



TONSE TIPINDULE MINING GOVERNANCE PROJECT



November, 2014



The imposing factory

The Poverty of the Rich People of Mwimila Village

BY CCJP
CORRESPONDENT

The veil of secrecy around how mining companies are getting contracts and conducting their business has ignited interest among communities and their leaders who are now demanding information on the same especially in locations where the mines are operating from.

In Kasungu district, in a village known as Mwimila, the scenario is not any different.

The poverty among the people of Mwimila village in the area of Traditional Authority Wimbe is visible. The majority of them depend on rivers and other natural sources for water, the state of destitution in this village is unimaginable. Very few

people walk in shoes, almost all the schools surrounding the village are in dilapidated state and roofing on houses is with grass.

In classrooms which leak when it is both raining and not, learners sit on the bare floor.

Like in most rural parts of Malawi, the women here walk long distances to fetch water and the floors of over 90 per cent of the structures they call their houses have mad floors. The nearest public health facility can only be reached by foot after an average travel of 3 hours. And it is never always that Wimbe Health Centre has the essentials to treat the common illnesses here.

Driving to Mwimila village is a nightmare although motor vehicle traffic on this road is too high for a remote

area like this. Long heavy duty trucks are ever in motion in both directions.

They are either loaded with bags of cement manufactured at Shayona Cement Corporation in the same village headed for town to fetch riches, or they are loaded with coal for use at the dazzlingly imposing cement manufacturing factory situated right in the middle of all this poverty.

Although Shayona Cement factory has been extracting limestone and manufacturing cement for close to twenty years ago in Mwimila village so far, traditional leadership and the district administration here says the estimated 90,000 people of the jurisdiction of Traditional Authority Wimbe have not derived any meaningful benefit from the gains of the



T/A Wimbe: Elsewhere where factories are in Malawi, people benefit

company.

While 74 per cent of the ingredients of cement manufactured here is from the Livwezi Mines close by,

Traditional Authority Wimbe himself says he is ignorant of the level of investment and profits that are being realized at this Shayona

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Environmental Concerns in Wimbe's Domain

BY CCJP
CORRESPONDENT

The excavation of limestone at Livwezi Mines for the purpose of manufacturing cement at Shayona Cement Corporation factory in Kasungu district has resulted in the creation of two huge pits in the earth subsequently creating environmental concerns among the local leadership and council officials there.

The two open pits, each about three hundred square meters and a 100 meters deep, are a creation of the past 20 years of limestone mining which is continuing with average blasting taking place every day.

Meanwhile, Shayona Cement Corporation is investing 65 million US dollars in the project which will see blasts in more other sites on the plot for the next 25 years when two more plants start operating soon.

The obvious implications of any expansion of limestone mining operations at Livwezi and Chikowa mines are that more pits will be created in the environment for which there is no publicly known remedies. Limestone mining, like most mining ventures, entail the felling of many natural trees, some of which are exclusive to this area. It also involves blasting which is known to scare and chase away wild animals.

The company's Managing Director Jitendra Patel is quoted in Mining Review, a publication which is sponsored by the government of Malawi, Shayona and other players with interest in mining in Malawi, as saying "We have huge limestone deposits at the two locations (Livwezi and Chikowa mine) that can sustain our operations for 25 years. The plan is to source all these raw materials locally".

Shayona Cement Corporation has established itself as the largest cement manufacturer in this part of Africa. The company has a capacity to produce 36,000 bags of cement per day and employs over 1,200 people.



Open pit limestone mines

With projection of available limestone adequate for mining in the next 25 years, concerns of how the company will maintain the environment for continued human use are now getting louder.

"After the mining, what will happen to the open pits that are shaping up there? Is there not going to be a lack as is the case at Kanyika? Will that be safe for people? What shall we do with the pits? We want to know what exact agreement was struck with government. Why is government so secretive about this?"

"We deserve to know all this because the impact of what the agreement can cause will be on the people living here and as their leader, I would like to know," says Traditional Authority Wimbe.

And as Director of Planning and Development Ernest Kaphuka observed, extension of operations at Shayona cement corporation factory and mines means that a lot more people would have to be relocated meaning that issues of compensation and socio welfare will automatically creep in here.

"It is very unfair that Shayona has been around for twenty years and we can only point at four classroom blocks constructed this year at Chigumba school as their contribution to the community

here. In those 20 years, I would have expected that issues of shortage of classroom blocks in the whole of T/A Wimbe and sub T/A Chitanthamapiri would have been history.

"It is important and our expectation that companies make meaningful socio-economic contribution in areas where they are operating and making their money from. As a council, we are interested, for example, to investigate what the effect of the fumes coming from those chumminess could be on human health. There are a lot of uninformed complaints from that area," says Kaphuka to us.

Kaphuka says councilors in his council have actually resolved that even with standing business agreements between companies in Kasungu such as Shayona and government, there will have to be documented and binding agreements between communities from where the companies are operating and the companies themselves detailing what and how the



Kaphuka: There are a lot of uninformed complaints from that area

community will benefits from companies.

The estimate of 65 million dollars being invested in cement mining by Shayona, admission of find of adequate limestone for cement manufactory for the next 25 more years and intent to stay on and increase daily production of cement in an industry where demand is also surging, is evidence that the company is making huge profits from this poor village where residents want a reasonable cut from.

The Catholic Commission for Justice and Peace (CCJP) and its partners (Evangelical

Association of Malawi-EAM, Quadria Muslim Association of Malawi-QMAM, Malawi Council Of Churches-MCC, Church and Society of the Livingstonia Synod and Norwegian Church Aid-NCA) hope to join hands with like-minded interest groups and institutions such as the Kasungu District Council and the Millennium Information And Resource Centre in a partnership that would guarantee the protection of land rights of citizens and a possible review of the mining deal which government went into 20 years ago with Shayona company.

"After the mining, what will happen to the open pits that are shaping up there? Is there not going to be a lack as is the case at Kanyika? Will that be safe for people?"

The Poverty of the Rich People of Mwimila Village

from page 1

Cement Corporation factory. He says his worry is that in 20 years that have passed, “we don’t see any benefit of having the factory here.

“Elsewhere where factories are in Malawi, people benefit. They have better roads, better schools, better teacher houses and better hospitals. The level of corporate social responsibility is too low for a company of the production size of Shayona,” says Traditional Authority Wimbe.

Generally, the mining sector in this country is growing but that growth is simultaneously matching the growth of concern that the majority of the impoverished citizens are expressing about the benefits accrued from the wealth that is obviously being excavated from the soils.

While the district officials and local leadership would like to see Shayona Cement Corporation plough back into the community from where the corporation is making millions of dollars, the company says in the 20 years, it has built four classroom blocks at Chigumba school, assists a paying private mission clinic and a police station which is housed on the factory premises.

The secrecy with which central government handles most mining deals such as the Shayona Cement Corporation agreement, has increased unnecessary speculation. The Director of Planning and Development (DPD) at Kasungu district

council Mr. Ernest Kaphuka says although the company is flexible in dealing with his office on development work, the council is officially ignorant of the nature of agreement between Shayona and the Malawi government.

“As council, for example, we have no idea how much government gets in revenue from Shayona. Whatever it is, it goes into account no 1 in central government. But people in the catchment area complain about poor road infrastructure. Our view is that Shayona is not doing enough in terms of corporate social responsibility.

“There should be a Memorandum of Understanding between the investor company and the Kasungu District Council so that it is explicitly spelt out as to what the company will do by way of CSR for the community in the catchment area,” Kasungu DPD Kaphuka says.

Legislative power dynamics in the awarding of prospecting and mining contracts have been blamed for the current scenario where miners appear to play hid and seek with Malawians on revenues. A 1981 Act of parliament vests almost all powers to make decisions concerning mining licenses in the president and the minister of mines, a development that has been blamed for the existing veil of secrecy on the majority of agreements on mining in the country.

Even when the minister of finance is speaking in parliament, there is never a

presentation of systematic figures of mining revenue. However, this is happening at a time Malawi has provided an estimated K86.4 billion in tax incentives in the mining sector (2008-2012 alone). But companies do not make public their tax payment details.

The act, now aged over 30 years, is outdated and thought to give the president and the minister responsible excessive powers when compared with most modern mining pieces of legislation such as those currently in use in Botswana, Mozambique and South Africa which clearly and constitutionally guarantee that mineral rights should be for the benefit of the people.

Inconsistencies in the 1981 Mining Act result in arbitrary deals and lack of regulations to govern specific provisions including the aspect on how communities should be benefiting.

To encourage inclusive, responsive and accountable governance in mining, the CCJP and its partners aim to help the proprietors of Shayona Cement Corporation and the community under Traditional Authority to harmoniously exist and enjoy the proceeds of the booming mining industry there.

This the CCJP and its partners, will do through emerging partnerships,



Chigumba new classrooms and existing toilets

COMMENT

Concerns about how communities, in areas where mining activity is taking place, are benefitting from resources that they have been living with for a long time are common place in Africa including here in Malawi where there has suddenly been a boom of active mining of late.

Studies have suggested that the extent to which mining companies routinely deprive countries of huge tax revenue is in their ability to employ measures that reduce tax bills for the companies.

This is tax revenue that could otherwise be used to combat poverty among people in areas where

According to the study, some of the measures employed by most mining companies to reduce mining companies’ tax bills in African countries include:

- ◆ Forcing governments to grant tax subsidies and concessions using threats to abandon projects
- ◆ demanding secrecy in mining contracts with governments which some African governments are happy to oblige.
- ◆ use secrecy of contracts to pursue aggressive tax avoidance strategies
- ◆ false accounting to enable companies artificially depress profits to evade tax.

This is the more Malawi will need to adopt protective laws and regulations that will no longer allow for any secret agreements between the government and prospecting mining companies.

This will not only guarantee that the country realises the maximum tax revenue collection but that the citizens of our mineral-rich communities should not continue living in abject poverty.

The Catholic Commission for Justice and Peace (CCJP) and its partners (Evangelical Association of Malawi-EAM, Quadria Muslim Association of Malawi-QMAM, Malawi Council Of Churches-MCC, Church and Society of the Livingstonia Synod and Norwegian Church Aid-NCA) strongly recommends that parliament should rigorously scrutinize all mining contracts and payments to government to improve transparency and accountability in this sector.

This would help contribute to the development of legislative bodies as important and effective actors in the struggle to develop more transparent and accountable management of the extractive industries. In turn, this would promote stronger and continuous dialogue among the key stakeholders.

Dialogue among key stakeholders should thus, help provide a clear and deeper sense of underlying incentives, interests, power, influence and authority of different stakeholders.

This may be impossible to accurately and fully discern in the absence of dialogue.

consultations and civic education on mining governance and constant, consistent liaison with the legislature and the executive to ensure a win-win and symbiotic relations between these.

While it is agreed that mining could help the country further promote sustainable development with increased revenue invested in education, health and agriculture, existing

transparency problems have degenerated into a huge gap on information on local mining to the public.

The spirit of the Malawi Growth and Development Strategy II (2012-2016) is one of harnessing Malawi’s natural resources to spur socio-economic development through properly integrated economic activity, environmental integrity, social concerns and effective governance systems.

BY CCJP
CORRESPONDENT

A lacking community in the abundance of resources

The Catholic Commission for Justice and Peace (CCJP) and its partners (Evangelical Association of Malawi-EAM, Quadria Muslim Association of Malawi-QMAM, Malawi Council Of Churches-MCC, Church and Society of the Livingstonia Synod and Norwegian Church Aid-NCA) believes that unless existing inadequacies are dealt with, communities sitting on mineral wealth will continue facing unjust displacement, resettlement and compensation leading to landlessness, joblessness, homelessness, food insecurity and marginalization

“We are, therefore, calling for the enactment and establishment of effective and responsive legal, policy and institutional framework that will ensure promotion of the welfare of affected communities and sustainable development in places like Mwimila village,” CCJP National Coordinator Chris Chisoni says.

A comparative analysis of policy and legal mining related displacement, resettlement and compensation in Malawi Botswana, Mozambique, Zambia and South Africa shows that;

- ◆ the governance framework does not always safeguard the rights of citizens or promote sustainable development.
- ◆ that there are significant gaps in the Malawi governance framework that include: inadequate legal restrictions and provisions, insecurity of customary tenure, under-developed Environmental Impact Assessment (EIA) requirements, inadequate legal guarantees etc

While the government of Malawi could be looking up to revenue and the economic gains made from this magnificent and imposing cement making factory among the subjects of Traditional Authority Wimbe and Sub T/A Chitanthamapiri, the villagers here feel abandoned and their interests not protected at



Women fetching water

all.

We visited and spoke to people in the villages of Kamiza, Kasiya, Chipozza, Gawanani, Livwezi, Kalufu,

workers, current workers, women and children with evident skeptical optimism.

We met Rose Chigawa of

Francisco. Water is scarce here.

“There is no water in this whole area and as such, we have to travel close to three

“There is no water in this whole area and as such, we have to travel close to three kilometers to find water and it is from a well”

Mndewe, Mwimila, Bondo and Kapyanga which surround the limestone mines and the factory where we met former Shayona

Chigawa village. She was coming from three kilometers away with a pail of water on her head. She went fetching water with a friend Elizabeth

kilometers to find water and it is from a well. If there are too many people there, we return without any. When Shayona came here, we

thought that was going to be history. It is close to 20 years now,” Rose Chigawa told us.

Visiting Magwalangwa village, which is located less than two kilometers from Shayona Corporation, we meet a former worker for the company Hannock Chiwanda. He tells us he was helping out in the factory laboratory before he was moved to help out with blasting for limestone at the Livwezi mines. He says he worked for Shayona for three years and left on his own because he was only paid K6,000 per month.

“I am now back here at home in a house that does not have a cement floor. We

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made the cement but we could not even access the product at staff price. I came out of that place the same as I went in. We are expected to buy from the shops. So if you want one bag of cement, you have to travel to Kasungu (about 50 kilometres South East) to buy cement at retail price,” says Chiwanda.

He, however, says during the time he was working at Shayona, the administration made sure everyone had proper protective industrial gear. Another man (name withheld) who is still in employment with Shayona says the workers on sight have issues with current levels of monthly salaries as they are low.

“We are paid per hour. I get K89 per hour and I work a maximum of 12 hours a day. It is so painful. My house has a muddy floor yet I blast limestone for cement. We cannot even buy a single bag. It looks like government has no problems with all that is happening here. We understand they entered into an understanding with Shayona. But as far as I am concerned, we are in great pain,” said the mine worker.

Traditional Authority Wimbe says “from experience” he has deduced that officials from Shayona Cement Corporation are more interested in responding to demands made by politicians than those being advanced by the community



Shayona Police sign post

in a “suspicious demonstration of obedience” to the legislatures.

“They are so much

interested with politicians, pleasing politicians. They seem to think the politicians would back their business

interests,” Wimbe says.

He said politicians, especially legislators, have

“My house has a muddy floor yet I blast limestone for cement. We cannot even buy a single bag. It looks like government has no problems with all that is happening here”

tended to use the factory to sustain political relevance through bags of cement they receive for which they pay through silence on community concerns raised.

“Shayona is still extending and people are being relocated. The people need more help. When they have problems, they come to me for help but when all is fine, they never show up. I have not seen a single worker get transformed and government appears to be over protecting the company.

“There is a lot of dust thrown in the skies, a lot of fumes from the kilns where they use coal and there is a lot of noise that has chased wild animals all around here. In my view, with Shayona around, we should have experienced some change to compensate all that.

“We see it at Dwangwa, Nchalo people are significantly benefiting, not here,” says TA Wimbe.

Director of Planning and Development Ernest Kaphuka says his council cannot push Shayona for particular CSR activities while in the dark about the agreement the company went into with the Malawi government.

He is of the opinion that the council should be involved at all stages of investment deals such as mining so that it would easily follow up issues in future or give proper advice in certain areas to the investor.



Former Shayona worker



Open pit mines

Land, Environment and Mining Legislation

BY CCJP
CORRESPONDENT

The wanting nature of most current mining agreements in Malawi has brought about problems of loss of livelihoods through forced displacement and land conflicts between

deals.

However, it is encouraging that the current minister of mining Atupele Muluzi in his public utterances continues to suggest that government would like to see rural poverty reduced through the mining sector because scenarios like the one in Kasungu could thus be

Association of Malawi-EAM, Quadria Muslim Association of Malawi-QMAM, Malawi Council Of Churches-MCC, Church and Society of the Livingstonia Synod and Norwegian Church Aid-NCA) therefore, subscribe to the thinking that investors and government be held accountable to policy and

which local people live, to harmful consequences.

Shayona Cement Corporation seats on a stretch of an estimated 500 hectares of land, which land was acquired after some people were relocated and compensated. However, it is not clear as to what the Environmental Impact Assessment for this venture says in terms of the usability of the soil and the land after all the limestone for making cement is excavated and depleted and the open pits are left behind.

The apparent growth in terms of the company's irrelevance to the lives of the people of Mwimila village could evidently be resolved where there was enhanced partnership, consultations and interfacing.

Already, the council in Kasungu plans to call for a 2014 meeting with all major

private sector operators in the district including Shayona Cement Corporation officials where councilors hope to push for formal Memoranda Of Understanding (MOU) on what communities should expect from all investors.

The Director of Planning and Development says the council feels short-charged in dealings surrounding operations at Shayona Cement Company especially in the area of CSR. He says, for a company that expects to extend operations for another 25 years, it has not helped the community in Mwimila village.

"This is clear indication that Shayona is making huge profits and there is no way a company that is making such profits can only build four classrooms at one school in its area of operation. The roads connecting the company to the main road of Kasungu-

"This is clear indication that Shayona is making huge profits and there is no way a company that is making such profits can only build four classrooms at one school in its area of operation"

companies and communities igniting need for inclusion in the designing of projects and

reduced.

The Catholic Commission for Justice and Peace (CCJP) and its partners (Evangelical

laws that should regulate the mining sector to ensure that mining activities do not expose the environment, in

Shayona Memorandum of Association

Shayona Cement Corporation is “prohibited from making any invitation to the public to acquire any of its shares or debentures...” according to a Memorandum of Association certificate issued by the Registrar of Companies under the Companies Act number 19 of 1984 in April of 1994.

According to information in our possession, Shayona Cement Corporation is a company authorised to carry out unrestricted business and teed-off with a share capital of K100,000.00.

We could not trace any available evidence of any understanding between the Malawi government and Shayona Cement Corporation with regard to corporate social responsibility. The absence of such an understanding could be the cause of the status quo where the company does not feel compelled to plough but into Mwamila village part of what it is getting from there.

The absence of laws regarding corporate social responsibility is thought to fuel the tendency by the majority of miners in Malawi to ignore the needs of poor communities around mines sites.

A recent Mining Task Force finding described this as ‘business as business only’ where mining companies believe that their only responsibility is to get the mineral out of the ground, and pay its taxes against CSR as a ‘...liberal conspiracy to hinder business innovation’ somewhat.

Other than look at it as fashionable exercise for poor communities, CSR provides space for companies to engage with communities for the creation of win-win situations. While mining

companies would argue that they pay taxes from their proceeds, it has also been argued

elsewhere that taxes do not necessarily reach the local community of a mining operation.

Traditional Authority Wimbe said: “Yes they pay tax but how do we benefit from that tax here? We still drink water from unprotected sources. Our schools are in a shambles, the roads are in bad state yet this company is 20 years old here and hopes to stay around another 25 years.

“What more evidence do we need to conclude that they are making huge profits here? We would like to have access to information about the performance of that company. We have every reason to believe that even government may not be getting its rightful share,” said T/A Wimbe to us.

Corporate Social Responsibility remains a critical part of achieving a fair deal for communities affected by mining operations such as those in the area of Traditional Authority Wimbe

Concerns about how communities, in areas where mining activity is taking place, are benefitting from resources that they have been living with for a long time are not a new thing in Africa including here in Malawi where there has suddenly been a boom of active mining.

Studies have suggested that the extent to which mining companies routinely deprive countries of huge tax revenue is in their ability to employ measures that reduce tax bills for the companies.

This is tax revenue that could otherwise be used to

combat poverty among people in areas where the mining is taking place.

According to the study, some of the measures employed by most mining companies to reduce mining companies’ tax bills in African countries include:

- ◆ Forcing governments to grant tax subsidies and concessions using threats to abandon projects
- ◆ demanding secrecy in mining contracts with governments which some African governments

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are happy to oblige.

- ◆ use secrecy of contracts to pursue aggressive tax avoidance strategies
- ◆ false accounting to enable companies artificially



Mr. Success Sikwese CCJP Extractives Desk Officer

depress profits to evade tax.

This is the more Malawi will need to adopt protective laws and regulations that will no longer allow for any secret agreements between the government and

communities should not continue living in abject poverty.

The Catholic Commission for Justice and Peace (CCJP) and its partners (Evangelical Association of Malawi-EAM, Quadria Muslim Association of Malawi-QMAM, Malawi Council Of Churches-MCC, Church and Society of the Livingstonia Synod and Norwegian Church Aid-NCA) strongly recommends that parliament should rigorously scrutinize all mining contracts and payments to government to improve transparency and accountability in this sector.

This would help contribute to the development of legislative bodies as important and effective actors in the struggle to develop more transparent and accountable management of the extractive industries.

In turn, this would promote stronger and continuous dialogue among the key stakeholders.

Dialogue among key stakeholders should thus, help provide a clear and deeper sense of underlying incentives, interests, power, influence and authority of different stakeholders.

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T/A Wimbe (right) : What more evidence do we need to conclude that they are making huge profits here?

Land, Environment and Mining Legislation

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Nkhotakota is in very bad condition and if the company had taken an initiative to have this road graded into a better road...people could have benefited greatly for they could easily traverse to

other areas with farm produce,” he says.

The whole discussion boils down to existing deficiencies in the process for granting licenses which vests a lot of power on the president and minister of mines. As the

mining law stands in Malawi at the moment, there is no requirement for the minister to consult with stakeholders.

Further to this, most key terms of mining agreements in the country are not determined by consistent

application of the law but bilateral negotiations which calls for partnerships and networking aimed at finding appropriate ways forward for the mining industry.

This is the more CCJP and its partners wish to

ascertain that the people of Malawi enjoy equal benefits from natural resources that they have lived with for a long time and now being extracted for commercial reasons.



Tonse Tipindule for Equitable Mining Benefits

BY ECM
CORRESPONDENT

The Catholic Commission for Justice and Peace in partnership with other like-minded in Tonse Tipindule Mining Governance Project (Evangelical Association of Malawi-EAM, Quadria Muslim Association of Malawi-QMAM, Malawi Council Of Churches-MCC, Church and Society of the Livingstonia Synod and Norwegian Church Aid-NCA) says government has a responsibility to ensure that operations of a company like Shayona are constantly monitored.

CCJP National Secretary Chris Chisoni said given what is happening on the mine site at the moment, Shayona Cement Corporation is not complying with environmental best practices.

"Without constant monitoring by government, Shayona



Chisoni: Shayona Cement Corporation is not complying with environmental best practices. pic-timesmediamw.com

risks causing environmental disaster and chaos in the area from where it is extracting raw material for manufacturing cement.

"Shayona is also duty-bound to engage in corporate social responsibility. The DC and Traditional Authority Wimbe should encourage the community in that area to demand what is theirs.

"The leaders should react to the status quo for their people," he said.

Chisoni said the case of

Shayona Cement Corporation reveals the need for transparency and accountability when companies and government enter mining contracts.

He said mining contracts that are entered into between government and com-

panies without the involvement of communities normally are known to disadvantage the community.

"We are calling on people to challenge these trends. Let the cement production by Shayona realize equitable development for the people.

While Shayona is developing in terms of economic gains, the people around the area should also benefit.

"These people have been sitting on these resources all their lives. They have a right to enjoy the benefits of these resources," he said.

"Without constant monitoring by government, Shayona risks causing environmental disaster and chaos in the area from where it is extracting raw material for manufacturing cement"



Overview of Shayona Cement Factory

