



Keynote Address

By

**The Hon. Advocate J. F. Mudenda
Speaker of the National Assembly**

At the

***Capacity Building Workshop for the Portfolio
Committee on Mines and Mining Development on the
Mines and Minerals Amendment Bill***

**10 to 13 July 2019
Carribea Bay, Kariba**

- **The Minister of Mines and Mining Development, Hon. W. Chitando;**
- **The Chairperson of the Portfolio Committee on Mines and Mining Development, Hon. E. Mkaratigwa;**
- **Hon. Members of the Portfolio Committee on Mines and Mining Development;**
- **The Clerk of Parliament, Mr. K. M Chokuda and your staff;**
- **The Secretary for Mines and Mining Development, Mr. O. M. Moyo and your staff;**
- **The Director of the Zimbabwe Environmental Law Association, Mr. M. Dhliwayo and your staff;**
- **Distinguished Facilitators;**
- **Esteemed Invited Guests;**
- **Ladies and Gentlemen;**

It is my singular honour and pleasure to share with you my thoughts about this cardinally important capacity building workshop which seeks to conscientise your Committee on the provisions of the impending Mines and Minerals Amendment Bill as well as the petition that was submitted by the Zimbabwe Environmental Law Association (ZELA) pertaining to the extractive industry.

Need I remind you that this is not the first time that we have congregated in this nature to discuss amendments to the

Mines and Minerals Act. It may also appear rather unusual for the Speaker as the Head of Parliament to take an active role in the legislative processes of a Bill, particularly at this early stage. However, it is instructive to point out at this juncture that the initiation of legislation is not the prerogative of the Executive only. In that regard, Section 130(1) of the Constitution of Zimbabwe clearly states that:

“Except as provided in the Fifth Schedule, in the exercise of their legislative authority both the Senate and the National Assembly have power to initiate, prepare, consider or reject any legislation”.

Pursuant to this, in January 2018 during the life of the Eighth Parliament, the then Portfolio Committee on Mines and Energy, convened a similar workshop to discuss proposed amendments to the Mines and Minerals Act. After reaching consensus with the Minister of Mines and Mining Development, Hon. Chitando, with respect to the proposed amendments, the Bill then went through all the procedural stages of Parliament prior to transmission to His Excellency, the President, for assent and signature in terms of Section 131(5) of the Constitution. However, just before the 2018

harmonized elections, His Excellency, President Dr. E. D. Mnangagwa, returned the Bill to Parliament with reservations in line with section 131 (6)(b) of the Constitution which states that:

“When a Bill is presented to the President for assent and signature, he or she must, within twenty-one days, either –

If he or she considers it to be unconstitutional or has any other reservations about it, refer the Bill back to Parliament through the Clerk of Parliament, together with detailed written reasons for those reservations and a request that the Bill be reconsidered”.

Under such circumstances, the Constitution goes on to state under section 131(7) that; *“where a Bill has been referred back to Parliament in terms of subsection (6)(b), the Speaker must without delay convene a sitting of the National Assembly which must –*

- (a) Reconsider the Bill and fully accommodate the President’s reservations or*
- (b) Pass the Bill, with or without amendments, by a*

two-thirds majority of the total membership of the National Assembly.”

Unfortunately, in this case, I was unable to comply with these constitutional obligations because the Eighth Parliament had by then been dissolved pending elections. In this regard, Section 147 of the Constitution states that; “*On the dissolution of Parliament, all proceedings pending at the time are terminated and every Bill, motion, petition and other business lapses*”, and to that an extent Parliament was unable to reconvene to reconsider the Bill. This workshop is, therefore, consequential to that constitutional procedure.

Hon Members, Ladies and Gentlemen;

As you may all be aware, Section 117 (2) provides that one of the critical roles of Parliament is “*to make laws for the peace, order and good governance of Zimbabwe.*” That is why we must applaud His Excellency, the President, for reverting the Mines and Minerals Bill back to Parliament for further legal scrutiny because Parliament must of necessity pride itself of enacting credible laws. In any case the Constitution enjoins us to always remember that Section 116 of the Constitution

affirms that **“The legislature of Zimbabwe consists of Parliament and the President”**. This obliges us, therefore, to ensure that all legislation, including the Mines and Minerals Act which was last amended over two decades ago, remains robust and relevant to our socio-economic development. Indeed, owing to global shifts in the extractive industry over the last twenty years since the amendment of the Act, a number of emerging policy and legal gaps need to be addressed seminally. It is, therefore, my hope that at the end of this three-day workshop, Members of the Committee will have an in-depth appreciation of the proposed amendments and their justification, inclusive of the reservations raised by His Excellency, the President. Accordingly, this workshop could not have come at a more opportune time given the critically important role that the mining sector is expected to play in the revival of our economy with the view of attaining our national vision 2030 of a middle income economy. Indeed, the mining sector is a catalytic industry whose rich resource base has huge potential to create linkages in both upstream and downstream industries necessary to create jobs and wealth for the nation. This is only achievable if the sector maintains an exponential double digit growth of not less than 10%.

Comparatively, South Africa's mining sector contributes 18 percent of the Gross Domestic Product (GDP). Zambia is between 10 to 15 percent of the GDP whilst in Botswana the figures are as high as between 35 to 40 percent of the GDP. Given the ubiquitous unexplored mineral wealth in resource-rich Zimbabwe, nothing stops our mining sector from contributing 35 to 40 percent to the nation's GDP.

It is not surprising, therefore, that according to the Transitional Stabilisation Programme (TSP), the mining sector was expected to have contributed over 70 percent of the country's foreign currency earnings by the end of 2018. Your Committee must find out whether or not this was achieved and its sustainability. Concomitantly, the mining sector is estimated to create slightly over 33,000 direct formal jobs and 70 000 indirect jobs through upstream and downstream industries.

Honourable Members, Ladies and Gentlemen;

As I have already alluded to earlier, it is an open secret that Zimbabwe is endowed with over 40 different types of minerals. These minerals include gold, diamonds, chrome and

the platinum group of metals, among others. In that respect, for Zimbabwe to optimally benefit from the mining sector, it is critical that Parliament crafts a sound legal framework which also addresses the urgent need for geomagnetic exploration of our mineral deposits along the Great Dyke. This will buttress the desire by Government to grow the mining industry from a \$3 billion to a \$12 billion annual gross turnover sector by 2023. In that context and as policy makers, we also need to insist on ensuring that there is a comprehensive national mining policy which must form the bedrock of our mining laws and attendant regulations. Such legal and regulatory frameworks for the extractive sector must, however, comply with the international best practices, including but not limited to the Extractive Industries Transparency Initiative (EITI) and the Africa Mining Vision (AMV). In the 2019 National Budget Statement, the Minister of Finance outlined some of the benefits associated with Zimbabwe subscribing to the EITI, one of which is its key role in unlocking more investment into the mining sector. EITI promotes transparency and accountability in the mining sector. This in turn reduces risks associated with illicit financial flows from the extractive industry and thus

contributing to boosting domestic resource mobilisation.

On the other hand, the Africa Mining Vision seeks to use mineral resources exploitation as a catalyst for sustainable socio-economic development and structural economic transformation. It is one of the important pillars of the African Union (AU) Agenda 2063 that was adopted by Heads of State and Government at the February 2009 African Union (AU) Summit. According to the AU, the basis of the AMV is fundamentally for Africa to ***“shift its focus from simply mineral extraction to much broader developmental imperatives in which mineral policy integrates with development policy.”*** Furthermore, the AMV also hopes to achieve ***“a transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”*** of the continent. As a Committee, you need to familiarize yourselves with the AMV and the EITI in order to bolster your legislative, oversight and representation roles. These eminent policy thrusts resonate well with Section 13(1) of the Constitution of Zimbabwe, which peremptorily obligates the State and all institutions and agencies of government at every level to:

“...endeavour to facilitate rapid and equitable development, and in particular must take measures to—

- (a) promote private initiative and self-reliance;*
- (b) foster agricultural, commercial, industrial, technological and scientific development;*
- (c) foster the development of industrial and commercial enterprises in order to empower Zimbabwean citizens;*

and

- (d) bring about balanced development of the different areas of Zimbabwe, in particular a proper balance in the development of rural and urban areas”.*

It is, therefore, paramount that we consider these policy instruments and approaches in order to realize the above Zimbabwean constitutional development aspirations in an effort to be attuned to the New Developmental Approach to Natural Resource Governance in Africa initiative in the context of ameliorating the Mines and Minerals Amendment Bill.

Honourable Members, Ladies and Gentlemen;

Equally vital, is the recognition of the Committee’s

responsibility to perform its oversight role on corporate social responsibility activities of the mining companies whose new concept is now “Corporate Social Investment”. Where mining takes place, there should be significant development of infrastructure such as roads, schools and hospitals for the surrounding communities to benefit. That is in line with Section 13(4) of the Constitution that obligates the State to “*...ensure that local communities benefit from the resources in their areas.*” In this regard, your Committee should interrogate the Bill so as to establish whether or not the Bill sufficiently addresses corporate social investment by way of creating Community Share Trust Schemes as instruments of corporate social investments. How about the employment of locals?

Furthermore, as you converse over the Bill, you may not necessarily have to re-invent the wheel as you can draw from and improve upon the recommendations made by the then Portfolio Committee on Mines and Energy in Vumba last year. Some of the recommendations emerged as follows:

1. On Section 5 of the Bill, there was need to remove the

list of strategic minerals given that there was inadequate consultation on the minerals to be included and, some critical minerals such as gold and diamond, were excluded from the list of strategic minerals.

2. Under Section 6 of the Bill, concern was raised on whether the Secretary of Mines should Chair the Mining Affairs Board. In that context a recommendation was made that the Board had to comply with the provisions under the Public Entities Corporate Governance Act [Chapter 10:31].
3. On the farmer-miner relationship, it was agreed that there is need to balance the interests of both groups noting that mining operations should not reverse the gains of the Zimbabwe Land Reform Program.
4. On the ‘use it or lose it’ clause, it was recommended that there should be a specific set timeframe, after which a mining concession could be forfeited not after a ‘reasonable time’ had lapsed.
5. The issue of setting timeframes was also raised on the clause pertaining to the resolution of mining disputes and it was further recommended that a specific timeframe within which disputes can be resolved has to be set.

6. Another critical recommendation that emerged was on the need to give a clear definition of artisanal and small-scale miners. That came about after realizing that the Bill merely described a small-scale miner as “...*a holder of a mining location who is not a large-scale miner*”.

It is, therefore, worthwhile for the Committee to go through those recommendations. I will not be surprised if more recommendations do arise from your microscopic analysis of the Bill.

Honourable Members, Ladies and Gentlemen;

It must be emphasized that there are also some progressive provisions in the Bill which you must embrace, including those covering the protection of the environment, sustainable development and the establishment of the Safety, Health and Rehabilitation Fund. As a country, we have experienced wanton destruction of the fauna and flora, pollution of water bodies and extensive damage to public infrastructure where mining enterprises occur. This is against the provisions of Section 73 of the Constitution which states that:

“Every person has the right —

- a) To an environment that is not harmful to their health or well-being; and*
- b) To have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that —*
- (i) prevent pollution and ecological degradation;*
 - (ii) Promote conservation; and*
 - (iii) Secure ecologically sustainable development and use of natural resources while promoting economic and social development”.*

However, while the endeavor to establish a fund for rehabilitating an environment decimated by mining operations is welcome, there is also an urgent and dire need to formalize the operations of all artisanal and small-scale miners, so that they can operate in a sustainable environment for the benefit of all land users and posterity.

Honourable Members, Ladies and Gentlemen;

Regrettably, the potential of the mining sector to contribute astronomically to economic development is being hampered by a plethora of challenges, including but not limited to: -

1. lack of transparency and accountability in the whole mining value chain;
2. corruption in the allocation of mining claims as currently witnessed in some provinces;
3. poor negotiation of contracts resulting in skewed contracts that fail to unlock maximum mineral value to the country;
4. lack of value addition and beneficiation;
5. imprudent management of the generated revenue; and,
6. failure to obtain approval of international mining agreements by Parliament in terms of Section 327 of the Constitution.

At regional level, SADC developed the Protocol on Mining in 1997 which seeks to foster a thriving mining sector that contributes to economic development, alleviation of poverty and improved standards of living for SADC citizens. It is, therefore, critically important for legislators to be conversant with such regional and international instruments governing the extractive industry as well as proposing the domestication of such protocols into our national laws. Thus, the amendments to the Mines and Minerals Act, has opened another opportunity for us to reflect and ponder on what can

be domesticated in the interest of our citizens and the country at large.

Hon. Members, Ladies and Gentlemen;

Let me now turn to the Petition submitted by ZELA for consideration by the Committee. Section 149 (1) of the Constitution succinctly provides that:

“Every citizen and permanent resident of Zimbabwe has a right to petition Parliament to consider any matter within its authority, including the enactment, amendment or repeal of legislation”.

Let me, therefore, hasten to say that in this first session of the Ninth Parliament, we have witnessed a more than welcome spike in the number of petitions that have been submitted to Parliament. This is a positive development which attests to the greater involvement of our people in the legislative and national governance processes. The Legislature should always be open to the people and carry their hopes and aspirations. In this regard, the Petition submitted by ZELA is not only a confirmation of our nascent participatory democracy but also resonates well with the policy reform agenda being

spearheaded by the Ministry of Mines and Mining Development. I am, therefore, confident that some of the concerns raised by the petitioner will be adequately addressed through this workshop.

Hon. Members, Ladies and Gentlemen;

Before I conclude my address, let me also point out that although this workshop will be focusing on the mining sector reforms, it is crucial that as legislators, you are always mindful of the fact that the exploitation of minerals should lead to the improvement of the quality of life of our people. Some of you may be aware of the phenomenon called the *Dutch Disease* which occurred around the 1970's. The discovery of oil in the North Sea changed the behavior of the Dutch such that they neglected their manufacturing sector to the detriment of a holistic national economic development approach. In the same vein, it is an open secret that instead of contributing to poverty alleviation and economic growth, resource revenues in Africa have in many cases led to large-scale corruption, underdevelopment, and in some cases, have fueled tribal conflicts, wars and hatred. That is also generally known as the "*Paradox of Plenty*" where the abundant

endowments of natural resources on the continent have not led to equivalent levels of economic growth and prosperity among African citizens. We should thus safeguard against such insidious phenomenon of the Dutch Disease and the Paradox of Plenty.

In that regard, it would be remiss of me to conclude my delivery without commending the Minister of Mines, Hon. Chitando, for taking a bold stance against corruption in the Ministry's ranks by suspending officials fingered in cases of corruption to pave the way for investigations. Indeed, cases abound of favouritism, nepotism and corruption in the allocation of mining claims most of which are held for speculative purposes and do not bring any tangible economic benefits to the country. It is my hope that this first step in demonstrating zero-tolerance to corruption will deter would be offenders in the Ministry and result in the allocation of claims to deserving citizens.

I conclude by expressing my appreciation to you all for taking time off your busy schedules to attend this workshop. It is my hope that the deliberations over the next two days will

culminate in the development of a Mines and Minerals Amendment Bill that provides a benchmark for the region and beyond, particularly in ensuring that a country and its people derive maximum benefits from its mineral resources.

It is now my singular honour and privilege to declare this workshop officially open.

GOD BLESS OUR NINTH PARLIAMENT!

I THANK YOU.

SIYABONGA.

TWALUMBA.

TINOTENDA.