GG GREENGOV ZW
Green Governance Zimbabwe Trust

MAY 2021 Vol: 04

NEWSLETTER

Constitutionalism, devolution and mining in Zimbabwe

Historically, extraction of minerals has always been a localized economic venture. Pre-colonial mining activities, were centralized to royalty- chieftainships and clans, whose architecture was not as intricate as modern day governance systems.

However, white settlers transformed mining from subsistent, communal and royalty ventures, into commercial large scale exploration activities through introduction of advanced technologies.

With the transition from colonial rule back to black majority rule, governance systems and institutions installed by settlers were adopted with little amendments on fundamental fiscal and economic frameworks.

All attention was pinned on securing political rights and freedoms, yet the legal framework, still benefited the black elite holders of land as before. Content with having political rights, black elites and conglomerates have continued to plunder the nation's resources following the colonial settlers model.

Within this current period of black majority rule, economic challenges are characteristic of the centralized system of resource management, within which an enclave economy is more apparent. However, communities in resource rich areas or other marginalized and less developed communal lands are seeking to break this state of affairs to promote equality through the devolution model.

In 2013, through a referendum, the agitation for greater inclusion of communties in governance came to be and principles for devolution were set out in the Constitution. Section 264 (1) of the Constitution of Zimbabwe provides that "Whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively."

This, ideally empowers local communities to govern resources, protect the interests of the marginalised communities, improve access to public services and promote developmental equity across the country.

The three tiers of government namely: the central government, provincial and metropolitan councils (PMCs) and local authorities are expected to play different roles and functions in the implementation of the devolution agenda.

The central government will be responsible for providing the policy direction, financing, creating the regulatory and legislative framework while PMCs will be responsible for initiating development programmes for their respective

provinces. Local authorities on the other hand, will have the responsibility of representing and managing the affairs of people in urban and rural areas of Zimbabwe respectively.

In countries where it has been successful, pre-conditions for successful implementation of devolution such as robust institutional mechanisms, creation of spaces for effective citizen participation and engagement, political and civil freedoms as well as capacity development at the local level among others are set.

Devoid of such detailed policy guidelines and subsidiary legislation, devolution roll-out can be merely recentralization of power. For instance, there are concerns over central government's approach to disbursing funds to provincial and local authorities through the Intergovernmental fiscal transfer (IGFT) system, without a law for the setting up of Provincial Councils and Local Authorities.

The funds will be distributed to the lower tiers of government, in line with the agreed formula, targeting projects and development which ensure sustainable exploitation of natural resources.

Lack of capacity within the lower tiers of government to develop bankable infrastructure projects, carry out feasibility studies, plan and speedily execute procurement of capital equipment and consumables in line with the Procurement and Regulatory Authority of Zimbabwe (PRAZ) will resulting in erosion of value of allocated resources due to inflation.

Making devolution work for communities in resource rich areas

Successful implementation of devolution requires a shared framework, which is accountable to local livelihood needs and people's rights to self-determination. Devolution alone without fiscal linkages, is not enough to spur local development.
Without inclusive planning and modeling, Zimbabwe risks implementing a devolution process which facilitates continuation of substantive central government control and management over natural resources, instead of a genuine shift in authority to lower tiers.

In practice, financial benefits from a devolved system usually fall short of local expectations. Income distribution models are generally decided at the central level, and governments often fail to deliver on their promised share of incomes, or returns are far less than anticipated and inadequate to maintain local enthusiasm.
Zimbabwe sits on vast mineral wealth that is under active commercial exploitation, yet the disconnect between mining activities and the general living standards of communities where resources are extracted is quite glaring.
The case of Chiadzwa diamonds smacks of poor mineral resource management which erodes anticipated community benefits from mining ventures, including local community development, employment and improved service delivery.

As the devolution drum beat gets louder and devolution is gaining traction in Zimbabwe, mining communities anticipate opportunities and progress through harnessing mining for sustainable and broad based local economic and social development. Perhaps, such an exercise can spur strong public conversation on how minerals can deliver benefits to communities to reverse the current undermining of anticipated development opportunities which stem from mining.

For instance, while government continues to rely on mining to finance economic development, as seen in the record breaking gold deliveries of 33.2 tonnes of gold conservatively worth US$1 billion against a set target of 30 tonnes to Fidelity Printers (FPR), perennial challenges still abound. Central government already saddled with high recurrent expenditure, is failing to translate this significant mineral wealth to finance local key public service including health and education.

The Abuja Declaration thresholds of 15% sharp shortages of essential drugs, for instance, evinces that record-breaking production in the mining sector has no telling development impact in health and education sectors.

Among its constitutional objectives, devolution seeks "to recognize the right of communities to manage their own affairs, and to ensure equitable sharing of local and national resources." Under Section 276 (2) (b), local authorities are empowered "to levy rates and taxes and generally to raise sufficient revenue for them to carry out their objectives and responsibilities." Despite this constitutional autonomy, resource rich local authorities are generally struggling to capitalise on enormous economic activities in their jurisdictions, mining particularly, to boost their purses to finance development.

A case in point is the outdated manual labour approach used as a base to calculate local mining tax collection system under the Rural District Council (RDC) Act. For the purposes of calculating mining taxes due to any local authority, in the case of precious minerals, this method is outdated, leading to revenue losses.

To achieve a progressive local mining taxation structure, it is prudent to consider a value-based approach rather than a manual labour-based approach used by rural District Councils to charge levies. A close look at such halfhearted approach to community empowerment and development is captured by the ill-fated Marange-Zimunya Community Share Ownership Trust which received a dummy cheque from mining companies. The same goes for Mutoko District in Mashonaland East province ranked amongst the top ten poorest and least developed districts in the country but is a major source of the world's best black granite.

Therefore, the ground-breaking move by the Ministry of Finance to comply with Section 301 of the Constitution in 2019 has its development lights dimmed because the power foreign currency linkages is missing. The State is constitutionally compelled to put in place mechanisms to ensure communities benefit from resources in their localities in line with Section 13 (4) on national development. In the quest to attract investment, government is operating on "Zimbabwe is open for business" mode, yet little evidence is available on how communities can benefit.

Devolution is an incentive for resource rich local authorities to harness revenue for local community development, drive community development from mining dividends and secure local interest of those directly impacted by activities. Local community interest can be ring-fenced by full implementation of devolution without overly generous incentives to attract investments, in the absence of transparency and accountability frameworks.

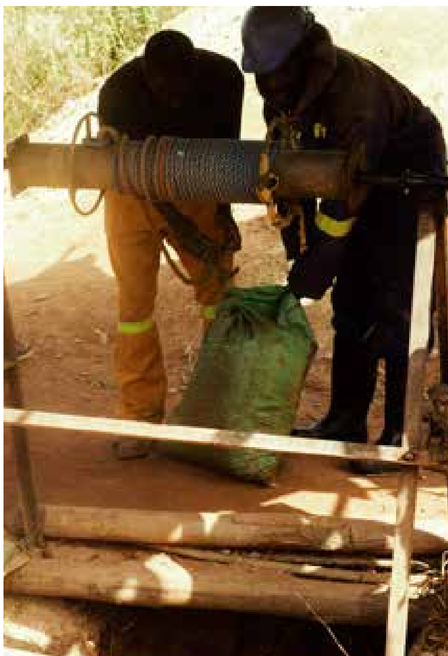
Therefore, fiscal powers of provincial and local authorities need to be backed by foreign currency linkages to enhance local economic and social development programmes. For the resource rich areas where natural resources abound it's appalling that communities still fail to access health services. Devolution cannot be fully implemented without an improved resource base or access to resource rents, mineral revenue in a way that strengthens institutional capacities at lower government tiers and arms.

Communities deserve such key services as quality, affordable and accessible health, education and infrastructure resulting in local citizens realizing their Chapter 4 enshrined rights and devolution is their best bet.

Why tax justice matters in natural resource governance

Tax justice is a human rights issue. Any other summation, falls short of encapsulating tenets encompassing the importance of this major source of revenue for governments and its four primary roles. This notion emanates from an understanding that government fulfils its obligations through exploitation of tax in four distinct ways- revenue raising, redistribution of wealth, representation and repricing harmful goods.

Progressive or pro-poor tax regimes ideally fulfils these four roles and take a higher proportion of income tax from the wealthy to fund public services like health and education for the less privileged.



Tax, in its many forms from duties, levies, royalties, fees or any other such government charges, feeds into the Consolidated Revenue Fund (CRF) to finance national development aspirations and goals. It is the main income stream for governments in addition to debt, income from sale of assets, dividends from State Owned Enterprises (SEO) and development aid particularly for the Global South.

Notwithstanding, good intentions of drawing out loans from international financial institutions like the World Bank and International Monetary Fund (IMF) accrued debt, slowly leading to a debt trap. Not necessarily because of lack of financial prudence by Global South governments but because of development aid conditionalities which further weaken the ability of states to promote broad based development. They prescribe austerity, in jurisdictions in dire need of government subsidies for provision of basic service delivery, as a one size fits all panacea to economic development. It leads to a viscous cycle.

As conditionalities of borrowing have become more stringent, governments are turning to using mineral resources as collateral, another emergent problem yet to fully rear its ugly head.

Resource backed loans, have ignited a dwindling appetite previously evident for IMF loans and structural adjustment programs of the early 90s, albeit this time from the Chinese and its various private development banks.

Having lost credit worthiness, African governments are now turning to these even more exploitative and opaque resource backed loans with little regard for principles of good governance, transparency and accountability.

As elected representatives, governments are expected to conduct business of formulating and implementing tax policies as well as deciding revenue expenditure priorities, in a transparent and accountable manner.

More often than not, progressive taxation regimes are a key absent ingredient in national development polices, as carbon taxes to penalize environmental pollution are frowned upon in favor of incentives and tax holidays.

Tax justice in the mining sector is a good governance concern focusing on leveraging mineral revenue, from finite resources, to finance national economic development for the benefit of current and future generations.

Mining is harmful to the environment, it poisons livelihoods of communities from resource rich areas - not in the least through human rights violations or forced internal displacements, but an ecological cost externalized by corporates.

Government raises revenue from mining through profit based taxes, income taxes and production based taxes especially royalties. Royalties accrue in spite of the operations of a company whether it is profitable or not and are regarded as a reliable income stream and less prone to financial cooking compared to income based taxes.

Flexible options like a sliding royalty scale are recommended to maximize and minimize impacts of boom or bust

cycles-for higher mineral prices a high royalty rate or vice versa, or cushion from global commodity price fluctuations.

Zimbabwe Revenue Authority (ZIMRA) seems to be missing from such revenues as outside gold, there is no royalty sliding scale regime in Zimbabwe, despite the price of gold, palladium, rhodium and nickel gliding in record highs in 2019 and 2020. Similarly an option of stabilization clauses ring fence revenue loss, tax freeze rates or capped tax increments despite changing economic conditions, which attract investors but ultimately undermine national tax interests.

This breeds skepticism on the prudence of tax incentives to attract investment where research shows that mineral wealth potential alone outside incentives are the greatest factor that investors consider when making decisions. Zimbabwe is highly rated when it comes to mineral wealth potential by investors, yet the Cabinet still approves Statutory Instrument, offering various tax holidays to mining company with conflicted beneficial ownership.

Tax incentives are a cost and represents revenue forgone by government through a tax discount or exemption from income tax as in the case of Great Dyke Investments, which was awarded a 5 year tax break under Statutory Instrument 26 of 2021.

Such rebates and holidays erode revenue from mining ventures leading to corporates internalizing profits while externalizing ecological costs to host communities in resource rich areas. Such contracts signed between government and corporates contain non-disclosure agreements and are difficult to completely assess until regressive clauses are enforced. This vindicates advocating for open contracting, beneficial ownership disclosures, in their argument that conflicted ownership fuel such arrangements.

There is a glaring lack of transparency and accountability in the manner governments administer tax incentives in Zimbabwe, key instruments necessary to progressive tax regimes. To compound these deficiencies, like its fellow African peers, many a government seem so keen an athlete in the race to the bottom.

Taxing rights are given to multinational companies leading to erosion of tax base and allows for the shifting of profits through transfer mispricing, trade mispricing, exploit double taxation agreements through treaty shopping, thin capitalization and mining agreements that are skewed in their favor.

Investors are borrowing to finance exploration ventures, (liabilities) instead of injecting capital equity, usually from related parties and earn returns unfairly through finance costs or interest on loans rather than dividends which are only payable if a company is profitable.

While there is domestic legislation to cushion from such practices, the laws are rarely applied in practice so they can provide for the legal provision that debt equity ratio be at 3:1- secretive deals essentially by-pass the imposed caps on interest rates payable on loans.

An example is the case of Caledonia the part owners of Blanket Mine who had to open a management company in UK to reduce tax burden on management fees because of the double Taxation agreement that Zimbabwe has with UK. Forget the free market idea, global trade is centralized. Another bleeding wound of natural resource revenue that drips into the large trough of Illicit Financial Flows (IFFs) is transfer mispricing through complex networks of subsidiaries.

In excess of 60% of international transactions and global trade is believed to be conducted by related subsidiaries under the parenthood of multinational enterprise. Corporates hide beneficial ownership or conflict of interest through such complex labyrinth of subsidiaries.

In this manner, multinationals are always determinants of trade profits. Allocation of profits and losses is controlled through deliberate over pricing of imported goods and services while exports quality and quantity of mineral exports can also be undervalued.

Tax justice demands that these anomalies get redress, institutions are capacitated to detect malpractices and that government arms are well resourced to stop capital flight. It becomes even more critical given the penchant for mining financed development, like the US$12 billion target.

Finite resources cannot be exploited in perpetuity and government in respect of their sacrosanct duties to superintend judicious management of these natural resources, should lead with a human rights approach to taxation.