

A PRINCELY PLAN IN THE PIPELINES OR A PAUPER'S PIPE DREAM?

ACHIEVING SUSTANABILITY IN THE EXTRACTIVES INDUSTRIES IN SOUTHERN AFRICA

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INTRODUCTION

This essay is a synthesis of the proceedings of the **Resource Governance Future Workshop** held at Hartbeespoort Dam in the North West Province of South Africa in April 2013. While the essay is by no means exhaustive in its coverage of the workshop proceedings, fundamental resource governance challenges in South Africa are discussed. This includes questions of transparent, enabling legislative environments, appropriate models of sustainable land management and natural resource exploitation as well as community land rights.

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THE LEGAL FRAMEWORK IN THE EXTRACTIVE SECTOR

Like many countries in Africa, SADC member states are rich in natural resources such as uranium, platinum, asbestos, timber, coal, gold, diamonds and copper. These countries rely on the extraction and exportation of such resources for economic growth. Seven out of fifteen SADC member states are considered to be highly mineral dependent (World Bank, 2011). Specifically the sector constitutes 70% of GDP in Angola, 29% in Botswana and 11% in Namibia (ibid). Even for diverse economies like South Africa, the extractive sector remains critical to economic success. For those reasons it is fundamental that the sector be governed by strong legislation and policies in order to maximize the benefit of the extraction of resources to the economy and the peoples of the said nations.

While most countries in the region have policies and legislation that govern natural resource management, it is poignant to note that either these policies tend to be archaic and have loopholes that promote corruption or are strong but not adhered to.

ACRONYMS

CEDAW: Convention on the Elimination of Discrimination against Women

CRC: Convention on the Rights of the Child

CSOs: Civil Society Organisations

CSR: Corporate Social Responsibility

FAO: Food and Agriculture Organization

FW-: Future Workshop

GDP :Gross Domestic Product

ICESCR:International Covenant on Economic, Social and Cultural Rights

ILO: International Labor Organization

SADC: Southern African Development Community

SARW: Southern African Resource Watch

SEEA: System of Environmental and Economic Affairs

UNEP: United Nations Environment Program

Minerals in Zimbabwe and Malawi for example, are governed by the same 1961 Mines and Minerals Act which was enacted when the two countries still formed part of the British Federation. This Act states that all mineral rights are vested in the State President who makes decisions on behalf of the people. While the government of Zimbabwe has made commendable efforts to formulate other policies within the sector, it is disheartening that there is a lack of political will by authorities to curb corruption in addition to a lack of transparency. Minerals such as diamonds and platinum are highly politicised; with the army partially owning some of the companies in the extractive industry. This is what has also contributed to the increase in the gap between the rich and the poor as those politically connected to the ruling party stand to benefit the most.

The rise in natural resource extraction in the region has not reduced the income gap between the rich and the poor. Rather, the resource-rich communities are by far the poorest and most vulnerable communities, with very limited access to education, health, clean water. They live in heavily polluted environments with no resources to mitigate against the effects. Communities have suffered displacements, forced relocations, human rights abuses, sexual crimes, environmental pollution and cultural violations at the hands of extractive industries and government agencies. For example in Chiadzwa Diamond Fields in Marange Zimbabwe, villagers were forced to vacate the fields to be relocated to a farm where they were given 3 roomed houses. These houses are not adequate for most families whose previous homesteads had at least 4 huts. It is also a cultural violation where in-laws are forced to sleep in rooms next to each other. Such communities are often unable to mobilise themselves to take action against these and other injustices. This picture can be best related to Zimbabwe but such situations are also found in South Africa, Malawi, Angola and Namibia.

Poignantly, the law in most Southern African countries does not compel companies in the extractive industry to lead development programs. Corporate Social Responsibility programmes are voluntary thereby leaving the 'development' within the companies' discretion. Mbada Diamond Company in Zimbabwe, for example distributes food packs and sponsors sporting activities in the name of CSR; things that do not contribute to sustainable development of the communities from which the company is harvesting the diamonds.

Additional challenges within the legal framework stem from lack of participation by the resource rich communities, its weakness in addressing gender mainstreaming issues and the future of the communities after the mining activities. Most communities are unaware of the impacts of the mining activities on their livelihoods and the future of their children. Some companies have, in the process of doing business, violated cultural, social, environmental and human rights. While CSOs act as the watchdogs, it is important that policy address such issues. Local leaders have been sidelined in the decision making process creating conflicts among the companies, communities, local leaders and the government. The policies need to address such socio-cultural issues that may seem unimportant to profit-seeking companies.

There is need for the Civil Society to engage the extractive industry in order to advocate for change from a profit-centric method of doing business to ways that promote sustainable development within the communities. Communities need to also harvest the resources in an economically and environmentally sensitive nature. Greater focus needs to be placed in formulating policies that promote maximizing socio-economic development synergies alongside minimizing pollution, environmental degradation and socio-environmental harms including bridging the gap between the rich and the poor.

TRADITIONAL KNOWLEDGE SYSTEMS AND MODELS OF SUSTAINABLE LAND MANAGEMENT WITHIN THE EXTRACTIVES INDUSTRY

Southern Africa is recognized as a region with a wide variety of institutional arrangements relating to land custodianship and management. Communal land management systems have had varying degrees of success; from community-based natural resource management systems, traditional commons and community land trusts to partnerships with private companies. It is this high level of diversity that was identified by delegates as both a challenge and a valuable source of answers to questions of sustainable land management. The situation is particularly complex within contexts of large scale agriculture and natural resource extraction. Traditional knowledge systems are acknowledged within government and constitutional arrangements in Southern Africa. Despite this, the degree to which traditional leaders and local communities are consulted as key stakeholders in decisions affecting people and their land differs starkly across the region.

The distribution of profits from extractive industry continues to be one area where the voice and presence of oft-affected local communities is largely absent. This is another factor contributing to the aforementioned in-country (and regional) economic disparities. This occurs as a result of several factors- not least of which are inaccessible national policies and the sheer power multinational corporations. The influence held within national regulatory processes by companies such as Anglo Gold Ashanti, De Beers, British Petroleum and Shell is widely recognised in countries such as South Africa, Botswana and Angola (National Democratic Institute for International Affairs, 2007). Multinational extractive companies are known to wield significant influence within legislative spheres in some countries in Africa. Even in a country such as South Africa whose extractives sector is heavily regulated with a legal framework that is often touted as a solid model for other African nations, the voice of local communities and traditional leaders is not at the forefront.

There are, however, positive lessons to be learnt from within the region in the future development of truly participatory, accountable resource management systems within the extractives industry. Botswana continues to embody a spirit of consultation and democratic dialogue through the implementation of traditional systems such as *kgotlas* (community councils) which consider the priorities of affected communities. This is strategically incorporated in negotiations at a higher level. The legislative and regulatory framework in South Africa can serve as a benchmark for regional frameworks. However, this means little if it is not combined with a spirit of a robust, informed civil society, engaged and transparent systems of government and thorough incorporation of all local actors through processes that are themselves transparent. There is also undoubtedly a need to incorporate traditional philosophies of *Ubuntu* (selflessness) and *kogisano* (social harmony) as traditionally practised in South Africa and Botswana. The momentum being gained by civil society in seeking accountability in the face of complex relations between national government and mining multinationals in Zimbabwe also offers powerful indicators of the value of an engaged public. Each of these country-level successes could contribute to a new model of sustainable land custodianship where traditional systems are valued. One crucial step towards achieving this would be the creation of a regional (SADC) platform or knowledge hub informed by priorities and successful land management practices at country-level.

BIODIVERSITY COMPONENT AND THE EXTRACTIVE INDUSTRY

Economic growth that is only reflected by Gross Domestic Product (GDP) can be a driver of the over exploitation of natural resources and biodiversity. In addition to developing an indicators of growth that

is more inclusive and cognisant of the use of natural resources, the need for more integrated land use and development planning (in both rural and urban areas) provides a potential solution for the better management and use of Southern Africa's natural resources and biodiversity. When looking at these issues from the perspective of the extractives industry, activities such as mining have two main detrimental effects on biodiversity. The first is the release of waste (i.e. heavy metals) that in turn pollutes and harms many ecosystems (most notably within aquatic ecosystems). The second is the encroachment of mining activities on biodiversity and ecosystems.

In relation to the release of effluent into the environment, the key issue is the sensitivity of the environment and ecosystems to the impacts resulting from mining activities. Increased pressure from mining activities on natural environments and ecosystem presents risks that push ecosystems past certain 'tipping points' to a point where these shifts in the functioning of the ecosystem are irreversible. In essence, these tipping points refer to situations in which an ecosystems become so degraded that they reach a state that is different to what it once was. For example, in an area where over grazing occurs, the soil can become degraded and thus becomes unsuitable for vegetation to grow easily. Observations from gold mining activities in the West Rand region in South Africa have shown that the impact of mining activities in this area have a serious adverse impact on ecosystems whereby there is no biota present in what was once considered healthy and diverse ecosystems.

The impact on water and wetland ecosystems, and the services these ecosystems provide, is a key concern. Potentially the most severe impacts from metals extraction on these ecosystems include the pollution and degradation of aquatic ecosystems and receiving water bodies, both of which often result in significant reductions in water quality. In this context, the situation of adverse impacts on the water sector combined with increasing demand for an already scarce water resource must receive more attention in Southern Africa. With rising population growth combined with a desire for economic growth, competition for scarce resources places increasingly unsustainable pressure on water resources. It additionally can contribute to increasing the fragility of ecosystems and arid environments. Overlaying the pressures exerted from mining activities, and this challenge becomes even hard to fathom.

In terms of forest, savannah and grassland resources, these natural resources can be placed under considerable, additional pressure. This is because while the mining industry is one actor that impacts on these environments, other industries such as the timber and agricultural industry encroach and make demands on these resources (albeit at differing scales). Furthermore, rural livelihoods are also reliant on fuel wood and non-timber forest products for the maintenance of their livelihoods. Thus both the ecosystems and the livelihoods that are reliant on these ecosystems can be placed under strain due to unsustainable practices by, amongst others, the mining industry.

Considerations from the Southern African Future Workshop (FW)

A potential tool to curb this over exploitation of natural resources and biodiversity that was discussed by delegates at the FW–Southern Africa was the System of Environmental and Economic Accounts (SEEA) .At a national level, the SEEA is one tool to provide environmental and economic information relating to natural resources. The SEEA builds on the System of National Accounts (i.e. accounting techniques for measuring the economic activity of a nation) as a means for expanding the framework of this system to incorporate measures for environmental resources into national accounting processes.

Delegates deliberated on the potential applicability of the SEEA in Southern Africa. . There are limits to this approach and these were raised and discussed. The biggest concerns being the ramifications of potential impacts due to the monetisation of natural resources and the resultant adverse impacts this

may have on resource exploitation. Furthermore, the need for strong legal and regulatory frameworks to monitor the implementation of such an approach was raised as was the need to support institutional capacity building to manage the implementation and monitoring of this approach.

There are elements of the SEEA approach (such as the tracking of resource depletion) that provide insights into strategies that can assist in how Southern African nations might tackle the sustainable management of the natural resource base. For example, by monitoring the stocks (amount of resources within a nation) and flows (amount of resources used in economic activity by a nation) of a nation's natural resources, the government ministries that maintain the System of National Accounts (i.e. the systems used to calculate GDP) should have the resources to better monitor resource usage. With this kind of information on hand, government may be able to make decision on the investment of revenues from the sale on non-renewable resources (i.e. gold) into other sectors of the economy (i.e. in renewable resources such as forest (for carbon sequestration) or solar energy). Delegates discussed how an approach of re-investment of revenues received from the extraction and sale of non-renewable resources should be channelled into renewable resources as a potential strategy for achieving sustainable resource use and sustainable economic development. The emphasis here is to investment in industries that would allow for the reduction in consumption of other resources.

The renewable energy industry is an example. Should a portion of the revenues from the sale of oil resources be re-invested in solar or wind power (or other renewable sources of energy generation) the development of a renewable energy sector has the potential to reduce the demand / consumption pressures on energy, as well as on the resource used to generate energy (such as coal).

LAND AND EXTRACTIVE INDUSTRIES IN SOUTHERN AFRICA

Agriculture and the extractive industries have for many years contributed enormously to the economic growth and development of Southern Africa (Southern Africa Resource Watch). However, with the increasing demand for mineral resources, the rate of expansion in mining activities over the past 10 to 15 years has been phenomenal. This chapter explores the competing land uses between agriculture and mining, and how the phenomena of land grabbing for extractive activities have threatened livelihood systems of numerous households and small holder farmers in Southern Africa.

Studies show that over 60% of the Southern African population derives their livelihoods and income directly from land (Mutangadula, 2004). This suggests that land remains one of the strategic sources of identity and livelihood options for many people in Southern Africa. Despite this, evidence shows that for the past 50 years land holdings have gradually been declining (Ward, 2011). For instance, recent population data bases indicate that more than 30% of the Sub Saharan Africa population lives in areas exceeding 250 people per square km, with limited or no potential for expansion (Ricker-Gilbert et al., 2012). In some specific countries such as Malawi, this situation is glaring as more than 40% of small holder farmers have land landholdings of less than 0.5 hectares per household (Niasse, 2011). Even though most studies mention population growth as a major factor reducing landholdings among populations in Southern Africa, recent studies suggests that a lot of agricultural land is being grabbed by governments and Multinational companies for extractive activities. For instance, the Mpumalanga coal mine which started on a desolate area is currently taking approximately 12 % of the South Africa's total high potential arable land, while a further 13.6 % are under prospecting by the Anglo Coal's Mine (Harvest South Africa, December, 14, 2012).The above evidence only suggests that a combination of

population growth, the effects of climate change and governments shift of policy priorities from agriculture to extractive industries will leave many people landless by 2050.

Over the decade, attempts have been made by the international community and Civil Society Organizations to protect and promote indigenous populations rights to land. Among the protocols developed to fulfill this are; The international labor Organization (ILO) convention 169, the United Nations Declaration on the Rights of Indigenous Peoples and the Report of the African Commission's Working Group on Indigenous Populations/Communities adopted by the African Commission on Human and Peoples' Rights. All these international protocols are aimed at ensuring that indigenous people assert their claims to traditional lands. The protocols urge governments to acknowledge indigenous peoples' right of ownership over their traditional lands and the natural resources obtained from their lands so as to protect the economic, political and spiritual interests of indigenous peoples. Furthermore, they require governments to recognize indigenous customs and institutions and to introduce legislation that allows indigenous peoples right to maintain and strengthen their legal, political, economic and social systems.

However, despite these protocols, and despite many Southern African countries being signatories to them, many households in Southern Africa are losing their land to extractive industries. In some cases governments themselves have been in the forefront of violating the rights of people in the interest of national development and have defended multinational companies to the detriment of the lives of its own citizens. For instance in Zimbabwe, numerous households have been forcefully relocated by government and mining companies to pave way for diamond mining in Chiadzwa.

A major challenge to the implementation of these international protocols is that the protocols assume that indigenous communities have land that is supposed to specifically belong to them. This is why the protocols urge government to obtain consent from the local communities before prospecting and mining, and to be compensated for their loss of land and other natural resources to activities that are in the interest of national development. Even when consent is gained, in many cases it is not "informed consent". As such, the communities are not adequately compensated, possibly as a result of a lack of awareness of the value of their land or the resources on their land. As a very basic example, a person's land may be worth US\$20, however capitalizing on peoples' lack of awareness on the value of their natural assets, governments usually gives them less than what they are supposed to be compensated. Further, as most studies on land in Southern Africa show, most populations are squatting on customary land, which by definition belongs to governments. While this legal arrangement makes it difficult for individual households and their communities to protect their land, especially when government wants to use it for extractive activities, the arrangement makes it very easy for government to grab land from communities and use it for other development programs. Unless the above mentioned international protocols are properly domesticated into the national legal framework that meaningfully protect the citizens from wanton land grabbing for extractives, communities in Southern Africa will continue to lose their land to extractive industries.

The land that governments make available for extractive investments is the same land inhabited by local communities. Consequently, the prioritization of extractive industries at the expense of small holder farming has a lot of negative implications for livelihoods and regional socio-economic development. In many cases governments move people to areas that are remote, places without housing, and other social infrastructure. In this way, people are separated from social amenities, namely schools and

hospitals and also from their crops, grazing land, forests, and water resources, thereby destroying their source of livelihood systems.

Studies also show that communities which were previously able to produce their own food fail to effectively do so having been displaced without appropriate plans. The FAO estimates that in order to feed the projected world population of 9.5 billion people by 2050, food crop production needs to increase by 70 percent (100 percent in developing countries). Consequently, displacement of people is not only a detriment to attaining this goal, but it also derails prospects of the regions attainment of the Millennium Development Goals, specifically goal number one of halving poverty by 2015.

Further, as families move, displacement has in many cases disrupted children's chances to continue with their education. In this way governments have failed to protect children's rights to education as enshrined in the Convention on the Rights of the Child. This also derails the regions efforts to attain goal number two of ensuring that all children have access to Universal Basic Education. In moving people to areas without medical facilities, governments interfere with the right to health, which is guaranteed under the ICESCR generally, and women and children respectively under CEDAW and the CRC.

The huge reliance of Africa's population on land also means that the extractive industries related ecological footprints on the region's land will be detrimental to food and livelihood production systems of the people in the region. According to the UNEP studies, the global ecological footprint was estimated at 2.6ha/person in 2006. This is much higher compared to an expected bio capacity average of 1.8ha/person. The studies also show that with the business as usual scenario, where industrialized countries maintain their per capital natural resource consumption and developing countries catch up with them, it is estimated that the global annual resource extraction will triple by 2050. The ecological damage resulting from this will throw many people on margins of production, thereby making human life difficult to sustain.

The extractives related ecological footprints in some world regions have already contributed to the creation of environmental refugees. In 2010, it was estimated that ecological footprints would force about 50 million people out of their land in search of fertile arable land. However, as extractive industries, especially mining continues to degrade the land through poor mine closures it is estimated that this figure could rise to 200 million by 2050. Environmental refugees have implications not only on the regions security but also on the attainment sustainable development (European Communities, 2007).

CONCLUSION

It is evident that SADC member states have a long way to go in relation to devising and implementing national and regional legislative frameworks that enable investment in extractives industries, while ensuring the conservation of biodiversity and promotion of socio-economic rights. Deliberations of the **Southern Africa FW** indicate, however, that much is possible where regional collaboration in finding solutions occurs. It is also abundantly evident that civil society has a fundamental role to play in promoting innovation, transparency, political will and sustainable development that takes cognisance of regional socio-political and ecological dynamics. Critically, it has become particularly clear that meaningful public participation across various spheres is central to the future of any intervention if it is to respond to local needs in a sustainable manner.

REFERENCES

European Communities .2007. *Environmental Handbook*, Europe Aid Unit, Avenue Louise 251 Bte 23 - B-1050 Brussels, Belgium.

Harvest South Africa, December, 14, 2012.

Mutangadura G., November, 2004., *Land in Africa: Market Asset, or Secure Livelihood?* Church House, Westminster, London.

National Democratic Institute for International Affairs. Bryan, S and Hofmann, B. (Eds.) 2007. *Transparency and Accountability in Africa's Extractives Industries: The Role of the Legislature*. Available Online: http://www.ndi.org/files/2191_extractive_080807.pdf

Niasse M., (2011) *Access to land and water for the rural poor in a context of growing resource scarcity*, Paper presented at the IFAD Conference on New Directions for Smallholder Agriculture 24-25 January, 2011, International Fund for Agricultural Development Via Paolo Di Dono, 44, Rome 00142, Italy

Ricker-Gilbert, J., Chamberlin, J., Thom Jayne .2012. *Rural population Density, Access to Arable Land, and Small Farm Development: Exploring Linkages in Malawi and Zambia*. Available Online: www.africaneconomics.org/2012/documents/papares/AEC2012-326

Southern Africa Resource Watch, *Overview of Extractives Industries in Southern Africa*. Available Online: www.sarwatch.org/sarwadocs/samphiri-claudeK/Overview of extractive industries in Southern Africa

Ward M 2011. *Climate Compatible Development*, Climate and Development Knowledge Network. Available Online: www.cdkn.org.

World Bank. 2011. *World Development Report 2011*. Available Online: <http://www.uis.unesco.org/Library/Documents/world-development-report-education-2011-en.pdf>