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**TITLES:** **Human scars - Is there a hidden cost to tax? -Case for Zambia and Zimbabwe**

**ABSTRACT:** **Using community testimonies, interviews and experiences, this paper will demonstrate the cost of collected and uncollected tax from extractive industries in Zambia and Zimbabwe. Using casework drawn from work under the aegis of Publish What You Pay (PWYP)<sup>1</sup>, this paper will seek to demonstrate the linkages between tax and human rights. It will argue for the need to locate tax at the centre of the human rights discourse focusing on corporate and state accountability. This is particularly important as the human rights international discourse has largely not looked at taxation issues in the context of corporate accountability.**

**JEL CODES:** **H21, H26, H11, H23**

**KEY WORDS:** **Optimal Taxation, Tax Efficiency, Collection, Compliance, Evasion, Income Tax Evasion, Tax Collection, Tax Compliance, Tax Evasion, Taxpayer, Government, Environmental Subsidy, Environmental Tax, Income Transfer, Lump Sum Transfer, Negative Income Tax, Tax Shifting, Human Rights, Gender**

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<sup>1</sup>Publish What You Pay (PWYP) is a [global network](#) of civil society organisations united in their call for an open and accountable extractive sector, so that oil, gas and mining revenues improve the lives of women, men and youth in resource-rich countries. Zambia and Zimbabwe are among the 42 countries where national PWYP coalitions exist.

## **Introduction**

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At first glance, tax and human rights are strange bedfellows<sup>2</sup>. After all every tax system has the same objective to extract funds from companies and its citizens ostensibly for the delivery of public goods that the general citizenry would enjoy. The process of collecting tax from companies mainly looks at how much was collected and how the collected revenue is appropriated. What is at times missing in discussions around tax is the often hidden human cost, how that tax revenue was generated and the human rights impacts- especially on women, associated with how well the tax is collected and allocated. This paper attempts to demonstrate that the human element is not captured and left missing in the millions of dollars that governments proudly declare as having been collected from the extractive sector<sup>3</sup>. The human element is also often missing in the millions of dollars more that extractive companies do not report as constitutive of the impact of extractivism on millions of people. The authors argue that there are ‘human’ costs related to extraction that need to be concurrently reported on when governments and mining companies report on the revenues, profits and taxes.

This paper seeks to demonstrate the linkages between tax and human rights. It argues for the need to locate tax at the centre of the human rights discourse focusing on corporate and state accountability. This is particularly important as the human rights international discourse has largely not looked at taxation issues in the context of corporate accountability.

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## **Problem Investigated**

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The total cost element of the extractive industry, especially mining, is hardly captured and reported on and this makes it difficult to assess whether or not mineral extraction is benefiting the citizenry and the country at large. Lives have been lost, people have lost their homes, land, ancestral graves; while culture and traditions have been annulled, all in the course of mining. The problem that this paper investigates is the impact and cost of tax collection on local community members in Zambia and Zimbabwe. The investigation seeks to establish the negative and

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<sup>2</sup> <http://www.tax.org.uk/tax-policy/tax-adviser-articles/2000/tax-and-the-human-rights-act-1998>

<sup>3</sup> The extractive industry comprises both oil and mining companies. For the purposes of this article we will mainly focus on mining as these dominate the extractive sector in Zambia and Zimbabwe.

cumulative impacts of non-payment of taxes on local community members while reflecting on whether or not taxes paid can account for those negative impacts.

Admittedly, these human rights impacts related to tax are difficult to capture in normative tax regimes. Some of the human costs relating to taxation include, for example, psychological trauma due to social values being upended by the intrusive and disruptive nature of mining, mining induced displacements, land and livelihood alienation; and often perpetual conflicts that characterise mining investments. On top of that, non-collection of tax revenues also negatively affects the ability of the State to progressively ensure the realisation of rights related to education, health, social services such as water, sanitation and gender inclusive development approaches. These costs have not yet been added to the armoury of tax collectors and certainly do not form part of the current debates and discussions around tax.

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### **Research objectives**

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The research objectives of this paper are:

1. To examine the negative and cumulative impacts of non-payment of taxes on local community members while reflecting on the extent to which taxes paid can account for those negative impacts.
2. To identify and examine the human rights violations caused by the extractive industries on local communities.
3. To demonstrate the linkages between tax and human rights.

This research has been motivated by the limited debate on the extent to which taxes paid can account for negative impacts on communities. The issue of tax vis-à-vis the human rights impact of extractive industries is particularly important in Africa, as most the African economy is largely commodity based. Zambia and Zimbabwe will be used as case studies in interrogating the issue of taxation, a topic that has gained continental and international prominence under the broader discourse of domestic resource mobilisation. In these settings, the issue is not the feasibility of certain taxes, but rather the optimality of alternative tax structures that reflect the human element and their impact. Governments need to have optimal tax design and systems that reflect the extent of the reality of tax avoidance and evasion, the necessity of enforcement, and the human costs elements of collection.

This paper will contribute to a budding and growing interest in the intersection between tax and human rights with a focus on how the current tax regimes do not fully account for the full cost of mining. The extractive industries sector is unique because it is the sector that has an enormous intrusive social, economic and environmental footprint, which this research paper will try to demonstrate.

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### Literature review

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The world of extractives both within and beyond Africa dominates the reported and unreported human abuses. The extractive industries, sadly, also account for most of the allegations for the *worst* abuses, up to and including complicity in crimes against humanity. There are acts for example, committed by public and private security forces protecting company assets and property; large corruption; violation of labour rights; environmental pollution and a broad array of abuses in relation to local communities (Hillary J, 2013; 81)

Human rights lawyers have developed a hierarchy of three forms of corporate complicity in order to distinguish the different ways in which such companies might be held accountable for human rights violations from which they ultimately derive an advantage. “Silent complicity” is held to exist where companies fail to speak out against clear patterns of human rights abuse in the areas where they operate. “Beneficial complicity” pertains when a company is the beneficiary of human rights abuses committed by state or other forces, irrespective of whether it is possible to prove the company’s own connection to abuses. “Direct complicity” occurs when a company provides assistance of any sort to another actor (public or private), which then commits human rights violations. This form of complicity is understood to exist even if the company many not have itself wished the human rights violations to take place (ibid: p81-82).

It may be argued that there is indeed a clear link between tax abuses and human rights. Tax abuses deprive governments of the resources required to respect, promote and fulfil human rights. This is particularly dramatic when one juxtaposes the billions of dollars that are said to be flowing out of developing countries with the comparatively small amounts that are required to lift individuals and communities out of the most extreme forms of poverty (International Bar Association; 2013).

To begin with, the paper concentrates on mining companies because of the vast profitability of the sector in the two countries under review- Zambia and Zimbabwe – which makes them stand out from other sectors. On size alone, no other sector matches the extractive sector in both countries, as we will demonstrate. For the mining sector, the twenty-first century has seen an even greater explosion in profits mining companies continue to deny that they are not making profits. See Figure 1.)



Figure 1: Newspaper clipping on rip off from mining companies in Zambia

Their profits have soured due to investor-friendly regulations that governments have been introducing by reducing the applicable tax and levy payments –often at the request of companies. This has impacted greatly the revenues that the Zambian and Zimbabwean government are collecting from the mining sector. For instance, the current extractive industry tax regime in Zimbabwe includes royalty rates for different minerals ranging from 7% to 15%; corporate income tax at 25%, withholding tax at 10% and a resource depletion fee levied at 2.5% among other taxes. The effectiveness and impact of this tax regime is only realised in the extent to which it results in positive development outcomes for Zimbabweans and the extent to which it ensures the realisation of citizen rights. Despite the tax regime changes over the past 5 years, mining taxes amount to just 8 per cent of total tax revenue<sup>4</sup>. This is a low figure given the industry’s share of GDP (15–18 per cent) and the value of copper exports (over \$3 billion). In Zambia, on the other side, the government raised its mineral royalty from 3% in 2006 to 6% in 2012, as well an increase in its corporate tax to 30% from the previous concessional rates. In addition, it is clamping down on tax avoidance in an attempt to close down loopholes that were costing the country \$2 billion in lost revenue annually (Hillary J, 2013; 82-83), revenues that could have otherwise been used for sustainable development. Still while worldwide, taxes represent between 25–40 per cent of export revenues, in Zambia, they only represent 3–5 per cent (Ley, E 2010). In 2015, the government raised the mineral royalty to 9% (from 6%) for underground mining operations as a final tax; and 20% mineral royalty for open cast mining operations as a final tax. By April, the key companies e.g. Konkola Copper Mines<sup>5</sup> and

<sup>4</sup> In Zambia, Wholesale & retail trade; repair of vehicles household goods; restaurants and hotels sector is the highest GDP contributor of 20.8% and second is public administration and defence at 18.9% and the third highest construction at 15.1% as of 2014

<sup>5</sup> <http://zambiareports.com/2015/04/04/ignore-kcms-loss-making-claim-urges-mutesa/>

Lumwana<sup>6</sup>, had started threatening the government that they would close down mining companies and lay off workers. The Government of Zambia has since reverted the mineral taxes to 8% and is considering to further reduce taxes to 6% for all mines. The approved changes to the 2015 mining tax regime will result in revenue loss of about 2.3 billion Kwacha<sup>7</sup> (US\$31 million)

It is important to note that there is already some recognition of the human rights impact of extractive industries. There is also recognition that normative forms of tax regimes do not sufficiently capture these. This has resulted in a slew of international initiatives such as the United Nations Global Compact, the United Nations Guiding Principles on Responsible Investing, the Global Reporting Initiative and the United Nations Guiding Principles on Business and Human Rights. The major shortcoming of all these initiatives is that they are all voluntary. The human rights impacts of the extractive sector clearly should be in the lexicon of tax administrators and capturing and reporting on human rights impact of extractive industries should be mandatory for corporates. Given the concerns about tax abuses by multinational enterprises, it is particularly important to look beyond the state as the primary duty-bearer for human rights to the responsibilities off non-state actors, including business enterprises (International Bar Association; 2013).

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### **Research methodology**

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This paper uses descriptive research designs to help provide answers to the questions of who, what, when, where, and how associated are extractive industries with tax abuse and human rights violations; the paper obtained information concerning the current status of the phenomena and to describe "what exists" with respect to variables or conditions.

A purposive sampling was used for the communities identified below in Zambia and Zimbabwe. The samples informed the casework drawn from work among Publish What You Pay (PWYP) members. Primary and secondary research methods were used to obtain information. Data was collected from selected locations in Zambia and Zimbabwe where mining companies or

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<sup>6</sup> <http://www.lusakatimes.com/2014/12/19/barrick-suspend-operations-lumwana-following-passage-new-mining-royalty/>

<sup>7</sup> <http://www.znbc.co.zm/?p=10498>

extractive industries are actively operating using primary and secondary sources. Primary data was obtained using a combination of methods, including participatory rural appraisal (PRA) tools and techniques, participant observations, and informal and formal surveys, interviews. Secondary data were obtained through amongst others formal filings and press releases and interviews.

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## **Findings**

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Tax should offer a perfect bridge between governments and their citizens: it should build accountability between the state and its citizens as well as corporations. On the downside tax abuses and bad tax systems can foster widespread gender and human rights abuses. These findings show massive economic inequalities that have been fostered by skewed tax systems and by secrecy jurisdictions, which have created towering inequalities in wealth, and consequently in the distribution of political power. It shows how tax haven governments purposefully, knowingly and deliberately create laws, regulations and secrecy measures that deprive the Zambian and Zimbabwean people and governments of the revenues they need to deliver on their human rights commitments, such as education, health, water and sanitation. This paper also describes how the states and extractive industries have encouraged or facilitated tax abuses, human rights violations or frustrated efforts of the respective governments to counter tax abuses, and how they are violating established international human rights obligations of the governments.

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### ***Findings: Case for Zambia***

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North Western province is the most sparsely populated of Zambia's ten provinces, with an area of 125,826 km<sup>2</sup> and a population of 727,044. Solwezi town is the provincial capital of the province. Solwezi district has an estimated population of 254,470, or 33% of the total provincial population. North Western Province's only industry is copper mining, which has boomed since 2000, Historically though small-scale mining has always existed, for example the Kansanshi mines functioned on and off since the early 1900s, although on a much smaller scale than it currently does.

The two major mines are as follows:

- Kansanshi mines situated about 10 km north of Solwezi town. Kansanshi Mining Plc. is a subsidiary of First Quantum Minerals (FQM), which owns 80% equity share, while Zambia Consolidated Copper Mines Investment Holdings Plc. (ZCCM-IH) owns the remaining 20%. FQM is a Canadian-based company listed on the Toronto and London stock exchanges. Its current mining licence covers 21,665ha and runs from 1997-2022.
- Lumwana mine is situated about 90 km to the west of Solwezi town. Barrick Gold, a Canadian listed company, owns 100% of the mine. (Equinox and ZCCM-IH sold everything to them) holds six Large Scale Mining Licences (LMLs) covering 118,304 ha. Lumwana's original licence under Equinox Ltd., was dated January 2004, but the current licence (dated 2012) includes six LMLs covering a total of 118,304 ha and includes two<sup>8</sup> major copper deposits, Malundwe and Chimiwungo. The mining company also secured a land title for 35,000ha of the land in May 2008, for its township. Mine preparation commenced in 2005, and copper production in April 2009.

### **Communities Affected by Mining in Solwezi District**

The two mines that the research investigated fall under the traditional leadership of Chief Kapijimpanga, and Senior Chief Musele. Chiefs are highly respected and honoured in the province and are regarded as having considerable authority over their people. Zambia practices both a customary and statutory legal systems. Most people living in rural areas rely on traditional authority with Chiefs' councils still being part of the decision-making process. We will further illustrate this by focusing on the case of Shinda Village and New Israel Community.

### **Case for Shinda Village**

Shinda village, under Chief Mukumbi, totals about 65 households and is situated adjacent to Lumwana mine. A license for the latter was given to Equinox copper ventures Limited for large-scale mining in the area (license LML 49) by the government on 6<sup>th</sup> January 2004, for a term of 25 years renewable for a further 25 years<sup>9</sup>. According to the Lumwana crop Compensation Agreement (Figure 2), Chief Mukumbi is recognised as the holder of the Mukumbilaloli Chieftdom and the customary land there is in trust for the benefit of his subjects. Although Chief

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<sup>8</sup> Lumwana Copper Mine Zambia; found @<http://www.mining-technology.com/projects/lumwana/>, [Accessed on 12/02/2013]

<sup>9</sup> Extract from 'Lumwana crop compensation agreement entered on 25<sup>th</sup> April 2006 with some members of the community, Page 1

Mukumbi is recognised as the holder of the Lumwana mine, he, together with Chief Mumena and Chief Matebo signed an agreement through a Memorandum of Understanding (MOU) on 7<sup>th</sup> August 2005 with Equinox Mining Company. This MOU authorised Equinox surface rights<sup>10</sup> over the area where Chief Mukumbi's subjects were carrying out agricultural activities. This agreement was designed in such a way that the local communities were forced to surrender their customary land rights to the mine through the Chief. As a result, the land in question had to be converted from customary land to state land, which is a category of land holding where leasehold is permitted. An interesting point is that this issue of surface rights surfaced a year after the mining licence was granted, whereas such matters should have been dealt with during the licencing process. Another issue is that even though the actual mine fell only on Mukumbi land the other two neighbouring Chiefs were also included in the MOU.

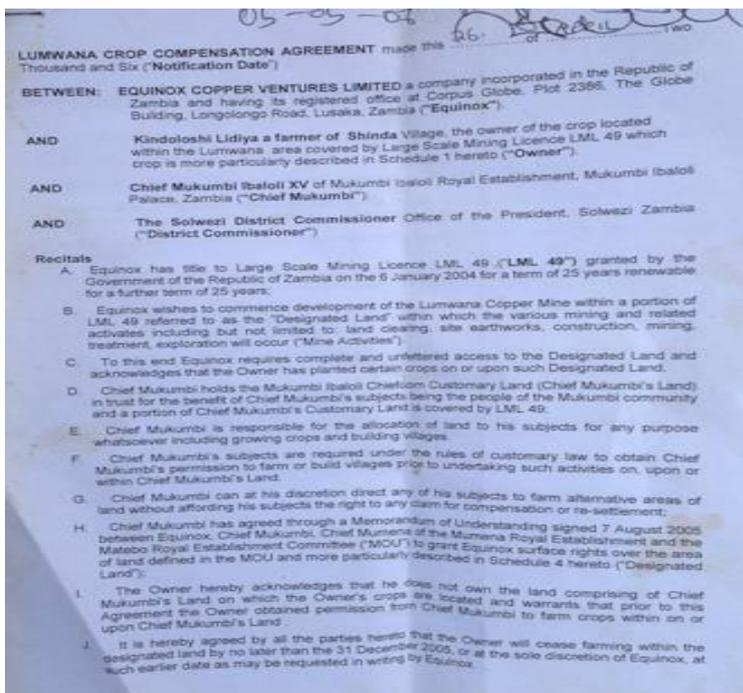


Figure 2: Extract of the contract

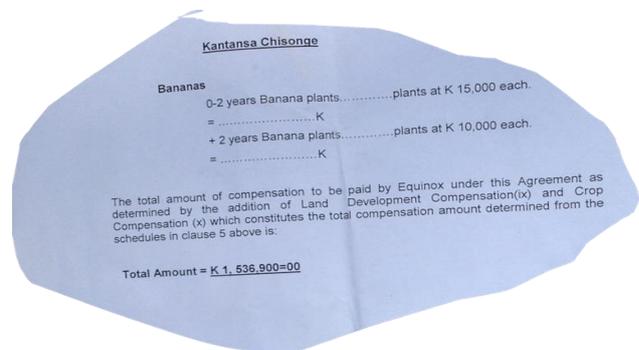
residents of Chiefdoms do not get permission from the Chief to allocate pieces of land for farming. Clan leaders who are the headpersons have this responsibility and authority. They are in fact the real custodians of the land. It seems the Chief in this agreement, is assuming too much power over the land than he is supposed to, by tradition.

<sup>10</sup> Extract from 'Lumwana crop compensation agreement entered on 25<sup>th</sup> April 2006 with some members of the community, Page 1, section H

Section (J) further states that, ‘It is hereby agreed by all the parties hereto that the owner will cease farming within the designated land by no later than 31<sup>st</sup> December 2005, or at the sole direction of Equinox, at such earlier date may be requested in writing by Equinox’.

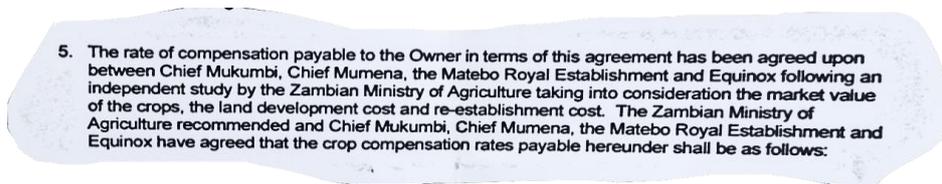
Since the communities in this area are solely dependent on farming of maize and cassava for their livelihood, it was difficult to imagine how they would survive without utilising their land. The research established that since 2005, the community had not been farming on the area, which they were forced to surrender. To make matters worse they were neither relocated nor given alternative land to continue their farming activities. This has made some of the community members destitute and poorer, as they did not have any other alternative stable source of income and food other than farming.

As regards to compensation, the community members were given as low as, **Zambian Kwacha, 1,500<sup>11</sup> (US\$203)** for their crops and field. (See figure 3 for an example, showing Kantansa Chisongo’s compensation record).



**Figure 3**

The Ministry of Agriculture and Chiefs Mumema and Mukumbi agreed upon the compensation amounts that were given to the village communities. There was no consultation with the communities involved and they had no role in the decisions that were made concerning their land and the compensation. They were not given any choice (See Fig. 4). The nature of the compensation that were given to the communities did not take into account the social connections and relations that were to be disturbed due to the pending displacements.



**Figure 4**

In instances where the women were the owners of the land and recipient of the

compensation, stories emerged that men (husbands) got the money on their behalf, and misused it. This is an indicator that the women were most vulnerable in the above matters.

<sup>11</sup> Exchange rate of US\$1 to ZMK7.4

### **Case for New Israel community**

New Israel is another community that has been affected by mining in Solwezi district. It is located about 60 Km away from Solwezi town, which is half way to the Democratic Republic of the Congo border from Solwezi. New Israel has about 42 households, which were displaced, from the Kansanshi mining site. Before the displacement of the community in 2005, the mining company promised them the following as part of their compensation; 1) Transport every Tuesday and Thursday into town 2) New houses 3) A clinic 4) A school 5) Seeds and fertilizer for their crops 6) Safe Water.

Communities were given between K1, 500 and K7, 000, (US\$202 and US\$945)<sup>12</sup> in a bid to persuade them to move. However, six years later, the above six agreements have only been partially fulfilled. Transport provision that was promised to the communities every Tuesday and Thursday was not provided, but the mining company gave out bicycles instead. At the time of the research, these bicycles were in a state of disrepair. A hammer meal was also given but has not been working since it was installed at the site.

In addition to the money they received as a resettlement incentive, the community was given roofing sheets instead of the new houses that they were promised. They were given between 5-15 roofing sheets per household, which was not enough to roof a standard house. No new houses were constructed for the community by the mining company apart from the Sub-Chief's palace



**Figure 5a: Family at the house, they built**



**Figure 5b: One of the houses in New Israel**

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<sup>12</sup> Exchange rate of US\$1 to ZMK7.4

(Sub Chief Bob Sekeleto), and so community members were forced to construct their own houses. (See figure 5a and 5b)

In terms of water provision to the community, the mine company drilled 2 boreholes at the school and at the clinic (see Figure 6), which went dry in 2013. The mining company also dug five wells from which the community, at the time of this study were drawing its water.



Figure 6: Dry water well and borehole

The New Israel community is involved in farming activities; growing beans, maize, and vegetables.

However, the communities have nowhere to sell their produce, as the nearest market is 60km away. There is hardly any transport available to help in transporting their products and the road is deplorable especially during the rainy season. People normally transport their goods by chancing vehicles that come visiting the area or walk or ride to the Congo road, which goes to Solwezi town. Difficulties in accessing the nearest market has made the community sell their products at very cheap prices, thereby making farming in the area very uneconomical.

As at 15<sup>th</sup> February 2013, the community did not have any school or health centre that was operational. The research team learnt that a volunteer teacher who was providing lessons to the children since 2005 had left. The mining company completed building a school of three classroom blocks in 2013, but the classroom is yet to be used by the community, as the government has not yet officially opened it. As a result, children have not been in school since 2005 when the communities were displaced or resettled. By the time of the research, it was evident that children had lost too many years of their education; for example a child, who was in grade one at the time of the relocation, should have been in grade seven. In order to catch up with the lost number of years, the community has been providing ad-hoc learning opportunities



Figure 7: Community School in 2011



Figure 8: Completed School as 21st January 2013, but not commissioned

for their children.

For their health needs, community members have depended on a Zambia National Service (ZNS) clinic, which is about 10km away. Although the mining company built a two-block structure that was used as a clinic, at the time of the research, it had not yet been opened because the government had not yet commissioned it. It was established that most of the community members had resorted to self-medication due to limited access to health facilities. The Headman holds some medicine supplies, which he obtains from the clinic in Solwezi and a nurse visits occasionally. Furthermore, the community members revealed to the research team that they are now worse off - socially and economically than they were before they were relocated. For instance, since the communities were moved, they have had no consistent income because of the distance to the nearest market, or to education and health facilities. They enjoyed better access to markets, health centres and schools in the areas where they were relocated. According to the mines and minerals act of 2008, an investor who had not yet received surface rights is not permitted to restrict peoples right to access resources in the area under question. It is therefore strange that the government would allow such a situation to occur in total abrogation of the law. The two mines discussed above are among the top five producers of copper in Zambia as reported in the 2010 and 2011 EITI<sup>13</sup> reports. The latest EITI reports, 2012 and 2013 also capture the two mines as the top five revenue contributors to the Zambian state coffers. These figures unfortunately do not reflect how many people lost their land, lives, or, violated. Community lives were changed forever, and the mining companies will be praised for the huge tax payments to the government.



Figure 9: Top 5 copper producing companies in Zambia

<sup>13</sup> Traditionally the Extractive Industries Transparency Initiative (EITI) is a global reporting standard reconciling the revenues paid by the companies against received by the government. Since 2013 it encompasses broader issues such as licences, subnational payments and encourages contract transparency and beneficial ownership.

### *Findings: Case for Zimbabwe*

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There is evidence that mining companies in Zimbabwe are not contributing enough tax revenue to the national treasury. This is not just a consequence of a poorly designed fiscal framework but also points to possible cases of tax avoidance or worse evasion. Presenting the 2012 National Budget Statement<sup>14</sup>, the Minister of Finance noted that whilst mining exports for 2011 were in excess of US\$2 billion, the contribution to the fiscus of the mining sector (excluding diamonds) would only be a meagre US\$150 million.

The Budget Statement noted that there is a disproportionate contribution of the rest of the mining sector to the national fiscus and this in turn inhibits the state's ability to provide social services and public goods that ensure the realisation of socio-economic rights. The potential of mineral revenue to address human rights is, therefore, not realised.

The case of tax dodging is particularly pronounced in the diamond-mining sector. The Zimbabwean government has equity participation through joint ventures in all the companies operating in the Marange diamond fields, the key diamond area in the country. State participation in the diamond-mining sector is through the Zimbabwe Mining Development Corporation (ZMDC). The challenges and impact of tax dodging are particularly apparent as the state enterprise is subject to audits by the Office of the Auditor General.

The 2014 Report of the Auditor General showed that the ZMDC had paid dividends without performing an analysis of whether the funds could have been invested in its subsidiaries and whether resources were available to meet statutory obligations and taxes that needed to be settled. Indeed, the Report noted that the Corporation had various tax obligations that had not been met as detailed below:

1. The Chairman of the ZMDC Board retired on June 30, 2013 and was paid US\$ 261 000 as gratuity. The gratuity payment was also not taxed in contravention of the Income Tax Act [Chapter 23:06].
2. In addition to approved remuneration, ZMDC non-executive directors were given 2,940 litres of fuel (cumulative), holiday allowances of US\$27,450 each, and US\$758,000 was

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<sup>14</sup> 2012 National Budget Statement, Ministry of Finance and Economic Development, 2011

paid as extra security. These payments were also not taxed in contravention of the Income Tax Act [Chapter 23:06]

3. The Corporation did not remit PAYE timeously during the year contrary to the requirements of the Income Tax Act, which states that PAYE should be remitted on or before the 10th day of the subsequent month. The amount outstanding at year-end was US\$622,563 and the penalties and interest charged were US\$3,396,737.
4. The Corporation had taxable income at 31 December 2012 and income tax payable of US\$5,252,415, which was not paid during the year.
5. The Corporation did not remit VAT timeously during the year contrary to the requirements of section 28(1) of the VAT Act and had possible penalties amounting to over \$1 million.

In addition to the above cases of non-tax payments, Marange Resources, a company that is 100% owned by ZMDC had the following outstanding statutory obligations:

**Table 1: Marange Resources Outstanding Statutory Obligations**

<b>Statutory Obligation</b>	<b>Amount (US\$)</b>
Royalties	11,466,846
Depletion fees	2,504,615
Pension contributions	1,162,674
Minerals Marketing Corporation of Zimbabwe Commission	758,270
PAYE (Zimbabwe Revenue Authority)	167,892
National Social Security Authority	141,365

*Source: Auditor General 2014 Report*

ZMDC signed joint venture agreements for mining of diamonds on its concessions in Marange; however, joint venture partners did not fulfil their investment obligations as agreed. The joint ventures have completed the project implementation phase and are in the production phase. The agreed investments are not likely to be injected, as the companies are now selling diamonds and declaring dividends to shareholders. This resulted in undercapitalization in some of the joint venture mines. The table below shows the amounts invested by the joint venture partners up to 31 December 2013:

Table 2: ZMDC Joint Ventures and Unfulfilled Capital Investment Obligations

Joint Venture	Agreed amount (US\$)	Amount invested (US\$)	Variance (US\$)
Mbada Diamonds (Pvt) Ltd	100,000,000	47,914,009	52,085,991
Jinan (Pvt) Ltd	200,000,000	134,853,491	65,146,509
Diamond Mining Corporation (Pvt) Ltd	1000,000,000	40,971,654	59,028,346

Source: Auditor General 2014 Report

These tax infractions were juxtaposed against the lived realities of the community members that have been affected by the mining companies operating the diamond mines in Marange.

Mining of diamonds in Marange has already displaced over 1000 families. These families have been involuntary displaced and resettled. A pre- displacement census established that 31 villages with a total of 4,321 households would be affected<sup>15</sup>. Despite the fact that the relocation exercise began in 2010, all community members that were displaced (except business-people) have not received any compensation from the mining companies for loss of property. This is despite the fact that the companies have been paying out dividends and putting in place excessive compensation packages for their board members and executives.

In addition, the schooling facilities at the relocation site are inadequate. There are two schools at the relocation site; Chirasika Primary School and Transau Secondary School. However, these schools do not have sufficient infrastructure to



Figure 10: Inadequate schooling facilities at relocation site

<sup>15</sup> Mbetsa.F.S,2013, Presentation Given at Capacity Building Workshop on Diamond Mining: Portfolio Committee on Mines and Energy at Leopard Rock Hotel 25-27 March 2013

cater for the relocated school children.

The Arda Transau Relocation Development Trust, a local Community Based Organisation (CBO) operating out of the relocation area, compiled a record of those deceased at Arda Transau as at March 2015. Thirty-two people were recorded as deceased and the cause of death in the majority of cases was linked to lack of access to clean water. Diarrhoea was noted as one of the main causes. This is compounded by the fact that to access the tap water, the resettled community members have to pay US\$6 per month. Before relocation, the communities had to walk long distances to access water but did not have to pay for access to water. The user fees are prohibitive for most families and this has resulted in the water authority, the Zimbabwe National Water Authority, closing off the taps at most households. Again, this needs to be put into perspective against the failure of the companies to meet their statutory tax obligations.

The human costs related to taxation in the case of Zimbabwe are not just evident in the case of the displaced community members. The Marange community members that still reside around the mining sites and other communities that are within the mine ‘catchment’ area have also been negatively impacted. A public interest law organisation, the Zimbabwe Environmental Law Association (ZELA) commissioned a study into the water quality of the Save and Odzi rivers in July 2012. The research showed large-scale impacts that include siltation, chemical pollution and heavy metal pollution. All these arise as by-products of the mining processes. Communities around the mining area have since taken the case of water pollution to the High Court of Zimbabwe and the case is still pending. Indeed, the OAG Report for 2014 noted that Marange Resources (Private) Limited did not have an Environmental Impact Assessment (EIA) certificate because it did not carry out an EIA in contravention of the Environmental Management Act.

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### *Policy recommendations*

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In light of the above findings, the authors would like to make the following policy and broader recommendations.

- Due to its particular complex nature, the impact on human lives as well as the need for a company to have a social licence to operate, fiscal regimes for mining should be anchored in a Human Rights Based Approach. While ‘mainstreaming’ human rights can be done

incrementally, the aim is a complete overhaul of the structural orientation of mining fiscal regime to actively promote the realisation of human rights, particularly socio-economic rights.

- There is a need for further research to interrogate the adequacy of tax regimes to address issues of socio-ecological impacts and debts. In other words, is a narrow focus on tax reforms adequate to address these socio-economic impacts or is there need for broader reform within the mining value chain?
- Mining companies must be mandated to produce integrated annual reports that capture social and environmental impacts. This could be auctioned through making the Global Reporting Initiative mandatory.
- There is a need for greater transparency in relation to tax practices as this has the potential for significant contributions to sustainable development and positive impacts on human rights.
- Government should consider and respect the owners of the land that is given away for mining purposes. This requires genuine consultations between the investors, the Chiefs, the people and government before any investment can be allowed to take off.
- Community sensitization and information sharing on extractive industries should be provided in order to empower people to claim appropriate compensation and where possible seek equity shares in the projects operating on their land.
- The affected communities need to be involved from the beginning of any project to its logical conclusion. It is unjust for people who are the owners of the land to lose their land forever to an investor without them having any meaningful share in the investment that alters their livelihoods and social connections permanently.
- Where lives are disrupted due to mining, the focus should not be on monetary compensation but on livelihoods and social reconstruction to the highest extent possible. It may be that the most meaningful compensation appropriate is community equity share in the mining projects.
- Investment laws and policies should protect the landowners rather than disrupt their livelihoods and disrupt their land rights.

## *Conclusions*

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There is need to address a lot of grey areas on human rights and taxes. It is generally agreed that taxation is important insofar as it provides an opportunity for the provision of public goods and services but the cost of collecting tax and revenues should not compromise the lives of people as seen in the above cases. Tax is particularly important in the context of mineral resource exploitation, given that these resources are finite and de facto or de jure owned by citizens. The window of opportunity within which to fully benefit from mineral resources does not remain open in perpetuity. In this sense, taxation becomes an important tool to generate sufficient resource rents before the resource is exhausted. Citizens should see the benefits of having minerals and they should be mitigated from having the scares of mining- its negative effects and impacts.

African governments are therefore consumed with creating the optimal fiscal regime. An optimal fiscal regime is one that balances the need for the country to generate sufficient revenue and the need to ensure the viability and profitability of mining enterprises. Often missing from the discussions around establishing an optimal mining fiscal or tax regime is the interface of tax and citizens, particularly for communities that are directly affected by mining.