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Legislative Paper Tiger: Can Zambia Use Good Policy by Itself to Solve its Resource Curse?

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About the series:

The United Nations University-Institute for Natural Resources in Africa in collaboration with the University of Warwick's Centre for the Study of Globalization and Regionalization, University of Leiden-African Studies Centre, Universidade Eduardo Mondlane and University of Ottawa's Centre on Governance undertook a joint United Nations Economic Commission for Africa funded project on "Engaging the Private Sector for Inclusive Extractive Industries and Sustainable Value Chains in Africa." The project was carried out through the study and analysis of four country case studies: Ghana, Tanzania, Zambia and Mozambique. The two-year study examined and prioritized backward linkages in Africa's mineral extraction and natural resources sectors, contributing to on-going efforts at answering the central problematic of how to leverage the latter industries to support, encourage, facilitate, and drive broad-based and sustainable economic growth and development, both transitionally and in key case study states.

Abstract

Some observers have called Zambia a quintessential example of the resource curse, reliant on a single economic source to drive revenues, the gross domestic product (GDP) and growth. Zambia has been focussed on developing its copper industry for decades. This is a commodity that is invariably and perhaps uniquely exposed to the ebbs and flows of the global market demand. This paper focusses on the context of Zambia's natural resources and its associated governance systems. It tries to investigate whether legislation can act as a potent antidote to the resource curse and related ills by itself, or whether the country is simply a legislative paper tiger. The paper poses the question whether Zambia, as a model for others, has successfully implemented forward thinking, responsible legislation and a policy for natural resource governance. Also, whether it has seen a measurable shift towards sustainable economic growth and development. If not, what variables may account for ongoing endemic governance challenges and the issues beyond the gaps in legislative language regarding natural resources? Both contravene the objective of leveraging natural, endowed wealth to develop a country.

I. Introduction

An effective legislative and policy system is one of the fundamental ingredients in the creation of successful beneficiation and value addition for a country with large natural resource deposits. This is according to academics and policymakers. Such a system ensures that foreign investment and state-sanctioned extraction activities distribute the resultant material wealth to an entire population. It is one of the most prominent elements of literature on natural resource governance; the need for legislation that is written in such a way is that exploitable and intentional gaps are closed for the benefit of all. Of course, legislation is a catch-all term. It references any number of legal prescriptions, from the establishment of regulatory commissions and government structures, to local content provisions; public-private-partnership mandates; the selection of oversight officers; royalties and taxation; revenue distribution; the import of products and goods; and contracting and the like. Issuing a suggestion that legislation is robust may not necessarily apply to all cases in all sectors and geographical locations in a given society.

With this in mind, the following paper endeavours to respond to several associated research questions. These questions are particularly related to the suggestion of legislation as a silver bullet to natural resource governance. It asks whether countries that have successfully implemented forward thinking, responsible legislation and policies for natural resource governance have seen a measurable shift towards sustainable economic growth and development. If not, what variables may account for ongoing endemic governance challenges and the issues beyond the gaps in legislative language regarding natural resources? Both contravene the objective of leveraging natural, endowed wealth to develop a country.

For this purpose, the paper will focus on Zambia, a country rich with natural resource deposits, especially copper. Some have called Zambia a near quintessential example of the resource curse, with severe dependence on single income-generating streams (Boos and Holm-Müller, 2016, 882). Indeed, the lifeblood of the country has almost always been copper, with the health of its economic system heavily reliant on the rise and fall of international market prices. Yet, despite these challenges, the country has been lauded by the Extractive Industries Transparency Initiative (EITI) as making considerable and satisfactory progress on the governance of its natural resources. This is led by efforts in tackling corruption and tax evasion. In this way it promotes transparency in beneficial ownership, improves public knowledge of the governance system, and identifies gaps in legislation that should be filled (EITI Secretariat, 2017).

This paper goes forward from this position, while being bolstered by similar arguments made in new research conducted in-country. It does so by exploring the sources of problems that continue to hound Zambia's ability to leverage natural resources for sustainable development through proper governance. It begins with a brief literature review of Zambia's mining code, including an emphasis on recent changes that have prompted a positive review from EITI. Following this, it broaches a secondary variable which continues to inhibit Zambia's successful translation of natural resource wealth into sustainable development. This variable is that of poor enforcement of existing policies and legislation. This includes the prevalence of high-level elite and ministerial corruption. As noted by Boos and Holm-Müller, poor enforcement may also stem from uncontrolled rents on natural resources which provide an impetus for adverse and corrupt behaviour by politicians. This includes a failure to require the adherence of multinational corporations to legislation and legal standards with regard to revenue distribution and the like (2016, 907).

Second, the paper explores the problem of partnership. Partnership is identified as a serious endemic undercurrent which, if not addressed, will continue to limit the potential of collaborative approaches with regard to legislative and governance remedies. Here, the paper revisits the issue of the introduction and now predominance of non-traditional operating partners in Zambia's mining sector, particularly from the BRICS states. Gathering this information together, the paper will conclude with a series of recommendations for Zambian policymakers, companies, and communities. In this way, it carves a new niche into those policy proposals that exist in academic literature today.

II. Zambian Mining Codes

Zambia is the continent's second largest copper producer after the Democratic Republic of Congo, producing roughly 700,000 tons in 2017 and rising to one million tons this year. Taking this into account, Zambia has seen a number of consecutive mining codes come and go (ZCCM Investment Holdings, 2017). The first of these in the contemporary era was the Mines and Minerals Act of 31 of 1995, which worked to unify the then disparate series of legislative tools for the governance of extractives. According to KPMG, the Act 31 of 1995 sought to simplify licensing, placed reasonable constraints on prospecting, and created new standards for mining activities. It also worked to encourage foreign direct investment by creating a favourable business environment (KPMG Zambia, 2013). By 2008, this legislation would be repealed and replaced. It was followed by widespread critique that it had been used by government and the private sector to negotiate considerable tax exemptions and concessions for the latter (KPMG Zambia, 2013). Its successor, known as the Mines and Minerals Development Act of 7 of 2008, was responsible for the rapid reduction in the number of Mineral Development Agreements (MDAs). Prior to 2008, this had been used as the principal means by which the government negotiated mining concessions with foreign private sector actors (Haglund, 2013, 2). Haglund describes MDAs as ushering in an uncontrolled sale of mining rights in Zambia. It thereby creates a context where the government would negotiate tax and revenue terms on a mine-by-mine basis (2013, 2). Simply put, this meant that individual companies would be able to negotiate and obtain concessions whereby each individual mine site would have its own unique tax and royalty rates. But the Act 7 of 2008 would do away with this practice. By doing so it would wean the country off the use of MDAs, increase royalty rates, and introduce a variable profit rate and a windfall tax, the latter of which would subsequently be removed in 2009 (Haglund, 2013, 2).

The Act 7 of 2008 established that mining companies would be required to generally pay a corporate tax of approximately 30 per cent. However, it differentiated between first tier resources including gemstones and base metals and second tier resources such as quarrying (KPMG Zambia, 2013). Equally the Act established a base rate of 3 per cent royalties for mining, which would be increased to approximately 6 per cent in 2012 for all base and precious metals. This would also be the case for gemstones (KPMG Zambia, 2013). The Act would afford a deduction rate of a 100 per cent from profit before tax for all capital expenditures by mining companies, including pre-production expenditures (KPMG Zambia, 2013). All prospecting and processing licenses were granted directly by the Office of the Director of the Department of Geological Survey. This department also undertook site visits and ensured that mine sites conformed to the directives of Act 7 of 2008 (Scott, 2013, 8).

Table 1 – Source: KPMG Zambia, 2013, 11.

Company Tax	2012	2011	2010
Corporate Tax			
Mining — Base metals/ Gemstones/Precious metals	30%	30%	30%
Other mining	30%	30%	30%
Mineral Royalty Rates			
Base metals	6%	3%	3%
Precious metals	6%	5%	5%
Gemstones	6%	5%	5%
Capital Deductions			
Mining equipment and related capital expenditure	100%	100%	100%
Pre-production capital expenditure	100%	100%	100%
Environmental restoration costs	100%	100%	100%
Commercial motor vehicles and other plant and machinery costs	25%	25%	25%

Non-commercial motor vehicles	20%	20%	20%
On mining operations	10%	10%	10%
Konkola Copper Mines Plc	20%	20%	20%
Prospecting and exploration	5%	5%	5%

Before the revitalisation of Zambia's mining codes, the country introduced several additional pieces of legislation. These were to be used as bolstering mechanisms for the governance of natural resources. The first of these was the Public-Private Partnership Act 14 of 2009, which sought to 'facilitate the provision of infrastructure and [the] effective delivery of social services'. It tried to do so through arrangements with the private sector (ZDA, 2014, 2-3; Public-Private Partnership Act, 2009). However, due to a lack of financial, human and technical capacity to undertake public-private partnerships (PPPs), there have been few public-private partnerships in Zambia. Examples of such public-private partnerships are a stalled redevelopment of the Long Acres Lodge by Thuthuka Group International Limited, the Kabompo Gorge Hydropower Plant, the Chingola-Solwezi-Lumwana-Jimbe freight railway line, the Lusaka-Livingstone toll road project, and the Kaluba-Mwenda road project (ZDA, 2014 4; ALSF, 2015, 4-5). Evidence from other efforts to develop public-private partnerships indicate that there have been challenges in attracting local Zambian businesses to these relationships. This was due to both the underdeveloped nature of the Zambian private sector and the continued emphasis on donor-led PPPs. Another contributing challenge is that partners are regularly dissatisfied with the failure of generating value addition for all partners and the high transaction costs. Also, ambitious timeframes can often lead to a difficulty in scalability and sustainability (Fleischman and Peck, 2016, 7-11). The Public-Private Partnership Act is still in effect today, albeit without too much success in generating collaboration with the mining sector.

Proceeding this was the Mineral Resources Development Policy of 2013, written to replace a previous mineral policy from 1995. It had a designated objective of 'creating a competitive, thriving, and sustainable mining industry that benefits Zambians while concurrently rewarding investors' (Columbia University, 2014, 6). Indeed, the policy is described as drawing heavily on the Zambia Vision 2030. This is a development strategy document authored by the government in 2006 to provide perspective on a path forward for Zambia in order to achieve middle-income status (Mineral Resources Development Policy, 2013, 2; Vision 2030, 2006). Vision 2030 argued for the following when it came to mineral resources in Zambia. First, the country must improve regulation, supervision and the enforcement of mining-related legislation (Vision 2030, 2006, 5). Second, it seeks to develop non-mineral sectors as part of broader economic diversification that would untie the country's fortunes to that of selected base metals like copper (Vision 2030, 2006, 10). It notes that sectors like manufacturing and production are deeply tied to the price of copper; if the latter falters, so too do the former sectors (Vision 2030, 2006, 18). Third, the country must continue to encourage the mining of resources apart from copper. At the same time, it must ensure the availability of local financial and technical capacity to activate some 60 per cent of mine sites that have been dormant since 2006 (Vision 2030, 2006, 19). Fourth, there must be a fair value marketing system established in the country so as to untie constrained investment and encourage improved value addition from the mining sector (Vision, 2030, 2006, 19). All of the above cumulates into an augmented mining-sector contribution to Zambia's sustainable economic growth, the governance of Corporate Social Responsibility (CSR) and the training and education of the country's population. The mining sector also contributes towards improvements in administration efficiency and capacity, infrastructure development, and a drive to become a highly competitive knowledge-based economy.

To translate this vision, the Mineral Resources Development Policy of 2013 proposed that Zambia should leverage its natural resource endowment in order to achieve three objectives: attract local and foreign investment into the natural resources sector so as to encourage sustainable extraction; integrate the mining sector deeply into the domestic economy; and, ensure that acceptable health, safety and environmental standards are followed for all related activities (Ministry of Mines, 2013, 2).

The advent of the Mineral Resources Development Policy of 2013 equally sought to remedy a number of issues. This included inefficiency in mining rights administration, failed efforts to mainstream small-scale mining, and low revenues from mining for the treasury among others. These were seen as prominent in the implementation of the Mineral Resources Development Policy of 2013 (Ministry of Mines, 2013, 4). In addition to all of the above, the Mineral Resources Development Policy of 2013 equally called for its use in the realisation of (Ministry of Mines, 2013, 6):

- empowering Zambians to be shareholders and owners in the mining industry;
- encouraging economic contributions from small scale mining operations;
- promoting mining research and development; and
- encouraging mining companies to develop collaborative approaches to planning, development and the decommissioning of mine sites.

The policy concludes by issuing broad-based pledges to pursue actionable responses to ongoing issues across seventeen sub-themes. Although outlined below in Table 2, the policy argued that the Ministry of Mines, Energy and Water Development would be responsible for drafting new, clearly articulated mining legislation. This legislation would spread the benefits of those resources across the country.

Table 2 – Policy Measures and Strategies, Mineral Resources Development Policy 2013 (Ministry of Mines, 2013, 7-13).

Theme	Actions
Exploration and Mining	Expedite geological mapping; promote energy resources as economic diversification; promote/exploit uranium deposits; spread mining benefits to all Zambians; promote exploration of industrial minerals; maintain stable and competitive fiscal regime.
Mining Rights Administration	Maintain a computer cadastre system.
Legal Framework	Regularly update existing law; create clear new mining law; strengthen legal provisions on information hoarding and inactivity of licensed areas.
Safety, Health, Environment, and Quality	Government must ensure that exploitation complies with health and safety regulations; maintain the Environmental Protection Fund; development environmental assessment processes; build new institutional capacity; ensure environmentally protected areas are strictly adhered to and respected.
Large-Scale Mining	Encourage artisanal and small-scale mining (ASM) use of safe, effective technologies; build capacity in regional mining offices; improve collaboration with small-scale mining associations; disseminate health and safety information; improve information flows to ASM practitioners; improve ASM access to financing.
Citizen Economic Empowerment	Encourage companies to list on the Lusaka stock exchange; promote the Citizens Economic Empowerment Act 9 of 2006 and Zambian ownership of large mines; reserve certain mining rights for Zambians; reserve a portion of mineral royalties for the mining community's local business development.
Domestic Economy Integration	Promote value-added linkages to other sectors; implement social sustainability plans for the life cycle of mining sites; engage in campaigns to promote opportunities for Zambians in the mining sector; compel through law a preference for the provision of local goods and services, as well as the employment/training of Zambians.
Institutions	Strengthen and streamline institutions; develop capacities of government departments; establish a Monitoring and Evaluation Department.
Value Addition	Facilitate the development of downstream processing capabilities.
Marketing Gemstones	Government to build auction system for gemstones in the country.
Human Resources	Identify skills deficiencies and address them; encourage training for staff with regard to the mining company; ensure adherence to the equal pay, equal work principle.

Research and Development	Encourage research and development; build partnerships between mining companies and universities.
Gender	Support gender equality in the mining sector through law; promote the education of women in mine sciences; provide support to equal opportunities.
HIV/AIDS	Promote the best practices in the industry to address these diseases; facilitate the implementation of the National AIDS Policy and related programmes in mining sector.
Regional and International Cooperation	Government will work with regional and international partners on its mining sector.
Accountability and Transparency	Promote good governance principles; develop appropriate laws; subscribe to international mining sector initiatives for transparency.

In a speech in 2014, the Minister of Mines, Energy and Water Development, Christopher Yaluma, argued that the purpose of the Act to Amend the Mines and Minerals Act of 2014 was to update the Act 7 of 2008. The purpose was to better align it with the Mineral Resources Development Policy of the previous year, including in regard to bolstering local content and beneficiation (2014). The Minister specifically argued that the new Act would achieve three key objectives: eliminate unnecessary bureaucracy in the issuance of mining rights; remedy the inadequate size and duration of prospecting licences; and solve the ongoing challenges of a lack of provisions to retain tenement when mine development is stalled due to adverse conditions (Yaluma, 2014).

However, ultimately the government would pass the Mines and Minerals Development Act 11 of 2015 (MMDA). It is cited by most sources as the pre-eminent legal framework in the country on the governance of mineral resources today. Read together with the subsequent Mines and Minerals Development Act (Amendment Bill) of 2016, the MMDA is responsible for overseeing all aspects of mining operations in the country. This includes exploration, licenses, large-scale mining, gemstones, health and safety and environmental proscriptions among others (ICLG, 2017). The MMDA establishes that mining companies will adhere to an income tax rate of 30 per cent, with the elimination of the country's variable tax on profits (ICLG, 2017). All active companies must equally obtain environmental authorisation from the Zambia Environmental Management Agency beyond application for an exploration and operation license. Also, there are no restrictions in law on the ownership of holders of large-scale mining licenses (ICLG, 2017). Subsequent iterations of the Mines and Minerals Development Act, including in 2015, proposed that the legislation applies to all non-renewable resources. It thereby vested the rights of ownership for those resources in the state, which required that they be 'conserved, developed, and used prudently, taking into account the needs of the present and future generations... mineral resources shall be explored and developed in a manner that promotes and contributes to socio-economic development in accordance with international conventions' (Mines and Minerals Development Act, 2015, 172).

In a final update to Zambia's mining legislation and governance regime, the Government of Zambia introduced an amendment to the Mines and Minerals Development Act of 2015. Subsequently read together, it amended the royalty rates outlined in Section 89 of the latter. After passage of the Mines and Minerals Development (Amendment) Act No.18 of 2018, a holder of a mining license would be required to pay the following royalty rates for any minerals produced or recovered: 5 per cent of the norm value of base metals; 5 per cent of the gross value of the energy and industrial minerals; 6 per cent of the gross value of gemstones; and 6 per cent of the gross value of precious metals (Government of Zambia, Amendment Act, 2015). That said, and as one might expect, royalty rates differ for Zambia's primary commodity, copper. For the latter, 4 per cent royalty rates apply when the average price of copper is less than US\$4500.00 per ton, while a 5 per cent rate applies for average prices between US\$4500.00 and US\$6000.00 per ton (Government of Zambia, Amendment Act, 2015). If copper prices were to rise beyond US\$6000.00 per ton, a royalty rate of 6 per cent would apply (Government of Zambia, Amendment Act, 2015). Analysis suggests that the government believed that the amendment of the Act would spur Zambia's push to the position of the largest copper producer in the world. In this way Zambia would bypass the Democratic Republic of Congo, as previous royalty rates from 2015 were deemed to be too stifling to promote business (Kapembwa, "Zambia Reforms Mining Laws," 2017).

From the above, it appears that at least in written form, Zambia does have relatively robust legislation for the purposes of governing its natural resources sector. But in the proceeding section, this paper will regard whether poor enforcement and corruption have played a part in limiting the effectiveness of those mining codes.



III. Poor Enforcement

In 2015, Zambia's former Minister of Mines and Minerals Development, Maxwell Mwale, was convicted of corruption. This came about because of the issuance of mining licenses to a Chinese company in 2009, named the Zhonghui International Mining Group (Reuters, "Zambian Ex-Mines," 2015). Testimony suggested that the former minister had done so with the expectation of some form of personal gain, with the licensing process time period being shortened from months to days for this company (Reuters, "Zambia's Former," 2015). And yet, in 2017, the minister would be acquitted of the charges, in the same week that another former minister would have his own corruption charges stayed (Phiri, "Former Mines, 2017). Indeed, it is not the first time that Zambian officials have been caught in a corruption scandal associated with the minerals sector. In 2015, the Minister of Mines and Minerals, Christopher Yaluma, and the Provincial Minister of the Copperbelt Province, Mwenya Musenge, were both linked to a US\$2 million payout from Chinese mining companies. It was in the form of monthly stipends. This is while Zambia's Minister of Justice, Wynter Kabimba, had been under investigation in 2012 for taking bribes from Trafigura, a multinational trading company (Sakala, "Zambian Officials," 2015; Neate, "£5bn Illegally," 2012). In its analysis of the Zambian context, U4, Transparency International and the Zambian Bribe Payers Index agree that corruption is not an isolated instance. This is despite considerable progress made by the country in ending these practices among political and government institutions. U4 in particular argues that corruption continues to be widespread in Zambia's bureaucracy, as part of patronage networks and in political institutions (U4, "Zambia: Overview," 2014). Investigative units are often understaffed and poorly funded, including the Financial Intelligence Unit, inhibiting their ability to enforce legislation and end corruption. This is while gaps in the existing legislation, including a significant lack of transparency with regard to information, shields government from scrutiny (U4, "Zambia: Overview," 2014; USCS, 2017). Indeed, as of 2017, corruption remains the second most prominent inhibitor of doing business in the country, after access to financing. However, indicators in this category are largely levelling out as opposed to previous years (Schwab, 312-313).

Analysis by the U.S. government confirms much of the above. According to the Department of Domestic Trade and Commerce, Zambia has indeed made progress in battling corruption. However, it remains a serious impediment to the ability of the country to enforce existing legislation. Zambia itself cited in 2015 that corruption in public procurement and contracting procedures are continuing areas of concern. This is especially the case as Zambia has opted to encourage companies to develop their own internal codes of conduct and best practices. Zambia did this instead of developing enforcement capabilities under its own legislative authority (USCS, 2017). Bribery and kickbacks have been difficult to police and remain rampant, owing to high-level officials regularly profiting or benefitting from corruption in its economic deals (USCS, 2017). According to an interview conducted with a Zambian civil society organisation, 'Zambia has a million good pieces of regulation and the institutions are there, but the problem remains the people enforcing and operating these solutions – corruption is endemic and there is considerable inconsistency in legislation.' (Interview with Zambian Civil Society Organisation, Nov 2016). Interviewees suggested that the Zambian government may well be content with the fact that mines are owned by foreign enterprise. This is because revenue derived from their operations can be contained in Lusaka and used at the discretion of technocrats, breeding corruption (Interview with Zambian Civil Society Organisation, Nov 2016).

But it is not simply political corruption that leads to poor enforcement. Numerous civil society reports argue that multinational mining corporations have themselves siphoned billions from the country, exploiting existing loopholes to avoid paying royalties. Perhaps the most well-known of these corporations is the multinational mining giant Glencore. Glencore owns several underground mines, concentrators, a cobalt plant, and a large smelter in the towns of Kitwe and Mufulira, employing some 16,300 individuals (Els, 2014). According to reports, Glencore was able to use enforcement and legislative loopholes to avoid paying tens of millions of dollars in taxes (Els, 2014). It is, however, a paltry segment of some US\$8.8 billion which is alleged to have been removed from Zambia between 2002 and 2012. This was due to crime, corruption and tax evasion. According to Global Financial Integrity, most of this can be linked to the country's predominant copper mining

industry (Neate, “£5bn illegally,” 2012).

According to interviews with Zambian civil society organisations, one of the quintessential drivers of poor enforcement is a deep, uncontrolled overlap between legislative pieces. In one interview, a civil society organisation argued that policies and legislation in Zambia are effective on the surface, but without enforcement they are useless (Interview with Civil Society Organisation, Nov 2016). It was argued that these policies are constantly shifting, with new governance documents regularly failing to engage with existing legislation (Interview with Civil Society Organisation, Nov 2016). The organisation offered the example of the Lands Act of 1995 and the Mines and Minerals Act of 1995. Each has differing clauses for the same topics, creating inconsistency and exploitable loopholes (Interview with Civil Society Organisation, Nov 2016). The country, the interviewee argued, is in a desperate need of legislative harmonisation. But the government does not appear to be interested in taking up the mantle of this challenge, instead opting to perform an intermittent, piecemeal legislative review when it suits their interests (Interview with Civil Society Organisation, Nov 2016).

Poor enforcement and the challenge of overlapping legislative mandates were equally pointed out in interviews with private sector actors. Government, it was noted, has not yet demonstrated an eagerness to perform its responsibilities under existing legislation and legal agreements with companies. Instead, it is opting to change royalty rates at irregular intervals leaving the private sector to complete development projects on its own accord (Interview with Anonymous Private Sector Actor, Nov 2016). In addition, personal ambition leading to wholesale corruption in government appears to prevent holistic approaches with regard to collaboration with the private sector. It also seems to prevent the uniform enforcement of existing legislation (Interview with Anonymous Private Sector Actor, Nov 2016). However, the interviewees expressed the hope that if the government were to follow the outlined legal obligations, it would improve the image of business and create an influx of new foreign direct investment (Interview with Anonymous Private Sector Actor, Nov 2016).

In addition to private sector and public-sector corruption, interviews pointed to a simple lack of capacity among relevant actors charged with the administration of mining-sector governance. Self-reporting by mining companies, who are hamstrung by at-odds legislative requirements, is not audited due to a lack of monitoring personnel and overall administrative and technical capacity (Interview with MMMD-Associated Actor, Nov 2016). The Ministry of Mines and Mineral Development is rarely seen on the ground, save when responding to complaints by private sector actors (Interview with MMMD-Associated Actor, Nov 2016). Interviews suggested in particular that the ministry is poorly funded, with budgeting being irregularly distributed and often at a level allowing no on-the-ground activities (Interview with MMMD-Associated Actor, Nov 2016). Analysts at the ministry are also said to have limited formal training. Also, they are uncomfortable with pursuing any formal monitoring of mining companies for fear of retribution by higher managers or directors (Interview with MMMD-Associated Actor, Nov 2016). When the ministry is able to deploy auditors, few are willing to jeopardise an income-supplementing per diem by penalising mine sites (Interview with MMMD-Associated Actor, Nov 2016). More broadly, the authority of the ministry regarding the enforcement of mining legislation as a whole is being actively challenged by the Zambia Revenue Authority. According to interviews the Zambia Revenue Authority has been slowly appropriating the ministry's mandate and becoming a so-called super ministry (Interview with MMMD-Associated Actor, Nov 2016). All of this culminates in a public sector that is unable and unwilling to enforce existing legislation, whether for personal or professional reasons. This leaves the door open to corruption and the exploitation of legislative loopholes.

There is, however, several hopeful indications of improvement. In 2017, the Zambia Revenue Authority announced that it would use an international accounting firm to conduct a comprehensive forensic audit of mining companies' compliance with tax codes (Lusaka Times, “Zambian Revenue,” 2017). The authority's move speaks to an apparent larger effort by the government to increase public returns from mining through the improved enforcement of existing legislation (Conrad, 2014, 82). Later this year, in September, Zambian President Edgar Lungu announced that his government would seek to establish a special committee tasked with the reform of the mining sector. However, opposition parties argued that enforcement of existing legislation, including the Act 11 of 2015, would result in the same outcome (Sinkamba, “Enforcement of

Already," 2017). Active civil society organisations have and will also play a key role in reforming the mining sector, particularly in Zambia's context of weak enforcement and limited government capacity. According to Sequeira et al., adherence to transparency mechanisms which are anchored in agreements between government, civil society, and the private sector are key to drive improved accountability (2016, 434). Such activity has already begun in Zambia, with civil society organisations bringing together all three actors so as to facilitate discussions of mutual interest. This is while some private sector actors were noted in interviews to be relatively proactive in this regard (Interview, Zambian Civil Society Organisation, Nov 2016).

Therefore, while Zambia has legislation and policies which could positively influence the impact of the mining sector on the country's development, it has yet to be used to its full potential. However, as alluded to, partnership between actors is a second challenge to governance that inhibits the actualisation of paper tiger legislation, namely the problem of partnership.

IV. The Problem of Partnership

Given the importance of the mineral sector in Zambia, a successful implementation of public-private partnerships (PPPs) would significantly impact the country's economic growth and development. Typically, successful PPPs establish a more predictable business environment. It also attracts increased foreign investment that is needed by the government for important developments, such as infrastructure. The prospect of optimum service delivery through collaboration with the private sector is the strongest selling point of the idea behind PPPs. This is what separates it from normal outsourcing. It holds the promise of each partner doing what they do best, allowing government to assure the provision of critical goods or services to the public in the most economical way. Thus, PPPs seek to combine the advantages of competitive tendering and flexible negotiation and to allocate risk on an agreed basis between the public and private sectors (Li et al. 2005a).

The Government of Zambia is politically stable. It also has a defined legislative framework as a basis for engagement with the private sector, including for the establishment of PPPs. The policy framework for the implementation of PPPs in Zambia was approved by the government in December 2008 (ZDA, p.1, 2014). Primarily, the policy sets out government's strategic objectives to facilitate the provision of infrastructure and the effective delivery of social services, using PPP arrangements. Following the policy pronouncement by government, Parliament, passed the Public-Private Partnerships Act 14 of 2009 in August of that year. The Act states that it is 'An Act to promote and facilitate the implementation of privately financed infrastructure projects and effective delivery of social services by enhancing transparency, fairness and long-term sustainability and removing undesirable restrictions on private sector participation in the provision of social sector services and the development and operation of public infrastructure.' (Public Private Partnership Act, 2009). Section 4 of the PPP Act makes provision for the establishment of a PPP Unit (Public-Private Partnerships Act, 2009). Due to considerations such as cost and time, it was decided to kick-start the process of implementation of the PPP projects. It did so by seconding the officers from the Ministry of Finance to the unit (ZDA, p.9, 2014). This had resulted in critical gaps in the requisite skills and expertise and affected the implementation of PPPs since the enactment of the Act (ZDA, p.9, 2014) negatively. It was only in November 2013 that the PPP Unit's functions were integrated into the Zambia Development Agency (ZDA) (ZDA, p.9, 2014).

The Common Market for Eastern and Southern Africa (COMESA), of which Zambia is a member, has published Public-Private-Partnership Guidelines in 2014 (COMESA, p.2 and 40, 2016). The main objective of the COMESA Private Public Partnerships Framework is to provide the COMESA member states with harmonised guidelines. This would facilitate PPP harmonisation in the COMESA region in an effort to ensure that private sector investors are more or less faced with similar PPP structures in the COMESA region (COMESA, p.2-3). Zambia can thus rely on this regional framework as a complement to its own Public-Private Partnership Act

14 of 2009. This is especially so for the fact that the specific objective of the COMESA PPP Framework is to provide an outline of the contents expected in a PPP framework. Countries can then adopt and/or customise this, thereby harmonising the PPP approach in the spirit of regional integration.

In a report on PPPs dated January 2014, the Zambia Development Agency (ZDA) observed that the country required political champions to drive the PPP agenda. At the time, the agency identified the following bottlenecks and constraints in the implementation of PPPs that remain:

- Lack of capacity in government to undertake PPP projects.
- Lack of financial resources dedicated to PPP projects.
- Lack of clear guidelines and regulations to guide contracting authorities and the private sector in the implementation of PPPs.
- High transaction costs and lengthy lead time on complex arrangements that require the involvement of various experts including financial, legal, sectoral expertise, and transaction advisory services.

In addition to issues related to administration and capacities, other issues relate to matters such as corruption and lack of transparency.

Administration and Capacity Issues

Public-private-partnership projects are complex arrangements. It necessitates the capacity development of the public and private sector in areas of finance, risk management, and contract management, among others. This also includes an understanding of the complexities of mining by government agencies. The PPPs should be established with the consideration of attaining the best value for money. They should thus ensure that despite specific roles designated to the private sector, government would retain an active service provider role and would not relegate that role to CSR by private sector. The absence of all or some of these elements have significantly hindered the PPPs in Zambia (ICMM, p.93, 2014).

Based on the analytical expressions made about PPPs (Interviews, November 2016), the first step required to render PPPs more effective in the country, would be to define the appropriate coordinating authority. This authority would be responsible for negotiating, monitoring and managing a formalised PPP. In the absence of such a definition, the private sector has found itself in negotiations with and reporting to the Zambian Revenue Agency. Although it has better capacities than other authorities, it would often overlap its role in relation to them and in particular vis-à-vis the Ministry of Mines and Mineral Development (ICMM, p.88-95, 2014).

As noted by the authorities and the private sector, the coordinating authority would need to build the capacity of its agents to assume responsibility for the negotiations, monitoring and management of the PPPs. This is especially with regard to mutual accountability for the success of the partnership. More importantly, it also needs to respect accountability to the public for the quality of services and results achieved through partnerships (ZDA, p.2-3, 2014).

Closely related to the institutional capacity to administer PPPs is the issue of strengthening contract management in procurement processes in the country. Also important is the issue of strengthening the management and mitigation of integrity risks in PPPs. As such, building the capacity to identify obstacles with regard to the implementation of the project under a PPP is essential. Also essential is to appropriately allocate related risks to the parties best able to manage them in a cost-effective manner. The impact of risks with regard to project objectives in setting up a PPP is usually significant. These risks arise from multiple sources. Examples are the political, social, technical, economic, and environmental factors and the nature of agencies and stakeholders involved. It also includes the complexity and nature of the discipline, of which mining has shown to be one of the most complex (ZDA, p.4-6, 2014). Both the private and public sectors need to have a better understanding of these risks in order to achieve an equitable risk allocation and enable the PPP to

generate better project outcomes (ZDA, p.4-6, 2014). This has lacked with regard to the implementation of Zambian PPPs, as identified by various stakeholders. Yet, it is fundamental for the successful implementation of PPPs (ZDA, p.4-6, 2014).

Defining the specific CSR role of mining companies in communities, as well as clearly communicating it to community leaders and members, would lead to more effective service delivery within PPPs. It would also improve the relationships of the private sector with communities (ICMM, p.93, 2014).

The PPP Unit, which was tasked with coordinating PPPs in the country and vetting the projects promoted by the various ministries, was largely inactive. This was until the government-initiated steps in 2015 to reinvigorate its PPP programme. In that same year, the British government offered a comprehensive in-country PPP training programme. The goal was to offer the government of Zambia a comprehensive overview with regard to identifying, structuring, evaluating, managing and implementing transactions within the purview of PPPs (British High Commission Lusaka, July 2015). The programme was well received, and the PPP Unit greatly benefitted from the programme. However, with changing personnel, additional training became necessary. In March 2017, Winston & Strawn LLP, an international law firm, presented a four-day training session on public-private partnerships in Lusaka. It was presented to officials from the government's renewed PPP Unit, as well as to staff from other government ministries involved in PPPs (Winston & Strawn, 2017). The core training on PPPs was provided on a pro bono basis by a non-profit organisation, the International Senior Lawyers Project (ISLP). This followed from a request from the African Legal Support Facility (ALSF) – an organisation funded by the African Development Bank and established to provide legal advice to African countries (Winston & Strawn, 2017).

Corruption

Zambia's anti-corruption activities are governed by the Anti-Corruption Act of 38 of 2010 and the National Anti-Corruption Policy of 2009, which stipulate penalties for different offenses. The Anti-Corruption Commission (ACC) is the agency mandated to spearhead the fight against corruption in Zambia (U.S. Department of State, 2016). The Anti-Money Laundering Unit of the Drug Enforcement Commission (DEC) also assists with the investigation of allegations of misconduct (U.S. Department of State, 2016). An independent Financial Intelligence Unit (FIU) was formed in 2010, but has not yet developed the capacity to take the lead in investigating financial crimes. In November 2012, the Board of Directors of the FIU was appointed and sworn in with a challenge to implement its mandate (U.S. Department of State, 2013). Zambia's anti-corruption agencies generally do not discriminate between local and foreign investors (U.S. Department of State, 2015). The government has also taken measures to enhance the protection of whistle-blowers and witnesses with the enactment of the Public Interest Disclosure Act 4 of 2010. They have also attempted to strengthen the protection of citizens against false reports in line with Article 32 of the United Nations (UN) Convention (Siwale, October 28, 2017).

Zambia signed and ratified the United Nations Convention Against Corruption in December 2007 (U.S. Department of State, 2016). Other regional anti-corruption initiatives are the Southern Africa Development Community (SADC) Protocol Against Corruption, ratified on July 8, 2003, and the African Union (AU) Convention on Preventing and Combating Corruption, ratified on March 30, 2007 (U.S. Department of State, 2016). Zambia is not a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions but is a party to the United Nations Convention Against Corruption (U.S. Department of State, 2016).

While legislation and stated policies are adequate for different offenses, the implementation sometimes falls short. It is primarily due to impunity and political interference, where government officials are complicit in and/or benefit from corrupt deals (Mundia Muya; The case of construction sector in Zambia, 2016). As such, most of the corruption cases remain on the shelves while the accused officials remain free.

However, the government encourages private companies to establish internal codes of conduct that prohibit the bribery of public officials. Most large private companies have internal controls, ethics and compliance programmes to detect and prevent bribery. The Integrity Committees (ICs) Initiative is one of the strategies of the National Anti-Corruption Policy (NACP). It is aimed at institutionalising the prevention of corruption (U.S. State Department, 2016). The NACP was approved in March 2009 and the Anti-Corruption Commission spearheads its implementation (U.S. State Department, 2016). Eight institutions were targeted, including the Zambia Revenue Authority, the Immigration Department, and the Ministry of Lands and Natural Resources. The government has taken measures to enhance the protection of whistle-blowers and witnesses with the enactment of the Public Interest Disclosure Act in April of 2010. It has also attempted to strengthen the protection of citizens against false reports in line with Article 32 of the UN Convention Against Corruption (U.S. State Department, 2016). For the effective implementation of this law, there is a need for all employers to be compliant with the provisions of the Public Interest Disclosure Act (Government of Zambia, 2010). Private and public entities should establish policies that protect whistle-blowers in their institutions.

As mentioned in the introduction, Zambia's participation in EITI has had a good impact on the country's efforts to combat corruption. In addition, according to the GAN Business Anti-Corruption Report on Zambia (GAN Anti-Corruption Business Portal 2017), corruption is a moderate risk for foreign companies doing business within the Zambian natural resources sector. This is because of its importance to the economy through export revenues. Therefore, government favours contracts for it. Although this would lead to believe that corruption is not an issue for PPPs in the mineral sector, this analysis partially contradicts the expressions of private companies involved in natural resources.

The Zambian government and firms in the United States have identified corruption as an obstacle to foreign direct investment (U.S. State Department, 2012). Corruption is most pervasive in government procurement and dispute settlement (U.S. State Department, 2012). Giving or accepting a bribe by a private, public or foreign official is a criminal act, and a person convicted of doing so is liable to a fine or a prison term not exceeding five years (U.S. State Department, 2012).

To reinforce its own legislative framework, the government encourages companies to establish internal codes of conduct that, among other things, prohibit the bribery of public officials. The Integrity Committees (ICs) Initiative is one of the strategies of the National Anti-Corruption Policy (NACP) created in March 2009. It is aimed at institutionalising the prevention of corruption (U.S. State Department, 2012). Most companies have effective internal controls, ethics and compliance programmes to detect and prevent bribery (U.S. State Department, 2012).

The government recognised corruption in public procurements and contracting procedures as a major area of concern. As such, in 2015, the government of Zambia worked with the Public Integrity and the Openness Department of the World Bank (PIO). It did so to develop a new e-procurement system that allows open data to be published in accordance with the Open Contracting Data Standard (Marchessault and Hassan, November 5, 2015). This would transform public procurement from a box-ticking exercise to using open contracting. In this way it would deliver better deals for governments, a level playing field for businesses, and enhanced opportunities to provide quality goods and services for citizens.

Subsequently, on July 8, 2016, Zambia launched the Africa region's first integrated e-procurement system. The system continues to be piloted in selected high expenditure ministries such as the Zambia Public Procurement Authority (ZPPA), the Ministry of Health, the Ministry of General Education, the Ministry of Higher Education, the Workers Compensation Fund Control Board, Muchinga Provincial Administration, the Ministry of Works and Supply, the Road Development Agency, and the Zambia Revenue Authority. The system can be seen on the e-procurement site of ZPPA (<https://eprocure.zppa.org.zm/epps/home.do>).

A well-known example was the conviction of corruption of Maxwell Mwale, the former Minister of Mines and Mineral Development of Zambia in February 2015. He was sentenced to one year in prison with hard labour

(Reuters Africa, Feb. 2015). He was later acquitted upon appeal by Lusaka's High Court in 2017. This was because the judge believed that it was impossible that the minister could have influenced everyone at the ministry to favour the companies concerned (Lusaka Times, Jun. 2017).

Transparency

The implementation of the legislation and policies is negatively impacted due to a lack of adequate laws to support transparency, such as asset disclosure, evidence, and the freedom of information. This is compounded by a lack of legislation for the protection of whistle-blowers.

For instance, mining companies provide audited financial statements upon request, but these often do not include detailed financial records since they are considered confidential (GI 2017). Similarly, the Zambian government does not publicly disclose mining contracts, nor any mining assets held by public officials (NRGI 2017).

Zambia is a member of the EITI and publishes yearly reports on the revenue generated from the sector (EITI 2017). The most recent reports are for the years of 2015 and 2016. Zambia has made several attempts at disclosing beneficial ownership, including in their 2013, 2014 and 2015 EITI Reports as well as in a separate 2015 Beneficial Ownership Report (EITI, n.d.). The objectives of beneficial ownership transparency in Zambia are (EITI, n.d.):

- promoting good governance and accountability in the extractive sector;
- deterring corruption in the allocation of extractive rights;
- preventing the abuse of Zambia's tax and incorporation rules;
- support of efforts to address money laundering and other financial crimes in the economy;
- promoting Zambian citizens' participation in the monitoring of extractive activities, including local content provisions; and
- promoting citizens in getting the full economic benefit of the nation's natural resources, especially in communities where extraction is taking place.

Despite building capacity with regard to beneficial ownership and the outreach to companies, the rate of reporting responses has been low (EITI, n.d.). The 2015 beneficial report cites a lack of legislation requiring disclosure of beneficial ownership and a difficulty in obtaining the information from companies located in foreign jurisdictions as reasons for non-disclosure (EITI, n.d.). It recommends further work on establishing a beneficial ownership register. In their new roadmap with regard to beneficial ownership, Zambia EITI plans to organise workshops to build technical capacity for relevant stakeholders with regard to reporting and law enforcement related to beneficial ownership implementation (EITI Zambia, 2017).

Trust

Transparency also plays a role in the component of trust within the partnership. It is vital to success. Yet, there is a significant lack of trust within PPPs in Zambia. Typically trust needs to be cultivated over time by efforts from both sides from day one of the partnership (World Bank, p.7-20, 2008). Open and candid communication and transparency with both the internal and external stakeholders that compose the partnership are essential to engender trust (World Bank, p. 7-20, 2008). Civil society organisations can facilitate the trust-building process not only between government and the private sector involved in mining but also with the communities where mining take place (Eigen, July 7 2009). As in other countries, CSOs have the trust of the people for working with them on various issues affecting their socio-economic life. Civil society organisations can intervene in the manner that supports the government and the private sector, without alienating mining communities (Eigen, July 7 2009). However, civil society organisations also need the building of capacity and recognition of the important role that they can effectively assume in the PPPs (World Bank, p.7-20, 2008). This exercise can be undertaken through a programme for government agents or it can be organised for CSOs by the private

sector (World Bank, p.53-55, 2008).

V. Non-Traditional Partners

Brazil, Russia, India, China and South Africa (BRICS)

The role of Brazil, Russia, India, China and South Africa (BRICS) in international development cooperation is changing in a significant and rapid way. Over the last decade, BRICS have increased their financial as well as technical assistance. It also established distinct ways and means for economic cooperation, especially through South-South Cooperation (SSC) with low-income countries (LIC) (European Parliament, p.1-6, 2012). Yet, BRICS are not among the most prosperous countries according to the per capita income. India has only recently moved from LIC to middle-income (MIC) status and all BRICS countries are facing serious disparity and poverty challenges (European Parliament, p.10, 2012). However, through their strong economic dynamics as well as territorial and demographic dimensions, BRICS countries are significantly influencing global economic development (European Parliament, p.10, 2012). The BRICS country group is distinguished by: the outstanding size of their economies; strong growth rates, leading to increasing significance in the world economy; and the demand for a stronger political voice in international governance structures, which corresponds to their economic status (European Parliament, p.10, 2012). Nevertheless, BRICS countries are a heterogeneous group with individual countries also forming other coalitions (European Parliament, p.4, 2012).

Because BRICS' development policies follow the idea of South-South Cooperation (SSC), (Yamoussoukro 2008), the relations between BRICS and LICs are not restricted to financial assistance (European Parliament, p.4, 2012). South-South Cooperation is based on the solidarity, shared experiences and self-reliance of the South. Trade, foreign direct investment and development financing are often intertwined and come as a package (European Parliament, p.4, 2012).

Zambia and the Case of China

Among the BRICS countries, the most commonly present partners in Zambia are China, India and South Africa.

China is not a new donor to Zambia. In the 1970s, China already built the Tanzania–Zambia (Tazara) railway and after a slowdown in the 1990s, Zambia has received a substantial amount of Chinese aid since 2000 (AFRODAD 2008b: 16). As a fast-growing economy, China's strategy to achieve sustainable economic growth is simple: use cheap raw materials to export manufactured goods. China is now the world's largest consumer of many commodities, such as copper, primarily imported from Zambia (BBC, August 31 2015).

The Chinese entities investing in Africa, and consequently in Zambia, are Chinese state-owned enterprises, corporations, and private companies. Large-scale Chinese entities focus on resource extraction for oil, uranium, industrial minerals and the construction of infrastructure projects. This includes roads, railways, dams and hydroelectric power (Edinger and Pistorius, 2011). Meanwhile, smaller-scale Chinese entities operate joint ventures with the Zambian government, such as manufacturing, wholesale and retail trade (Joon Lim, p.549, 2011).

In 2008, China and Zambia set up a zone in which Chinese investors didn't have to pay taxes to the Zambian government – China's first zone in Africa of such a nature – and 50 companies invested a total US\$800 million (Okeowo, October 9 2013). As of the end of 2012, the Chinese government and private sector invested US\$2.5 billion in the nation (Okeowo, October 9 2013). At least 80 000 Chinese immigrants live in Zambia,

which has a population of 14 million (Okeowo, October 9 2013). Partly as a result of all this investment, Zambia has a steadily growing economy (Okeowo, October 9 2013). Its politics, though, have recently been dominated by officials who have been accused of enriching themselves. Apparently they did so by reaping the benefits of Chinese investment instead of using it to help the poor (Okeowo, October 9, 2013).

China is considered a preferred lender, because unlike traditional ones, debt cancellation and rescheduling of debt repayments are part of its development assistance package. This package is mainly through loans and to a lesser extent, grants. According to China's policies, interventions in Africa are considered under economic cooperation and official development assistance (ODA): 'Co-operation refers to foreign direct investment (FDI) and contracts with Chinese companies, while ODA refers to concessional loans, debt relief and grants' (Chileshe, p.7, December 2010). China also scores well against African government priorities such as the speed of implementation (Schmaljohann and Prizzon, p.649, September 2015). The governments appreciate the flexibility and fast disbursement of Chinese assistance. However, it also criticises Chinese assistance for having low spillover effects for the local economy and a lack of transparency with regard to the negotiation process (Schmaljohann and Prizzon, p.649, September 2015).

Despite its unconventional aid, China has signed up to the Paris Declaration intended to improve the quality of aid and its impact on development. It has thereby committed to follow its five main principles (ownership, alignment, harmonisation, results, and mutual accountability) (OECD, p.1-12, 2008). It is unclear whether China signed up in its capacity as a recipient or as a donor country. Due to this lack of clarity, Zambia is unable to determine how to hold China accountable according to these benchmarks.

Furthermore, unlike other donors in Zambia, China has not signed the Joint Assistance Strategy for Zambia (JASZ) that provides Zambia with some leverage in dealing with traditional Western donors. The Joint Assistance Strategy for Zambia (JASZ) is an instrument of harmonisation and division of labour in line with the principles of the Paris Declaration on aid effectiveness (Chileshe, p.8, 2010).

Chinese FDI involves private and state actors and has increased tremendously during the last few years in Zambia. It has gone up to US\$100 million per year and has reached over US\$4 billion in 2016, as reported by Zambian and Chinese authorities. Investment in the resource sector and infrastructure projects constitutes the biggest proportion of Chinese investments, followed by the manufacturing and service industries (ZambiaInvest, January 28 2016).

In accordance to China's debt cancellation policy, a number of Zambian loans have been partially or completely cancelled over the years. However, in almost all cases where loans have been cancelled, other loans have been acquired soon after (Chileshe, p.6-7. 2010). In 2016, the Government of Zambia's debt to GDP was 66.70 per cent, this despite several debt cancellations in previous years (Trading Economics, n.d.). Generally, government debt as a percentage of the GDP is used by investors to measure a country's ability to make future payments on its debt. It affects the country's borrowing costs and government bond yields. As such, debt sustainability is a concern in Zambia (Chileshe, p.6-7, 2010). Therefore, while China offers an alternative source of financing, disclosure of information is needed to determine whether loans from China threaten debt sustainability in Zambia or not (Chileshe, p.6-7, 2010).

Within a weak regulatory setting, Chinese investments pose significant challenges (Chileshe, p.11, 2010). In countries like Zambia, the Chinese take full advantage of the weaknesses, such as poor-quality control, labour protection or land allocation. They export their bad practices alongside their investments (Chileshe, p.11, 2010). The exporting of bad practices is one of the major causes of the controversial debate about China dumping cheap, low-quality products in Africa in general. In Zambia the effect of these imports has been drastic and have choked many Zambian small traders (Chileshe, p.11, 2010). There are some extreme examples of bad practices related to Chinese mining operations in Zambia. Well-founded popular complaints are based on fundamental issues such as: poverty wages; insecure terms and conditions; resistance to the legal right of trade unions to organise; inadequate support for retrenched and retired workers; and a failure

of attention to safety measures and environmental protection by the mining companies.

These issues reveal a troubling intersection between the global trade hegemony and weak governance. They have also resulted in dire incidents and consequences as exemplified below:

- In April 2005, 52 Zambian workers were killed at Chambishi Mine, in the biggest disaster in the history of Zambian mining. There was an explosion at the BGRIMM explosives plant owned by China's NFC Africa Mining Plc. Copperbelt Royal Council of Chiefs. (BBC NEWS, April 21 2005). The company is known for exploiting Zambian workers by paying poverty wages and employing many without a permanent contract (Guerin, July 4 2007).
- In 2006, during a two-day wildcat strike over delays in payments to workers at Non-Ferrous Metals Corporation Africa (NFCA), workers from the mine protested near to the living quarters of Chinese managers (Chen, May 25 2011). Two of the protestors were shot (Chen, May 25 2011).
- In early 2007, the Mulungushi Textiles Factory closed, creating losses of more than 1000 jobs (Chileshe, p.11, 2010). Financed by China in the 1970s as a sign of Sino-Zambian solidarity, the factory was once the biggest textile factory in the country. It ceased production after suffering repeated losses as a direct result of competitive imports (Chileshe, p.11, 2010).
- In 2010, at the Chinese-owned Collum Coal Mine, 11 mine workers protesting about their working conditions and pay. They were shot at by two Chinese mine managers (Chanda, December 13 2010).
- A cooperation between China and South Africa in the border town of Livingstone, Zambia, has shut down the local economy (Carmody, December 28 2015). There are two large Shoprite stores and almost everything in the store is produced either in China or South Africa (Carmody, December 28 2015). Instead of benefiting local Zambian producers, profits from the sale of Shoprite products largely flow back to South African shareholders, even though Shoprite is listed on the Lusaka Stock Exchange (Carmody, December 28, 2015). All of this has created a relationship of dependency for Zambia because it no longer produces many of the goods its population needs (Carmody, December 28 2015). The South African and Chinese capture value by selling commodities in the country, by investing in copper mining and processing, through profit repatriation from direct investments and through money circuits (loans from banks, for example) (Carmody, December 28 2015). Even the flow of tourists and business travellers also generate profits for South African and Chinese-owned hotels in Livingstone (Carmody, December 28 2015).

It is noted that while China is favoured as partner, it has not assisted Zambia to benefit from partnerships. These partnerships incorporate modernising manufacturing technologies that produce and export finished goods (Lusaka Times: Economic Governance, February 6, 2018).

In addition, China's unconventional approach to aid gives it access to political elites who serve as the territorial gatekeepers of resources and to some extent of the markets. The policy of non-interference (no conditionalities) further facilitates China's cooperation with political elites (IAPPS Academic Department, April 10, 2018). On one hand, the policy of no conditionalities provides the country with greater ownership of the aid resources accessed. On the other hand, such policy undermines local efforts to increase good governance. By proclaiming political non-interference, China ends up giving some pretext and legitimacy to authoritarian governments to continue governing as they wish. Although Zambia would be considered a democratic country, the opportunity for the government to rule as they please are not lost on them.

VI. Conclusion

Zambia has been called by some observers as a quintessential example of the resource curse, reliant on a single economic source to drive revenues, the GDP and growth. For decades, Zambia has been focussed on developing its copper industry, a commodity that is invariably and perhaps uniquely exposed to the ebbs and flows of the global market demand. This paper worked to investigate whether legislation alone can act as a potent antidote to the resource curse and related ills. It did so with regard to the context of Zambia's natural resources and its associated governance systems. Indeed, it was asked whether Zambia, as a model for others, has successfully implemented forward thinking and responsible legislation. The question was also asked whether policy for natural resource governance has seen a measurable shift towards sustainable economic growth and development. If not, what variables may account for ongoing endemic governance challenges and the issues beyond the gaps in legislative language regarding natural resources? Both contravene the objective of leveraging natural, endowed wealth to develop a country.

To answer these questions, the paper began with a brief literature review of Zambia's mining code, including an emphasis on recent changes that have prompted a positive review from the EITI. Following this, it broached a secondary variable which continues to inhibit Zambia's successful translation of natural resource wealth into sustainable development. This variable relates to the poor enforcement of existing policies and legislation, or being a paper tiger in legislation. Indeed, this includes the prevalence of high-level elite and ministerial corruption. Second, the paper introduced the problem of partnership, identified as a serious endemic undercurrent that remains unaddressed by Zambian policymakers. The paper reviewed the impact of new, non-traditional investors on partnership development in Zambia. It did so by pulling together the impacting variables, namely administration and capacity development, corruption, transparency and trust.

Concluding this discussion, the paper offers the following policy recommendations that Zambia can consider in remedying its resource curse. First, the government would do well to acknowledge that legislation alone is not enough to drive an escape from the resource curse. Legislation is a framing mechanism, a map to a perceived post-curse utopia. Zambia has done well to draft genuinely positive natural resource legislation, perhaps even a model for other African states. It does seem that the country has learnt some lessons from the rise and fall of copper prices and its dependence on these prices. But legislation, as was argued throughout this paper, is simply not enough to fundamentally remedy the resource curse. Indeed, Zambia must broach a number of other concerns. Principal among these is the problem of poor enforcement. Too often, Zambian politicians and officials responsible for resource governance have been found perpetuating severe corruption. This corruption ultimately impairs the country's ability to grow sustainably and attract investment from abroad. A state with deep corruption is labelled a risky investment. Specifically, corruption must be remedied in public procurement and contracting procedures, while the government must do more to end the practices of kickbacks and bribery for a favourable review of purchasing and site lease agreements. Zambia would do well to consider the implementation of a well-funded, independent investigatory body for resource-related governance.

Continuing, Zambia must work to improve the dispersal of resource-related revenues from Lusaka into rural areas. Interviews conducted for this research suggested that officials were content with primarily foreign-owned mine sites, for revenues derived from them could be contained in the capital city. Encouraging mine ownership by small and medium enterprises in Zambia may well be a partial remedy to this problem. Of course, legislative and enforcement loopholes, derived primarily from ad-hoc, overlapping laws, must also be closed. These continue to be exploited by multinationals to expatriate revenues derived from resource sites. This paper calls for a thorough review of existing legislation so as to end the overlap of institutional and agency mandates, enforcement procedures, and at-odds proscriptions.

With regard to the problem of partnership, a number of issues must be resolved. First, the government must work to engage private sector actors as equal partners in development processes, and not simply as

a source of revenue. Interviews conducted in Zambia in 2016 suggested that current discussions on these topics tend to originate from the companies themselves, rather than the government. This is because the Ministry of Mines and Minerals Development and related agencies rarely engage proactively with mining firms (Interview, Consultants with Experience in Zambia, 2016). Corporate Social Responsibility, it was denoted in these conversations, largely stems from companies themselves, rather than as a product of productive engagement between private and public sectors. To build partnerships, the Government of Zambia must begin by addressing the bottlenecks and constraints identified by the Zambia Development Agency as inhibiting effective PPPs from taking shape. These include: a lack of capacity in government; a lack of financial resources dedicated to PPPs; a lack of clear guidelines and regulations to guide contracting authorities and the private sector in the implementation of PPPs; and the high transaction costs and lengthy lead time to create PPPs.

With regard to capacity, solutions begin with defining the appropriate coordinating authority that would be responsible for negotiating, monitoring and managing a formalised PPP. Contracting authorities must build the capacity of its agents who assume responsibility for negotiations, monitoring, and the management of PPPs. Finally, defining the specific CSR role of mining companies in communities, as well as communicating it clearly to community leaders and members, would lead to more effective service delivery within PPPs. It will also improve the relationships of the private sector with communities. Coupled with capacity, the government must improve the reporting response rate with regard to ownership of mine sites and operations in the country. This will be a means of improving the overall trust and transparency in PPP agreements.

When it comes to non-traditional partners, Zambia must improve its bargaining position with countries like China. It must do so by remedying poor quality control and ineffective labour protection or land allocation laws. Indeed, Zambia should be wary of BRICS states attempting to export and mask their bad practices through attractive investments with companion loan cancellation agreements. Second, Zambia must take a closer look at China's policy of non-interference, which can often undermine efforts to increase good governance.

Zambia is an interesting case, a legislative paper tiger with all the right ingredients for promising economic growth derived from natural resources. But so far, it appears that those ingredients have yet to be used in the proper order. Some have been oversaturated while others are ignored. It is not a problem unique to Zambia; indeed, most resource-rich countries have at one time felt the incapacity to leverage their natural resource wealth for sustainable development. With concentrated effort, Zambia may well emerge from the grasp of the resource curse, becoming not just a model state on paper, but one held up as an example of best practices to be emulated.



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