

## **Extractivism, Tax and Wage Evasion in the “Crocodile Case” hosted Southern Africa Tax & Governance Network and Alternative Information and Development Centre**

**Summary of Case:** In 2019, a case was opened against a few directors and owners of the South African chrome giant Samancor. This case was brought forward by AMCU, working in cooperation with lawyers from Richard Spoor Incorporated, an ex-Samancor director turned whistleblower, and researchers from the AIDC. The owners and directors have been accused of being engaged in transfer mispricing practices and other forms of profit shifting from 2006 until the present day. These practices were primarily to the benefit of Samancor’s “parent companies”, as well as a select few directors, and they deprived workers, minority shareholders, and the company itself of an estimated R28bn. The Ndizani Workers’ Trust, a minority shareholder of Samancor set up for the benefit of workers, has been estimated to have lost more than R1bn.

This case offers some unique insights into the nature of IFFs and BEPS within the extractives sector. The whistleblower’s first hand evidence has exposed the mechanisms, opacity and complexity of cross-border profit shifting arrangements, while also highlighting the need for certain urgent reforms (towards e.g. corporate transparency and greater enforcement of transfer pricing policy). More concretely, it has also shown us the direct consequences of the ongoing “bleeding” of profits from the extractives sector. In Samancor’s case, profit shifting has left the company artificially unprofitable. This has deprived the Workers’ Trust of income that would have been used to pay workers dividends, and other benefits such as bursaries. Other minority shareholders set up to benefit women and local communities have been similarly deprived. Finally, this state of affairs has also led to the issuing of retrenchment notices in the past year, with the company claiming the need “to cut costs to remain competitive”. If profit shifting had not taken place, Samancor could have had the resources to retain workers, pay workers and communities their due, and improve working conditions.

AMCU’s demand in the first step of the case is to force the company to open the books and provide financial statements, reports, and other details of the company’s transactions since 2006. This would not only provide a complete record of the profit shifting arrangements in question, but it could also set a precedent whereby other unions could demand this kind of information in wage negotiations with subsidiaries of other multinational firms - especially in the extractives industry - in turn empowering them with the information needed to play a leading role in the fight against IFFs and BEPS on a company-by-company level.

### **Key Points Covered:**

- Samancor case is not an aberration as data shows IFFs/BEPS rife in SA extractive industry.
- Not just a problem of tax evasion - workers and communities are at the coalface and thus lose the most, but have the most to gain.
- If subsidiaries were not made artificially unprofitable and if the use of their funds was held up to scrutiny, then they would have the resources to improve the conditions of workers and local communities. This is vital because subsidiaries operate on the level at which the damage of mining and smelting is inflicted on the bodies of workers and community members as well as the environment in which they live.
- That said, the loss of tax revenue on this scale still has very real implications, especially in the context of ongoing austerity which has crippled essential services like the public health system.

- The pervasiveness of profit shifting is further proof of the brutal culture of “profit maximization at any cost” that has been allowed to run loose in the extractive sector, culminating in decisions like running mines during the height of the COVID outbreak. The state has expressed an acceptance of (if not outright compliance with) this status quo.
- Labour (especially mineworkers’ unions) are very well situated to tackle the issue from the inside, especially via industrial action. However, this will require capacity building and a degree of state cooperation, including legislative reform.

**Key Areas of Discussion to Lead Into:**

- What are the concrete consequences of profit shifting beyond tax evasion?
- How is profit shifting in mining linked to communities and workers’ right to health and other duties given the current COVID-19 pandemic?
- How can civil society, labour, and community organisations utilize their own strengths in order to form a united front against profit shifting?
- Do the relevant policy frameworks (at the regional and international level e.g. trade agreements) help or hinder efforts to resolve these issues?
- As the push for the formalization of ASM continues as part of the larger industrialization drive, given the above information, is this the best route for workers?

**Speakers/Panellists:**

- Jaco Oelefsen, AIDC
- Darlington Chidarara, Action Aid
- Asha Ramgobin, Human Rights Development Initiative
- Phutuma Manyathi, Association of Mineworkers and Construction Union
- Mtwalo Msoni – Action Aid (Moderator)