



## Report and Analysis of the Mines and Minerals Amendment Bill

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### Introduction

The principal Act governing the mining industry was first crafted in 1961 and amendments to the law were last effected in 1996. Consequently, there have been a number of issues that have arisen in the mining sector, that need to be addressed through policy reforms. In analysing the amending bill, the Committee was guided by a number of imperatives which include: the investment environment, fiscal mining regime, new administrative measures, balancing of interests of persons involved or affected by mining operations and corporate governance issues. The mining industry is currently the backbone of the economy and has been a leader in export earnings in the past decade. In order to optimise production, the mining industry requires US\$3,9 billion in the next five years<sup>1</sup> and this growth needs to be supported by a strong legal and policy framework. Based on the 2015 survey by an international mining research centre, the Fraser institute, Zimbabwe was listed at the bottom ten of the least attractive jurisdictions for investment. This was attributed to unclear and inconsistent policies pertaining to the mining industry. To this end, the Committee of Mines and Energy shall outline areas that need to be addressed in order to spur sustainable and positive growth by the mining industry.

### Methodology

In 2016, the Committee had an opportunity to conduct public hearings in all the 10 provinces of the country in line section 141 (b) of the Constitution. The consultations were attended by a wide spectrum of people who included: large-scale and small-scale miners, civil society, mining communities and ordinary citizens. A written submission was received from the Women and Law in Southern Africa Research and Education Trust, giving a gender analysis of Bill. The Committee also had an opportunity to interact with the former Minister Hon W. Chidhakwa and officials from the Mines and Mining development. From 2016 up to January 2018, the bill was not enacted into law, due to a number of contentious issues that were identified by the portfolio Committee. In order to address these areas, in January 2018, the Committee held further consultations with the new Minister, Hon W. Chitando and officials from the Ministry of Mines and Mining Development as well as other players

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<sup>1</sup> The 2016 Mid-Year Fiscal Policy Review Statement

in the mining industry that included; Chamber of Mines, Zimbabwe Miners Federations, Minerals Marketing Corporation of Zimbabwe, Fidelity Printers and Refiners and mining community representative.

## **Findings**

Following the consultation process of January 2018, between the portfolio Committee on Mines and Energy and key players in the mining industry, these were its findings:

### **1 Strategic Minerals**

The first draft bill under section 5 identified and listed 19 minerals as strategic to the economic, social, security and industrial development of the country. During the 2016 public consultations concerns were raised that the bill excluded minerals such as gold and diamonds which were key to the growth of the country's economy. After further consultations in January 2018, the Ministry of Mines agreed to amend this provision by:

- i. Removing the list of strategic minerals;
- ii. By inserting a clause which outlines that from time to time the Minister of Mines will determine the country's strategic minerals. This was borrowed from the principal law governing the mining industry in South Africa.

### **2 Mining Affairs Board**

Section 6 of the Bill, seeks to amend section 7 of the Act which touches on the composition of the Mining Affairs Board (MAB). The re-constitution of the Board was overdue, given that certain positions in government such as deputy secretary or under-secretary were no longer in existence. Furthermore, following the land reform process of 2000, new farming associations emerged to compete with the Commercial Farmers Union which unquestionably had a seat on the Board. Hence reconstituting the Board is a welcome development given its critical role in ensuring good governance in the issuance and management of mining titles. However, the proposed Board has a number of shortcomings which were raised by the public and the Committee concurs with these observations. These include:

- i. *Imbalance between government officials and non-government officials:* The section clearly outlines that there would be 6 non-government officials, however the number of government representatives is unclear. The provision merely states that all principal directors from the

Ministry shall sit on the board. Nobody knows how many principal directors are in the Ministry or whether they all add value to the operations of the Board. Secondly the provision allows for the appointment of two other officials from the Ministry chosen at the discretion of the Minister. It is not clear what knowledge or skills these persons will bring or why it is difficult for the Minister to clearly identify these persons given that he or she is overall in charge of the Ministry. In short, the composition of the Board, in term of numbers is unclear and it appears there will be more government officials whose expertise is unknown. These issues need to be resolved to avoid a bloated board, which would be costly. The composition of the board will have an impact on issues to do with corporate governance. Therefore this needs to be addressed in order to build confidence in the mining industry and for investment.

- ii. *Gender Parity:* Subsection 1 (e) of the provision highlights that the Minister shall endeavour to ensure there is gender parity in the nomination of the six non-government officials. The same rule is not being applied to government officials. This matter needs to be addressed in line with section 17 (b)(ii) of the Constitution which calls on the State to ensure “*women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament*”. While the Committee is conscious that the mining industry is male dominated, the Ministry should be seen to be promoting gender parity.
- iii. *Inclusion of New Members and Expansion of the Board:* There were calls by the public that the Board should be expanded to include representatives from the youth, civil society, mining communities, the academia such as the Institute of Mining Research and artisanal miners. Secondly, the following associations requested for more seats on the Board: representatives from the Chamber of Mines to be increased to 5 and members from association of small-scale miners to be increased to 2. The Committee will urge the Minister to consider the practicality of these requests. The position of the Committee is that there should be balance on the board between the policymaker and the producers or those affected by mining operations.
- iv. *Quorum of the Board:* The bill is silent on the quorum. The provision merely states that the quorum at any of the Board’s meeting shall be fixed by the Board. There is danger that a quorum may comprise merely of government officials and this will be equivalent to having a heads of department meeting at the Ministry. Safeguards need to be put in place to ensure that the quorum reflects the diversity of the composition of the Board.
- v. *Procedure of Board:* The provision that the Board shall meet at least once every two months is a welcome development. History has records of periods that the Board went without a meeting whilst many issues remained unresolved.

- vi. *Independence of the Board:* During the public hearings it clearly emerged that the majority of views did not want the Secretary of Mines to chair this Board. The fear was that Permanent Secretary will undertake multiple roles: that of advisory, of oversight and implementation. The views of the people were that this should be an independent Board which makes recommendations which can either be adopted or rejected by Secretary. This issue was very emotive and the Committee observed this was caused by negative public perceptions on the incumbent office holder. During the January 2018 consultative meeting, the Committee decided to shelve its position on this matter and referred it to the Attorney General, in light to the Public Entities Bill gazetted in 2017, which has a provision barring Permanent Secretaries from chairing any boards.

### **3 Computerised Cadastre of Mining Rights and Title**

The cadastre system is defined in the bill as “*the system for manual or electronic management and recording of processes that create mining rights and titles*”. In essence, there will be a dual system of recording mining titles. This is a welcome development, because for a long time the Ministry had been relying on a manual system which created voluminous papers and documents. The computerised system will go a long way in improving the ‘*ease of doing business*’ in the mining sector and will play a critical role in attracting investors. The benefits of the cadastre system include:

- i. Speedy recording and retrieval of mining information;
- ii. Improves accuracy of locating mining properties;
- iii. Eliminates miner to miner disputes associated with shifting of beacons and pegs;
- iv. It creates a platform for comparison and enables competition between Zimbabwe and countries in the region, the continent and beyond.

The Committee would urge the Ministry of Finance to provide adequate financial resources for the establishment of this system in the forthcoming financial year.

However, several concerns were raised during public consultations. These included:

- i. The Secretary of Mines should not hold the post of the Cadastre Registrar. Apart from the day-to-day responsibilities as the accounting officer in the Ministry of Mines, the bill accords the Secretary another important responsibility of chairing the Mining Affairs Board. Concern was raised that the Secretary of Mines is being asked to take on too many responsibilities. In terms of good corporate governance, it is the Committee’s position that it would inappropriate to accord the Secretary with too many responsibilities. During the January

2018, consultation meeting, the Ministry agreed to amend this provision and to delegate the responsibility to someone else other than the Secretary of Mines.

- ii. The Cadastre System is highly technical, hence it should be managed by someone with competencies in information communication technology.
- iii. There is need for the bill to stipulate the type of map to be used for the issuance of title coordinates, such as Arc 1950 UTM. The benefit is that users will apply the same data for identification of coordinates.

On the interpretation of mining title, the Committee concurs with the mining producers that there is need for further dialogue in order to simplify the mining titles used in the country. In law of property, the moment a person acquires title, this has rights attached to it. In the bill there is separation of mining title and mining rights. This is unnecessary. Recommendations were made that we could have mining titles such as 'mining claims for small workings', 'mining leases for large scale', among others.

#### **4      *Exclusive Exploration Licence and Exclusive Prospective Licence***

The clauses on the issuance of exclusive exploration and exclusive prospective licences are progressive, in that they give exclusivity of title. However there are certain areas that need improvement or clarity such as:

- i. *Terms of extension and renewal of license:* a prospecting license is valid for 12 months, whereas an exploration licence is valid for 3 years and may be extended for a further period not exceeding three years. Concerns were raised by the mining industry that time restrictions can be retrogressive in the exploration of minerals. An example was cited of Murowa Diamonds which took more than 10 years of exploration before production began. Each mineral and project is unique hence time restrictions can hinder full development of a mining project. The mining producers outlined that in order to promote speedy exploration for minerals, other countries have developed an escalating fee structure where delays result in charging of a premium price. This will greatly benefit Treasury than incompleteness of projects constrained by time factor.
- ii. *Pegging of Claims in Exclusive Exploration Reservation:* Section 96 (4) of the bill highlights that the Minister may authorise pegging of claims in an exclusive exploration licence for a mineral other than the minerals for which the licensee is authorised. During public consultations, the Committee observed that this was a very contentious issue between small and large scale producers. There was a plea from small-scale producers, particularly the youth to be

accommodated in reserved areas. Artisanal and small-scale mining is a critical sector towards poverty reduction and employment creation in most resource-rich countries in Africa. On the other hand large-scale producers were vehemently opposed to the idea on the grounds that it will diminish security of mining title and will create administrative challenges.

The purpose of section 96 is explained in the 2016 Mid-Year Fiscal Policy Review Statement, which states that the policy on reservation on mining areas would be reviewed to allow for new investment opportunities. The Committee supports the position taken by the Executive of accommodating small-scale miners and other investors to explore or even mine in reserved areas. This has worked well in countries such as South Africa, where different mineral producers co-exist on one mining location. However, the Committee would like to encourage more dialogue between the Ministry and the primary producers to dispel the notion that government is expropriating mining workings or imposing its decision irrationally.

- iii. *Monitoring and Regulation of Exploration Activities:* On section 101 of the bill, concern was raised by the producers that it will not be possible to produce a work plan every six months during the exploration phase. The Committee concurs with the suggestion by producers that the licensee should produce an annual work plan and then report on progress made every six months. It reduces delays in carrying out a project due to bureaucracy.
- iv. *Requirements for Application of a license:* In order to apply for either a prospecting or exploration license, the Bill highlights that the Registrar or Board will consider whether a person is '*fit and proper*' to hold such a license. The Ministry of Mines, agreed at the January 2018 meeting to remove this clause.
- v. *Abandonment of Exclusive Exploration Reservation:* Section 106 provides conditions under which reserved ground for exclusive exploration can be abandoned. The large scale producers requested that the restriction in section 106 (2) (b) should be removed particularly where abandonment will result in the ground being divided into two separate portions. The argument by the Chamber of Mines is that it is possible given an initial size of 65 000 hectares that discoveries can be located in two distinct areas. A request was made to allow for retention of the said two areas. The Committee concurs with the request by large scale producers unless if the Ministry has a compelling reason to deny the request.

#### **4 Farmer-Miner Relations**

There is a lot of tension between farmers and miners when minerals have been discovered on productive agricultural land. The Committee observed the following:

- i. Conflicts between farmers and miners, particularly small-scale and artisanal miners was prevalent in various parts of the country. One participant during public consultations described the relationship between a farmer and miner like that of '*mombe ne bere*', it's a win or lose type of relationship.
- ii. Miners are accused of being arrogant and do not respect the rights of farmers. Threats and intimidation are used to force farmers to cede their land rights.
- iii. The most vulnerable farmers are those with offer letters, 99 year lease or permits. The assumption is that such farmers do not have any title to the land, hence should be re-located in the event that a mineral is discovered.

However, the Committee would like to commend the Executive for progressive provisions in the Bill that seek to balance the interests of the farmer and the miner. Such provisions include:

- i. Section 65 protects the farmers with a 99 year lease or a permit. A miner is compelled by law to get the consent of the farmer before prospecting. The provision also outlines the distances that should be observed for prospecting from areas such as homestead, dip tanks, on land under cultivation among others.
- ii. In the event that the discovery encroach into the restricted areas such as farmhouse, agricultural land, the farmer can be bought out through the court process, where compensation will be determined on factors such as the value of improvements on the land, the possible loss of profits over a period of three years and so on.
- iii. During public consultations, the sentiments from farmers were that miners should be compelled into a joint venture with the farmer. However, the bill protects the miner from such greedy farmers, in section 65 (3), where it states, that "*where any consent .....is unreasonably withheld the Minister may authorise any person to exercise his or her rights...*" Furthermore if the farmer refuses to grant the miner permission and then decides to apply for permission to mine, the bill prohibits such behaviour. Section 65 (2) says that "*if the holder of any private land or occupier of communal land, holder of a 99 year lease or permit withholds consent to the exercise of any mining right or title.....such holder or occupier may not apply for a like mining right or title over the ground in respect of which such consent was withheld...*"

Whilst provisions of the farmer-miner relationship are progressive and seek to balance the interests of both groups of people, there is need for the Ministry to formalise most artisanal and small-scale miners, so that they respect the rights of farmers, public property and institutions such as roads, schools and dip tanks and so on.

## **5 Mining Leases**

Part 8 of the Bill touches on mining leases. One of the contentious issues is that of mining rights of a lessee, outlined in section 143. The bill highlights that every lessee has an exclusive right to any ore or deposit of any mineral *“except energy minerals, precious stones and declared strategic minerals which may be discovered within the mining lease...”* The concern is the government will have control over the exploitation of strategic minerals and arguments were raised by the industry that such restrictions are inconsistent with best international practice. The acceptable approach will be for lessee or investor to be given the first right of refusal to exploit any discovery.

The second area of concern by the industry, was found in section 145 where a lessee has to submit to the Board a written program which outlines the development work which he or she intends to undertake on the mining lease during the forthcoming 12 month period. The argument of the industry was that given that mining leases are for 25 years and subject to renewal, annual management will become a cumbersome process for both government and the miners. A request was made for the mine plans to be based on a five year cycle and the lease holders would submit annual reports as outlined in the five year plan.

The third issue of concern pertains to section 153 (1), which deals with the approval of transfer of mining leases. The provision states that *“a mining lease may not be transferred except to a person approved of by the Board, after consultation with the owner of the ground covered by the lease”*. The Committee supports the position where transfer of title is based on commercial factors. The authorization by a regulator and payment of prescribed fees should be adhered to but this provision seems to imply that transfer can be initiated by a third party and the lessee will only be consulted. The process will be prone to manipulation by the Ministry in that it can influence the transfer process, particularly the person to get the mining lease.

## **6 Fiscal Measures**

This section seeks to outline the fiscal measures that will have a bearing on the mining industry once this bill is introduced. The industry has been complaining that they are overtaxed and the bill seeks to introduce the following charges, fees or levies:

- i. Safety, Health and Rehabilitation Fund:* Section 257 E provides for a Fund to be used for the rehabilitation of environmentally damaged sites. Concern was raised by mining producers

that this Fund was a duplication of the Environmental Fund which is provided for under the Environmental Management Act. Mines are already contributing to the Environmental Fund and if this new Fund is approved it will lead to multiple schemes for managing the environment. The Committee supports the position that miners should only contribute to one Fund, either the new one or the one established under the Environmental Management Act. The Committee also noted with concern that most of the damage to the environment is perpetrated by illegal mining operations particularly by small-scale and artisanal miners. Formalisation of this group will have the added advantage of safe and environmentally friendly practices. Following the consultative meeting held in January 2018, the Ministry of Mines agreed to conduct further consultations within government, to ensure there is harmonisation of laws.

- ii. *Payments to Local Authorities:* Section 76 in the Bill has not changed from the current position in the Act, which prescribes levies to be paid by miners to local authorities. The fear by mining producers is on the purpose of this levy, which can lead to duplication of levies provided for in the Rural District Councils Act. The best approach will be to remove the provision and the regulation should be left to the discretion of the Ministry Local Government.
- iii. *Royalties:* The Bill highlights that *“the rate of royalty payable in terms of section 244 shall be as fixed in the Schedule .....of the Finance Act”*. The criticism levelled against this provision is that modern mining laws provide the basis upon which royalties are charged, like in the current law. Mining producers requested for more dialogue with the Ministry in order to come up with a workable formula, which takes into account the maximum cap, fluctuations in international commodity prices among other issues. The Committee is persuaded to support the position of the mining producers, given that this issue on the rate of royalties has been a contentious subject over the past decade.
- iv. *Cadastre System,* in section 17 the Registrar is empowered to collect a fee for processing applications. There will also be annual service fees, fees to inspect the Register and any other fees may be charged as prescribed in this Act or regulations.
- v. Section 103 of the bill highlights that fees for exclusive exploration licence shall be paid in a prescribed manner. The bill does not provide the basis upon which the fee is calculated. This formula should be outlined, to promote stability and predictability.

Following the January 2018 consultative meeting, the Minister of Mines told the delegates that the Minister of Finance had made an undertaking to introduce a consolidated fiscal mining regime, to enable the industry to be productive and to lure investment.

## **7 Mineral Beneficiation**

Value addition of minerals by resource-rich nations is recognised in the Africa Mining Vision of 2009 and the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim Asset), 2013 to 2018 as playing a critical role in wealth and employment creation. The Committee would like to commend the Ministry of Mines for fully recognising the importance of value addition through this bill. In 2012, the Times of India carried a story which stated that *“with imports of low-range rough diamonds from Zimbabwe expected to soar, it’s going to rain jobs in Surat, the world’s largest cutting and polishing centre”*. It was anticipated that Zimbabwean diamonds worth about 1,5 billion American dollars were going to create 600 000 in one province of India.

Whilst beneficiation of minerals is a noble idea, the public during consultations expressed reservations on the implementation of value addition policy, given the binding constraints associated with infrastructural services such as roads, power, water and technical skills.

Section 307 (5) of the bill highlights that the Minister shall initiate or prescribe incentives to promote beneficiation in the country. The Committee would like the Minister to outline these incentives in the Bill, as a way of attracting the investors into the sector. The Committee was informed by the Minister during the January 2018 consultative meeting, that the incentives offered for beneficiation of minerals were outlined in the Special Economic Zones Act of 2016. Furthermore more a mineral policy will be developed to guide subsectors such as beneficiation.

Secondly, section 307 (3) is ambiguous. It states that *“any person who intends to beneficiate any mineral mined in Zimbabwe outside Zimbabwe shall only do so upon written authorisation from the Minister”*. This section can imply that a third party who has bought minerals outside the country which were mined in Zimbabwe, would need to seek the consent of the Minister to beneficiate. This gives extraterritorial powers to the Minister, which is unacceptable. It would be more acceptable if the obligation is placed on local exporters and not for all and sundry.

The third area of concern is section 307 (6) which states that the Minister will prescribe regulations on export permit fees payable on unbeneficiated minerals. There is a risk of tax duplication on some minerals, which include platinum where 15% is chargeable on unbeneficiated exports. Some of these taxes are regulated through the VAT Act. If the bill becomes law, it is important that the provisions in the VAT Act are repealed in order to protect the miners from double jeopardy.

On the definition of terms, the Committee noted with concern that there was inadequate consultation by the Ministry in coming up with a proper definition of *‘beneficiate’*. The definition is restricted to

separation of ore into concentrate and gangue. Other economically valuable forms of beneficiation such as washing, cutting and polishing are not mentioned.

## **8 Localisation of Shareholding and Use of Local Financial Institutions**

Section 393A of the bill highlights that no mining right or title shall be granted to a public company unless the majority of its shares are listed on a securities exchange in Zimbabwe. Concern was raised that this provision will work against listing on Zimbabwe securities. Those not listed will not be affected by this provision.

Secondly, section 393B states that a holder of a mining right has to make use of local financial institutions. Whilst this is a noble idea, in light of the liquidity crunch that country is currently experiencing, the sentiments from the public were that financial matters and their regulation should be left under the purview of the Reserve Bank of Zimbabwe and the Ministry of Finance.

Thirdly, section 393 provides for notification to the Minister of Mines of any changes in its shareholding within 14 days. Concern was raised that this provision is not practical, especially for listed companies whose shares are traded daily. After 14 days such listed companies are likely to report to the Minister daily.

## **9 Riverbed Mining**

Section 391A of the Bill states that, “*no person shall undertake any mining operations on any riverbed except where such persons are part of a joint venture partnership with government.*” The Bill has restricted riverbed mining to joint venture agreements with the government. There were divergent views by the public on this matter. Some of the concerns include:

- i. *Source of Livelihood:* riverbed mining is a source of livelihood for many communities and this provision seeks to exclude such group of persons;
- ii. *Environmental damage:* a number of major rivers have suffered extensive damage, hence affecting other sectors that rely on the water bodies such as irrigation farming;
- iii. *Prohibition of Riverbed Mining:* The bill contradicts statutory instrument 92 which prohibits riverbed mining.
- iv. *Joint Venture:* Riverbed mining has been restricted to joint venture agreement between government and another partner.

The clause on riverbed mining was very emotive during the public hearings and after the January 2018 consultative meeting, the Ministry of Mines agreed to remove this provision. In effect this entails that riverbed mining remains prohibited in terms of SI 92 but the reality on the ground is that the activity is still taking place. The Committee's position is that there is need to balance the interests of all persons that are dependent on the country's river systems. Countries such as China are engaged in riverbed mining without extensive damage to the environment.

## **10      *'Use it or Lose it' Policy***

Section 401 of the Bill relates to the *'use it or lose it'* policy in that it highlights the reasons behind the cancellation or forfeiture of a mining right. The reasons include:

- i. Where a miner has failed to commence mining operations within a reasonable period;
- ii. The miner has not declared output within a reasonable period after commencing operations;
- iii. Where a false return or declaration regarding output from a mining location has been made;
- iv. Where certain provisions of the Gold Trade Act, the Precious Stones Trade Act and the Minerals Marketing Corporation of Zimbabwe Act have been contravened.

There were number of issues that were raised by the public regarding the *'use it or lose it'* policy. Firstly, artisanal and small-scale miners were in support of this policy because it affords them an opportunity to get valuable claims most of which are in the hands of the large-scale producers. On the other hand, the large scale producers expressed concern that this policy should be applied with caution, given that mining is a long-term business and is capital intensive. One of the reasons why mines pay protection fees is to secure their future interests. The other concern raised by large companies was that the term *'use it'* should be clearly defined given that there are various activities that occur in mining which are not necessarily linked to production of minerals, such as construction of infrastructure. At the same time mining companies have five-year plans which are implemented in different phases, hence these plans should be taken into account before a company is forced to surrender part of its ground.

The Committee observed that the term *'reasonable period'* need to be specified. A timeframe should be clearly set out. Secondly, the Committee welcomes the decision taken by the Ministry of Mines to open new ground that was under reservation to enable artisanal and small-scale miners to acquire claims legally and for others to expand their operations. However, some of the artisanal and small-scale miners were bitter over the loss of their claims because they were unable to pay statutory fees laid out by the Minister. The bitterness emanated from the fact that the parent Ministry was paying

a deaf ear to their plight which was causing them to be unproductive. However, Government through the Reserve Bank in 2017, introduced a \$40 million loan facility to assist small-scale miners. This facility has had positive impacts on production and deliveries of gold through the formal system.

## **11 Mining Disputes**

Section 344 of the Bill refers to dispute regulation process between miners. The provision highlights that the Cadastre Registrar will order parties to stop mining activities where one party has lodged a dispute with the Ministry or at the courts. Furthermore, the provision highlights that the Ministry should endeavour to resolve the dispute within a reasonable period. During the public hearings, the Committee heard that the sector is riddled with many disputes, some of which have been raging for more than five years with no solution in sight. The causes were attributed to incapacity by the Ministry to resolve the problems, due to shortage of manpower and vehicles to visit the affected mines. Some of the officials within the Ministry were also accused of bias and nepotism in resolving some of these disputes. Concern was also raised that it will be improper to shut down a large mining company where a dispute has been declared because of the impact it will have on workers, security of machinery and loss suffered to the fiscus. A suggestion was made that the Ministry should set up an Arbitration Board to assist in resolving these disputes whilst operations continued.

The Ministry would need to look at the merits and demerits of establishing an Arbitration Board but the real problem is that the Ministry is taking long in finding solutions hence creating anxiety, suspicion and complications over the disputes. Furthermore, it was noted that the long delays in resolving disputes may be deliberate. In such disputed claims the area was ring-fenced and the police were called in to safeguard the place, but due to failure to resolve the case speedily, the police were also being accused of mining the disputed claims with the assistance of illegal miners.

## **12 Recognition of Artisanal and Small-Scale Miners**

The Committee noted with concern that the Bill is silent in fully recognising artisanal and small-scale miners. Section 257 A (1) defines a small-scale miner as '*a holder of a mining location who is not a large-scale miner*'. This definition is grossly inadequate. Secondly, the Committee is concerned that the operations of this sector have been criminalised. The Minister of Finance has on numerous occasions verbally announced that artisanal and small-scale miners have been de-criminalised but the Ministry of Mines has not inscribed this on paper. As a result the sector continues to experience harassment by the police and stigmatisation by the generality of the people. Official and unofficial

statistics estimate that there are between 500 thousand to a million people engaged in artisanal and small-scale mining in Zimbabwe. In the process the country continues to lose millions of dollars each year through smuggling and leakages of minerals.

### **13 Conflict of Laws**

There are several contradictions that exist between this bill and the Environmental Management Act. These relate to the riverbed mining and on the establishment of another environmental fund in the bill. At the January 2018 consultative meeting, the Ministry of Mines agreed to address these conflicting laws and ensuring there is harmonisation of the country's laws.

### **14 Transitional Provisions**

There are a number of challenges that will be created following the enactment of this bill. A request was made that there should be transitional provisions in the bill as it relates to the legal status of mining rights. The areas of concern include the following:

- i. **Computerised Cadastre System:** It is anticipated that there will be changes to mining locations and this may create disputes. Transitional provisions should be laid out in the bill to deal with this matter.
- ii. **Stock Exchange Listing:** Where a mining company has acquired rights under a special mining lease pursuant to the provisions of the current legislation and such entity is a public company that is not listed on the stock exchange as required by section 393 of the Bill, there is need to clarify what the status of the rights of such an entity are. The concern is whether the company can continue to operate under the current special mining lease which was acquired before the new restriction as regards listing of shares on the local bourse.

### **15 Penalties**

The Bill provides for excessive penalties that do not match the level of the breach. These penalties need to be reviewed in order to attract investment and should take into account the socio-economic environment of the country.

- i. **Riverbed Mining:** Section 391 A (2) highlights that any person who undertakes riverbed mining without the observing the provisions of the bill will be imprisoned for a period not less than years and not more than 10 years. Those mostly likely to be affected by this provision

are artisanal and small-scale miners who have been engaged in riverbed mining. Whilst the Committee supports sustainable mining practices, it has to acknowledge that the penalty is too harsh. The Committee's position is that sentencing should be left to the discretion of the Judiciary.

- ii. **Protection of the Environment:** Section 257 D (3) highlights that directors of a mining company will be jointly or severally held liable for any unacceptable negative impacts on the environment. The Committee supports the recommendation made by the mining industry that the company is the one that should be sued as a legal persona as provided by the Companies Act. Furthermore, the Companies Act provides for the piercing or lifting of the corporate veil, so there is no need for duplication on the strict liability when it is covered in the law elsewhere.
- iii. **Use of Financial Institutions:** Section 393B highlights that a holder of a mining right who does not utilise local financial institutions for transactions will be imprisoned for a period not exceeding 20 years.

## **15 Mining Contracts**

The Bill is silent on the negotiation and performance of State contracts. The State has negotiated a number of mining contracts which have been prejudicial to the country, for instance the ones that were negotiated in the diamond sector soon after discoveries in Marange. Section 315 (2)(3) clearly outlines that *“An Act of Parliament must provide for the negotiation and performance of the following State contracts – concession of mineral and other rights to ensure transparency, honesty, cost-effectiveness and competitiveness”*. It is important that once the Executive negotiates these contracts, they are brought before Parliament for further scrutiny. There has been allegations that the country lost about 15 billion dollars' worth of revenue from the diamond sector, attributed in part to poorly negotiated contracts.

## **16 Recommendations**

### ***Strategic Minerals***

1. The list of strategic minerals should be removed and strategic minerals will be identified by the Ministry from time to time through gazetting of statutory instruments.

### ***Mining Affairs Board***

- 1 There should be a cap on the number of board members.
- 2 The expertise of board members should be clearly laid out as this will promote good corporate governance.
- 3 Representation from mining producers should be increased to a maximum of 2 for small-producers and 4 for large producers.
- 4 The quorum of the board should be at least 50% membership from both government and non-government officials.
- 5 Gender parity should be promoted in the composition of the Board in line with section 17 (b) (ii) of the Constitution.
- 6 The Chairperson of the Board should be determined in light of the Public Entities and Corporate Governance law of 2017.

#### ***Cadastre of Mining Rights and Titles***

1. The Secretary of Mines should not be assigned the position of Cadastre Registrar. It should be given to another person, who will work within the Ministry.
2. Mining titles should be simplified for the benefit of investors, producers and other key stakeholders.

#### ***Exclusive Prospective Licence and Exclusive Exploration Licence***

1. An escalation fee or expenditure structure should be developed to promote speedy exploration of minerals rather prescribe time limits.
2. More dialogue is needed between the Ministry and the mining industry on the pegging of claims in exclusive exploration reservation, so that there is acceptance by all the affected and interested parties.
3. Section 20 (4) (c) and 89 (1) (a) which state that an applicant for an exclusive exploration or exclusive prospecting license should be '*fit and proper*', should be struck off from the bill. It does not add any value to the process but can be abused to deny certain applicants of a license on flimsy grounds that he or she is not '*fit or proper*'.
4. Restrictions on abandonment of ground for exploration should be removed and allow interested persons to retain a portion or separate portions of ground.

### ***Fiscal Measures***

- 1 The fee structures should be clear for all applications, this will create stability and predictability in order to attract the much needed investment.
- 2 The provision on the payment to local authorities, should be removed from the bill and left to the discretion of the Ministry of Local Government.

### ***Mining Leases***

1. The lessee should be given the first right of refusal in the event that he or she discovers strategic minerals. This will promote investment into the industry.
2. Transfer of title should be based on commercial reasons, so as to build confidence amongst investors.

### ***Beneficiation of Minerals***

- 1 A holistic approach on the beneficiation minerals is required. The policy should be supported with adequate resources from Treasury and investors, in setting up of infrastructural services, institutions and enablers such as power, water and trained personnel.

### ***Localisation of Shareholding and Usage of Local Financial Institutions***

1. Monetary and fiscal measures on the mining sector should be left to the discretion of the Reserve Bank and the Ministry of Finance respectively.

### ***Riverbed Mining***

1. The Ministry should conduct extensive research and get best practices on riverbed mining in light of both negative and positive impacts of the activity.

### ***'Use it or Lose It' Policy***

1. The timeframe in which a person can lose a mining title should be specified. The term 'reasonable period' is vague and maybe open to abuse.

2. The business plan of large companies should be taken into account before implementation of this policy.
3. The policy should be implemented in line with the exploration policy of the country. Once mineral quantities and values are known it enables and empowers investors to make decisions and not hold on to unproductive ground.

### ***Mining Disputes***

1. The Bill should clearly set out the time-frame in which a mining dispute should be resolved, especially if it is being handled by the Ministry.
2. The Ministry should be adequately resourced with personnel and vehicles to speedily resolve mining disputes.
3. In the case of large-mining companies, a waiver should be inserted in the Bill before closure of a mine, given the socio-economic impacts of shutting down a large mine.
4. The Ministry of Mines should consider the possibility of an arbitration process in resolving some these disputes.

### ***Recognition of Artisanal and Small-Scale Miners***

1. The bill should give an adequate definition of artisanal and small-scale miners.
2. Artisanal and small-scale miners should be de-criminalised and this should be clearly laid out in the Bill.

### ***Conflict of Laws***

1. There is need to create harmony between the Environmental Management Act and this Bill on provisions that relate to the protection of the environment.

### ***Penalties***

1. There is need to review downwards some of the penalties.

### ***Mining Contracts***

1. A provision should be included in the Bill which allows for Parliament to scrutinise multi-million dollar contracts entered into by government.

2. A provision should be inserted in the Bill, in line with section 315 (2) (c) of the Constitution to ensure transparency and accountability in the negotiation of mining contracts.

### **Conclusion**

The Committee would like to commend the Ministry of Mines and Mining Development for its effort to introduce reforms in the mining sector. These reforms have long been overdue given the criticality of the sector to the growth of the economy. However, the Committee would encourage the Executive to consider some of its recommendations most of which emanated from the public consultations, so as to enact a law which is line with the African Mining Vision of 2009 and is also according to the hopes and aspirations of the citizens of this country.