Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation**

The Mines and Minerals Act has no specific provisions for community benefits and participation in mining nor does it specify that mining companies should have a Corporate Social Responsibility (CSR). It is however through the 2008 Indigenisation and Economic Empowerment Act (IEEA) that communities' access to such services can be derived from. The IEE policy requires at least 51 percent of shares in every foreign owned company (including mining companies) to be owned by indigenous Zimbabweans. Of this, at least 10 percent must be disposed to local communities through a Community Share Ownership Trust (CSOT). A further 10 percent can also be made available to employees through a qualifying Employee Share Ownership Scheme/Trust (ESOS/T). Money accruing to CSOTs ought to be used for social and economic infrastructure in accordance with community priorities which include:

- provision, operation and maintenance of schools and other educational institutions, hospitals, clinics and dispensaries; and
- provision, development and maintenance of roads and water works.

Despite the potential of the CSOTs in enhancing beneficiation of local communities from mining, the noble idea suffered a myriad of challenges that compromised communities' ability to benefit from the initiative. Some of the major challenges faced by most CSOTs include political interference, lack of financial integrity and weak policy framework to support the initiative.

A study by ZELA<sup>3</sup> concluded that despite the government's blame on other stakeholders for the failure of CSOTs, the Indigenisation Fund have been abused to be dipping pools to facilitate corruption by the ruling elite. It is equally imperative to appreciate that CSOTs managed to benefit some communities like Bindura, Gwanda and Tongogara where various projects including the building and repairs of schools, medical centres and dams.

## **2.5 Conclusion**

It is notable that the Zimbabwean tax law requires minerals to be taxed at source which is in line with the AMV requirements for enhancing mineral revenue accruing to the state. The 2014 enactment of the Sovereign Wealth Fund of Zimbabwe is also commendable. However, capacity to physically audit mineral production and exports together with regulations on negotiating contracts so as to optimize revenues and ensure fiscal space and responsiveness to windfall appears to be poor hence

3. Zimbabwe Environmental Law Association (2016), The legal and Economic Framework for Natural Resources - Related Statutory Funds in Zimbabwe

compromising efficiency and improved mining revenue collection in the country. In this regard it is recommended that the country:

- Finalise the amendments of the Mines and Minerals Act and the Development of the Mining Cadastre System.
- Finalise the review of the mining fiscal framework to align and rationalize the multiple taxes and charges levied on the mining industry and also promote transparency in the sector.
- Build and strengthen national capacity to physically audit mineral production and exports.
- Considerations can be given to the establishment of an institute like the Tanzania Minerals Audit Agency so as to address the weak revenue accountability and transparency concerns in the mining sector.
- Strengthen implementation and oversight on the Community Share Ownership Trusts to ensure mining community development in line with the Indigenization and Economic Empowerment Policy infrastructure development provisions.

## Bibliography

Attorneys, M. (2015). Doing Business in Zimbabwe: A Comprehensive Guide, 1–71.

<https://doi.org/10.1596/978-1-4648-0667-4>

Centre for Research and Development. (2014). Challenges and future prospects of the mining sector in Zimbabwe, 1–45. Retrieved from [http://www.crdzim.com/challenges and future prospects of the mining sector in Zimbabwe.CRD Report January 2014.pdf](http://www.crdzim.com/challenges-and-future-prospects-of-the-mining-sector-in-zimbabwe.crd-report-january-2014.pdf)

Chamber of Mines Zimbabwe (2015). State of the Mining Industry Survey. Report on the Findings

Dhliwayo, M. (Zimbabwe E. L. A. (2014). A review of Zimbabwe's draft minerals policy, 42. Retrieved from [www.zela.org](http://www.zela.org)

Jackson, T., & Green, K. (2015). Survey of Mining Companies 2015. Fraser Institute Annual, 1–90.

Jackson, T., & Green, K. P. (2016). Annual Survey of Mining Companies.

Mines and Minerals Amendment Bill, 2015, Pub. L. No. H.B. 19, 2015.] (2015). Zimbabwe.

Murombo, T. (2013). Regulating Mining in South Africa and Zimbabwe: Communities, the Environment and Perpetual Exploitation. LEAD Journal (Law, Environment & Development Journal), 9(1), 31–35.

Retrieved from

<http://search.ebscohost.com/login.aspx?direct=true&db=8gh&AN=90594916&site=ehost-live>

Reserve Bank of Zimbabwe. (2014). 2014 Annual Report. Trends and Future Prospects, (August), 28.

Spiegel, S. (2011). Policy and Regulation in Artisanal Mining Communities: Examining Strategies, Experiences and Key Lessons.

The Republic of Zimbabwe .Indigenization and Economic Empowerment Act, 2008 The Republic of Zimbabwe. Base Mineral Export Control Act, 2001

The Republic of Zimbabwe. Gold Trade Act, 2006

The Republic of Zimbabwe. Income Tax Act, 1967

The Republic of Zimbabwe. Minerals Marketing Corporation of Zimbabwe Act, 1982

The Republic of Zimbabwe. Mines and Minerals Act, 1961(Amendment of 2015) Williams, R. (2011).

The Marange Diamond Fields of Zimbabwe : an Overview, (October).



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