



Zimbabwe Environmental
Law Association (ZELA)

Zimbabwe Environmental Law Association
26B Seke Rd, Harare, Zimbabwe

March 6, 2020

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

CC:

Mr. William Hinman, Director, Division of Corporate Finance
Mr. Barry Summer, Associate Director, Division of Corporation Finance
Ms. Elizabeth Murphy, Associate Director, Division of Corporate Finance
Mr. Elliot Staffin, Special Counsel, Division of Corporation Finance

RE: Dodd-Frank 1504 rule, file #S7-24-19

Dear Secretary Countryman:

The [Zimbabwe Environmental Law Association](#) (ZELA) welcomes the renewed effort by US Security Exchange Commission (SEC) to enact mandatory disclosure rules for companies in the extractive sector.

ABOUT ZELA

ZELA is a civil society organisation that has an impeccable record in Zimbabwe and Africa on influencing the formulation and implementation of laws, policies and practices which contribute to good natural resource governance, transparency, and accountability in the extractive industry. ZELA is a member and current coordinator of the Publish What You Pay (PWYP) Zimbabwe Chapter, a grouping of 15 civil society organisations in Zimbabwe pushing for transparency and accountability of the extractive sector.

ABOUT ZIMBABWE'S NATURAL RESOURCES

Over the past decade, Zimbabwe relied on the extractive sector for over 50% of its export earnings. The country has over 60 known minerals although 40 are currently being exploited, with some of the biggest reserves being in platinum, chrome, gold and diamonds. Zimbabwe also has nickel, iron ore, a wide variety of semi-precious and copper among other known major minerals. The sector has been extensively liberalised and is open to foreign investors.

Despite being rich in natural resources, Zimbabwe is one of the poorest countries in the world, ranking 150 out of 188 on the [UN's 2019 Human Development Index](#). Seventy-two percent of its people live below the poverty line and our country has the highest level of food insecurity in all of Africa, with 5.8 million people [living in acute hunger](#).

Mining is crucial to Zimbabwe's economy. Each year since 2010, mining constituted more than half of our country's export revenue. The mining sector is expected to become a USD 12 Billion economy by 2023. Despite this extreme wealth, [34 percent of Zimbabweans live in extreme poverty](#). Development is particularly lacking in communities impacted by extractives, which lack access to basic services such as clinics and schools. Zimbabwe is plagued by widespread and severe corruption, that causes the country to lose precious revenue from the extractives sector that could be used to aid in our development. For example, in 2016, the former President Robert Mugabe remarked that the nation had lost roughly US\$15 billion from looting in Marange diamond mining operations.

Whilst the figure is questionable, what is undisputable is that huge amount of public funds was syphoned. The former Finance Minister, Patrick Chinamasa disclosed in the 2016 national budget speech that there was tangible economic activity when artisanal miners were operating in Marange compared to organised large-scale mining activities which took over from 2009.

To promote greater transparency and accountability, government booted all the seven company that were operating in Marange in 2016. Government then went on to establish the Zimbabwe Consolidated Diamond Company (ZCDC). Unfortunately, ZCDC has failed a transparency test. Its audited annual reports are not publicly accessible and the information lags by one year. Diamonds are still an important mineral to Zimbabwe as government targets at earning US\$1 billion annually by 2023.

In October 2019, the government [launched a strategy](#) to grow mining sector earnings to \$12 billion by 2023, a 344% increase from the \$2.7 billion earned in 2017. We are concerned that this push for more mining will not

lead to better development outcomes for the citizens of Zimbabwe but will instead fuel corruption. Given our government's pushback against joining the EITI, we therefore look to the world's leading capital markets to create a fighting chance for us to hold our government and the corporations operating in our country accountable for the revenues generated from extraction of our finite resources.

A CRITICAL DATA GAP

Whilst the renewed effort to push for the enactment of the SEC Resource Extraction Rule is laudable, in its current form, the proposal is inadequately structured to help in the fight against corruption, opacity, and limited accountability that is experienced in countries that are resource rich but economically poor, Zimbabwe included. Our view is that the SEC Dodd-Frank 1504 Rule must at a minimum, meet the bottom bar standard set by mandatory disclosure rules enacted in Canada, the European Union, and Norway. Those country's disclosure rules compel extractive companies listed on their stock exchanges to publicly disclose payments made to every government agency and local, regional, and national government, on a project-by-project basis. Currently, one of the largest platinum mines operating in Zimbabwe, Unki Mine, is owned by Anglo-American which is a US listed company.

Zimbabwe has fallen behind international best practices in governing its extractive sector. Recently, our government [revealed](#) that it is disinclined to join the Extractive Industries Transparency Initiative (EITI), an international standard aimed at fighting rampant corruption and enhancing accountability in oil, gas, and mining. Since we will not be able to receive critical contract data through EITI disclosures, we call on the SEC to help us receive this data through granular, project-level company's Payments to Government disclosures.

Section 13 (4) of Zimbabwe's Constitution compels the state to put in place mechanisms to ensure that communities benefit from resources in their localities. However, since we do not have project-level disclosures for all projects, we cannot know fully what the state is doing with natural resource revenue, and we have no way of knowing whether our communities are receiving the full benefit to which they are legally entitled.

Our country's Public Financial Management Act requires that state-owned enterprises and government institutions produce annual audited financial statements within six months of each financial year, however, the Zimbabwe Mining Development Corporation is notorious for producing outdated reports. If done in a timely fashion, these types of reports could provide critical information on the health of government and state-owned entities. In recent years, we've been lucky in that through its own, timely reporting standards, ESTMA has generated information on some of the companies operating in our country. A Dodd-Frank 1504 rule that

establishes reporting deadlines that are in line with those used by European and Canadian companies could provide us with useful data that we are not reliably able to receive in a timely fashion from our government.

DATA USE

Despite limited access to data, ZELA has already used what financial disclosures are available to advocate for greater revenue transparency and government accountability. We can offer you several examples of how we have made use of the available data to benefit our country and communities. These examples also show how increased access to project-level data broken out by contract and issuer, would mean we could do even more and strengthen our effectiveness.

Example 1: Using ESTMA data

Reporting under Canada's Extractive Sector Transparency Measures Act (ESTMA) has had a significant impact in southern Zimbabwe's Gwanda mining community in Matebeleland. In our interviews with residents of the area, most say that they have not benefited from the mine operating in their area, which has caused significant animosity.

However, through Caledonia Mining Corporation's ESTMA reports, residents can now trace various payments made to local and central government institutions. For instance, in 2016, Caledonia [paid \\$466,000](#) for a rural electrification levy that provides access to basic electricity to more than 2,330 households through solar panels at a cost of \$200 per household.¹ By disaggregating of various payments made per project to local, provincial and national governments, Caledonia is able to show that they have made contributions to these communities and exactly where those payments have gone.

Payments to government data can also reveal when revenue is not being equitably shared among local governments. For example, Caledonia's 2018 report showed residents of Gwanda that their local government received only 2.77% (\$144,760) of the Blanket mine's total payments to governments (\$5,227,855). Civil society is currently working with the local government to address this issue and is collaborating with the Zimbabwean parliament on a formal evaluation. With Caledonia's disclosed payments, local residents are beginning to see that it's not entirely the company's fault that their community doesn't feel the benefits of mining activity more directly, which is beginning to improve Caledonia's relationship with residents of Matebeleland. Armed with data, these residents can now advocate for their local government to receive a greater share of overall revenues.

¹Zimbabwe: Caledonia Estma Reports an Eye Opener, All Africa (7 June 2018), <https://allafrica.com/stories/201806080107.html>

Example 2: Using data to influence policy decision

By examining available data, we realized that export incentives given to mining companies were costing the government more than it derived from mineral royalties, a key source of national income.² This discovery made us inroads at the national level, and through our advocacy, which was backed up by data, contributed to the removal of these harmful export incentives in 2019.

Example 3: Promoting Community Understanding

In Zimbabwe, mining drives violence. For example, on a hot July night in 2017, approximately 200 people breached the fence of a Zimbabwe Consolidated Diamond Company project, wrenches and machetes in hand. Security guards open fire and death and injury ensued. This is only one such story of the violence and death the plague our mining industry.

When citizens see others profiting off resource extraction while their communities suffer, they get angry. But ill-informed, angry people are easy for companies to ignore; a united front of community leaders armed with spreadsheets are far more persuasive. To that end, we've been educating people in mining towns across Zimbabwe about budgets, taxes, and corporate social responsibility. These groups are beginning to investigate whether their local governments are receiving mining revenues and are advocating for mining contracts that bring more benefits to their communities.

Following one such training, a community-based organisation from Mutare convinced the rural district council to share two years of financial reports with them. They were able to conclude that though mining is the district's primary activity, they had never received any significant revenue from the mining companies. Following this discovery, and the constant let down of failing to benefit from the Community Share Ownership Trust (CSOT), the community pressured ZCDC to make a payment of \$5 million to the Marange-Zimunya CSOTs (a vehicle established under the indigenisation and economic empowerment framework to spearhead local development hinged on extractives). While it is useful to have the money, because there is no transparency, we still do not know tax contributions of the diamond mining activities to both national and local government.

CONCLUDING REMARKS

² Mukasiri Sibanda, "Why Zimbabwe should not give mining companies an export incentive," *The Source*, 13 Feb 2018, www.thezimbabwemail.com/business/zimbabwe-not-give-mining-companies-export-incentive/.

We call on the US to provide leadership in promoting good governance in the extractive industries by at least meeting the bottom bar set by mandatory disclosure rules implemented by Canada, the EU and Norway. As you can see by the examples we've presented, we are using the data that we have access to through ESTMA well to make real change in our society. More data will allow us to achieve even greater impact.

Payments must not be aggregated or lumped up because this will impede the ability of citizens to follow the money, participate in decision making processes and demand accountability. The company identity and the government recipient, including local level governments, must be publicly disclosed. The project definition must be based on contract, lease or concession to ensure that host communities can easily relate with data emanating from a mining activity within their jurisdiction. We hope that the US will view its actions in terms of the impact they can have for countries like Zimbabwe that are behind on global standards when it comes to transparency.

Sincerely,