

The Extractive Industry versus State and Society

A Complex Relationship



Conference

28th and 29th of October 2016

Basel, Basler Afrika Bibliographien (BAB)

Organisers:



Content

Introduction	1
Reflections on the Relationship between the Extractive Industry and the Postcolonial State, and Implications for Society as a Whole	1
Profit-Shifting, Transfer Pricing and the Rip-Off of Country, Community and Mine Workers	2
The Bermuda Connection: Profit shifting, inequality and unaffordability at Lonmin	3
Switzerland's Responsibility as a Tax Haven	4
The Consequences of Mining for Women and Taking Action in Switzerland	5
Local Communities and Resistance: The Case of Amadiba, South Africa	6
Concluding Remarks	8

IMPRESSUM

KEESA (Kampagne für Entschuldung und Entschädigung im südlichen Afrika

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Edited by Daniela Zimmermann

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Introduction

Under the title “The Extractive Industry versus State and Society. A Complex Relationship” the Basel Africa Bibliographies on 28th/29th October 2016 hosted a workshop organised jointly by the Apartheid Debt and Reparations Campaign, the Centre for African Studies, Solifonds and Afrika-Komitee. The workshop addressed the question what mining companies contribute to the well-being and development in South Africa and how civil society and research could assist. As in previous years, the workshop brought together scholars and activists from the field in the South with their counterparts from various Swiss NGOs (Alliance Sud and Swiss Lenten Fund).

The conference intended to reflect on the effects of mining on local communities and host countries and to link the practices of multinational mining companies in the global South with the financial centre of Switzerland. It was trying to establish what is needed to improve the situation on the ground and to give voice to the actors at the receiving end of the mining industry. The lobbying done by representatives of Swiss NGOs at Parliament level was demonstrated against the background of local activists resisting a mining project at the South African Wild Coast. Research done into the mechanisms of financial reporting by multinational mining companies was explored against the background of mining workers striking for higher wages.

The 2016 conference was the fifth in line organised to keep the issue of Switzerland’s deep involvement in Southern Africa on the agenda – as a financial centre and as seat of multinational mining and commodity trade companies. The conference was also a reminder of Switzerland’s ensuing responsibilities, responsibilities that are linked to the country’s past role as a bankroller of the apartheid state.

The organisers believe that the contributions to the conference were extremely valuable and should be made accessible to the participants and to a wider audience. It was therefore decided to publish them in a concise form electronically. A warm thank you goes to Daniela Zimmermann for compiling the texts.

The organisers would like to thank the contributors to the conference for their papers and all participants for the active involvement. We also thank the funders who made the conference possible: Fastenoper, Comundo, Swiss-Zimbabwe Friendship Association, Bread for All, terre des hommes schweiz, Reformierte Kirche Bern.

Barbara Müller, coordinator of the Swiss Apartheid Debt & Reparations Campaign

Reflections on the Relationship between the Extractive Industry and the Postcolonial State, and Implications for Society as a Whole

South Africa’s society is highly unequal – not much has changed in this respect since the transition to democracy in 1994. 10% of the population earns between 60 and 65% of all income and on an even more horrific scale, 10% of the population possesses 90 to 95% of all wealth¹.

This general framework of high inequalities has to be considered in the light of the extractive industries and how it links countries like Switzerland with South Africa. As a starting point for the conference, Tamara Paremoer raised important questions around pressing issues.

What do we mean by resource extractivism?

The term extractivism refers to an economic practice where growth is based on large scale removal and export of natural resources without processing them in the

countries of origin. Extractivism is not limited to the extraction of mineral resources, but can be expanded to other forms of industrialisation that use land in an exclusive way to gain profit on the expenses of the communities. Large-scale commercial agribusinesses are an example in the food production sector; they rely on intensive land use and the profits flow into the pockets of private owners. In such settings, we can speak of financialisation because financial markets, instruments and actors play an increasingly important role. Prices of commodities are

¹ Orthofer, Anna (2016): Wealth inequality in South Africa. Evidence from survey and tax data.

URL: <http://www.redi3x3.org/sites/default/files/Orthofer%202016%20REDI3x3%20Working%20Paper%2015%20-%20Wealth%20inequality.pdf>



determined by global players such as Glencore, partly detached from their “real” value. Such trading and mining companies have thus control over the whole value and supply chains. Having the complete control over the commodities, from extraction to the end product, owning parts of the necessary infrastructure (including railways and ports) and controlling access allows companies to influence prices and exert power over all actors involved, all the way to the customers at the end of the chain².

The extractive industry and the postcolonial state

Having influence over essential parts of the infrastructure and controlling the extraction of and logistics around mineral resources highlights the high influence of multinational companies in sovereign states such as South Africa. Many of those company-state relationships are relics of colonial times and have been perpetuated up to today. Paremoer ascribes this fact to complacency, which she defines as a conscious political choice, where governments actively decide to do nothing to break up old structures but rather to concentrate on other issues such as nation-building in a postcolonial context. She further invokes the term complicity, as the new governments often gain personally from relationships with the extractive industry. This explains partly that the structure of the economy in countries like South Africa has not changed after the transition to democracy.

In a global context

According to Melanie Müller in her response to Ms Paremoer’s presentation, the global context in the era of neo-liberalism is of importance, also for the mining sector. The Washington Consensus aimed at attracting foreign direct investments to countries like South Africa. The implementation of new mining legislations and privatisation in the targeted countries have worked: The foreign direct investment in the mining sector in Sub-Saharan Africa increased between 1991 and 1998 from 4% to 17,5%. However, this led to the watering down of especially social and environmental standards and the profits benefitted only a small minority only. Who is missing out, what they do to demand their rights and what instruments companies use to bypass communities will be discussed in the following contributions.



Tamara Paremoer

Economist, University of Johannesburg, South Africa



Melanie Müller

Researcher, Freie Universität Berlin, Germany and Stiftung Wissenschaft und Politik, Germany

Profit-Shifting, Transfer Pricing and the Rip-Off of Country, Community and Mine Workers

“The developing world lost US\$ 991.2 billion in illicit financial flows in 2012, over ten times the amount of official development aid received by these countries in that year (...).”³

Illicit financial flows include different ways of tax evasion through profit-shifting and transfer pricing between subsidiaries of a company. Many of those money-shifting strategies to avoid tax-paying applied by multinational

companies are – although morally questionable – not illegal. How such mechanisms work and what effects they have was the topic of economist Dick Forslund’s talk.

² For the example of Glencore, see Paremoer, Tamara (2015): The New Masters of the Universe? Commodity Traders in the Age of Financialisation. In: Amandla! Issue, 40, pp. 26-27.

³ Kar, Dev and Spanjers, Josph (2014): Illicit Financial Flows from Developing Countries: 2003-2012. Link: https://www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf



Transfer Pricing – How does it work?

Transfer pricing refers to the prices multinational companies transact between their own subsidiaries. In many cases, such transactions between associated companies are artificially valued higher in order to do an unspecified capital transfer. This strategy is often used by multinational companies to move profits to lower tax jurisdictions. Many of those affiliated branches located in tax havens, that guarantee financial secrecy, have no specific functions and do not have any on-site employees or offices. Their only purpose is to help siphoning off money to avoid taxation. The money can be declared as usually overpriced management or marketing fees.

The Bermuda Connection: Profit shifting, inequality and unaffordability at Lonmin ⁴

After the massacre at the mines of the UK-based platinum mining company Lonmin in 2012, where 41 mine workers lost their lives during a strike for higher wages in Marikana, the South African government appointed a commission of inquiry. Lonmin was forced to open their books, which gave an opportunity to Dick Forslund of the Alternative Information and Development Centre AIDC to research the financial architecture of Lonmin. The subsequent report concludes that Lonmin could have afforded the higher wages, had it not moved money out of South Africa through two subsidiaries to avoid paying taxes. Those payments were declared as management and marketing fees: in 2011, Lonmin paid the excessive amount of 194 Million Rand in management fees compared to 70 Million Rand in labour costs. One of Lonmin's subsidiaries is situated on Bermuda, which is known as a tax haven. The company moved an estimate of 400 Million Rand annually through such practices. Lonmin tried to interdict the report before its publication (Forslund 2015), but failed to do so.

Another way to avoid taxation is to deliberately misinvoice the trade with commodities, where exports are under- and imports are over-invoiced. This becomes possible because partner companies issue their own invoices with little external control. Often, auditing firms are com-

PLICIT with the companies. The money transfers are usually made by the mother company and also affect the subsidiaries (in the case of South Africa often BEE⁵ companies). This is done at the expense of the subsidiaries' shareholders, as they do not get the dividends of the siphoned profits.

Not only tax, but also wage evasion

It is not only governments that lose high amounts in taxes that could be invested in infrastructure, the delivery of basic services and poverty reduction. In order to avoid paying a certain amount of taxes, a significantly higher amount has to be shifted out of the country. As an example: If the corporate tax revenue is 28%, 100 Million Rand have to be taken out in order to save 28 Million Rand in tax payment. This is money can neither be invested in the local economy nor can it be used to implement corporate social responsibility programmes or to pay higher wages.

Secrecy and intransparency as a strategy

As conscious secrecy and intransparency are at the core of tax avoidance, controlling the books and the practices of multinationals continues to be a challenge for researchers and activists. They have to work with reports that are available, hoping to discover discrepancies. Commissions of inquiries appointed by governments can be helpful, as it was the case with the Marikana Commission of Inquiry (see information box). Researchers often depend on information from whistleblowers, who share information about financial transactions and other practices that are usually kept secret. In many enterprises, it is only very few people who have comprehensive knowledge of all the company's actions – since in most cases, not even the shareholders know about all the financial practices within a company.



Dick Forslund

Economist, Senior Researcher
AIDC; Cape Town, South Africa

⁴ Forslund, Dick (2015): The Bermuda Connection: Profit shifting, inequality and unaffordability at Lonmin 1999-2012. Link: <http://aidc.org.za/download/Illicit-capital-flows/BermudaLonmin04low.pdf>

⁵ BEE stands for Black Economic Empowerment (BEE) and is a programme introduced by the South African government to diminish the economic inequalities of apartheid, mainly faced by the black population group.



Switzerland's Responsibility as a Tax Haven

It is a matter of choice: Do you siphon off profits out of the country for the benefits of a few or do you invest in the labour market by paying fair wages? Many multinational companies choose the first and end up in Switzerland, the wealthy tax haven in the heart of Europe.

Dominik Gross from the Swiss NGO Alliance Sud spoke about the role of Switzerland as one of the profiteers of globalisation, the exploitative extractive industry and money-shifting strategies of multinational companies. According to the Swiss Association of Banks (Schweizerische Bankiervereinigung), approximately 30% of the global offshore wealth is stored in Switzerland – brought here by multinational companies and rich individuals with the intention to avoid taxation. While these funds are lying in Swiss bank accounts, it is lacking in other parts of the world: the losers are the people in developing countries, where tax money could be used to fight poverty or to provide higher wages and better working conditions to the workers of multinational companies.

Glencore: Profit Shifting from Zambia to Switzerland

Between 2001 and 2012 Glencore shifted 174 Million Dollars from its copper mine in Mufulira, Zambia to Baar, a city and tax haven in Switzerland. This was mainly done through transfer mispricing, where the parent company overcharged its subsidiary for accountancy services. Thus, the profit of the Zambian subsidiary shrank, whereas the profit of the mother company in Switzerland with low tax rates increased. Such mechanisms could be prevented through country-by-country-reporting.

Trade without a Market

60% of the worldwide trade is conducted *within* multinational companies. Transfer prices within those companies are not made according to the law of supply and demand, but are decided at management level and often used to shift profit within the company.

Switzerland's "Alibi Politics"

Switzerland is compelled to work on a new project named "Base Erosion and Profit Shifting" (BEP) initiated by the

OECD⁶ to fight profit-shifting. However, the Swiss Federal Council decided to only implement the minimal standards. The data from country-by-country reporting will not be made public and will only happen between OECD member states, that is mainly rich, European countries. Therefore, the countries of the global South do not gain from these measures, as they are being excluded.

Raising Public Pressure

Transparency and a culture of open books, not just between governments and multinational companies, are essential for the avoidance of practices such as transfer-pricing, misinvoicing or other profit-shifting mechanisms. There are different policies and regulations to enhance tax information exchange. One is the arm-length-principle: It ensures that transnational transactions between affiliated companies (such as subsidiaries) are assessed by the same measures as if the affiliates were independent companies. Another measure is the country-by-country reporting, where multinational companies have to report key financial information annually about each country in which they operate. NGO representatives like Dominik Gross are lobbying at the Swiss Parliament for the inclusion of such policies into law. These efforts are often frustrated because the current Swiss Parliament is refusing to take up the arguments. Gross furthermore believes that the pending Corporate Tax Reform Act III (USR III) offers corporates new profit shifting instruments.



Dominik Gross

Policy adviser for International Finance and Tax Policy, Alliance Sud, Berne, Switzerland

⁶ Organisation for Economic Co-operation and Development: Intergovernmental organisation with 35 member states to promote economic development and world trade.



The Consequences of Mining for Women and Taking Action in Switzerland

Another aspect of the extractive industry was showcased by Caroline Ntaopane of the Regional Network WoMin (Johannesburg) who described how mining affects the living conditions of women and children. Doro Winkler, from the Swiss NGO Fastenopfer explained how the introduction of binding laws in Switzerland through an initiative can lead to improvements in affected countries.



Poster advertising the Responsible Business Initiative launched in Switzerland

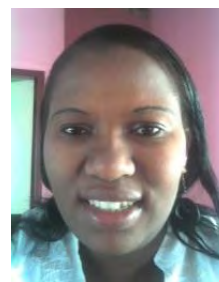
Environmental degradation, such as serious air, soil and water pollution lead to health hazards and affect women in particular. They often support the mining industry indirectly by providing for the needs of their families. Their unpaid labour subsidises the mining companies. Frequent accidents in the presence of a weak social system lead to the loss of the breadwinner of a family with little or no compensation or support from the employer, especially with respect to long-term damages. In many communities in South Africa women are responsible for providing food and when communities are pushed off the land or the resources cannot be used any longer due to pollution, the livelihoods of the families are threatened. Direct employment in the mining sector for women is limited and they often end up in the informal sector, some turning to prostitution and working in unstable and unsafe environments. Migrant labour affects women in rural areas indirectly, as household structures are altered and lead to rapid cultural and economic changes in the villages, which bring new challenges. Affected women often do not have the means and possibilities to defend their rights since the mines and government act in collusion, according to Caroline Ntaopane.

Absence of binding regulations

In the absence of strong, binding laws, multinational companies do not have to account to anyone and often

do not comply fully with human rights and environmental standards. By now it is clear, that voluntary standards and corporate social responsibilities are futile. Legally binding measures are needed. Doro Winkler explained how an initiative in Switzerland could provide some remedy.

In Switzerland a coalition of 80 civil society organisations have launched the Responsible Business Initiative, which, if adopted, will oblige Swiss companies and their subsidiaries by law to comply with internationally recognised human rights and environmental standards. Companies with their headquarters in Switzerland and their subsidiaries will have to account for their actions. Such a change in law is possible as the Swiss political system allows its citizens to launch initiatives to amend the federal constitution. In this case, the necessary signatures were collected and the initiative has been successfully submitted. As a next step, the Swiss electorate will vote about the amendment of the constitution by way of a referendum within the next three years.



Caroline Ntaopane
Regional Network WoMin, Johannesburg, South Africa



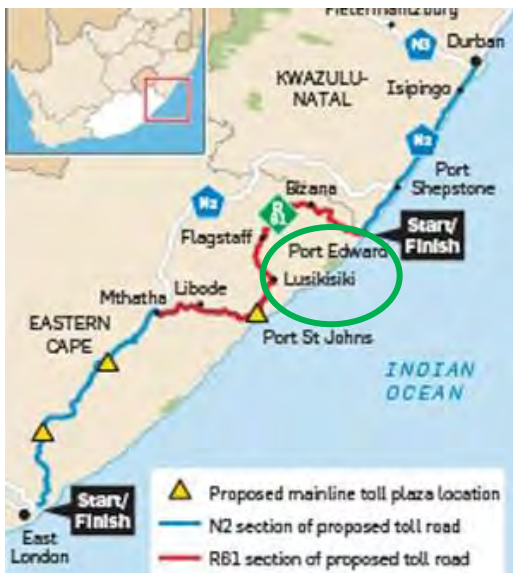
Doro Winkler
Desk Officer Human Rights, Fastenopfer, Lucerne, Switzerland



Local Communities and Resistance: The Case of Amadiba, South Africa

The Amadiba community on the Wild Coast in South Africa is an example of struggle against a foreign mining company before the mining starts, successfully defending their land since more than 13 years. As a founding member of the Amadiba Crisis Committee opposed to the mining project, Nonhle Mbuthumba was at the forefront of the struggle since the beginning.

Nonhle Mbuthumba followed in the footsteps of her forefathers, when she started speaking out against the mining plans of the Australian company MRC and its local partners. The Amapondo are known as fierce resisters against any oppression and have been challenging imperialism and the racist apartheid regime for decades. In 2003, the Amadiba Crisis Committee formed to address the issues that arose with the arrival of the mining company. MRC has shown interest in mining titanium at the scenic and remote wild coast. The mining project would affect 5 villages and 22 kilometres of coastal landscape. A titanium mine has a life expectancy of 22 to 35 years. While a few see the project as a bringer of economic development, the majority in the community fears the destruction of the sensitive biological system and the fertile, agriculturally used land.



The planned toll road is seen by many as a preparation of the remote area for the titanium mining. The Amadiba area lies between Port St. Johns and Port Edward (green circle).⁷

A No is a No

The majority of the community with the Amadiba Crisis Committee at its forefront has made up its mind: For them it is no mining at all, and any alternative is out of question. Too many bad headlines about other mining projects in South Africa fill the national newspapers. No one quite knows whether the MRC and its subsidiary TEM would hold the promises they are making now: development for the whole community, jobs for locals, the construction of schools, improvement of the infrastructure and renaturation after the end of the mining period.

It is certain, however, that at least a few families would have to be relocated to build the road and to mine the titanium-rich sand along the dunes. Titanium is mined in open-cast mines, thus the community fears dust and the pollution of natural resources: the ecosystem with its rivers and fisheries right at the coast is very fragile and the communities depend on agriculture and fishing. Furthermore, the land has a spiritual value, as it is ancestral land where the ancestors of the inhabitants are buried.

Divide and rule strategies of the mining company

The mining company itself does not seem to care about the community's opinion. The South African laws require foreign companies to have a local partner. To comply with this, MRC has founded a company involving local entrepreneurs with alluring prospects of profits and jobs: As a teaser, a local chief and a local entrepreneur have received a car sponsored by the company. MRC uses strategies known as "divide-and-rule". They speak to a few people, usually in leading positions, buy them small "gifts" and convince them of the project's benefits. What follows is a division of the community into supporters and opponents. Disputes turn violent and the companies do not have to waste their resources, as their local supporters do the job for them.

⁷URL:<http://www.news24.com/SouthAfrica/News/Green-light-for-Wild-Coast-toll-road-20150725>



But not only people on the Wild Coast are deceived by the prospect of money and wealth: The South African government sees mining as an important contributor to the economic upliftment of the country. The Department of Mineral and Energy supports mining companies and is considering drafting a law which would state that the resources below surface are owned by the state and the communities have no rights to it.

To enforce its interests government officials have pulled different triggers. They supported a person from the royal family who has challenged the legitimacy of the king of the Amapondo in 2012. Not surprisingly, the supported opponent is in favour of the mining project, whereas the challenged one, Mpondombini Sigcau, and his family oppose it. Especially the provincial government of the Eastern Cape continuously threatens not to invest in the infrastructure of the Wild Coast, arguing that people reject development in general by opposing mining projects.

But Nonhle Mbuthuma is not against development as long as it benefits the community in the long run. Agriculture and tourism are more sustainable and will benefit communities over a long period, as the offspring can always inherit land for further use. Some investments into the infrastructure are needed to make the Wild Coast more accessible.



Nonhle Mbuthuma in front of the picturesque Wild Coast landscape (film still from the Documentary "The Shore Break")⁸

David against Goliath

With the arrival of MRC violence has reached the community. Intimidation, bribery and random arrests have increased. At the beginning of 2016, the chairperson of the Amadiba Crisis Committee was shot dead in front of his house. Some sources claim he has been involved in illegal activities and taxi violence. Either way, the police has

shown no interest in solving the crime and finding the perpetrators.

Timeline

2003 MRC shows interest in mining in the Amadiba area

2007 Formation of the Amadiba Crisis Committee (ACC)

2010 Government acknowledges Zanozuko Sigcau, who is pro-mining, as the official king of the Amapondo, although Mpondombini Sigcau has been king since 1978

2013 Death of the official king of the Amapondo, Mpondombini Sigcau

2013 The Constitutional Court decides in favour of the deceased king Mpondombini Sigcau's family in that he and his descendants are the rightful rulers of the Amapondo

April 2015 Delegation of the MRC to perform Environmental Impact Assessment are forced by local protestors to leave the area

Dec 2015 Supporters attack villagers opposing the mining project

2016 Announcement of planned construction of N2 toll road to improve access to the area (seen by some as the starting point for the mining?)

March 2016 Sikhosiphi Bazooka Rhadebe, chairperson of the Amadiba Crisis Committee, is murdered

Jul 2016 MRC withdraws and hands over to their local BEE partners

Sep 2016 18-month moratorium announced by the Minister of Mineral Resources

Although the laws are in place, they do not function in practice. The implementation of South Africa's laws is insofar flexible, as it is often used in favour of the powerful and rich. This is especially problematic, as the mining company MRC has much more resources than the community. The protestors raise national and international awareness about their problems through the media. On a local level, it remains difficult to defend their rights, though as the local state is of no help. When a delegation of the MRC tried to undertake an Environmental Impact Assessment, which is necessary in South Africa to be given a mining licence, community members chased

⁸ The documentary "The ShoreBreak" by Ryley Grunenwald is about the mining project at Xolobeni and depicts the crisis

within the community caused by the mining company. Link for further information: theshorebreakmovie.com



Kampagne für
Entschuldung und Entschädigung
im südlichen Afrika

Campagne pour l'annulation
des dettes et les réparations
en Afrique australe

International Apartheid
Debt and Reparations Campaign

them away. Once the company has the license, community members know there is little they can do against being evicted from their land.

Mining may have worked for some countries, like Norway, where strong laws protecting communities and workers are observed. Those cases are rare, if not non-existing on the African continent and in many other parts of the world. Natural disasters, pollution and a destroyed environment after the pull-out of the mining company

are more common – and reaffirm the concerns of the Amadiba community.



Nonhle Mbuthuma

Speaker of Amadiba Crisis
Committee, Amadiba, South
Africa

Concluding Remarks

The conference has highlighted the importance of research, the and the work of pressure groups and lobbying for the compliance with human rights and the implementation of measure against illicit financial flows. This has to be done on both sides: in countries that are benefiting from the global system, like Switzerland and the ones find themselves rather on the losing end, the people in countries like South Africa. Networking between activists and NGOs on both side and creating an overarching environment of transparency is crucial. There is a need to identify successful, non-authoritarian ways how to regulate and

go on with extractivism. It might help to look for examples where the extractive industries have contributed to socio-economic growth, as it is to a certain extent the case in Botswana. In future, we might have to think about the-growth and how minerals already in use can be recycled (the key word here is “urban mining”) or substituted. With this in mind, the organisers would like to thank the supporters of the conference, the contributors and the participants who made this event challenging and inspiring.



The concluding panel discussion moderated by social anthropologist Rita Kesselring (left): From left to right Rita Kesselring, Melanie Müller, Dick Forlsund, Tamara Paremoer, Nonhle Mbuthuma, Caroline Ntaopane, Doro Winkler and Dominik Gross.