Advancing public health rights, claims and standards in mining
REPORT OF A SIDE SESSION AT THE ALTERNATIVE MINING INDABA

Regional Network for Equity in Health in East and Southern Africa (EQUINET) through Training and Research Support Centre,
Southern African Trade Union Co-ordinating Council (SATUCC),
Benchmarks Foundation, and
SADC Council of NGOs (SADC-CNGO)

Alternative Mining Indaba
Making Natural Resources Work for the People, Leaving No One Behind

Cape Town, South Africa, February 6 2018

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Contents

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1. Background and objectives

The Alternative Mining Indaba (AMI) is a platform that was created in 2010 by faith based organisations and civil society, realizing the exclusion of mining affected communities from the 'Investing in Mining Indaba Conference' held annually in Cape Town, South Africa. The Alternative Mining Indaba has been held annually since 2010 at the same time as the Mining Indaba to provide a platform for communities affected by mining to voice their concerns and be capacitated to fight for their rights. The AMI seeks to advocate for transparent, equitable and just extractives practices in the management, governance and distribution of national resources through different approaches, including policy and legislative reform; advancing meaningful decision making processes for communities, advocating for just national and regional policies and corporate practices; providing space for engagement for the inter-faith communities, governments, CSO's and private sector to share information and experiences; and providing space for the interfaith community to lead and accompany affected and impacted community.

The theme for the 2018 AMI was: "Making Natural Resources Work for the People: Towards Just Legal, Policy and Institutional Reform". The Thematic issues for discussion included: human rights defenders; the curse of natural resource policies; gender and legal reforms; the independent problem solving mechanism; policies and laws that facilitate the benefit sharing for local people and faith and the extractives sector. The meeting gathered representatives of over 400 members of faith-based organisations, civil society organisations, community-based organisations, pan-African networks and organisations, labour movements, women movements, human rights activists, media, students from African countries and international partners on February 5 – 7, 2018 in Cape Town.

EQUINET, as a consortium network of organisations based in the region has for several decades built research capacities and evidence at country and regional level on global health issues relevant to health equity in the region, through the Southern and Eastern African Trade Information and Negotiations Institute (SEATINI) and TARSC. In follow up to proposals from stakeholders in a 2015 regional meeting on global health and work by TARSC on social determinants of health in Mozambique, EQUINET has implemented research on extractive industries and health to review how far key guidance principles/standards on health in extractive industries are contained in domestic laws in countries in east and southern Africa as a basis for identified good practice that can inform the content for regional guidance for policy and law on extractive industries and health.

After a plenary presentation by EQUINET in the panel discussion "Seeking to Reverse the Resource Curse through Legislative, Policy and Institutional Reform" on the first day of the AMI, a side session was convened at the AMI by EQUINET through TARSC, SATUCC, Benchmarks Foundation and SADC C-NGO.

Objectives: The side session aimed to raise and discuss the key public health challenges facing workers and communities in the extractive sector / mining in east and southern Africa, the strategies for responding to them, including proposals for harmonised regional health standards, and the proposals made by civil society to advance them.

The side session programme is shown in *Appendix 1* and the delegates attending the session are shown in *Appendix 2.* Delegates were provided with publications on the work from the convening organisations. The recommendations from the work and side session were integrated in the formal AMI communique presented to all delegates at the concluding plenary and the section relating to health in extractives adopted by the AMI is reported in Section 5. The full Communiqué of the AMI and documents from the Indaba are separately available at http://altminingindaba.co.za/

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2. Claiming rights to health in the extractive sector

Dr Rene Loewenson, Director, TARSC/ EQUINET welcomed participants, introduced co-convenors for the session and outlined the objectives and process for the session. Delegates introduced themselves and their organisations.

Rene introduced issues affecting health and wellbeing in the extractive industries, outlined the risks and benefits associated with mining in the region, the current protections and laws, and steps taken to date to advance regional health standards and protections.

She noted that most countries in the region are richly endowed with a range of mineral reserves that are highly sought after in global trade, largely by multinational companies from outside Africa. Countries in the region thus face a challenge to make and implement policies that link their natural resources to improved social and economic development and to ensure that mines do not generate harm to health. She noted that mining is a key vehicle linking African countries to neoliberal globalisation, with by 2008, developing countries reported to be transferring about a trillion dollars more a year to wealthy countries than they received in FDI.


Water yellowed by cassiterite collected for sluicing. DRC, M Craemer 2010

Various policy documents like the 2009 African Union (AU) African Mining Vision state the intention to ensure national and social benefit from activities in the mining sector that amongst other issues "*is safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities*." Health is a key aspect of this, but how far, she asked, is health being protected? There is evidence of poor return for local wellbeing, such as the experience of Tete province in Mozambique where districts with large extractive industry projects had higher poverty and food insecurity and poorest improvements in these areas than those without, despite the wealth generated.

She outlined the health risks associated with mining , including accidents and hazardous working conditions; poor environmental, living condition; loss of biodiversity, pollution; displacement of local people; HIV, TB and STIs in surrounding communities and tax exemptions reducing fiscal contributions for health care. There is a significant social cost in unmet health needs that are displaced to poor communities and underfunded public services, many of which are preventable. Addressing this and promoting health is a critical element of making natural resources work for the people.

Rene raised that there is a potential to better use the power of public health rights and laws in mining. The International Covenant on Economic and Social Rights signed on to by African countries recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, while public health law sets duties **for e**very 'person' (which includes corporates) to avoid harm to public health, and that where any other law is in conflict or inconsistent with public health law, in matters of public health it is public health law that prevails. Various international and regional standards commit to protecting health in mining for workers and communities and the SADC UNECA harmonisation of policies and standards indicated that *Member States should*

*develop, adopt and enforce appropriate and uniform health, safety and environmental guidelines for the sector as an **immediate** milestone area.* However, while there has been progress on doing this for TB and HIV and some attention is now being paid to chronic occupational diseases for ex mineworkers, there is as yet no comprehensive focus on public health in the mines, to prevent, treat and manage the wider range of health problems experienced by communities as a result of EI activity.

Rene summarised how far these commitments are included in the laws in the region. Some areas of health are better protected than others, and some countries better protected than others, as shown below (and outlined in more detail in EQUINET reports).

Area of law	**Level of protection**
Consultation and health protection in granting prospecting rights / licenses	Environment impact assessment provided but not health or social assessment
Health and social protections in relocation of affected communities	Poorly provided for
OHS for employed workers / contractors	OHS for formal workers relatively well covered
Health benefits for workers and families	Limited duty for health benefits or health care coverage for workers and their families
Environment, health and social protection for surrounding communities	Environmental protections provided; Social and health protections more limited
Health benefits for surrounding communities	Most countries have no duty for mines to ensure health services for surrounding communities
Fiscal contributions from EIs for health and health services	Limited duty to make tax contributions for health. Tax duties but with exemptions
Post-mine closure obligations	Limited provision for health duties post closure
General governance issues	Participation and information rights in environment and transparency laws

No single ESA country provides adequate legal protection, different countries have good practice clauses that could be used for regional guidance on minimum standards. She highlighted some key areas that need to be advanced:

- Approval of mining licenses are in many countries now subject to environment impact assessments, but these do not include health and social impacts, so health and social impact assessments need to be done by communities and local authorities, with costed plans to prevent harm, including for displaced communities and to address long term health consequences that may arise after mine closure. These should be implemented and prior informed consent give by communities and health authorities before licenses are granted. She noted that these can be done district wide rather than mine by mine as the effects of a number of mines may combine and call for collective measures, infrastructure and services.
- Any resettlement plans should be developed with local communities and re-establish living standards, incomes, health infrastructures and health services before people are settled.
- Mines duties to ensure healthy environments, prevent harm to health, prevent and report communicable and notifiable disease in the surrounding community and provide services that cover workers, families and communities or contribute to public health services need to be clarified and put in practice.
- Extractive industries have duties to make fiscal contributions for health, and there is need to ensure that they do not obtain exemptions on fiscal contributions and corporate levies for health. Further, she noted, some countries have introduced levies on mines to address specific health issues, such as in DRC levies for nutrition,

and longer term health consequences such as for chronic disease by ex-mineworkers or post closure heath impacts call for public insurance funds to meet these liabilities.

Such health-related demands should be part of the overall demands communities have to benefit from their resources. At the same time at a regional level there is a potential to harmonise such rights and duties, given the SADC commitments.

Rene noted that this had been discussed with directors of health and other health agencies in the region at the 2017 East Central and Southern Africa Health Community Best Practices Forum and Directors Joint Consultative Conference. The health officials recommended inclusion of health in harmonised regional minimum standards in the sector. Further the 13th Southern Africa Civil society Forum in August 2017 the forum adopted a recommendation that civil society demand harmonised standards for health in extractive industries, and raised strategies for popular education, exposure of violations, alliances of activism and regional advocacy. She welcome the collaboration across EQUINET, SATUCC, SADC CNGO, Benchmarks to bring workers and communities together around this, and the opportunity at the AMI to further inform the key demands and strategies for protecting health.

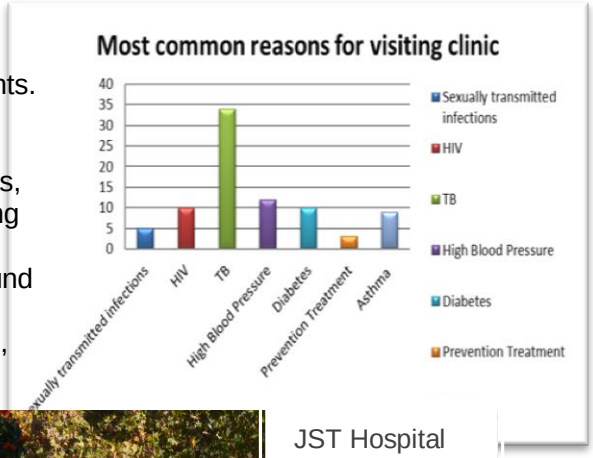
3. Health experiences of communities living on and around mines

Joseph Magobe, Chairperson, Bua Mining Communities presented evidence from a survey Bua mining communities implemented with Benchmarks on their health conditions.

He outlined information on Bojanala Health District, with a health services expenditure per capita that is the second lowest in the country and poor performance on a range of health service and disease and mortality indicators. BuaMC receives consistent complaints from the communities it works with about general service delivery problems and health problems. This led to the 2014 study to explore the effects of platinum mining on the people in the municipality, particularly the extent of externalisation of health costs on the communities and the department of health.

The study aimed to inquire into the reasons for the overcrowding at clinics and health provision points and the poor health care service in the local clinics in Rustenburg; to examine how the mining industry impacts on the local public health care facilities; to examine if there are situations in other mining areas that could be similar to Rustenburg municipality and to survey the community clinic users' satisfaction levels relating to the clinic services

Joseph noted that the scaling down of operations by many mining companies has also led to retrenchments. Ex mineworkers are no longer covered by the mine health care insurance but remain living in poor conditions in mine-hosting communities with migrants, making them and their families vulnerable and leaving the burden of health care to the public health care system. Further a range of health problems were found emerging from the mines: asthma from air pollution; physical disability from injury; and chronic conditions, shown in the adjacent figure.



He noted that overcrowding of facilities led to long waiting times before getting treatment; but also raised tensions between different groups in the community, scapegoating migrants for example for overcrowding. This not only affects the community but also the health workers, who suffer poor working conditions and high workloads, undermining quality of care. The services lack mobile services; ambulances and have limited opening hours. The few home-based carers report being underpaid and overworked, while long distances between facilities raise costs for already poor community members.

JST Hospital

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Jacob observed a situation where mines have a duty to monitor and limit harm to workers, but pay scant regard to communities surrounding the mines, is unjust and unconstitutional. The study recommended that government and the corporations, with civil society and community participation, have responsibilities for health in the communities living in and around mines. In this regard the study raised a number of recommendations, including

- To take the full community numbers into account in planning, staffing, funding and delivering services from community to facility level.
- To ensure adequate medicines and emergency services in these facilities to respond to the needs of both communities and workers.
- To work with clinic committees which involve the community in planning services, rather than external consultants, and to strengthen mutually respectful dialogue between community members, workers and health workers on health care.
- For the mine to acknowledge responsibility for health and reverse externalisation of burdens onto communities by jointly planning and collaborating with communities, government and the municipality to resolve health challenges and fund and improve health infrastructure and services, including community health activities, home-based care and health promotion.
- To train health workers from within the community living in and around the mines.

Joseph noted, in conclusion, that the system will not change without communities engaging the authorities on a continuous basis over a long period. They recommended that each village develop an action group to monitor and engage authorities as well as continue work on community health issues; to engage and meet regularly with health workers to develop joint actions. He pointed out that community organisation was needed to direct action to the conditions and services causing stress, to prevent internal conflict among different groups of services users.

4. Proposals made at the 13th Southern African civil Society Forum on public health rights and mining

Gadzani Mhotsha, Secretary Gen, BFTU past president SATUCC, informed participants of the role trade unions have played in promoting labour and social rights in mines, but made a point of the importance of bridging the gap between workers working on mines and communities living around mines. He observed that the relationship was sometimes adversarial but that both groups had common interests around health and were affected by the same underlying economic conditions. He thus welcomed this cross-cutting dialogue, and the inclusion of ex-mineworkers within it.

He outlined the resolution of the 2017 Southern Africa Civil society Forum to demand harmonised standards for health in extractive industries (EIs), as shown below:

At the 13th Southern Africa Civil society Forum in August 2017 the forum adopted a recommendation that civil society demand harmonised standards for health in EIs, and that these include EI and state duties:

1. To implement environment, health and social impact assessments, with costed plans to manage harms, for resettlement and post mine- closure duties for health, obtaining approvals from health and local authorities and from communities *before* licenses are granted and making the assessments available in a public domain register at regional level.
2. To ensure health and avoid harm to health of all workers and of communities living in and around EIs; to remedy or compensate for damage; to prevent epidemics and emergencies, including from climate related health effects, and to report to health authorities the spread of infectious/notifiable diseases.
3. To pay without exemption any taxes used for health, and contribute to public funds held to remedy harms or to meet post closure public health duties.
4. To ensure free prior informed consent and participation of communities on EI measures and plans to meet these duties above; with fair grievance management processes and prohibition of involved public officers from holding mining rights, to protect against conflict of interest.

Gadzani indicated that taking these proposals forward calls for a bottom up local to regional campaign for civil society

- *Locally*, to spread popular and rights-based education in affected communities and community based organisations, and work with communities to document and expose violations of duties and to share positive practices.

- *Nationally*, to build alliances of health, labour and environment awareness and activism on health in extractive industries within and across countries, including in civil society forums; national alternative mining indabas and health days, to engage ministries to support regional standards and to engage parliaments, states and communities to enforce existing laws.

- *Regionally,* in alliance with health and environment civil society and traditional leaders, to advocate for SADC harmonised standards for health in mining in forums such as the regional Alternative mining indaba; the SADC Ministers of Health, the SADC (PF) and other parliamentary forums; and other SADC and AU platforms.

5. Moderated round table discussion and plenary review

Participants then discussed the issues further in three moderated round tables facilitated by the convenors, to explore and add their own experience and perspectives on the issues raised and to identify areas for follow up. The three areas were:

1: What public health standards should apply across east and southern Africa? What advocacy to advance them? - facilitated by EQUINET (Rene)

2: How should we organise and profile the evidence from workers and communities on their public health conditions and experience? How should we strengthen their voice in their health rights in mining? – facilitated by Benchmarks (Brown Motsau and Joseph)

3: What steps to advance the advocacy strategies and campaigns on harmonized public health rights set in the 13th Southern African civil Society Forum? – facilitated by SATUCC (Gadzani) and EQUINET/SADC CNGO (Ranga Machemedze).

The plenary report and discussion on what was raised in these round tables is shown below.

5.1 On the key areas for harmonising rights and standards on health in extractive industries

The group noted that health is not a matter than can be left purely to voluntary corporate social responsibility. It needs to involve binding rights and duties.

There was a caution on simply integrating health into existing environment impact assessments (EIAs) as these are done by companies and their experts and need. What is needed are public sector and community driven environment, health and social impact assessments (EHSIAs), implemented before mines are licensed and monitored and reviewed regularly It was also seen as important to implement district wide ESHIAs as multiple mines have synergistic effects and need to plan for and contribute to wider effects.

The lack of transparency, variability in informal voluntary approaches and population wide effects of mining on health were seen to highlight the need to reclaim the role of the state in public health on mines. Civil society /communities should engage the state not as

a monolithic entity with one position, but recognise different elements within the state, some of which at local or other levels can be brought into alliance on health and social issues. An example of this is in linking with public health personnel in ministries of health and local government.

This raised the role of the state as regulator, and the deficits to be met in terms of its enforcement of existing law and response to duties that should exist, and its political commitment, capacity and trained personnel to apply the law, especially for sectors oriented to protecting social wellbeing and natural resources. The group identified that these capacities need to be strengthened in the public sector, and that it further points to the need for a public protector/ombudsman function to address community claims and grievances where the state is not adequately doing this.

Further there is need to pin down the externalities (and areas of externality) from mining for long term issues to be addressed in the EHSIAs *before* licensing and regularly thereafter to ensure they are met in plans before events or closure. These may relate to health, livelihoods, social problems, services and other areas. For this it was felt that we need a more systematic process to highlight what these are and for them to be included in prospective assessments and costed plans.

For those leaving mines or post mine closure there needs to be better record keeping of who live and works in these areas and their health literacy on effects, rights and duties

Finally the approach to addressing these issues as rights and duties cannot simply be left to voluntary contributions. It was felt that they need to be met from taxes and other public funds (sovereign wealth funds, levies, insurances) that take on board immediate and long term impacts, including those arising after the mines have closed or left.

5.2 On giving voice to the evidence from workers and communities on health

The group pointed to the need for community based assessments to assess and profile key issues affecting health , including water sources, access to clean water, air pollution and its wider effects and so on. This means building bridges between workers in the mines and communities hosting the mines through various forms of engagement, and particularly facilitated dialogues across these groups.

This can be documented in written reports for formal negotiations, (such as for the community driven EHSIAs noted above), but bringing alive the conditions and voices of workers and communities can also be done through stories and visual media such as videos.

5.3 On advancing advocacy for regional health rights and standards

The group highlighted the importance of identifying key focal points in both workers and communities living in and on mines for dialogue across the groups and for active and participatory movement building. This core partnership between workers and communities can be a basis for building wider alliances with those working in public health, in universities, and for involving groups like students in joint assessments.

At local level the group also pointed to the need for common rights and health literacy training in this area, using accessible materials in local languages.

They recommended that health literacy and health issues be included on the agenda of all the national AMIs (NAMIs) and other national health processes, including with health civil society and in national civil society fora such as the Kenya National Mining alliance.

The group called for strengthened links between community based organisations and other civic bodies at the national level to ensure the flow of information and co-ordination of capacity building activities. This extended to strengthening the apex alliance bodies of trade unions, faith based organisations and NGOs at the national level for easy of coordination, solidarity and movement building.

At regional level they supported the need for follow up through civil society, SATUCC, EQUINET and other regional bodies, integrating this area of work in their mailing lists.

The group raised that mining and health should not be isolated from wider health trends, such as in the links for health for those in mining and agriculture; or in common concerns around public health services. Further the group called for a strong connection from local to regional level in the processes taken forward.

6. Next steps and AMI communique input on public health

As a summary, Rene noted the common issues raised across all three groups, in

- Strengthening dialogue between workers and communities on mines and building alliances with other public health activists/ professionals in the state and civil society;
- Building health literacy on mining and health, within the context of wider health literacy
- Carrying out community driven environment, health and social impact assessments, an mine and district level, to raise and address burdens currently being shifted to workers, communities, ex mineworkers and public services;
- Building local to regional links through our civil society networks to strengthen the focus on public health and to advance improved and harmonised standards for health in the sector.

As a follow up, the report of the session is being sent to all participants and circulated in the networks of the participating organisations. The meeting proposed having an email list and keeping all involved in this session involved in the follow up to it.

Rene noted that EQUINET was committed to action on the issues and that the side session had informed the content and strategies and built alliances around their implementation. The SATUCC and Benchmarks representatives equally expressed their commitment to the follow up. The convening organisations met immediately after the session the plan actions to take forward key areas raised, within their scope of work and resources.

Finally, key points from the discussions from the plenary and side sessions on health in mining / extractive industries were incorporated into the AMI communique. The full communique is available on the AMI website. The section on public health is shown overleaf

9th Alternative Mining Indaba
5-7 February 2018, Cape Town, South Africa

Section on public health….
See the full Communiqué of the AMI and documents from the Indaba at http://altminingindaba.co.za/

5. **Public Health**

5.1. We reiterate that public Health rights and the right to life supersede all other claims. They have been won through social struggle and are a source of social power;

5.2. We note with concern the rights violations by mining companies relating to health and access to resources and services for health in and around mines. We recognize that health goes beyond voluntary corporate social responsibility and is a matter of legal rights and duties activated from the community;

5.3. We therefore commit to ensure they are protected for all living in and around mines in all our countries, including through negotiating harmonised regional and continental standards, national laws and enforcing them at the local level;

5.4. We also demand that community based health and social impact assessments are implemented that involve community evidence, including on assessing and planning for impacts after mines close, and for free prior informed consent on these issues to be given before mines are given licenses;

5.5. Social services including health, education, water services and infrastructures must be provided before people are resettled;

5.6. Measures to be put in place to protect health and prevent disease and injury, during mine operations and after closure;

5.7. Workers and communities to build dialogue between them and to be informed and fully participate in decisions on all of these measures.

Appendix 1: Programme

EQUINET, SATUCC, SADC CNGO AND BENCHMARKS
PROGRAMME FOR SIDE SESSION: Advancing public health rights, claims and standards in mining, Tuesday 6 February 2018 1830-20.00

The objectives of this side session are to raise and discuss the key public health challenges facing workers and communities in the extractive sector / mining in east and southern Africa, the strategies for responding to them, including proposals for harmonised regional health standards, and the proposals made by civil society to advance them.

TIME	SESSION	ROLES
18.25	Admin, registration of participants, refreshments	
18:30-18:50 **18.50-19.00** **19.00-19.10**	Introduction on health and wellbeing in the extractive sector: Risks and benefits, current protections and laws, and steps taken to advance regional health standards and protections Health issues and experiences of communities living on and around mines Proposals made at the 13th Southern African civil Society Forum to advance public health rights and protections in mining	Dr Rene Loewenson TARSC/ EQUINET Joseph Magobe, Chairperson, Bua Mining Communities Gadzani Mhotsha, Secretary Gen, BFTU past president SATUCC, with SADC CNGO
19:10-19:40	**Moderated round tables** Facilitator led moderated round tables on the three areas below *1:* What public health standards should apply across east and southern Africa?What advocacy to ensure they are formalised at regional and national level? *2:* How should we organise and profile the evidence from workers and communities on their public health conditions and experience? How should we strengthen their voice in their health rights in mining? *3:* What steps to advance the advocacy strategies and campaign on harmonized public health rights and standards set by civil society in the 13th Southern African civil Society Forum	Moderator: R Loewenson EQUINET Moderator: Brown Motsau, Bench Marks Foundation Moderator: Gadzani Mhotsha, SATUCC, with Ranga Machemedze, EQUINET and SADC CNGO
19.40-19.55 **19.55-20.00**	**Plenary review** Presentation and plenary discussion of the round table recommendations. Summary of recommendations, acknowledgements and closing	EQUINET
	End	

Appendix 2: Delegate list

1	Dr Rene Loewenson, Director, Training and Research Support Centre, Zimbabwe Cluster lead, EQUINET
2	Custodio Ribeiro, Universidade Católica, Angola
3	David Fig, TNI/UCT/AUA/ Biowatch, South Africa
4	Olof Bjornsson, Swedwatch, Sweden
5	Garrett Barnwell, Medicines Sans Frontières, South Africa
6	Brown Motsau, Bench Marks Foundation, South Africa
7	Joseph Magobe, Bua Mining Communities, South Africa
8	Augustine Masiga, National Council of Churches, Kenya
9	Gadzani Mhotsha, SATUCC, Botswana
10	Kitso Phiri, BOLAMA, Botswana
11	Bakang Moseki, Botswana Council of Churches (BCC), Botswana
12	Kelebogile Lekone, Botswana Council of Churches (BCC), Botswana
13	Rangarirai Machemedze, SEATINI / EQUINET, Zimbabwe
14	Pepukai Jimu, CNRG, Zimbabwe
15	Michelle Pressend, University of Cape Town, South Africa
16	Sandra Serumaga-Zake, BIGEN, South Africa
17	Richard Saunders, York University, Canada
18	Francisco Lopes, ADRA, Angola
19	Victor Massiala, OSISA, Southern Africa
20	Makusiri Sibanda, Zimbabwe Environmental Law Association, Zimbabwe
21	Vama Jele, SWAMMIWA

NB The recommendations on public health in the full AMI communique were presented to and adopted by the plenary session of over 500 people.