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Extractives Revenue Transparency in SADC: Challenges and Opportunities

Background

On 13 November 2014, the Southern Africa Liaison Office (SALO) held a regional multi-stakeholder workshop on Extractives Revenue Transparency as part of its "Extractive Futures Dialogue Series".[1] The series aims to enhance the sustainability and development contribution of resource extraction in South Africa and the region by facilitating multi-stakeholder dialogue and knowledge and experience sharing on international best practices in extractives transparency. This policy brief summarises the key insights from this workshop.

A recent wave of new mineral resource discoveries across Africa has increased the estimation of Africa's already substantial mineral endowment. There are several continental initiatives to ensure that the extraction of these minerals contributes to social development in Africa. Harnessing mining revenue more effectively is also part of African governments' attempts to generate domestic revenue in lieu of donor dependency.

There are competing expectations and interests between private sector investors, governments, labour, mining communities and broader citizenry in relation to minerals extraction. Investors and governments aim to generate a profit, in the latter case to reinvest in national economic and social development, while the general populace, labour and mining communities seek a positive social dividend. The challenge is to design systems that enable the extractives industry to balance these interests and enable mutual benefits. Transparency at all stages of the extractives process is a key ingredient to generating such mutual benefit.

(From left to right) Facilitator: **Tara Polzer Ngwato;** Presenters: Panel 1: **Makgotha Machaka,** Department of Mineral Resources, South Africa; **Gideon Ndalama,** Ministry of Mines, Energy and Water Development, Zambia**; Edmond Kangamungazi,** Caritas, Zambia*;* **Pooven Moodley,** OXFAM, South Africa

[1] The "Extractive Futures Dialogue Series" is supported directly by the British High Commission. SALO also acknowledges the support of the Royal Norwegian Embassy; Irish Aid and the Embassy of Ireland; the Embassy of Denmark; and OSISA, among others, for their on-going support of the Policy Dialogue Series.

(From left to right) Presenters: Panel 2: **Jacqueson Ranasay,** Madgascar Strategic Resources Ministry; **Isaac Kwesu,** Chamber of Mines, Zimbabwe; **Gilbert Makore,** 'Publish What You Pay' Campaign, Zimbabwe; **McBride Nkhalamba,** Southern Africa Trust

Summary of Dialogue

The following insights were shared by panelists and audience members during the dialogue meeting:

Iain Stewart, the Head of the Prosperity Fund Team at the British High Commission gave opening remarks on behalf of the British High Commission as the sponsor of the Extractive Futures Dialogue Series

Lack of trust and different expectations among stakeholders

❑ Extractives revenue transparency initiatives take place in a context of power asymmetry, information asymmetry and distrust between investors, producers, regulators (government), workers and affected communities. While transparency initiatives aim to reduce these asymmetries and build trust, their implementation is affected by these factors.

❑ Mine workers and near-mining communities are stakeholders that feel particularly excluded from decision-making and information flows. They often perceive collusion between industry and regulators.

❑ There is no shared understanding between communities, workers, government and industry of what contribution extractive industries should make to local and national social and economic development or what the vision of the 'good society' or 'good economy' should be. Therefore, even where transparency initiatives make information on revenue flows and impacts available, there may not be a consensus on whether these contributions are sufficient in relation to expectations.

Transparency about what?

❑ Transparency initiatives in the extractives sector traditionally focus on a narrow range of indicators, namely reconciling industry payments and government receipts from mining. During the workshop there was consensus that this is insufficient information to enable an informed analysis of whether extractives are contributing to social development. Transparency is needed for the full process and impact cycle of mining, including:

- Resource endowment identification and definition (exploration)
- Mining rights allocation policies and processes
- Awarding of mining contracts, including selection process and contracting conditions
- Use of mining revenue by governments, including distribution of revenue by geographical area (near-mining locality, region, national) and sector (social services, economic diversification/beneficiation, etc.)
- Impacts of mining activity and revenue on: the environment; social relations and governance structures (including through elite capture, labour migration, etc.); the structure of local and national economies (monopolisation, single sector dependency, distortions in pricing and wage levels, inequality levels, etc.).

- These dimensions of impact need to be measured not only for current populations (ideally compared with a pre-mining baseline), but also in terms of impacts on future generations.

Capacity

- Capacity constraints are a major factor limiting the effective implementation of extractives transparency initiatives in Africa, and, more broadly, the structuring of extractive industries for maximum social developmental impact.
- Key areas in which many African states lack capacity include:
    - mineral reserve exploration and valuation;
    - geological and mining information systems;
    - investment promotion;
    - negotiating good fiscal terms as part of mining contracts with international investors;
    - controlling revenue leakage through monitoring illicit profit-shifting mechanisms (e.g. transfer pricing), production accounting and by-product production by mines;
    - financial accounting systems to trace the use and impact of mining revenues;
    - provincial and local/municipal capacity to utilize mining revenues productively and transparently for local development;
    - integrated local economic development planning for up and downstream linkages, beneficiation and local economic diversification.
- Apart from the state, local communities often have insufficient capacity to engage productively with either mining houses or government.
- In some cases, a claim of capacity constraints may be used to mask a lack of political will to implement transparency initiatives. There is sufficient international best practice for states to draw on if they wish.
- Existing European and North American mandatory disclosure legislation can be powerful tools for holding foreign mining companies in Africa accountable where African monitoring and enforcement capacity is lacking, or to augment fledgling local transparency systems. However, reporting requirements in these western jurisdictions need to be adapted to disaggregate mining information project by project or country by country so that African advocacy organisations can better utilise it. In some cases, African community and civil society actors may find western legislators more accessible and responsive than their own. The drawback of working through third party enforcement mechanisms is that it does not change the power and capacity imbalance between large multinational companies, African states and affected local communities, and therefore does not lead to locally entrenched good corporate citizenship.
- There are also significant capacity differences within the private sector in implementing transparency measures. While many countries say they wish to encourage artisanal mining and domestically owned small and medium scale mines in order to spread the local economic benefits of resource extraction, these junior players have less capacity and sophistication than the majors in terms of social relations, labour standards, environmental standards, linkages for local beneficiation and financial reporting transparency. It is harder for governments to monitor many smaller companies than a few large ones.

Process and Substance

- It is important to distinguish between transparency (we know what is happening) and equity or justice (what is happening is right) in the extractive industry.
- Countries may be compliant with the Extractives Industry Transparency Initiative (EITI) in publishing tax payments and receipts, but grant companies such large tax breaks that virtually no revenue goes into local development. Transparency in itself does not prevent countries from continuing to engage in a ‘race to the bottom’ to supposedly attract investment.
- Transparency initiatives must be accompanied by advocacy to use the information to change policy or to enforce minimum standards. This requires political will by existing leaders and/or an increase in voice

and power by civil society or community actors to be able to sanction political leaders who do not implement.

Benefits and Beneficiation

- Transparency initiatives are intended to enable an informed cost benefit analysis of whether extractives are contributing more to social development than they are costing. However, even when information on all relevant dimensions of impact is available (which it is often not), there is no consensus on how different impacts should be weighed up against each other, e.g. economic growth versus environmental degradation, national tax revenue versus local social disruption, current employment generation versus future wage level distortions and inequality in the wider economy.
- Those stakeholders who bear a disproportionate amount of negative impacts, such as near-mining communities, often have the least voice in deciding whether mineral resources should be exploited or kept in the ground.
- It is necessary to move beyond normative calls for local beneficiation of mining products and diversification of the local economy away from extractives dependency. The question is what kinds of alternative economy are feasible and sustainable. While mining is based on the competitive advantage of a particular place (where the natural resources are found), so successful beneficiation and diversified industries must also have a competitive advantage. This requires African economies to develop their own markets for processed goods as well as investing in the R&D and human resource development needed for innovation to take place.

Regional approach

- No country can deal with changing the structure of extractives industries on its own. Reform of the global system of mineral extraction and trade in the interests of African countries and citizens needs a regional and continental civil society dialogue to keep the issue on the agenda.
- Extractive revenue transparency can be integrated into existing regional and pan-African structures and processes, such as the SADC Public-Private Partnerships Network, the SADC Mining Protocol and the AU's African Peer Review Mechanism's Economic Governance and Corporate Governance stream.

Conclusion and recommendations

The aim of greater transparency is to lead to policy change and changes in practice. This can only happen if greater information symmetry leads to greater power symmetry. If there is no change in power relations between investors, governments, labour, civil society and communities, then transparency initiatives can be easily rolled back or no substantive corrective action is taken even where transparency exists.

The following themes were identified for further dialogue:

1. **Common vision**: What kind of society do we want to see in the SADC region in the next 10 years and what kind of mining industry will contribute to that society through what kinds of linkages?
2. **Sharing Community Lessons**: Bringing together current mining communities with post-mining communities to learn how to turn short-term mining revenue into long-term social and economic development beyond the life of a mine.
3. **Minimum social standards**: Can existing transparency initiatives, like EITI, integrate minimum social standards in addition to a process-focused approach.
4. **Regional policy harmonization**: regional and continental information sharing and advocacy with regional governance bodies (SADC).

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The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

SALO believes that sustainable conflict resolution requires dialogue among a wide range of stakeholders in order to shift the positions and therefore the actions of key decision-makers

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