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Building A Sustainable Future For Africa's Extractive Industry : From Vision To Action

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The reforms, regulatory frameworks and institutions introduced over the last 20 years to open the mining sector of mineral rich countries of Africa to investment pursued specific objectives . objectives very different from those spelled out in the Africa Mining Vision (AMV). The model that informed these changes is now outdated and inappropriate. Africa's experience over 20 years has been a cumulative process of reform leading to several generations of increasingly liberalised mining regimes. The African Mining Vision is therefore also about reinforcing democratic political processes and appropriate institutional arrangements needed to support them. Furthermore, because the Vision entails moving beyond seeing mining essentially as a source of revenue so that it serves as a catalyst to build intersectoral linkages, notably by integrating mining activities into industrial policies, this will necessarily require that governments have policy options. There is a need to reset discussions concerning the developmental role of mining in a broader context as does the ISG report which takes account trade negotiations and other areas of policy decision which may condition or limit policy space.

Mots clés

Africa, mining regime, development model, Africa Mining Vision, institutional arrangements.

BUILDING A SUSTAINABLE FUTURE FOR AFRICA'S EXTRACTIVE INDUSTRY: FROM VISION TO ACTION

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“Building human and institutional capacities”

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From vision to action :

What is required is **not just** about institution building, ensuring technically proficient processes and increasing expertise. It is about this but much more.

Translating the *African Mining Vision* into Action will require **an important policy shift**.

There are however obstacles to such a policy shift.

Why? The reforms, regulatory frameworks and institutions introduced over the last 20 years to open the mining sector of mineral rich countries of Africa to investment pursued specific objectives ó objectives very different from those spelled out in the AMV. The model that informed these changes is now outdated and inappropriate.

Five features of past approaches will serve to illustrate this:

- i) Past reforms and resulting institutional arrangement resulted from an approach which was **rigorously mono sectoral approach**. As the last two decades demonstrate, because foreign companies are above all integrated into supply and market chains internationally, they have tended not to integrate mining operations into local economies.
- ii) Institutional reforms have been **undertaken overwhelmingly from the perspective of mining companies rather than that of promoting development strategies**. In fact, reforms which resulted from the World Bank's important 1992 study *Strategy for African Mining*, were informed by the replies of major and junior companies to

questionnaires sent to 80 international mining companies¹ as to what types of regimes might best suit their needs.

- iii) The key **contribution of mining activities to the local economy was seen to be tax revenues and foreign exchange receipts rather than developing linkages**² Moreover, because African countries were perceived to be a high or medium risk investment, they **were encouraged to be competitive in their taxes and incentives.**
- iv) **Concerning the environmental consequences of mining activity**, and subsequently, **the social impacts** were in fact much less developed than other aspects of regulatory frameworks, **these impacts were seen as side effects, considered as secondary and marginal** to the positive consequences. It was assumed that they could be regulated by the introduction of **voluntary performance standards for which the responsibility was seen to rest above all with companies** rather than being considered as issues which were clearly interrelated and integral parts of development strategies entailing overriding government responsibility.
- v) And above all else³ most important³ was **the stringent retrenchment of state** which took place, the new delineation between public and private spheres of authority and the transfer of what were previously public responsibilities to private actors. The private sector was to become **owner and operator**³ and the role of government was relegated to that of **facilitator and promoter (regulator and promoter)**³.

Africa's experience over 20 years has been a cumulative process of reform leading to several generations of increasingly liberalised mining regimes.⁴

One should not underestimate the entrenchment of the model which has been introduced notably in existing institutional arrangements and political processes.

A first characteristic which emerged in this regard concerns the **increasingly and explicitly privileged position accorded to the industrial mining sector in the economy.** In fact, it may be shown that in many mineral rich countries, the **industrial mining sector has been favoured over other sectors of the economy to the detriment of the country as a whole.** As a World Trade Organization study noted concerning one West African country, Guinea : "The incentives given to approved mining enterprises are still much more attractive than those for non-mining enterprises under the Investment Code."⁵

¹ World Bank, *Strategy for African Mining*, World Bank Technical Paper no.181, Africa Technical Department Series, Mining Unit, Industry and Energy Division, Washington D.C. World Bank, 1992, p. 16.

² Ibid. p.27.

³ Ibid. p. 53.

⁴ These are analysed in B. Campbell (ed.) 2004. *Regulating Mining in Africa : For Whose Benefit?*. Coll. Discussion Paper 26. Uppsala : Nordiska Afrikainstitutet, 89 p.and B.Campbell. (ed.). 2009. *Mining in Africa : Regulation and Development*. Copublication London : Pluto Press, Ottawa :IDRC, and Uppsala : The Nordic Africa Institute., 284 p.

⁵ World Trade Organisation (WTO). 2005. *Trade Policy Review: Republic of Guinea and Report by the Secretariat (Revision)*. Report no. WT/TPR/S/153/Rev.1. Geneva: Trade Policy Review Body, December 14.p. 54.

Second, the strong retrenchment of the state from the mining sector has been accompanied by an ongoing process of the **reduction of state sovereignty**.

Third, the process of redefining the role of the state in the mining sector and the decrease of its sovereignty more generally, have contributed to its **reduced autonomy and authority, as well as its reduced capacity to influence the evolution of its own structures. States find they can no longer direct or plan : they can only bargain.**⁶

Fourth, particularly in countries where mineral resources are plentiful, the narrowing of the margin of manoeuvre of mineral-rich states and of their policy space in the context of an externally-driven reform process has, in certain circumstances, been accompanied by the institutionalization of **a particular mode of reproducing domestic power relations or a particular politics of mining** often lacking in transparency and accountability.

A fifth and final feature concerns the emergence and prolongation of **particular domestic structural power relations linking African decision makers to powerful foreign actors**, whether corporate, financial, or diplomatic. It is such constellations of influence and the structural relations of power which accompany them, (a locking in) which when unchecked by internal counterforces have in the past at times made possible the signing, occasionally in non-transparent conditions, of the excessively generous tax and legal agreements.

These institutional patterns are now deeply entrenched.

The AMV is therefore not simply about reinforcing capacity, bolstering weak governance or weak institutions as if the problem was an essentially technical or managerial and one about making existing institutions more efficient. It is about a change in paradigm: redefining **who** informs the objectives of the continent's mineral resource development, **what** those objectives are and **redefining strategic national and regional policy measures** to reach them. Moreover, because it is now recognized that there is considerable diversity in institutional forms across industrialized to reach similar results, there may actually be a risk in promoting specific templates as the substance of such reforms.⁷ Hence prolonging past strategies which used the same template to reform African regulatory frameworks, may well undermine the diversity of institutional forms necessary to deliver the same functions in different country contexts.⁸

⁶ In *Rival States, Rival Firms* by John M. Stopford, Susan Strange, and John S. Henley (2001, 14), the consequences of the growth of foreign direct investment on the structural power of states is described as follows: "[...] states' positive power to harness internal resources is decidedly constrained when they try to influence where and how international production takes place. They find they cannot direct; they can only bargain."

⁷ Andrews, Matt. 2008. *Are one best way models of effective government suitable for developing countries? (Or) Do we need a theory of government before we measure government effectiveness?* Prepared for the Oxford Policy Institute. Mimeo.

Chang, Ha-Joon. 2007. *Institutional Change and Economic Development*. London, Anthem Press/UNU Press.

Pagano, Ugo. 2007. "Cultural globalisation, institutional diversity and the unequal accumulation of intellectual capital." *Cambridge Journal of Economics*, Vol.31 (5), pp. 649-667.

⁸ The recommended policy reforms proposed in the early 1990s usually entailed the creation of **five key institutions** each with a specific and well-defined role: a Ministry of Mines, a Department of Mines, (a sub-unit of the Ministry of Mines), a Geological Survey, a Mineral Promotion Agency, and an Environmental Office. The Department of

What are some of the institutional implications for the present?

As opposed to the former essentially monosectoral approach, the *African Mining Vision* foresees, ðA mining sector that has become a key component of a diversified, vibrant and globally competitive industrialising African economy.ö

However, there is no historical experience of industrialisation taking place without appropriate policies. **The right policies and strategies are critical to create the dynamic changes required including building eventual backward and forward linkages** and the possibility of value added processing of minerals. This will require a resolutely multi sectoral approach involving redefined institutional arrangements. One chapter in the report brings this out above all the others: Chapter 8 *Optimizing Mineral-based Linkages* of the ISG Report provides the strategic policy recommendations necessary to spur the impetus for the transformative changes which are required. **Each of the eight major areas of policy reform will require strategic public policies**⁹ without which there will be no transformative change. And this brings us to the most fundamental issue.

Mines would also regulate artisanal mining, limiting associated problems such as poor working conditions, health and environmental impacts, lost government revenues, by recognising and formalising this reality and with realistic regulations concerning the environment, health and safety. World Bank, *Strategy for African Mining*, World Bank Technical Paper no.181, Industry and Energy Division, Washington D.C. 1992. Chapter 6 ðInstitutional Reformö pp. 35-45.

⁹ Policy reforms in Chapter 8 can be summarized as follows.

More consciously and consistently integrating mineral policy into development policy. This involves a shift away from the traditional (practically exclusive) focus on mineral extraction.

Enhancing primary sector integration into the broader economy. Building backward and forward linkages requires complementary strategies, primarily creating the business environment and public sector institutions that foster growth. Second is ð as far as governments can ð setting terms on access to mineral resources that both impose linkage conditions on mineral rights holders and provide incentives for investors to structure projects in ways that deepen the integration of mineral projects into the broader national and regional economy. Reasonable national local content and value-addition milestones need to be incorporated in mining regimes.

Promoting mineral beneficiation before export. The pursuit of downstream processing of minerals before export should not be placed at the top of the national agenda for the minerals industry in isolation. Beneficiation contributes to growth and diversification only when it generates above-average upstream and side-stream linkages, and should not be pursued merely because a country is endowed with mineral resources. Although some countries have used export taxes to promote downstream processing, experience is mixed and such taxes need to be applied judiciously, possibly only after an independent study has indicated that investment in the next value-addition step is feasible. (New trade agreements, particularly the Economic Partnership Agreements with the European Union, are likely to complicate use of this instrument ð chapter 9.)

Directing attention to developing upstream capital goods and service industries. This is critical for employment generation and for generating new products and processes.

Enhancing local linkage development through local participation and empowerment models. Many benefits can flow from local participation and empowerment models.

Extending economic infrastructure. Funding and driving the establishment of economic infrastructure, particularly power and transport, is critical in prudent mineral development.⁹ Policymakers need to maximize the beneficial spillover effects of infrastructure triggered by mining through resource corridors. Planning needs to explore the collateral or integral use by other economic sectors. Mineral infrastructure needs to allow third-party access at non-discriminatory tariffs. Expanded infrastructure will also promote rural development.

The policy recommendations of each one of the chapters of the ISG report point in a similar direction. There is one essential ingredient that is urgently needed in order that they may be implemented: a developmental state.

In contrast to the policies of state retrenchment which have been introduced and which have provoked the development implications which we know and as the Executive Secretary of the UNECA Mr Abdoulie Jannah has suggested, what is needed is an effective developmental state with **ōclear visions of development paths and coherent, consistent and coordinated planning frameworks.ö** Only such states can be at the centre of transforming Africa's economies from dependency on primary commodities to value addition processes which will spur Africa's industrialisation. **This will entail a return to planning** which has been largely replaced by policy prescription which are externally determined. **Economic planning is critically important and if human resources in this area do not exist,** it is essential to **invest in them and create planning ministries or departments that can draft strategic and comprehensive development plans-**

Public involvement is necessary as well for the provision of essential services such as a good transport system and reliable energy supplies, good education and health systems. It is also important that the state participate in strategic industries which will open the path to industrialisation. A greater involvement of the state is critical in other areas such as the taxation system. Rather than be a source only of revenue as in the past, taxation systems can be used as a transformative tool. For example, when tax levels vary inversely with the degree of local transformation, they become an incentive for encouraging local beneficiation.

The role of a developmental state is eloquently summarised by the examples of Asian countries which based their development strategies on infrastructural development, mobilising savings for investment in education, health, agricultural diversification, science, research and development.

Contrary to what is sometimes suggested, the agenda of the developmental state is not about wholesale nationalisations of industries but rather state intervention in strategic industries that will contribute to the transformation of the economy. Public participation in specific industries is

Developing human resources and fostering innovation. Effort needs to be directed to expand higher technical skills required by the minerals industry. Public support is required for innovation in fields related to natural resource exploitation through national innovation systems, such as tax incentivization of local R&D and technical human resource development, as well as the allocation of some resource rents to developing technological linkages.

Pushing regional integration. The gradual movement towards regional integration would go some way in overcoming barriers to establishing linkages, through creating regional common markets (customs unions). African governments need to dismantle the numerous impediments to intraregional trade in order to realize the larger regional markets and to overcome the high barriers to entry that are related to poor economies of scale for many mineral backward and forward linkage opportunities (discussed further in chapter 9). In order to soften currency appreciation (Dutch Disease) and to access regional markets, South Africa's New Growth Path⁹ has mooted creating an African Development Fund to invest in regional infrastructure and so stimulate intraregional trade and investment. (See also, Jourdan, 2010, for a proposal for an African regional development fund to support long-term regional physical and knowledge infrastructure).

In conclusion, successful linkage development relies on simultaneous multi-factor promotion: skills, savings, business performance, governance, pricing, policy making and implementation capacity. It is also premised on maximizing the development impact of a resource endowment by optimizing potential investor market interest in realizing wide-ranging linkages, given the demand for specific resources at a given time.

also of central importance in order that public officials be in a position to exercise oversight. It is a means to ensure that those who are responsible for the management of the sector will be in a position to inform the population and to be accountable to them. In the area of social and environmental impacts, public officials can in fact be assisted by local communities. Once there is in place a clear definition of the social and environmental responsibilities of companies and clear requirements in terms of best practices, new framework for negotiations can be set up which bring together representatives of civil society, the local population, the mining enterprise and public officials and which can then set out recommendations for each of the parties concerned in terms of their responsibilities. By putting emphasis on the empowerment of local communities rather than treating them as passive or simply needing help ó the institutional capacity to monitor impacts by the government could be significantly transformed.

Conclusion. Three challenges

The first concerns the role of corporate actors:

One consequence of the past policies of liberalization of the African mining sector has been the way that **past functions of the state**, already institutionally weakened through structural

adjustment measures, **have increasingly been systematically delegated to private operators**. These include service delivery, rule-setting and implementation and also mediation. While current trends may have allowed governments to shift the locus of responsibility for what were previously considered state functions (clinics, roads, infrastructure, security, etc.) to the private operators of large-scale mining projects and NGOs, and help explain the pressures on companies to introduce corporate social responsibility projects (CSR) in order to gain a social license to operate, such transfers are problematic for several reasons. With regard to the origin of CSR projects, they are most often the result of externally-driven initiatives rather than ideas emanating from a domestic policy process and as integral parts of locally-owned public policies. Moreover, not only do they silence the legitimate, and indeed necessary right of governments to offer services to their populations, a precondition to their being held publicly accountable, they also contribute to obscuring the issue of government responsibility itself. The current sidestepping of the state, by suggesting companies can gain better legitimacy for their operations by offering social services, runs the risk of undermining a precondition for building responsible governments and the basis of democratic practice: the need to hold governments publicly accountable. **Translating the African Mining Vision into action will therefore require revisiting past responses of mining companies and bringing CSR strategies more closely in line with needed policy shifts in order that such initiatives are integrated into transformation public policies - a precondition for them to become sustainable.**

The second concerns external multilateral and bilateral institutions.

As is now widely recognised: **“After several years of budgetary reductions, Government institutions lack the human and financial resources to enforce the law, especially in the context of decentralization”**.¹⁰

In the context of more recent initiatives, reforms have been proposed by the multilateral financial organisations to improve the administrative capacity of states in the mining sector, as for example through recommendations with regard to reinforcing institutional capacity, adopting strategic plans reinforcing governance, transparency, infrastructure, telecommunications, energy, and roads, all of which are critically important. **What is surprising is the apparent absence of recognition** of the need to reinforce the **“developmental capacities”** of states. In this regard, there appears to be little attempt to respond to the observations made, for example, in 2005 by the Commission for Africa which recognised not only the legitimacy of state interventions, but also the need to reinforce the capacity of states in Africa so that they might assume a developmental role:

“Weak institutional capacity prevents the state from undertaking its responsibilities effectively, whether planning and budgeting, managing development assistance, providing services or monitoring and evaluating progress.”¹¹

While there is discussion as to how to improve administrative capacity and how development can be achieved by promoting activities **at the community level**, which is without doubt important, much less emphasis if any appears to be given to the role which states need to assume in ensuring a positive impact on social and economic development at **the national level**. This is where the emphasis needs to be placed. Moreover, it becomes a circular argument and rather counterproductive to call for the reinforcing of local institutional capacity if the nature of past and ongoing reforms and practices which have weakened local capacity to promote development at the national level, notably by transferring responsibilities to mining companies, are not questioned.

The third challenge concerns African governments.

Translating the *African Mining Vision* into action will above all require **political commitment** and **political will** on the part of the African governments concerned. This is **where the empowerment of not only communities affected by mining becomes so important but also the sharing of a common vision by the population as a whole of mineral rich countries** and one which foresees: **“A mining sector that has become a key component of a diversified, vibrant and globally competitive industrialising African economy”** for the benefit of the country and future generations **becomes an essential ingredient**.

¹⁰ World Bank, Project Appraisal Document for a Mining Sector Reform Project, Report No. 17788-MAG, Washington, DC, June 2, 1998, p. 6.

¹¹ Commission for Africa, *Our Common Interest, Report of the Commission for Africa*, U.K, 2005, p. 128.

The *African Mining Vision* is therefore also about reinforcing democratic political processes and appropriate institutional arrangements needed to support them. Furthermore, because the Vision entails moving beyond seeing mining essentially as a source of revenue so that it serves as a catalyst to build intersectoral linkages, notably by integrating mining activities into industrial policies, this will necessarily require that governments have policy options.

For this to happen it is key that **countries not be obliged to forego policy space**. For example, with a view to providing additional certainty to investors, many developing countries have gone beyond opening up to foreign investment in extractive industries by locking policy changes into fiscal stability clauses as well as by signing various international investment agreements (IIAs). The most important international investment agreements have been **bilateral investment treaties (BITs)** on the promotion and protection of foreign investment. In many mineral rich countries, the number of bilateral investment treaties has increased rapidly during the past decade.¹² In this regard, most countries today offer national treatment to domestic and foreign investors with regard to mining rights ó but there are exceptions.¹³

Clearly there is a need to reset discussions concerning the developmental role of mining in a broader context as does the ISG report which takes account of trade negotiations and other areas of policy decision which may condition or limit policy space.

These challenges may seem formidable. However, as illustrated by the AMV, the African continent has drawn the lessons of this experience and has an Action Plan. It has lessons to share to which the rest of the world should be listening.

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¹² United Nations Conference on Trade and Development (UNCTAD), *World Investment Report*, Geneva, 2007, p. 161.

¹³ For example, in Ghana, small scale gold mining is reserved solely for Ghanaians. It is interesting to note that in China, foreign parties are prohibited from exploration or securing mining rights to certain minerals, and are required to have a Chinese domestic partner in order to acquire exploration or securing mining rights to certain other minerals. *Ibid.*