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Policy in Mining: Mining Companies and Traditional Authorities in Zambia

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I. Introduction

Zambia boasts some of the world's highest grade copper and cobalt deposits with some of the copper deposits in the Copperbelt Province yielding a grade of 2–3 per cent (compared to the global average of 0.8 per cent) (KPMG 2013). When Zambia became independent in 1964, five main copper mines were contributing over 50 per cent of government revenue (Kruger 2013). The success of copper mines in the Copperbelt Province has transformed it into a vibrant urban and industrial community. In 1969, the country was classified as a middle-income country, with one of the highest gross domestic products (GDPs) in Africa (US\$476 per capita, compared to Zimbabwe with US\$347 per capita (World Bank 2015b)). This was largely due to the growth of the mining sector (responsible for 41 per cent of the GDP in 1965, slightly down to 33 per cent in 1969 (Central Statistical Office 2014)).

Today, Zambia is the second largest copper producer in Africa, after the Democratic Republic of the Congo (DRC), and the eighth largest producer in the world (International Copper Study Group 2016). Twenty-eight per cent of its total revenue comes from mining taxes. Zambia is working on overtaking its main competitor, DRC, and increasing its production to 1 million metric tonnes according to the Zambian Minister of Mines (Zambia Business Times 2017). By comparison, the DRC produced 910,000 tonnes of copper in 2016 (Barrera 2017). However, it is clear that in order to avoid following the boom and bust of international commodity prices, the Zambian economy needs to diversify. Between global copper prices rising in late 2017 and 2018 and the growing agricultural sector (World Bank 2017) the Zambian government is hopeful about its Vision 2030 of once again achieving the status of a middle-income country by 2030 (Government of Zambia 2006). While this positive trend was stymied by the initial effects of the COVID-19 pandemic in 2020 which hindered the export and sale of copper due to global travel restrictions it appears that Zambia is still on track. The industry seems to be bouncing back, with production in the first six months of 2020 over 3.8 per cent above the equivalent period in 2019 (Resources Magazine 2020).



Mining is seen as a strong source of income and (potential) development in Zambia. Furthermore, the population is affected by the physical and environmental impacts of the large mines in their communities. Therefore, the relationship between the mines, government, and communities in which they work is scrutinised by scholars, policymakers, and the private sector. Ideally, there is an aspiration towards a positive relationship between all the parties. Such a relationship benefits all those involved by opening avenues for the engagement and economic development of local micro, small, and medium enterprises in the employment of the mine, directly or indirectly. It also ensures that the community itself develops by taking advantage of the support offered by the mining company.

The relationship between the mines and the communities in which they are established and function, offers important insights into the effect that mining corporations have on Zambian development. Due to the limited resources of the state and government, the contact between mines and the community is typically mediated through traditional leaders. It is the chiefs, sub-chiefs, headmen, and other elders of the areas in which the mines are established, who are involved in the day-to-day business of maintaining a relationship with the mining company and being the intermediaries between the community and the mine when problems arise.

This brief offers insights and recommendations for both Zambian policy makers and private-sector actors. It focusses on the interactions between the mining company and traditional leaders in areas with active mines. By analysing the positive and potentially negative ways of engagement a clearer picture emerges of how these stakeholders can improve local relationships where necessary, and ensure that their actions are transparent, equitable, sustainable, and inclusive.

II. Traditional Authorities

Traditional authorities in Zambia, like in many other African countries, retain significant power, particularly with regard to governing in rural settings that are farther away from the capital city. The state formally incorporated chiefs, creating a House of Chiefs in 1965. The House is a non-partisan institution and part of the National Assembly of Zambia, provided for in the Constitution of Zambia of 1996. It initiates discussions on socio-economic development and welfare of communities, advising the National Assembly and making recommendations to local authorities (Act 169, section 5). Chiefs retain significant power over land and some say in law enforcement. This is accompanied by various traditional sources of influence, such as traditional courts to settle disputes, although these are not officially recognised (Baldwin 2010). Furthermore, in 2011 the Zambian government created the Ministry of Chiefs and Traditional Affairs (MOCTA) dedicated to traditional institutions. The House of Chiefs falls under the MOCTA.

In addition, there are several constitutional provisions offering traditional leaders formal roles in governance. Traditional leaders around the state are also relatively well organised into small groupings where they meet on a regular basis, such as the Copperbelt Royal Council of Chiefs, and they frequently use the media to magnify their voice and argue their case. These traditional structures are seen as legitimate forms of government for the community and they enjoy considerable trust and moral authority (Negi 2010). The already complex relationship between them and the formal state and local government in Zambia is a delicate equilibrium. When a mining company enters as a negotiating partner, this

equilibrium is put under pressure. Disagreements emerge as to who is charged with the overall 'governance' of sites, including tax payments and regulatory enforcement. The complex interactions of various levels of governance create a difficult and politicised environment for both, the community and the mines.

The majority of land in Zambia is held under customary tenure, without time limitation. It is typically administered by traditional authorities such as chiefs and allotted to community members. There is often no formal documentation, and no payment of land tax. All other land which does not fall under customary tenure is considered state land. Based on the Lands Act 29 of 1995, for the state to allow for land conversions to a leasehold, the chief and any other affected parties have to give their consent. Once a leasehold is granted, customary rights are extinguished, and the land is administered by the state. The administration of the land by the chiefs is not regulated by law, although negotiations are ongoing on a draft land policy. However, chiefs have to balance the potential of enrichment and development opportunities against the loss of land, and thus authority.

That being said, access to financial resources is centrally held by the state. The government has been known to overturn the decisions of chiefs when it determines that it is in its best interest to do so. It thereby maintains the neo-patrimonial hold on power by the elite (Leiderer 2011). This hold is also visible in government policy, where although the majority of land is administered by chiefs, the subsurface minerals are clearly designated by Zambian law as state property.

III. The Chiefs and the Mines

All companies have to negotiate with the traditional leadership in order to obtain written consent to purchase or lease customary land. Based on interviews with representatives from the sector, the mining staff is much more likely to engage with local, traditional leaders on day-to-day issues, than with local, regional, or state government. They view the latter as more politicised. While traditional leaders do engage in some political play their position depends on the maintenance of the trust and loyalty of their community. They live in the communities with their families and their lives are closely intertwined with the successes and failures of their people. This means that their engagement with the mining companies differs from that of the government and remains very important.

Due to the size (and depth) of some of the mines in Zambia, there is a degree of permanence attached to them (Negi 2010). It is therefore a priority for them to maintain good relations with their neighbouring communities. The state is able to provide only minimal oversight due to limited capacity and resources. Therefore, the chiefs routinely take on duties such as land administration, whether to provide families with land for farming and building homes, or to establish businesses (Negi 2010). They have thus become important gatekeepers as the custodians of the land. Establishing a relationship with them is important if there is to be community support for mining activities. In addition, they have the power to negotiate on behalf of their people, by for example reserving a certain number of jobs for specific tribes in the community.

Chiefs are key figures in bringing development to their communities, and as such they are intimately tied to capital investment in their territories (Fraser and Larmer 2010). Community development agreements (CDAs) are negotiated and signed between the company and the community,

represented by the chief. However, it is up to the negotiators (primarily chiefs, headmen, and elders) from the community to determine whether the deals they make with the mining companies are in fact fair. This can be both a boon and a burden. For those traditional leaders who seek the best possible offer for their communities but enter negotiations with little previous experience or knowledge, it is difficult to successfully represent their people and achieve a good and fair outcome, even with the requirement of Free, Prior, and Informed Consent under the United Nations Declaration of Rights of Indigenous Peoples.

IV. Recommendations

Based on the importance of the relationship between mining companies and the traditional leadership in Zambia, several policy recommendations are highlighted below. These policy recommendations are directed both at policy makers and private sector actors. The recommendations focus on ways in which the relationship can be supported in a better way or improved.

In terms of government policy two opportunities stand out:

- Increasing the focus on education and access to information
 - Free, Prior, and Informed Consent requires informed consent. Yet, the knowledge needed to provide informed consent is in no way imparted uniformly across communities. Some chiefs who are well educated, or those who come from mining communities, are often more knowledgeable with regard to matters related to mining and negotiation. They are able to negotiate better than those who are less educated and experienced. Therefore, informed consent varies significantly from community to community. The government should therefore offer training opportunities and make templates of agreements widely available for leaders new to the relationship with mining companies.
 - Knowledge-sharing is also required in cases of resettlement, to share examples of previous experiences and ensure that both traditional leaders and community members are able to negotiate robust resettlement agreements where needed.
 - The education sector benefitted from early investment by the government when mining was nationalised. However, current funding for education is decreasing annually because of other priorities competing for funds. This is despite the glaring need for higher education. The government needs to refocus on skills training and education to ensure the availability of both potential mining employees and small and medium enterprise (SME) entrepreneurs. This would offer the chiefs additional leverage when negotiating with mines to include quotas for the employment of locals in top management positions and in SME engagement.
 - Transparency should be increased by allowing access to development agreements negotiated between the government and the mining companies. The responsibilities of each should be stipulated (International Council on Mining and Metals 2014) so that community leaders are aware of the mines' obligations and can learn from others when negotiating their own agreements.

- Defining and supporting 'the local'
 - A clear definition of local content is urgently needed. This would help reduce the vagueness of the Zambian policy framework as it relates to mining and its contributions to the sustainable development of the communities in which the corporations operate. Currently, the focus on local suppliers and manufacturers is rare. This is despite local content provisions in the Mines and Minerals Development Act 11 of 2015 and stakeholder consultations, likely due largely to a lack of coordination between departments, as well as lack of capacities to ensure appropriate linkages and enforcement. There are critical linkages missing between policies which could provide opportunities to strengthen local development and industrialisation (Fessehaie, Rustomjee, and Kaziboni 2016). Traditional leaders and mining companies are thus left to negotiate their own agreements with regard to the employment of locals or the use of local businesses.
 - Local manufacturing or services could be leveraged by the government, which maintains its share of the mining companies through the ZCCM-IH (Zambia Consolidated Copper Mines Limited - International Holdings) (Fessehaie, Rustomjee, and Kaziboni 2016). However, ZCCM-IH remains a silent partner in these investments rather than actively participating and encouraging local businesses and the mines to work together. This is presumably because the government does not have the capacity to get involved in each mine, yet this offers the perfect opportunity to promote local content.
 - In conjunction with a local content policy and following a review of best practices and consultation with the private sector, a regulation on Corporate Social Responsibility (CSR) should be created. This would aid and support the work of traditional leaders in prioritising and executing development projects.
 - Another important disadvantage for local businesses is the inability of the financial sector to offer loans to small businesses at attractive interest rates. Due to these challenges, access to financing to operate production infrastructure and maintain large stocks of products and parts to ensure quick delivery, is a major challenge (Fessehaie, Rustomjee, and Kaziboni 2016).
 - Many current complaints about mining centre around unfulfilled promises. Communities have high expectations of the mining companies based on their past experience with nationalised mines, which effectively performed the role of the government. While the government needs to exact as many community improvement projects as possible from the companies, it also needs to ensure that it supports its rural communities by maintaining its responsibilities beyond what the mines do.

For mining companies specifically:

- Transparency and communication
 - There is a need for a more concerted, transparent, and coordinated effort on the part of both the mining companies and the communities. They must do so to ensure that the development is sustainable and benefits the greatest number of people on an economic level.
 - A common complaint is related to the low number

of jobs available to locals. While mines have programmes in place to ensure priority employment for locals, few on-site jobs are created due to technological advances in automation. Only 1.7 percent of Zambians employed in the mining industry, despite the fact that the staff at most mines is 98-99 percent locally employed (International Council on Mining and Metals 2014). Yet, one mining job is estimated to support up to 15 people (McGroarty and Parkinson 2016). It is therefore imperative that the mines continue to invest in the education of the local population, offering a variety of programmes that build transferable skills so those graduating are able to take up opportunities both in mining and elsewhere.

- While the large majority of jobs in Zambian mines are staffed by locals, top management positions continue to be filled primarily by expatriates. Grooming promising local candidates for these positions and thereby increasing the number of top managers of Zambian nationality would also benefit both, the communities in which the mines are based and the company more broadly.
- Maintaining respect for traditions and an understanding of culture and language is one of the most important ways in which the mine can ensure a good relationship. While some languages can be difficult to learn, ensuring that everyone in the community understands each other is critical. Thus, interpreters are necessary to help spread the message, including to those members of the community who might not be able to participate in every meeting. In addition, an open line of communication must be maintained between the mine and community. This should include responding to requests for meetings when called for by members of the community, as it can help to balance the relationship. Where top management positions are held by successful local Zambians who have ties to the community and can help navigate the relationship, these can act as interlocutors educating both mine and community on goals and needs of each.
- Due to the complexity of the relationships involved, maintaining regular contact with all levels of government and traditional leaders is key. Thus, companies should communicate with the appropriate ministries and local government. They must do so in ways that ensure that they are informed and cognisant of projects affecting their spheres of influence. Regular, predictable, and accessible methods of communication are key in maintaining good and open relations. Here again, Zambians in top management positions who are intimately familiar with the government are likely to offer key insights.
- Mining companies have to be particularly careful to avoiding situations in which they position government against traditional leadership or vice versa. Even in conflict situations where the involvement of government is necessary, this should be done in an open and transparent manner. All relevant parties should be engaged in dialogue and address the situation collaboratively.
- Engagement in CSR with a sustainable-development focus in mind is necessary so that communities can continue to develop well beyond the lifespan of the mine.

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