Alternatives on Resource Trade and Access to Information in Africa

A response to EU policy on raw materials

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Introduction

Resources are a valuable asset for sustaining growth, reducing poverty and achieving the Millennium Development Goals for African countries. In the past decade meetings have taken place in many parts of the globe to discuss ways to ensure that mineral-rich developing countries get better deals from the extraction of their abundant resources. It has been established that most developing countries, especially African countries, do not benefit from their resources. The causes are both internal and external. Internal causes include poor governance, weak tax regimes and poor tax collection, weak administration and secrecy. External causes include an unfair international trade regime, distorted foreign direct investment (FDI) and asymmetric information. But the biggest problem in the extractive industry in Africa is secrecy. Citizens in many developing countries do not have access to information related to the extraction and trade of their resources. Secrecy in extractive industries is not only related to contract negotiations and the refusal by governments and companies to make contracts available, but also relates to the entire value chain – countries' mineral potential, production volumes, revenue streams, corporate social responsibility arrangements, and mining closure funds. This paper looks at alternatives that are being developed both internationally and on the African continent to try to deal with this very serious problem affecting many resource rich poor countries.

A. SECRECY IN THE RESOURCE SECTOR AND IMPACT ON THE POOR

Most constitutions in Africa guarantee each citizen the right of access to information. Despite this constitutional right, citizens in most African countries have no access to information in relation to extractive industries. This lack of transparency promotes corruption and hinders African government's ability to maximize benefit from mineral resources trade. Thus, good governance is obstructed by secrecy in the sector. The importance of transparency in the extractive industry cannot be overestimated. In countries where mining seems to benefit the people, governments provide information on how decisions on resources extraction, revenue collection and distribution are made. Countries which have achieved a high level of control over their resources are those that have put in place systems of management that are transparent and accountable. Accountability and transparency helps to promote a pro-poor and pro-environment extractive industry.

The mining business and governance

Mining is a risky, complex and capital intensive business. It is also a long term investment. It has a level of unpredictability which sometimes both government and companies have little control over in terms of exploration cost, real level of production and future price fluctuation. This problem is compounded by weak institutions in Africa. It has also been observed that extractive companies prefer to invest in African countries with opaque, weak institutional and governance structures. The collusion between weak institutions and governance structures in Africa and mining companies' pressure to make profit exposes the sector to mismanagement, opacity and corruption. Although rarely documented and by nature hard to detect, corruption in allocation /negotiation of mining concessions is widespread in Africa. Because of the secrecy that surrounds mining contract negotiations it is very easy for acts of corruption to set in. Corruption can happen at each level of the value chain from the determination of the mineral reserve, licensing, contract negotiation, environmental impact assessment application, tax payment and mining closure. Many African countries, including the Democratic Republic of Congo (DRC), Liberia, and Guinea Conakry, have renegotiated mining contracts (see Box 1 for details of the DRC). Other countries are contemplating doing the same.

Most multinational companies resist attempts by countries to review their resource contracts. The renegotiation of resource contracts is similar with the principle of odious debt. The odious debt principle is morally convincing because of the primacy it ascribes to

BOX 1: EXAMPLE OF THE DRC RE-NEGOTIATING CONTRACTS

In the case of the DRC, the government of President Kabila initiated the renegotiation of 63 mining contracts in 2008. These contracts were signed during the period of war and political transition in total opacity when the state clearly was not in a position to engage in such commercial transactions. The state was weak and had no capacity to negotiate contracts. These contracts were extremely disadvantageous to the DRC, leaving the country with such a low share of resource revenue that the state will be unable to generate profits from the deals. In this case, the principle of permanent sovereignty over natural resources allowed the elected government to unilaterally cancel or amend dubious contracts. The case of the DRC shows that with combined pressure from below (local) and from above (external), it is possible to force government and companies to review their contracts.

an effective promise. It rightly stipulates that international treaties that are signed by an autocratic regime do not constitute an effective promise and, therefore, do not have to be paid back. Hence, the odious debt principle fulfills the principle of justice for international debts. In the same vein, dubious resources contracts which do not serve the interest of the people should be renegotiated or cancelled. This principle, however, is being undermined by the inclusion of very stringent investor-protection and dispute-settlement clauses in EU Free Trade Agreements (FTAs) and Economic Partnership Agreements (EPAs), which will effectively make it very difficult for developing countries to cancel or renegotiate odious mining contracts.

For any country, resources contracts (mineral, oil, timber or fisheries) are not simply commercial instruments; they are part of countries' public policy to achieve short and long term economic development. This is why contract negotiation and trade agreements on these resources must be transparent to allow citizens to hold their government to account, and where necessary, apply pressure for fair trade.

The lack of transparency is at the centre of the mismanagement of Africa's abundant natural resources. Most African countries' resource contracts and trade agreements are signed away from the scrutiny of citizens. In the majority of African countries, although this is slowly changing, it is difficult to know the terms of the agreements, due to opaque processes and reasons of confidentiality often invoked in relation to resource contracts (Chêne, 2007). In this environment, powerful multinational companies, sometimes supported by their governments, coerce their hosts (using their knowledge advantage and sometimes threats of withdrawal of Foreign Direct Investment) to get tax concessions, reduce corporate social responsibility, undermine environmental protection requirements and sideline community involvement in resource projects. Table 1 shows how highly profitable mining companies in South Africa are, and that they spend less than 1 percent of their profit on community development.

TABLE 1: COMMUNITY DEVELOPMENT SPENDING OF FIVE SELECTED COMPANIES IN 2007[1]

Community development spending (CDS) (millions)		Profit (millions)	CDS as % of Profit
Anglo Platinum	15.9	1.600	0.99
AngloGold Ashanti	3.2 (*)	657	0.49
Impala Platinum	5.7 (**)	2.200	0.26
Lonmin	2.8	408	0.68

[1] Figures provided by companies in Rands have been converted to US dollars at the rate of 1 Rand = $0.127
(*) Includes spending in southern Africa region from where a number of employees in South Africa are drawn.
(**) Includes community development spending in Zimbabwe, to be consistent with the fact that profit levels also include Zimbabwe.

Source: AngloGold Ashanti (2007), Anglo Platinum (2007), Impala Platinum (2008), Harmony (2007).

BOX 2: LACK OF TRANSPARENCY IN AFRICA'S MINING SECTOR

The lack of transparency and accountability has also led to illicit financial flows or transfer pricing. Karin Lissakers, Director of Revenue Watch Institute, says for example that in 2008, Africa exported natural resources worth some US $ 400 billion but the continent benefited very little. In the DRC, a senate report (the Mutamba report 2009) revealed that the country loses approximately US$ 5bn a year in the mining sector alone due to corruption and tax evasion; in Zambia a report by European and Zambian civil society (2010) accused Glencore, the world's largest commodities trader and owner of Mopani Copper mines in Zambia, of having evaded tax amounting to US$ 100 million.

In the situation of total opacity, companies believe that it is less costly to bribe than to pay market prices for resource concessions. In the DRC, for example, First Quantum (a Canadian Company) had its contract cancelled in 2009 after years of being in operation, when President Joseph Kabila's government discovered that due process was not followed when the contract was signed.

In Africa, mining operations are synonymous with corruption. The lack of direct benefits to local people from mining activities is increasingly producing violent manifestations and litigation from citizens demanding greater share of the revenue and protection of the environment. It is not surprising that there exists an unacceptable gap between enormous profits realised by mining companies on the one hand, and the limited revenues that remain in developing countries, which is compounded by the lack of tangible benefits realised by communities living within the immediate vicinity of the mines (see Box 2). In 2006, for instance, the Zambian government earned US$ 70 million from about US$ 3 billion turnover from copper sales. This is not reasonable even if the case for recapitalisation was made (Mwitwa and Kabemba, 2007). What in fact this amounted to was the transfer of wealth from one of the poorest countries in the world, facing huge developmental challenges, into the coffers of big Western multinationals. Sadly, many resource rich developing countries are similarly robbed of their resource wealth.

Most contracts do not deal comprehensively with human rights issues and social justice. Contracts also do not prioritise the environmental impact of mining. In many countries, companies select Environmental Impact Assessment (EIA) consultants to carry out the assessment of their project. There is no independent assessment of the EIA.

Equally, control of minerals in weak governance settings is often associated with violence, insecurity and human rights violations. Civil society groups and individual activists who have dared to speak out have met stiff resistance not only from powerful mining companies but also from governments. In Zimbabwe, a human rights activist Farai Maguwu and Director of the Zimbabwean based Centre for Research and Development has been arrested many times by President Robert Mugabe's regime for exposing corruption and human rights abuse in the trade of the Marange diamonds. As such, the lack of transparency and accountability in the extractive industries is undermining the consolidation of democracy in Africa.

B. THE ROLE OF THE EU

Impact of EU trade and investment policies

Current EU trade and investment policies are undermining Africa's ability to make the most of its natural resource wealth. For instance, a contentious issue that cuts across EU-Africa trade discussions on resource trade is the issue of export tax. The primary aim of EU trade policy is the establishment of an unregulated and unrestricted free market, which in the case of Africa includes the elimination of regulation and export restrictions on raw materials. Through the use of trade initiatives such as the Raw Materials Initiative (RMI) and Economic Partnership Agreements (EPAs), the EU is aggressively fighting export restrictions that it argues will restrict the supply of critical raw materials to European industry.

The RMI, for example, is an attempt by the EU to secure access to resources by all means including undermining transparency and accountability in Africa's extractive industry. This is in stark opposition to the Africa Mining Vision, passed by the African Union (AU) in 2009, which aims to introduce regulations on raw material extraction and trade. The Africa Mining Vision is in tune with many resource rich developing countries' new industrial strategies and policies which have a protectionist approach aimed at adding value to their resources to promote industrial development. The contradiction between the objectives of the EU's RMI and the Africa Mining Vision show how far apart the two economic blocs are, and clearly demonstrates how difficult it is to reconcile the interests of two very unequal partners facing two very different economic challenges. Africa

wants to fight poverty and accelerate development, while the EU is struggling to prevent economic decline and maintain global market share.

The EU wants unrestricted access to raw materials as a preventive mechanism to two realities. First, to deter resource rich countries from introducing access restrictions. The EU fears that such a move will have an impact on economic development and employment in Europe. But what about Africa? Any obstruction to the introduction of new export restrictions, the elimination of existing restrictions, or the prohibition of their use will severely limit Africa's policy space to define its own development strategies (Ramdoo, 2010). Secondly, the EU is concerned with the rapid erosion of its historic and neocolonial privileges with Africa since the appearance on the scene of new emerging powers and their increasing interest in accessing resources.

It is important for Africa to understand that trade agreements such as EPAs have become a space for the EU to deal with emerging powers like China, India and Brazil. It is not coincidental, for example, that the EU is insisting that the Most Favorable Nation (MFN) clause be part of EPAs to ensure that any preferential agreement negotiated with emerging countries or with African countries are automatically extended to the EU. The MFN clause will undermine South-South economic privileges and African regional economic integration. It is clear that in their current form, EPAs and the RMI will reinforce the character of an unequal EU-Africa trade regime.

The EU is also using foreign direct investment (FDI) as a means to freely access resources in Africa. African countries continue to be forced to open up their market if they want to attract FDI. FDI is being used to lower and undermine Africa's right to levy import and export duties. Using the same misleading ideology of attracting FDI, African countries continue to grant tax holidays to foreign investors. Fiscal incentives may not be the best mechanism for attracting FDI and in most cases the cost of incentives to attract FDI outweighs the benefits. African governments are foregoing millions of dollars in tax revenue from the mining industry because of generous tax concessions, usually granted discretionally in secret mining contracts. EU mining companies have been pushing for mining tax breaks in secret mining contracts amounting to an aggressive tax avoidance strategy. The RMI will expand and consolidate an already existing policy. Africa, if it wants to emulate other continents and countries that have benefited from their resources, must fight to protect its interests in international trade negotiations.

Africa's economic & trade agenda

In the natural resource sector, Africa is increasingly focusing on beneficiation and value addition [2].This policy is in tune with the continent's need to industrialise. All African countries want multinational companies to add value to their minerals in the country before exporting. EU mining companies, unfortunately, are refusing to beneficiate minerals in African countries where they are produced. To force these companies to add values to the minerals, African countries are contemplating introducing export taxes. The judicious use of tariffs in this case does not mean protection which allows permanent rent-seeking by inefficient industries, rather it means creating the space and time to allow such industries to develop or to restructure themselves in the face of global competition (Davies, 2008). For the EU, sadly, this is viewed as restrictive and trade distorting measures which need to be aggressively combated. The EU argues that export bans or quotas may lead to the temporary or even definitive closure of production units in the EU (European Commission Directorate-General for Trade, 2009). This may be true, but African countries want to industrialise and diversify their economies away from raw material export. This is becoming important if African countries are to increase their intra-regional trade.

There is no doubt that beneficiation could reduce the access of EU companies to inputs they need to remain competitive. But the EU must understand that export tax in this case is not aimed at maximising the market power of exporting countries, but at developing the domestic industry as a part of Africa industrial diversification efforts. This is not unique to Africa. Countries have introduced restrictions on raw materials exports as part of their industrial strategy; Russia imposes export duty of 50 per cent on scrap aluminum, India taxes iron ore export at 50 rupees a ton, and China has introduced an export tax of 120 percent on yellow phosphorous and increased export duties on coke to 40 percent (Kabemba, 2010).

Africa has no option but to introduce changes to its mineral production after centuries of mineral economies that have only produced questionable welfare gains and development outcomes for the majority of African

[2] In mining, beneficiation is a variety of processes whereby extracted ore from mining is separated into mineral and gangue, the former suitable for further processing or direct use. Based on this definition, the term has metaphorically come to be used within a context of economic development and corporate social responsibility to describe the proportion of the value derived from asset exploitation which stays 'in country' and benefits local communities. For example, in the diamond industry, the beneficiation imperative argues that cutting and polishing processes within the diamond value chain should be conducted in-country to maximise the local economic contribution.

BOX 3: DENYING BLACK AFRICA TO INDUSTRIALISE

Even the apartheid regime in South Africa was allowed by the EU to introduce tariff protection. The apartheid government identified strategic industrial priorities (such as iron and steel production and oil from coal), which were generally relatively capital intensive upstream industrial activities. These priority sectors were accorded tariff protection, as well as other forms of support and nurturing. Apartheid policy on minerals was nationalistic in nature. The main reason for this was that precious metals, in particular gold, were the most important means of foreign exchange and a crucial reserve asset. But this changed with the advent of democracy and black majority-rule in 1994, when the Africa National Congress (ANC) government was forced to liberalise the sector. The EU's behavior could signify a deliberate attempt to deny Black Africa to industrialise.

citizens. The EU must refrain from tax retaliation if developing countries introduce export taxes on strategic resources. African countries are aware that export restriction in one sector can induce responses from importing countries in an area where individual African countries are vulnerable. Equally, Africa is aware of the possibility that high prices that might be caused by export restrictions can encourage production in countries where such restrictions are not applied, thereby increasing supplies, which in turn will reduce prices in the long term (OECD, 2010). But, the EU must not use its economic power to force African countries to sign mining contracts and trade agreements that do not take into account best practices and which are not open to scrutiny by national parliament, civil society and communities.

In a competitive world where accessing Africa's resources has become imperative, there is a possibility that the EU could use threats to impose its will on developing countries. In 2010, for example, the European Commission (EC) said that it would withhold trade benefits from developing countries that restrict raw material export. It is clear that the EU is using trade and investment agreement to secure cheap access to raw materials and unfair preferential treatment for EU multinationals, at the expense of economic development and poverty eradication in Africa (see Box 3). This must change.

C. THE SEARCH FOR ALTERNATIVES

Happily, in recent years, many campaigners and activists for mining justice, both internationally and on the African continent, have brought to bear considerable pressure on national governments and mining companies to disclose information of their contractual agreement. These efforts have borne some fruits. We can distinguish efforts which are being deployed at the national and international levels. The following section of the paper examines international initiatives.

International initiatives for transparency and accountability

The United States and the European Union have taken unprecedented steps to promote transparency in the extractive industry. In July 2010, the U.S. Congress passed Section 1504 of the Dodd-Frank Act, a measure requiring companies registered with the Securities and Exchange Commission (SEC) to publicly report how much they pay governments for access to oil, gas and minerals, country-by-country and project-by-project. In October 2011, the European Commission issued a draft Directive requiring companies listed on EU stock exchanges and large private companies based in member states to disclose their payments to governments for oil, gas, minerals and timber, country-by-country and per project[3]. This EU directive also covers forestry, while 1504 is limited to oil, gas and mining. These two pieces of regulation circumvent clauses of confidentiality in contracts as well as the regulations of host countries' regulations which prohibit disclosure.

The EU Transparency Directive set out minimum transparency requirements for listed companies. It requires issuers of security in regulated markets within the EU to ensure appropriate transparency for investors

[3] See proposed amendment (in Oct. 2011) to the existing directive: Directive 2004/109/EC: Available: http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

through the disclosure of regulated information and its dissemination to the public through the EU. The Directives do not only focus on finance, they also call for listed companies to make periodic non–financial disclosures, generally in connection with the annual financial report, such as the so called Corporate Governance Statement. The Transparency Directives also make reference to the disclosure of Environmental, Social and Governance (ESG) data made by listed companies (EC, 2010). The EU Directive unfortunately does not make reference to companies' responsibilities towards communities.

The US Dodd Frank Act and the EU Directive will complement the effort already in place under the Extractive Industries Transparency Initiative (EITI). The EITI is a global initiative working towards the regular publication of payments and receipts from extractive companies with a view to promoting transparency, good governance and sustainable development[4]. It is a process by which government revenues generated by extractive industries are published in independently verified reports. Most of the implementing countries are in Africa. If properly implemented, the EITI could lead to the following benefits: improved governance, improved revenue collection, provision of a forum for collaboration, improved sovereign and corporate rating leading to increased investment, provision of a basis for public engagement, improved corporate risk management and reduced risk of capital conflict.

The Publish What You Pay (PWYP) campaign was pioneered by George Soros and it has been central to the promotion of the EITI. As George Soros puts it "The free and open participation of civil society is critical to the integrity of the EITI process" (2009). It is therefore deeply disturbing that some implementing countries have violated this founding principle of EITI – in fact and in spirit. Mozambique failed its validation in 2011 primarily because of poor civil society engagement. The voluntary nature of the EITI is its weakness. In addition, the EITI has a narrow focus on revenues while neglecting other important elements such as contract negotiation, environmental accountability and corporate social responsibilities. The biggest weakness of the EITI, however, is that major EU countries whose mining companies have invested massively in Africa have refused to become EITI implementers.

The spirit of the EU Transparency Directive is unfortunately in contradiction with and undermined by other EU initiatives such as the Raw Materials Initiative (RMI), and Economic Partnership Agreements (EPAs) which the EU has been negotiating with most African countries since 2002. In 2008, the European Commission presented its RMI and has been working to implement it (Sydow, Fuhr and Straub, 2011). The RMI is being promoted in terms of being a strategy focused on securing EU access to raw materials worldwide. It has raised legitimate criticism that the EU will use bullying tactics to coerce developing countries into opening up their markets, as it is doing with the Economic Partnership Agreements (EPAs), in order to gain unprotected access to resources in developing countries without respect for transparency, development, and social and environmental accountability. How will the EU marry two initiatives, one which promotes transparency and accountability, and the other which forces developing countries to allow the EU free and unregulated access to resources?

The RMI lacks coherence with development policy goals and sustainability and has the potential to undermine development prospects in resource-rich poor countries (Ibid.). The EU has also refused to include development benchmarks in EPAs. Accountability must ensure that resource rich countries are able to use their minerals to promote their internal economic growth and development. This means that developing countries should have the policy space to introduce policies that will ensure that the extractive sector contributes to domestic growth and economic development.

National initiatives for transparency and accountability

Significant initiatives which promote transparency and accountability have emerged in many developing countries since the democratic dispensation of the early 1990s. Below is a outline of initiatives that have a direct bearing on combating the scourge of secrecy in the extractive industry in Africa.

1. Information Bills: Most African countries have adopted Access to Information Bills, and the few that haven't, are under pressure to do so. The Bills state that every citizen has the right of access to information held by the state. Access to information has been an issue of concern in many developing countries. In Southern Africa for example, the Media Institute of Southern Africa and Article 19 have been leading a regional campaign around it.

Unfortunately, in most cases these Bills have been shelved for many years as governments developed cold feet. Where they are being implemented, the implementation has been selective and does not cover extractive industries. For access to information to become a reality, African citizens, civil society, labour and social movements must form a common front to

[4] The EITI brings together a coalition of resource-rich countries, civil society groups, donors, extractive companies, and investors.

demand from their governments the right to know. In extractive industries all operations must accept the principle of continuous free, prior and informed consent throughout the life of operations ensuring that the impacted community is fully informed of both hidden and visible impacts and costs of all stages of extractive operations, including direct and indirect costs. In the same vein, citizens have the right to know how their government is negotiating and selling their resources[5]. The principle of complete public transparency must operate prior to the awarding of contracts and contracts themselves must be made public. This transparency requires equal opportunities for citizens to monitor payments, receipts and utilisation of mineral tax revenues.

In this struggle, communities, especially those around mining activities are receiving attention. Communities are now being organised and structured to engage with companies and government. In South Africa, the Bench Mark Foundation has created a community research and monitoring team in the North West Province which has been very active in engaging platinum mines. The Southern Africa Resource Watch has developed a community training tool kit which will help build the capacity of mining communities to do their own advocacy. In this same perspective, it is important to engage traditional leaders in an effort to mobilise communities. The Southern Africa Resource Watch (SARW) is also leading the way in helping traditional leaders in Southern Africa understand their role in ensuring good governance of resources and ensuring their people benefit from any extractive work undertaken in their community. In 2011, SARW organised a workshop with eight Zambian traditional leaders and Zambian civil society.

2. Litigation: Litigation is also increasingly being used as an entry point for increasing transparency and accountability. Civil society organisations have taken companies to court for violating the rights of local communities, polluting their environment without compensation, and displacing people without prior consultation. There are a number of litigations against government and companies across the continent (see Box 4).

3. Sensitisation: There is also a sensitisation drive taking place to help political parties to start reflecting on how resources can be better managed. Transparency and accountability must be a policy orientation for all political parties vying for power. This is why, increasingly, election campaigns are being targeted as an entry point for increasing transparency and accountability in management of resources. Political parties are now forced to articulate their policy on resource governance in their manifestos. In October 2011, ahead of the 28

BOX 4: HOLDING COMPANIES TO ACCOUNT IN ZAMBIA

In Zambia, a case of environmental pollution taken to court by a group of citizens[6] against Konkola Copper Mines (KCM) based in the Mining Town of Chingola in the Copper belt has produced an unprecedented result. On November 10, 2011, five years after the case was taken to court, the High Court of Zambia found the company guilty and has asked KCM to pay US $ 2 million in reparation to 2,000 community members who have been affected by water pollution. Although the company has promised to appeal, the court decision sets a new precedence that communities can take a company or government to court and win.

However, many people think that the Court verdict was too lenient. This is how one Zambian citizen interprets the case: “The KCM has seen that Zambia has a very dull government and as such it can pollute at will. Zambia is full of dull creatures in government which do not care about the lives of the poor people. The dull creatures care only about KCM filling their pockets. Why can’t they fine KCM in millions of dollars? Look at what Obama did to BP, BP is paying billions of dollars ….this is how great leaders think. Not this government of dull creatures.”

In the meantime, attempts by the company to resolve water pollution have failed. The three boreholes in Shimulala provided by the company are rarely used by the community because they contain Copper, Iron, Acid and other minerals from underground.

[6] About 2,000 community members suffered and were attended to by the local hospitals. These people contributed legal fees amounting to K10,000 equivalent to USD $ 2.00 per person and managed to raise about K20,000,000 (Twenty Million Zambian Kwacha), equivalent to USD $ 4,000.00.

[5] In most countries around the world, sub-soil resources such as minerals, oil, and gas are the property of the nation, not the individual property of the owner of the surface rights.

November Presidential and Parliamentary elections in the Democratic Republic Congo (DRC), the Southern Africa Resource Watch (SARW) organised a conference where all political parties were invited to present their policy and strategies to resolve the country's resource curse. It was clear that the ruling party and all the opposition parties had not given the issue serious time and thought. This is what one participant had to say about the initiative, "SARW should have ensured that the conference is broadcast live on television and radio so that Congolese people can follow and witness for themselves the inability of political parties to manage their resources".

4. Legislative oversight: We are also seeing parliaments using their oversight role in the extractive industries. Generally, parliaments' oversight has been weak in most countries. Parliaments have been unable to use their oversight to promote transparency and accountability in the extractive industries mostly for political expediency. In most countries there exists an unwelcome pattern of executive interventions to blunt effective oversight. This situation is fast changing. Each parliament has established portfolio committees on extractive industries (mining, oil, forestry) and environment. There are efforts by civil society organisations in many developing countries to engage and train parliamentarians to get involved in monitoring extractive industries.

5. Activism: There is also a proliferation of civil society networks working on issues that are directly related to the extractive industries, especially calling for transparency and accountability. These organisations are focusing on contracts and revenue transparency, environmental protection, corporate social responsibilities of companies, and budget analysis. Publish What You Pay (PWYP) chapters in countries where they have been established are playing a key role in ensuring revenue transparency in the extractive industries.

The philosophy behind these local initiatives is that the state cannot stand above and outside of "society". This false dichotomy has contributed to opaque management of resources which has resulted in what is called the resource curse. The emerging initiatives, in general, speak to the concept of the "public sphere" and of "popular participatory" activism. Increasingly, in Africa, democratisation is moving beyond just elections, it is becoming an affirmation of the public sphere, thus increasing the prospects for mining justice for all. See Box 5 for an example initiative.

BOX 5: ACTIVISM IN ZIMBABWE

In Zimbabwe, the Zimbabwe Environmental Lawyers' Association (ZELA) has established a close relation with the Parliamentary Portfolio Committee on Mines and Energy. In 2010, ZELA, SARW and RWI trained parliamentarians to prepare them to engage with the mining legislation which was to be tabled before parliament. In 2011, ZELA continued with an outreach programme for members of the Parliamentary Portfolio Committee on Mines and Energy. The outreach focussed on platinum mining areas along the Great Dyke which is home to Zimbabwe's mineral base. President Mugabe's government has proposed an indigenisation policy whereby foreign-owned mining companies have to sell 51% of their worth to locals. On the other hand, some economic scholars caution that such a policy risks destroying the already vanquished industry. Parliamentarians have been taken on study visits to understand the real dynamics on the ground and prepare themselves to make informed decisions on key policy issues such as indigenisation.

C. TOWARDS FULL DISCLOSURE OF RESOURCE CONTRACTS AND TRADE POLICY

What Africa needs to benefit from its abundant mineral resources is transparency and accountability in the sector. Resource contracts must be in line with country's overall economic development strategy and must be in tune with broader international trade agreements. The RMI and EPAs will have a bearing on how resource contracts are negotiated in the future. Therefore, there must be a greater scrutiny of trade agreements that African countries are currently negotiating with the EU. African citizens through their parliaments, civil society and social movements must be allowed to review any trade agreement before it is finalised. This is the only way African people will protect their resources against any kind of spoliation from either local or outside actors.

It is imperative that African governments appropriate the Dodd-Frank Act and EU Directive by domesticating them. The disclosure of revenues and information on the extractive industries must be led by national regulations. This paper argues that efforts for transparency and access to information must be led by internal regulations; external initiatives (such as the Dodd-Frank Act and EU Directives) must simply play a supportive role.

Transparency in the extractive industries should not be an end in itself. It should lead to economic growth, development, and poverty reduction. Many countries are now disclosing mining contracts. Liberia has implemented contract disclosure requirements as part of the EITI Act, allowing citizens' access to resource contracts. In May 2011 oil contracts pertaining to the Jubilee Field in Ghana were made public. The Democratic Republic of Congo, under pressure from civil society and international partners, has made public all mining contracts. These disclosures must translate into better management of revenues and produce tangible benefit for citizens. Transparency and accountability cannot happen without consultation with communities. While legislations such as the Dodd-Frank Act, the EU Directive and the EITI force companies to publish their payments and other information, they fall short of forcing companies to consult with communities on all aspects of their activities including carrying out Environmental Impact Assessment, corporate governance and practices, and procurement policy. This must change; voluntary codes on corporate social responsibility alone do not work (War on Want, 2007).

Secrecy contributes to the exclusion of communities from participating in the management of their resources (see Box 6). Full disclosure, including the potential for increased burdens on the environment, has to be made before mining starts so that the public may decide whether permission can at all be granted for carrying out mining activities. The importance of full disclosure should not only be limited to foreign companies, but national companies must be also subject to the same requirements of transparency and accountability.

BOX 6: IMPACT OF OPACITY FOR LOCAL COMMUNITIES

In Mozambique in the case of Riverdale, a subsidiary of Rio Tinto, the community of Capanga in the Tete was displaced 40km from their land to Mualadzi to give way to coal extraction. The community is unhappy that the discussion was not fair and transparent. The community informed SARW that it was not involved in the discussion with the company and the individuals who represented it in the land resettlement discussion with the company were not selected by the community. Many compromises were made which the community is not happy with. For example, the community was moved before water, electricity, schools and clinic were provided for. The community also complains that the new area does not provide enough land for agriculture and grazing.

RECOMMENDATIONS

Below are a series of recommendations that are needed to move to a more transparent and equitable future, and bring benefits of natural resources to the people.

- The EU must make it mandatory for all EU companies involved in resource extraction to disclose contracts. Contrary to the belief that contract disclosure will undermine the competitiveness, disclosure can in fact increase competitiveness in the international market.

- The EU must promote binding standards for corporate accountability. Relying on voluntary codes of conduct and self-regulation to police the extractives industry has been shown to be ineffective.

- The EU must ensure that there is no contradiction between its development policies and access to raw material strategies (RMI and the EU Directives). The two must speak to each other.

- The EU must promote win-win instruments in resource trade with Africa. The EU must allow African countries policy space to initiate their own policies, including export tax, and value addition that would boost industrialisation, economic development and regional integration.

- The EU must not use the threat of withdrawing FDI as a weapon to discourage developing countries from introducing progressive legislation in the extractive industry, such as stringent environmental standards and performance or local content clauses.

- The African state needs to play a prominent role in resource management. It is at each country's level that actions for transparent and accountable resources management must take place.

- All African countries must investigate the possibility of joining the EITI. The EITI has proved to be an effective tool in the promotion of transparency and accountability.

- African countries need to remain vigilant to the terms and conditions of their international trade agreements to ensure that they are consistent with the developmental agenda of the continent expressed in the African Mining Vision.

- African countries must continue to make the case, at both multilateral and bilateral level, of why development considerations are critical for developing countries and for a sustainable trade regime. As such, development benchmarks must be included in EPAs, the RMI, and resource contracts.

- African governments must build efficient administration. It is clear that institutional constraints are the principle stumbling blocks to improved management and oversight of the extractive sector.

- African countries must increase their geological capabilities. Countries must be in possession of correct data on their mineral resources. This will eliminate the asymmetry of information that exists in the sector between the state and multinationals.

- African governments must ensure that FDI is not to the detriment of African growth and development. Companies that invest in the resource sector must be obliged to procure services and goods locally and from local companies in a transparent manner.

- African governments must promote local beneficiation in order to unlock the intrinsic value of minerals. Efforts should be made to export minerals in value added form as far as possible. Africa must not wait for the EU to give a green light to implement her own policies which are in the interest of the continent.

- The Africa Mining Vision must become the reference document for resource trade negotiation. The Mining Vision raises critical issues of value addition and industrialisation. The African Union must give life to its policy document by moving from formulation to implementation.

- The regional blocs Southern African Development Community (SADC), Economic Community Of West African States (ECOWAS), The Common Market for Eastern and Southern Africa (COMESA), and The West African Economic and Monetary Union (UEMOA), must quickly harmonise their resource policies and avoid countries entering into bilateral negotiation with the EU. Africa is weak when countries negotiate individually.

- African civil society must continue to build its knowledge and capacity to hold governments and companies to account.

- Citizens must be allowed to have complete access to information on their resources and the manner in which they are managed. The clause of confidentiality must be eliminated in all contracts.

- Consultation with local community and local community participation in resource management must be mandatory. African governments must include these issues in all contract negotiations and trade agreements.

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