

# ALTERNATIVE MINING INDABA

OFFICIAL REPORT 2016



ALTERNATIVE MINING INDABA



@AltMiningIndaba

**Alternative  
Mining Indaba**  
Making Natural Resources  
Work for the People

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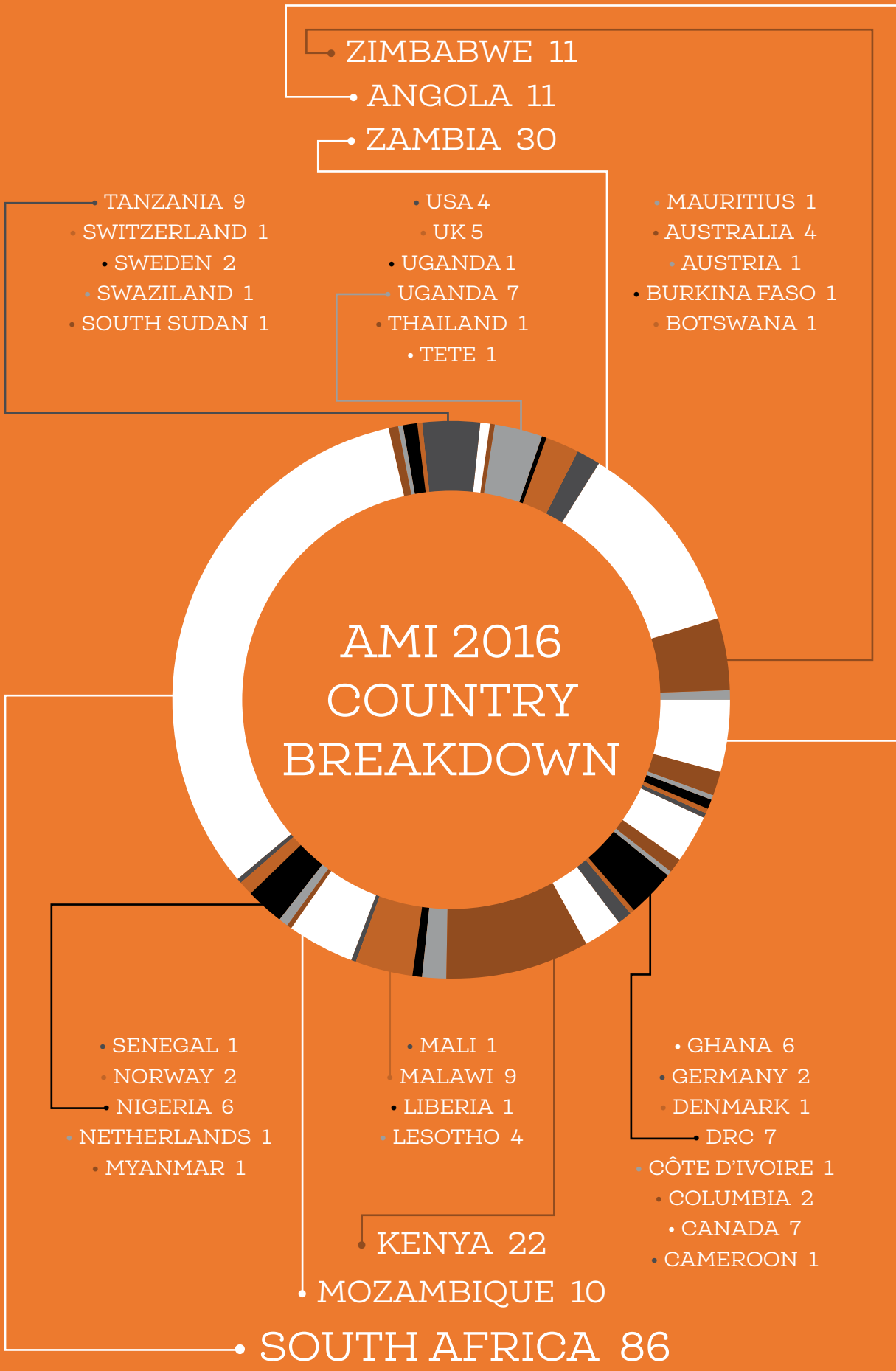
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# AMI 2016 COUNTRY BREAKDOWN



# 1 EXECUTIVE SUMMARY

The 7<sup>th</sup> Alternative Mining Indaba, in Cape Town from 8<sup>th</sup> to the 10<sup>th</sup> of February 2016, took place against the backdrop of declining world commodity prices following a decade in which rising commodity prices echoed the “Africa Rising” narrative. During that period countries such as Mozambique, the Democratic Republic of Congo (DRC) and Zambia were among the major destinations of mining investment inflows.

However, as expressed at the AMI 2016, commodity prices for base metals such as chromium and nickel had fallen due to the decline in China’s stainless steel demand. Only precious metals such as gold were steady, while silver showed upside potential. A surplus in the world supply of diamonds due to supply disruptions from Russia and the ever increasing supply of these precious stones from conflict-ridden countries, kept prices of this commodity low.

Additionally, the environmental and social degradation caused by the mining, the aggressive tax avoidance and illicit financial outflows, have remained permanent features of multinational mining corporations. These problems are exacerbated by the complicity of African governments in corporate malpractices, ultimately giving Africa little to show financially or in terms of improved living standards for all this flurry of activities in the extraction of resources over the past decade. It is for this reason that the AMI was held under the theme:

“ Making natural resources work for the people... Leaving no one behind. ”

This theme, although aligned to the UN General Assembly’s Sustainable Development Goals, also resonated with the movement’s continued effort to give mining-affected communities a fair stake in natural resources, similar to that enjoyed by government and corporate mining companies. The theme also encapsulated the ever present threat of elite capture which could derail the movement. Thus the theme was adopted as a reinforcement and reassurance to stakeholders that the AMI was committed to continue to fight for economic justice for every member of the mining community regardless of their diversity or their needs. Through this theme the 2016 AMI recommitted to unconditional inclusion of especially mining affected communities.

The 2016 AMI was held from the 8<sup>th</sup> to the 10<sup>th</sup> of February. More than 350 participants from all over Africa as well as from Latin America, Asia, Europe and beyond attended the conference (a far cry from the 40 that gathered for the AMI’s inaugural meeting in 2010).

## THE OBJECTIVES OF THE AMI 2016 WERE:

- To provide a platform for communities affected and impacted by the extractive industries to reclaim their rights through the formulation of alternatives.
- To advocate for transparent, equitable and just extractives practices in the management, governance and distribution of national resources through policy and legislative reform.
- To create meaningful decision making processes for communities, advocating for just national and regional policies and corporate practices.
- To provide space for engagement for the communities affected by mining, inter faith communities, governments, CSO's and private sector to share information and experiences.
- To provide space for the inter faith community to lead and accompany affected and impacted communities.

In order to achieve this the programme was structured over two and a half days as follows:

**\* 1 keynote address and 2 discussants**

**\* 2 panel discussions held in plenary on**

- Making Natural Resources Work for the People and
- Transparency Trends in the Extractive industry,

**\* 4 parallel community trainings sessions on**

- Community Consent Index
- Mining Legal Clinic
- Health And Safety -
- Tax Justice

**\* 5 thematic breakaway sessions on the following themes that were identified from national mining Indabas**

- Access to Remedy: Litigation and Mining
- Mining and Taxation
- Business and Human Rights
- Artisanal Mining
- Gender and Extractives

## SIDE EVENTS

As has become the custom over the years, side-events related to the Indaba's theme were held on the side-lines of the AMI in and around the venue. They demonstrate the growing significance of the Alternative Mining Indaba. This year there were six such side events, titled as follows:

- *United Nations Entity for Gender Equality and the Empowerment of Women; What Broke the Dam?*
- *The Impacts of industrial gold extraction on socio-economic development in the Democratic Republic of Congo and Zimbabwe;*
- *Shore Break;*
- *Tax Me If You Can Campaign launch;*
- *The Price of Gold; Mining and armed conflict:*
- *Do minerals build peace?*

# 2 HIGHLIGHTS OF AMI 2016

## DAY ONE

In her welcome and opening remarks, chairperson of the AMI Steering Committee, Veronica Zano, from the Zimbabwe Environmental Law Association, noted with satisfaction the continued growth of the annual indaba. She also pointed out that the AMI had transformed from simply being confrontational to the African Mining Indaba, to engaging them in dialogue, with a view to addressing thorny issues surrounding the mining industry such as labour conditions, health and environment. This was illustrated by the African Mining Indaba inviting delegates from the AMI to its annual meeting at the Cape Town International Convention Centre to engage in dialogue.

Giving the programme overview and touching on the AMI principles, Carol Kiangura, vice-chairperson of the AMI Steering Committee and AMI 2016 Programme Director, pointed out that this year's programme varied from previous formats where the thematic breakaway sessions were normally dominated by one expert. This year's agenda had instead featured more interactive sessions in response to feedback from AMI 2015. She highlighted that each thematic breakaway session would be developed over four stages namely: inspirational sessions, debate sessions, collecting evidence sessions and lastly designing strategic action plans.

The major resolutions, recommendations and action plans from each of the thematic sessions were distilled into the AMI 2016 Declaration, which can be found at the end of this report.

The programme then kicked off with presentations of the reports on the member countries' National Mining Indabas. This year, six African countries, namely Botswana, Malawi, Mozambique, South Africa, Zambia and Zimbabwe gave overviews of the national processes. There was also a presentation from Colombia, a country that has sought to replicate the AMI model in South America.

The National Mining Indabas (NAMIs), which are now in their sixth year, have grown significantly as stakeholders such as government, business and the communities have found them to be a useful platform for engaging each other on mining issues mutually impacting them. In Zimbabwe, mining indabas were now also taking place at provincial levels prior to the national indaba. Other AMI member countries expressed interest in replicating this model.

The major issues from the country reports are summarised below:



### SOUTH AFRICA

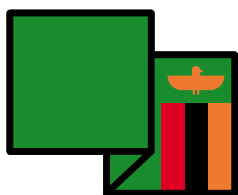
Although South Africa does not host a national mining indaba, MACUA (Mining Affected Communities United in Action), in conjunction with the Economic Justice Network, ran provincial workshops to inform mining-affected communities on the

proposed Mineral and Petroleum Resources Development Act (MPRDA). The idea was to advocate for greater consultation with community leaders and local government.

On 14 November 2015, a large march was organised by NUMSA and MACUA which concluded with the delivery of a memorandum to the Chamber of Mines, detailing the demands that mining-affected communities expected of mining companies operating in their areas. A meeting was to take place on 28 February 2016 to discuss this memorandum and come up with possible solutions.

While government is taking the “*phakisa*” approach in wanting to fast-track mining, MACUA calls for “*bhekisisa*” or introspection in looking at the way forward.

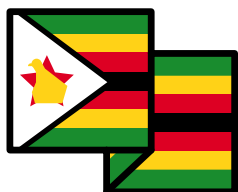
Meetings with groups of artisanal miners have been set up in order to understand more about their circumstances.



## ZAMBIA

The Zambian Alternative Mining Indaba, or ZAMI, has facilitated positive dialogues between civil society organisations, government and mining companies. For four days, six mining companies engaged in dialogue on many topics, including how youths could also benefit from mining activities in their communities.

A major focus of the ZAMI has been tax justice and advocacy among stakeholder institutions around illicit financial flows. They are a major supporter of the ***Stop the Bleeding Campaign***.



## ZIMBABWE

Midlands and Manicaland Provincial AMIs (PAMIs) and the ZAMI were held under the theme “Creating Shared Value in the mining sector through engagement with People, Business and Government”. The ZAMI hosted over 200 participants made up of community members, government departments, legislators, mining companies, artisanal and small-scale miners, civil society, media and faith-based organisations.

Reported results included:

- Participation of the Deputy Minister at the ZAMI –unprecedented hard-talk-community-Minister engagement
- Communities defending rights by demanding Environmental Impact Assessments (EIAs) and participating in EIA processes.
- Communities demanding participation and access to information on Community Share Ownership Trusts
- Communities and local authorities organising own indabas e.g Mutoko Alternative Mining Indaba-organised by the local authority.





## COLOMBIA

Colombia had been involved in an armed conflict for almost 60 years. The country initiated peace talks with one of the oldest guerrilla groups in Latin America and now, and because of that, there was some hope among civil society in the country. Despite that, Colombia has witnessed an increase in social and environmental conflict over land, mostly because of the consequences of the deepening of the extractives industries (e.g mining and oil). This raised concern because these industries were the structural causes of the armed, political and economic conflicts.

The Colombian delegate believed the way to put the war behind was through rural communities, especially those that had faced the impact and damages of industrial extractive projects. Local and national dialogue on this subject began, taking the following forms;

1. Popular consultation regarding the opinion of communities on particular projects where the communities actually took part in decision-making, unlike in the past where such projects were only decided by the government.
2. Litigation against some of the structural aspects of the extractives policy
3. Promoting national campaigns to stop the way mining was being conducted with a view to ensuring that natural resources worked for the people.

## IN HIS INTERCESSION

Rev Damon reiterated the EJM of FOCCISA's (Secretariat of the AMI) mission to seek just and equitable distribution of the wealth generated from mining resources. In his intercession prayer, he appealed to God, whom people knew as a God of Justice, to assist in the achievement of this mission.



## KEYNOTE ADDRESS

The keynote address was delivered by Bishop George Palo from Zambia who noted that there were many challenges obstructing the effectuation of justice. Dwelling on AMI 2016's theme, of Making Natural Resources Work for the People, Bishop Palo emphasized the inclusion of women in the extractives industry as well as the full participation of women in decisions made regarding mining resources, including the owning of mines, as a fundamental step in achieving justice.

Bishop Palo also criticised the intellectuals often entrusted with negotiating agreements between mining companies and communities. These intellectuals, he observed, often agreed to documents that benefitted them personally at the expense of whole communities. The Bishop described this as "Intellectual Iscariotism", alluding to the Biblical betrayal of Jesus Christ by one of his disciples, Judas Iscariot.

In her response to Bishop Palo's remarks, Winnie Byanyima, Executive Director of Oxfam International and a famous woman rights activist in her own right, said because of their lack of power, women bore the brunt of gender-based violence that stemmed from alcohol abuse commonplace in mining areas. Worse still, because of the same lack of power, girls between 15 and 19 were most affected by HIV/Aids around mining centres. Winnie said measures, including laws, were needed to empower women and strengthen their voices.

Kudakwashe Zireva of the Mhondongori Community, Zvishavane in Zimbabwe, responded to the Bishop by observing that most laws governing mining were from the colonial era and took no cognizance of the rights of labour, rights to health or community, cultural, or women's rights. He advocated for legal reforms that would compel mining companies to pay attention to these issues as well as enforce the transparent collection of mining revenue and spending it on social infrastructure for communities.

The morning session then ended with the four short capacity-building workshops for the communities on major topics in the extractives sector which included:

### **1. Community Consent Index**

Presented by Oxfam. This was intended to equip communities with knowledge on how to monitor how much Free, Prior and Informed Consent (FPIC) was accorded to communities in extractive activities in their areas based on the Community Consent Index.

### **2. Mining Legal Clinic**

The purpose of this workshop was to allow for groups, communities and individuals to engage with practising attorneys and learn about legal remedies available to them, starting with litigation.

### **3. Health And Safety**

The workshop gave a broad outline of and background to the South African Mine Health and Safety Act 29 of 1996 (MHSA). It looked at Institutions established by the MHSA, the risk-based system of health and safety management and employers' duties in terms of the MHSA. The workshop also covered enforcement of the provisions of the MHSA, employees' rights and duties in terms of the MHSA and the compensation schemes.

### **4. Tax Justice**

Participants were introduced to a fair tax monitor, a tool which helped them analyse which countries had fairer tax systems. Included in this monitor were whether a country had sufficient revenue, effective tax administration and pro-poor spending, among other considerations.

The afternoon was then designated to the five policy theme breakaway sessions, starting with an inspirational session followed by a debating session. The inspirational sessions gave participants new insights and ideas on the policy theme presented by an expert in an interactive manner so as to ensure active participation by the delegates.

The debating sessions facilitated active participation by delegates as they gave them an opportunity to develop their own positions on the controversial statement presented by the facilitator as well as influence their peers on their new position.

## DAY TWO

Day Two started with a recap of the key items of Day One, which were to be incorporated into the final Communique at the end of the Indaba. This was followed by a panel discussion on how natural resources could be made to work for all and drew panelists representing workers, civil society, women, youth and the African Union. Mukasiri Sibanda from the Zimbabwe Environmental Law Association (ZELA) set the tone for the discussion by centering his presentation at the many ways that mining could be shared by communities positively, as opposed to the dominating rhetoric which framed mining as a negative experience.

In exploring this dimension the speaker highlighted employment opportunities including training that could be experienced as lateral transfer between community and the mine. There was also the possibility of sharing and enjoying the infrastructure brought in by the mine. The building of infrastructure initially intended exclusively for the mine operation triggers other developments such as mass water resources and roads, which can be shared and benefit the community. There is need however to ensure that the Corporate Responsibility programme is designed in consultation and participation with the community. This then ensures that the programme is alive to the needs of the people.

The speaker also called on the participation of women if the mine's development goal is to be realized.

Paul Msomi, a panelist from the African Minerals Development Centre (AMDC) entered into the debate by urging participants to engage the African Mining Vision through engagement with the African Union. He further added that it was important for everyone to familiarize themselves with vision and use it to imagine the future of mining in Africa.

Bwale Mutanunka, UN Youth panelist, highlighted that those in power set a bad example for the youth where resources were not shared equitably. She pointed out that such practices had robbed the Zambian youth of hope.

Following the thought provoking panel discussion, was the thematic breakaway session on collecting stories and case studies from each of the thematic sessions that were started on day one. The main objective of this session was to allow participants to share their factual good or bad stories of the respective thematic sessions so as to allow learning from each other.

The afternoon session kick started with designing strategic approaches. This session allowed participants the opportunity to come up with collective action plans to address the issues they had discussed from all the sessions held since day one. These action plans were also used to draft the final communique

The day ended with a panel discussion on transparency trends in the extractives sector, which updated the participants on the work that is being done in the industry to ensure transparency in the sector.

## DAY THREE

The final day of AMI 2016 began with a short session from Tom Butler the Managing director of International Council on Mining and Metals. His participation showed business' willingness to engage mining communities on the issues at hand, and provided a platform for communities to question business on some of the malpractices that they were experiencing. However, it was evident that he was not ready to discuss previous grievances of the mining communities, which included failure to protect the human rights of the communities where mining occurred.

This was followed by the presentation of the draft final communique and action plan of this year's Alternative Mining Indaba. One participant expressed concern at what he saw as the inadequate representation of communities in the AMI 2016 process, yet delegates had made inputs into the communique that appeared to be representing the interests of the communities.

The conference was then officially closed by Reverend Malcolm Damon before the delegates marched to the Cape Town International Convention Centre, venue of the Investing in Africa Mining Indaba.

## THE MARCH

After the official closure of the three-day deliberations, scores of delegates marched to the Cape Town International Convention Centre (CTICC), the venue of the African Mining Indaba, the high table of the discussions on the future of Africa's mining industry from which communities and labour have been excluded since its inception seven years ago. Armed with the declaration, which protested against this exclusion of workers and communities at the forum, AMI delegates directed their demands at businesses and government representatives at the meeting. The declaration of demands was read out and received by a representative of the AU.



# 3 OUTCOMES OF THE FIVE POLICY THEMATIC SECTIONS

## POLICY THEME 1

### ACCESS TO REMEDY; LITIGATION AND MINING

Under this theme, the litigation process was brought closer to communities, while strategies to ensure success were introduced. Every attorney who discussed litigation as a remedy emphasized the need to couple this strategy with training of communities in human rights. The participants listened to case studies from the region, and in each instance were able to perceive the realistic significance of time and resources when litigation was used.

Also critical under this thematic group, was the discussion of Social Labour Plans (also known as Beneficiation Plans) with particular reference to South Africa. A research undertaken by the Centre of Applied Legal Studies (CALs) of Wits University in conjunction with OSISA recently unearthed a shambolic filing system of Social Labour Plans under the Department of Mineral Resources (DMR). This lack of due diligence directly prejudiced the respective mining communities from benefitting from the mining operations.

There was general consensus that the time had come to seek justice through opportunities presented by new national constitutions introduced in a number of African countries over the last five years, as well as under the African Commission on Human and People's Rights (ACPHR) of 1987. As more communities became familiar with the possibilities to utilize litigation, there was a growing need to ensure that communities were also aware of the many diverse and deliberate approaches that could be adopted in pursuing successful litigation outcomes. This followed the realization that litigation was a process that often lasted several years and during which communities could lose hope. Thus the multi-faceted approach provided communities with opportunities for preliminary mini-victories and kept their goal relevant and current.

The unfolding cases of Xolobeni litigation case, now in its seventh year, and Marikana, now in its fourth year were critical living testimonies of the time consuming nature of litigation.

### KEY RECOMMENDATIONS

1. The resolution to use litigation in conjunction with other strategies (such as advocacy training) for optimum outcomes in future.
2. That attorneys working on community cases should not be discouraged by the threat of SLAPP (strategic law suits against public participation) suits that corporates use to censor their work. It was revealed that there was now a legal precedence in existence which showed that the South African courts would not entertain such strategies on the part of corporates
3. That countries that had new constitutions should look at the opportunities emanating from them to utilize the opportunities they presented under social, cultural and environmental rights
4. There was a call to engage AU Commission on Human and People's rights in the quest for justice.

## POLICY THEME 2

### MINING AND TAXATION

Although in the past the AMI focused its energies on pushing corporate companies to publish what they were making and as well as what they were paying to governments, an initiative led by Publish What You Pay, this year more energy was directed towards Tax Avoidance as an unfair practice by mining corporate companies and how this had a negative bearing on the human rights of the mining communities.

Through discussions, participants were able to align the narrative of the resource curse to Illicit Financial Flows (IFF), and called on governments to act decisively in curtailing continued loss of resources to tax havens and the pockets of faceless mine owners in other countries. Participants called on the region to act together through harmonization of tax systems by working in tandem, as well as sharing and improving knowledge on the extractive industry. The session evoked the African Mining Vision and participants called on governments to work towards making it an African reality.

### KEY RECOMMENDATIONS

1. Tax avoidance mechanisms such as abusive transfer pricing reduce the profitability of nations. There should be disclosure of transactions by subsidiary companies;
2. The corporate paradigm must be changed to realize that in the greater broader perspective, wages are not a cost, particularly to the nation, but provide disposable incomes that make businesses and economies tick and also contribute significantly towards the tax base.
3. Taxation is a sustainable way of optimizing mining revenue, hence African countries must work together to halt the unhealthy tax competition;
4. African governments need to build the capacity of public agencies to adequately monitor production levels of mines;
5. Countries should ascertain their comparative advantages beyond determining their competitiveness;
6. Harmonization of taxes in Africa was needed to avoid competition, commonly known as the “race to the bottom”;

## POLICY THEME 3

### BUSINESS AND HUMAN RIGHTS

Arguably the session that epitomizes the conflict between the ideals of the Alternative Mining Indaba and that of mining corporates, it was not surprising that Business and Human Rights was the most prolific in terms of its outputs, bringing out more than 50 issues in all. Human rights are engrained in law, tax, gender rights and the rights of small scale or artisanal miners. Thus only the main points of human rights principles in business practices have been listed below. In the inspiration session, participants heard of real experiences of people whose rights had been violated by mining corporates, a case in point being Solwezi in Zambia. What strongly came out was the need for mining companies to be held accountable for human rights violations brought about by their activities. Many participants strongly felt that there should be legal instruments implemented to compel corporates to respect the rights of the communities in which they sought to or already operated in. Many also argued for increased dialogue among mining companies, governments and communities.

## KEY RECOMMENDATIONS

1. Governments should be made accountable for their responsibility to protect, respect, and fulfil human rights;
2. African nations must come up with Human Rights implementation strategies that involve the entire public;
3. Legislatures should be more active on human rights violations and enact laws to achieve justice and equality;
4. Human rights commissions should be financially capacitated by governments to play their role;
5. Before granting mining rights and licences, governments must ensure the rights of the people;
6. Before licences are issued, governments and corporates must not only consult the chiefs of communities, but also the communities themselves;

## POLICY THEME 4

### ARTISANAL MINING

This thematic session was inserted as a recognition of the history and the critical role of artisanal mining particularly in the African region. The session discussed new developments in certain parts of the region, where artisanal mining was decriminalized and being viewed as a way to retain and benefit from extractive resources among local communities.

The discussion was however cognizant of the fact that artisanal mining still had a long way to go in becoming more ordered, safe and transparent enough to contribute critically to the country's GDP.

It was also during this discussion that a call was made to African economies to begin to look at alternatives to mining, as extractives were a finite resource that also had the greatest negative impact on the world's greatest threat; climate change.

The overarching issue throughout the discussions on artisanal mining was that the operations of this sector were almost always viewed by both governments and large corporations as criminal activities. This largely stemmed from the fact that most artisanal mining was informal. Where artisanal mining was recognized as constituting a role in a country's mining industry, it was confined to the periphery of the mining industry. This led to lack of prioritisation of the needs of this sector by government and it had none of the incentives afforded to the larger mining companies. This was so despite the fact that artisanal miners in some instances provided significant quantities of products to formal smelters and were contributors to many larger mining companies. Due to less mechanisation, artisanal mining employed large numbers of people and tended to employ more women than larger mining companies. However, many of these people worked in very unsafe environments and received no support toward safety and health from governments or corporates who benefited from their production. Only a few days before the beginning of the AMI three miners had been trapped underground at Lily Mine in Mpumalanga. This highlighted the need for all miners, including artisanal miners, to have their safety prioritised.

## KEY RECOMMENDATIONS

1. There must be a vision formulated for artisanal mining;
2. The artisanal miner's manual developed in Zimbabwe by the Ali-Douglas Research Network (ADRN) needs to be analysed to establish whether it could be beneficial to other countries;
3. National seminar/ dialogues for artisanal miners, such as one to be held by Mining Affected Communities United in Action (MACUA), need to be replicated in other countries;
4. Artisanal mining (ASM) should be decriminalized;
5. Policies that will protect and recognize artisanal miners must be established and implemented;
6. Gender equality in artisanal mining must be promoted;

## POLICY THEME 5

### GENDER AND EXTRACTIVES

The gender and extractive thematic area represented a new direction in the AMI. It was conceptualized after the realization that mining remained a masculinized industry. The sessions attracted many feminist thinkers, who not only contributed to rich analysis but went on to insert issues of equality critical in finding solutions into the debate. The discussions were not limited to distinctions borne out of gender differences but included other prisms of marginalization such as race and class, and how these intersected in creating immiserated mining communities.

The sessions brought to the fore the need for women to be able to assess the world trends around the mining industry and to begin to strategize around skills development that would not find them at the bottom of the workforce chain, but that rather would provide them access to being decision makers and owners in the extractive industry of the future.

It was evident during the course of the sessions that in spite of apparent social progress in the world under the aegis of the United Nations, the African Union and other multilateral world organisations, women were still heavily marginalized and relegated to the periphery within the extractives industries. Evidence of this relegation was reflected in the plethora of issues that still need to be tackled in order to attain gender equality in the access to benefits, if any, presented by the extractive industries. It was telling that no one was able to affirmatively answer the following question, posed by the UN Women representative, "Has any country successfully added a gender policy into their constitution?"

This was a significant starting point in addressing the issues related to Gender in the Extractives Industries. This was one of the most pertinent issues to address particularly because the year 2015-2016 is the Year of the African Woman. Incorporating gender policies into African constitutions would be an appropriate follow up to the initiative by the Organisation of African Unity, the predecessor of the African Union, in its Gender Impact Assessment. Nevertheless, Gender Assessment Tools have been created to collect empirical data on the condition of women for use in advocacy. Oxfam has created one specifically for companies working within the Extractives Industries for use in making recommendations for gender strategy in community planning and corporate social responsibility priorities. In addition to the gender impact assessment tool, an application has been developed to increase the ease of conducting data search and collection. In addition, *Publish What You Pay*, a global coalition of civil society organizations united in their call for an open and accountable extractive sector, worked with UN Women to develop a *Gender Responsive Guide - Extracting Equality Guide*. This guide gives communities a tool to have a clear picture of the specific considerations to make and questions to ask in order to ensure women are not left out of natural resource governance.



## KEY RECOMMENDATIONS

1. Need for AMI to increase the connection with women's rights movements to bring their voices into the extractives construct. Build a movement around it;
2. Women in Mining (WOMIN) – a regional movement- needs to target specific political spaces, e.g. space in which women already held office;
3. Need to empower women, not just ensure a certain number of women exists in influential and powerful organizations;
4. More money had to go towards women's rights work. Specifically to women's rights organizations, but not exclusively;
5. Gender impact assessments with data and statistics are needed to back up advocacy aimed at both governments and corporations or their indicators needed to be incorporated into the social and environmental assessments already being done;
6. Engage with unions with a view to make them more gender sensitive;
7. Need to promulgate laws and regulations that protect and promote women artisanal miners;
8. Need for tax justice to pay special attention to gender as well.



# 4 LESSONS FOR THE FUTURE

The decision on how best to navigate the relationship between the Investing in Africa Mining Indaba without derailing from the 'all important' task of securing economic justice remains a difficult work in progress as co-option on the part of communities and NGOs is a real possibility and one that members of the AMI have to continue to interrogate. This year the international Mining Indaba offered scores of tickets to members of the Alternative Mining Indaba as part of its initiative to broker dialogue, which began in 2013. Although viewed as a positive move by funding partners the gesture evoked mixed responses from many participants who want to see these good gestures translate into real material gains.

While some within the AMI movement view dialogue between the two centres; in whatever form, as a positive outcome, it evoked a reflective moment in the configuration of the AMI, the movement's goals and the nature of this struggle. Critical here is the realization of the power dynamics which are framed within political capitalism. An over-embracing stance of the IMI could result in co-option of members and organizations and a silencing of the AMI ideals into mainstream capitalist narrative. Inversely, what is obvious is that the AMI and IMI cannot continue to fight their binary battles in silos, a balanced point of convergence has to be found.

The organizers of the AMI can be congratulated for bringing the thematic area of Gender and Extractives into the fray. The sessions provided invigorated discussion around the extractives industry and how it has continued to reify gender hierarchies. However, what was evident was what feminists have been saying for years, that gender issues have to be mainstreamed if they are to be discussed in a useful way. Isolating gender to one platform facilitates the silencing of gender issues in other thematic platforms as other debates are obligated to reduce repetition. This was therefore the lesson drawn from this year's Gender and Extractives thematic sessions which tended to draw women and gender activists as participants.

The African Mining Vision (AMV) also made its way on to the agenda. It is important to note that the AMV was extensively discussed during the AMI 2013 in the context of the Africa Rising narrative. This time, though, the issue was raised by participants who advocated for its use as a reference framework to enforce AMI goals. This motivation was met by ambivalence as other participants did not believe in the potential of this Africa Union Commission framework, in light of the organization's lack of resources and limitations in enforcement mechanisms, for its own rules. Through engagement with an AUC representative, Paul Msomi, AMI participants were given an opportunity to participate in an AUC March 2016 session that would begin to explore utilization and implementation of the AMV.

Overall the 2016 AMI ended on a high-note, with indications that the 2017 AMI promised to be an even more fruitful, engaging and resourceful event.

The rest of the conclusions to the outcomes of the deliberations of the Alternative Mining Indaba 2016 are encapsulated in the declaration/communique below:



## AMI 2016 FINAL COMMUNIQUÉ

We, the representatives of more than 350 members of civil society organisations; faith based organisations, Pan-African networks and organisations, labour movements, industry associations, media, international partners and community based organisations, have met from 8th – 10th February, 2016, in Cape Town, South Africa, to share experiences and deliberate on the role and the impacts of extractives on communities, the environment, animal life and society at large. This marking the 7<sup>th</sup> year of the Alternative Mining Indaba (AMI) which has now grown from just 40 to more than 350 delegates, mostly from Africa.

**COGNISANT** that Africa remains richly-endowed with a diversity of mineral resources, yet its citizens are among the poorest in the world, recognising the important role that mining and mineral resources play in the livelihoods of millions of African citizens;

**COGNISANT** of the current decline in mineral prices and the negative impacts of reliance on a boom-bust enterprise by mineral-exporting countries;

**RECOGNISING** the unbridled pursuit of profit by transnational corporations;

**DESIROUS** that the benefits accruing from mining are shared by the greater majority of Africa's citizenry;

**DISSATISFIED** by the exclusion of mining communities in the decision-making and benefit processes of mining enterprise;

**COGNISANT** of the duplicity of some African intellectuals entrusted with negotiating a better deal for the benefits for the majority of Africans;

**COGNISANT** of the economic, social and political injustices perpetrated against communities in which minerals are exploited;

**REALISING** the need to give the disadvantaged a voice;

**DESIROUS** to create strategic tools to empower these disempowered communities;

**DESIROUS** to serve as a link for dialogue between communities, business and government;

**RECOGNISING** the particular legal marginalisation of African poor, women, youth and children from access to the same resources and benefits, this stemming in part from colonial legacy;

**WE CALL UPON** African governments, the United Nations, African Union, international financial institutions, transnational mining corporations and other corporate mining entities, fellow civil society organisations to join hands with us in pursuing justice in the exploitation of minerals and the benefits accruing therefrom, as outlined in our ensuing recommendations and action plans annexed hereto.

## ACCESS TO REMEDY: LITIGATION AND MINING

1. We call on government to create and implement effective legal mechanisms to investigate and prosecute environmental damage.
2. We call on government to promote beneficiation plans.
3. We call on government, companies and civil society to review social labour plans emanating from extractive activities.
4. We call on governments and companies to protect communities' safety from the threat of coercion, duress or intimidation.
5. We call on governments and companies to recognise and respect the right of communities to say "no" to mining projects or to the terms of proposals and contracts by recognising the principles of community consent for non-Indigenous communities and free, prior and informed consent for indigenous communities.
6. We call on governments and companies to compensate beyond land value for the negative social, environmental, cultural and emotional impacts of mining activities as found through social and environmental impact assessments.
7. We call on African States to comply with their obligations under the African Charter on Human and Peoples' Rights to recognise, promote and protect customary tenure, respect customary communities' right to development including the right to FPIC, and respect communities' rights to freely dispose of their natural resources. In particular, the AMI calls upon States to respect their obligations in terms of Article 1 of the Charter to ensure that their country legislation affirms their commitments in terms of the Charter.
8. We call on African States to protect and promote the customary tenure rights of rural communities who continue to suffer disproportionate prejudice of the extractive industries through the entrenched discrimination against indigenous property rights.
9. We express our solidarity with the people of Xolobeni in their struggle to prevent the strip-mining of their lands without their free, prior and informed consent.
10. We call on governments to be held accountable for proactively involving communities in the decision making process regarding the expenditure of tax revenues for community benefits through enhanced transparency and accountability.
11. We call on civil society to raise awareness of SLAPPs<sup>1</sup> (strategic lawsuits to silence public participation), to encourage communities to take legal action on activities that negatively affect them AND to support community- led litigation to defend or promote community economic, social and cultural rights outcomes.
12. We affirm the importance of community organisation and leadership in all litigation. Litigation must be designed to support community organisation, development planning, achieving reparations and building community defence strategies. Community litigation advocacy value local knowledge and processes and rely on cross learning between communities.

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1 A **strategic lawsuit against public participation (SLAPP)** is a **lawsuit** that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition. The typical **SLAPP** plaintiff does not normally expect to win the **lawsuit**.

13. We call on civil society to develop strong networks of lawyers across the world to share impacts of litigation and help establish legal principles in domestic jurisprudence to promote rule of law decision-making and environmental justice.
14. We recognise that the simplistic use of exchange values as means of estimating compensation and restitution has long been used as a mechanism of dispossession of customary and rural communities in Africa and call on African states to adopt a holistic means of assessing impacts that pay due regard to cultural and aesthetic value that create a sense of place and community identity
15. We in the same way call for the avoidance or minimisation of externalised costs through market exchange-based values of human health, time, psychological wellbeing and productivity to be characterised as a human rights violation and as such cease to be used as an approach for the assessment of feasibility and/or for weighing relative interests in regulatory frameworks for decision making as to whether to mine.
16. We, in doing so, recognise that people are the only true barometer of their own value and the only acceptable gauge of such value is where a community gives its free prior and informed consent to impacts and costs it may face and through this right is able to ensure in negotiation that its own development paths are realised rather than compromised.

## ARTISANAL AND SMALL SCALE MINING

1. We call for governments to decriminalise artisanal mining, hereinafter referred to as “ASM.”
2. We call on governments to enact or implement legislation that empowers ASM communities depending on mining for their livelihoods.
3. We call on governments to rehabilitate abandoned mines to help protect and ensure safety for ASMs, many of whom disappear in abandoned mines.
4. We call on government to hold police officers involved in gold smuggling accountable for their transgressions and protect community members from their abuse.
5. We call on government to formalise ASM in order to help curb violence emanating from competition for the ability to mine in specific spaces.
6. We call on governments to draft and enact legislation protecting artisanal miners from exploitation and repossession of equipment by vendors.
7. We call on governments to support sustainable rural development such that ASMs can have viable alternatives to make a reasonable living with food security and other economic, social, and cultural rights protected.
8. We call on companies to end the practice of using ASMs as providers of cheap products to then on-sell and to provide fair prices for our resources.
9. We call on civil society to help provide trainings to miners on environmental, health and safety standards and technological improvements as formalisation of the sector occurs in order to be more inclusive of women and youth participating in ASM.
10. We call on civil society to find ways to engage mining communities where ASM activities occur within the policy process.
11. We call on civil society to take up the pragmatic fight for the rights of ASMs beyond workshops.
12. We call on civil society to help encourage diversification of economies in order to help communities become less dependent on minerals.

## BUSINESS AND HUMAN RIGHTS

1. We call on corporations, governments and civil society to engage in all aspects of extractive industries through constructive dialogue within the framework of human rights protections as described in the Universal Declaration of Human Rights (such as the right to civil and political participation).
2. We call on corporations and governments to develop, implement and enforce appropriate grievance mechanisms for communities and individuals whose rights have been violated.
3. We call on investors to disinvest from companies that perpetrate human rights violations thus holding the companies accountable for their conduct.
4. We call on government to ensure that the rights of communities are protected and that the international law principle of free, prior, and informed consent by communities, not just their leaders, is observed before exploration licences are granted.
5. We call on governments to enact and revise laws and policies that maximise sustainable benefits for communities with input and engagement from civil society.
6. We call on governments to hold the corrupt within its ranks and within private security accountable through closer monitoring of the sector and protection of human rights.
7. We call on civil society to demand more tax revenues from extractives to fund projects that benefit the affected communities.
8. We call on civil society and governments to ensure that Social Labour Plans include a plan to combat the invasive nature of the activities undertaken by the extractives industries.
9. We call on civil society to advocate for the adoption of an internationally binding legal instrument that holds business accountable for human rights abuses.
10. We call on international human rights mechanisms to protect the rights of activists and communities and to promote their rights at an international level.

## MINING AND TAXATION

1. We call on African governments to create adequate space for civil society and communities to strengthen dialogue on setting national priorities including the collection and utilisation of mining revenues and other public resources.
2. We call on governments and companies to publish contracts for public scrutiny to promote transparency and accountability for tax and other revenues from the mining industry.
3. We call on African governments to drastically reduce incentives awarded to companies in order to increase the revenue available for transparent funding of critical infrastructural projects such as roads, hospitals and schools.
4. We call on governments to remove fiscal incentives, such as tax holidays and VAT refunds, given to mining companies and the number of deductions awarded based on social investments.
5. We urge African governments to strengthen tax legislation by modernising and closing all tax and non-tax loopholes as well as strengthen the ability of national revenue authorities to carry out their functions to raise more resources domestically to underpin the sustainable development of their economies.
6. We call on African governments to strengthen institutional structures responsible for mining taxation, and foster cooperation and coordination among government agencies (e.g. Ministry of Finance and Mines). These agencies should share information and specialised skill in order to overcome the complexity of administering mining revenue collection and minimise ministerial or agency discretion.
7. We call on our governments to strengthen collaboration among themselves and the larger international community on financial transparency by demanding Country-by-Country Reporting by multinational corporations and their subsidiaries, Automatic Exchange of Information between Africa

and its trading partners and disclosure of beneficial owners of shell companies and anonymous trust accounts.

8. We call on governments to leverage on their collaboration under the African Union and the Regional Economic Communities (RECs) to harmonise their finance, investment and taxation policies to avoid tax competition and eliminate the “race to the bottom”. At national level, governments should develop a clear criterion for determining royalty rates based on economic and non-economic costs and benefits of extraction rather than simply benchmarking with other countries which leads to a “race to the bottom.”
9. We call on Africa government and civil society to build and strengthen the capacity of institutions at political, regulatory and administrative levels with a view to improve contract negotiation skills, monitor production figures, assess profit-tax liability and royalty payments and respond to, and detect transfer mispricing which is complex in nature and erodes the tax base.
10. We call on governments to work with civil society and communities to conduct robust research studies before developing mining policies and awarding mining licenses.
11. We call on African governments to track and participate more actively, where possible, in international processes to improve commercial transparency and the international tax regime which have the capacity to undermine the continent’s ability to maximise tax revenue and the overall benefit of the mining sector to economies on the continent.

## GENDER AND EXTRACTIVES

1. We call on companies and governments to proactively create space for women’s voices in decision-making processes that directly or indirectly affect them due to extractive operations (before, during and after operations).
2. We call on companies and governments to honour legally binding contracts which include corporate social responsibility activities with all citizens, especially women.
3. We call on government and companies to include gender impact indicators within all environmental and social impact assessments.
4. We call on government to create a strong legal framework that mainstreams gender into the spending of extractives revenues.
5. We call on government need to expand economic opportunities; strengthen agency of information access as well as deconstruct norms, and facilitate institutional mechanisms for women.
6. We call on governments to respect and increase women’s land rights, particularly for those using their land for agriculture purposes.
7. We call on civil society to work to increase our engagement with academia, women’s rights organisations, and unions in order to ensure gender sensitivity, strong political analysis and evidence-based advocacy on gender.
8. We call on our civil society to emphasise the effectiveness, not just the numbers of women in influential and powerful positions.

# 5 ADDENDUM 1

## THEMATIC SESSION: ACCESS TO REMEDY: LITIGATION AND MINING

OBJECTIVE	PLANNED ACTIVITY	WHO WILL BE INVOLVED?	PLANNED IMPACT
To assess coherence of legal frameworks across Africa.	Comparative Analysis of legal frameworks across Africa.	<ul style="list-style-type: none"> <li>• AU</li> <li>• CSOs in different countries</li> <li>• Parliaments</li> <li>• Justice ministries</li> <li>• Mining ministries</li> <li>• Law societies</li> </ul>	Ensure that countries comply with the instruments that they assent to.
To harmonise instruments that have been developed by different stakeholders.	Mapping and collection of instruments that have been developed.	<ul style="list-style-type: none"> <li>• CSOs</li> <li>• AU/SADC/EAC/ECOWAS</li> <li>• Business and Private sector</li> </ul>	Enhance the current AMI site and produce a knowledge hub for AMI and other platforms.
To strengthen judges' capacity to appreciate issues of natural resource governance.	<p>Skills impartation from experienced advocates in developed settings.</p> <p>Engagement of judges to strengthen their capacity in natural resources, governance and learning.</p>	<ul style="list-style-type: none"> <li>• Law societies</li> <li>• Members of judiciary</li> <li>• Environmental and human rights lawyers.</li> </ul>	Increased access to justice for mining affected communities.

## THEMATIC SESSION: ACCESS TO REMEDY: ARTISANAL AND SMALL SCALE MINING

OBJECTIVE	PLANNED ACTIVITY	WHO WILL BE INVOLVED?	PLANNED IMPACT
To use research to understand the land	Research and country reports by stakeholders	<ul style="list-style-type: none"> <li>• Bench Marks</li> <li>• ZELA</li> <li>• MACUA</li> </ul>	Knowledge sharing
To amplify the voices of artisanal miners	<p>Artisanal miners' national meetings/dialogues</p> <p>Attendance of artisanal miners at AMI 2017</p>	<ul style="list-style-type: none"> <li>• MACUA</li> <li>• Economic Justice Network</li> </ul>	Provide an enhanced platform for issues of artisanal mining to be discussed
To shift perceptions and discourse around artisanal mining	Multi-nodal campaign	<ul style="list-style-type: none"> <li>• MACUA</li> <li>• Labour movements</li> </ul>	Decriminalisation of artisanal mining
To share information	Country exchange visits	<ul style="list-style-type: none"> <li>• ALL</li> </ul>	Regional network to be created



THEMATIC SESSION: ACCESS TO REMEDY:  
BUSINESS AND HUMAN RIGHTS

OBJECTIVE	PLANNED ACTIVITY	WHO WILL BE INVOLVED?	PLANNED IMPACT
To ensure increased mining affected community participation in the AMI.	Resources mobilised for increased participation Communities are informed about the AMI Communities equipped in advance with information and training on the AMI Authentic community representatives identified	<ul style="list-style-type: none"> <li>• AMI steering committee (to include representatives from mining affected communities) CBOs; NGOs and cooperating partners</li> </ul>	Outcomes of mining Indaba reflect and have a greater chance of meeting the real needs of the community.
To engage more with governments to ensure that the communities' grievances are heard and there is community participation in decisions around local economic activities (business).	Regular meetings with government and follow up committees. Ensure space for community representatives in the meetings with government	<ul style="list-style-type: none"> <li>• Affected communities</li> <li>• Civil society organisations</li> </ul>	Communities will hold government accountable and democratic culture will be strengthened.
To promote processes to ensure that businesses are held accountable for human rights violations.	Develop mechanisms to hold MNC(multinational corporations) to account for human rights violations at different levels, specifically: <b>At International level:</b> <ul style="list-style-type: none"> <li>• Participation in high level policy making with regards to the proposed binding treaty on business and human rights at the UN level etc.</li> </ul> <b>At Community Level:</b> <ul style="list-style-type: none"> <li>• Empower affected communities through strengthening capacity to enable them to demand access to information and processes around MNC's activities</li> </ul> <b>At CSO level</b> <ul style="list-style-type: none"> <li>• Develop an Index reflecting how MNCs comply with human rights standards</li> </ul>	<ul style="list-style-type: none"> <li>• CSOs</li> <li>• Labour unions</li> <li>• Government</li> <li>• Affected communities.</li> </ul>	Projects should be stopped upon confirmation of breach of human rights or MNC's complicity in human rights violations  Improved access to information around MNCs' activities and operations.

## THEMATIC SESSION: ACCESS TO REMEDY: MINING AND TAXATION

OBJECTIVE	PLANNED ACTIVITY	WHO WILL BE INVOLVED?	PLANNED IMPACT
To maximise tax revenue from extractives industry	Tripartite meetings with all the relevant  Lobbying and advocating for improved tax system	<ul style="list-style-type: none"> <li>• Tax Forums</li> </ul>	Coordinated CSO's in the region that speaks with one voice.
To increase the transparency of the Extractives Industry	Development of new revenue model that ensures that the government gets a fair share of taxes.  <ul style="list-style-type: none"> <li>• Research on how to develop this</li> </ul>	<ul style="list-style-type: none"> <li>• CSO organisation and institutions around</li> <li>• Government</li> </ul>	Sealing of the current loopholes in the current tax system
To increase CSO participation in Extractives	Research	<ul style="list-style-type: none"> <li>• Media, Academia, and international organisations</li> </ul>	Improved service delivery based on increase in revenue
To implement the Africa Mining Vision	Review National legislation in terms of alignment to the AMV  Through exiting monitoring mechanism for the AMV, engage member state governments to accelerate implementation of the AMV		Capacitated grass root people that can pressure the politicians to effect change
To make mining contract signings easily accessible and transparency			

## THEMATIC SESSION: ACCESS TO REMEDY: GENDER AND EXTRACTIVES

OBJECTIVE	PLANNED ACTIVITY	WHO WILL BE INVOLVED?	PLANNED IMPACT
To increase gender awareness by companies	Gender impact assessment indicator incorporation	<ul style="list-style-type: none"> <li>• CSOs and Communities (recipients private sector)</li> </ul>	A better understanding of gender risks
To increase gender awareness by companies	Gender impact assessment indicator awareness	<ul style="list-style-type: none"> <li>• CSOs and Communities</li> </ul>	Communities better understand the gendered risks they will face, and have the ability to advocate for them.
To increase awareness of available gender tools	Gender Tool Inventory Database	<ul style="list-style-type: none"> <li>• CSOs (perhaps hosted on AMI website? Elsewhere?)</li> </ul>	Increase access to the tools already created and available, as well as a place to put learnings from CSOs and communities that end up using them



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