

# Mining in Africa

## Regulation and Development

Edited by Bonnie Campbell



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# ACRONYMS AND ABBREVIATIONS

ANAPI	National Agency for the Promotion of Investments (DRC)
APPI	Agreement to Promote and Protect Investments
ASM	Artisanal and Small-scale Miners/Mining
BCMM	Madagascar Mining Registry Office
CAMI	Mining Registry Service (DRC)
CBG	Compagnie des Bauxites de Guinée
CEPS	Customs, Excise and Preventive Services (Ghana)
CIAT	International Committee for the Accompaniment of the Transition (DRC)
CMRN	Comité militaire de redressement national (Government of Guinea)
COPIREP	Steering Committee on the Reform of Public Enterprises (DRC)
DCPE	Political Economy Framework Document (Madagascar)
DDI	Diamond Development Initiative
DMC	Diamond Market Company
DNGM	Direction nationale de la géologie et des mines (Mali)
DRC	Democratic Republic of Congo
DSRP	Poverty Reduction Strategy Document (Madagascar)
EIR	Extractive Industries Review
EITI	Extractive Industries Transparency Initiative
ERP	Economic Recovery Programme
FARDC	Armed Forces of the Democratic Republic of Congo
FDI	Foreign Direct Investment
HDI	Human Development Index
HIPC	Heavily Indebted Poor Countries
IBRD	International Bank for Reconstruction and Development
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IF	Integrated Framework for Trade-Related Technical Assistance to least-developed countries
IFC	International Finance Corporation
IGM	Madagascar Gemology Institute

## ACRONYMS AND ABBREVIATIONS

ILO	International Labour Organization
IMF	International Monetary Fund
LGIM	Law on Large-Scale Mining Investments (Madagascar)
MARG	Mission d'Aménagement Régional de la Guinée
MDGs	Millennium Development Goals
MEM	Ministry of Energy and Mines (Madagascar)
MIGA	Multilateral Investment Guarantee Agency
MONUC	United Nations Mission in the Democratic Republic of Congo
NCOM	Ghana National Coalition on Mining
NSEIA	National Strategic Environmental Impact Assessment
OBK	Office des Bauxites de Kindia
OECD	Organisation for Economic Co-operation and Development
OFAB	Office d'Aménagement de Boké
OMNIS	National Mines and Strategic Industries Office (Madagascar)
ONE	National Environmental Office (Madagascar)
PGEF	Project Environmental Management Plan
PGRM	Project for the Governance of Mining Resources (Madagascar)
PIRN	Programme intérimaire de redressement national
PMMC	Precious Minerals Marketing Corporation
PREF	Programme de réformes économiques et financières
PRGF	Poverty Reduction and Growth Facility
PRSM	Project for the Reform of Mining Sector (Madagascar)
SAESSCAM	Small-Scale Mining Technical Assistance and Training Service for Small-Scale Mining
SAP	Structural Adjustment Programme
SEMOS	Société d'Exploitation des Mines d'Or de Sadiola
UNDP	United Nations Development Programme
UNIDO	United Nations Industrial Development Organization
WACAM	Wassa Association of Communities Affected by Mining
WBG	World Bank Group
WTO	World Trade Organization

# INTRODUCTION

*Bonnie Campbell*

This study comes at a time that could be described as a turning point regarding African mining regimes. Through the analysis of the reform of past regulatory frameworks and the impact of implementing the resulting policies in the mining sector in Africa, the case studies in this book seek to throw light on some of the central issues in the continuing process of revision of mining legislation.

Since the beginning of the current decade, the regulatory frameworks introduced in mineral-rich countries of Africa during the 1980s and 1990s have been widely called into question. In an increasing number of cases, there have been calls for mining codes to be revised, mining contracts to be renegotiated and remedial measures of numerous kinds to be introduced.

There are many reasons for this but two stand out as particularly important. First, there is mounting awareness of the inability of past reforms of mining legislation and the conditions surrounding their implementation to meet the development challenges facing many African countries. Second are issues of legitimacy and responsibility raised by the externally driven nature of the reform of the regulatory process.

As documented (Campbell, 2004), throughout the 1980s and 1990s, the reform of regulatory and legal frameworks supporting greater harmonisation and stability in the mining sector in Africa has contributed to creating a more favourable environment for foreign investment. In the process, the reform measures have entailed redefining the role of the state so profoundly that there are few historical precedents. In large part because of this, the reforms have had the effect of reducing institutional capacity, as well as driving down norms and standards in areas of critical importance for social and economic development, and the protection of the environment in many countries in Africa in which mining activities take place. Strong evidence leaves

little doubt that the latter tendency continues to be the case in an increasing number of situations (Campbell, 2006; UNCTAD, 2005).

Present trends raise pressing questions concerning the conditions that have surrounded the definition of the 'development goals' which are being implemented as well as the role and responsibility of the agents and actors contributing to shaping this process. Consequently, if the issue of lasting and sustainable economic development is to be addressed, this implies taking into account a broadened perspective in order to consider the role of the different actors concerned and the terms on which the mineral-rich countries of Africa have been opened up to foreign investment. In summary, attention needs to be paid to *by whom* and *to what end* the development agenda has been formulated. This entails considering not only the role of the private sector and specific companies, but also the role that bilateral agencies and multilateral financial institutions, and the countries of origins of the companies present, play in shaping the investment environment and the norms which regulate it. This brings us to a second area of concern.

If meeting the development challenges of the mineral-rich countries is at the heart of discussions on regulating mining in Africa, issues regarding to what end and by whom past trends could be reformed introduce another dimension. This concerns the necessity for mining companies to ensure the legitimacy of their activities, and consequently raises the question of the responsibility for providing such legitimacy through the introduction and enforcement of norms and standards. Problems of legitimacy, however, have been complicated by the fact that mining activities often take place in what have been described far too quickly as 'fragile states' (North-South Institute, 2008). Paradoxically, such situations are revealing of a process of the weakening of institutional capacity and state sovereignty, caused, among other factors, by long years of structural adjustment reforms. Past reforms in the mining sector have tended to be closely linked to the conditions identified by multilateral financial institutions as a prerequisite for obtaining further funding. As a result, rather than resolving the issue of legitimacy, what can be described as an externally driven reform process may well have, in itself, further contributed to undermining the legitimacy of the governments of mineral-rich countries that are the object of such reforms.

The external origin of the reform process responsible for the new regulatory frameworks introduced into African countries over the last 20 years has had other far-reaching implications for governance.<sup>1</sup> In what follows, this notion, which is as omnipresent as it is polysemic

and ambiguous, will be used in the broad sense as referring to modes of political and social regulation, including their political dimensions such as political accountability for the policy process and issues of state legitimacy in the countries concerned.<sup>2</sup>

In the face of the disappointing results of activities in the mining sector for the local economies of many countries of Africa, since the end of the 1980s, the tendency on the part of multilateral financial institutions has been to point to internal factors such as corruption, lack of transparency and 'weak governance' as the key to the explanation. Although I do not want to minimise the importance of these factors, other considerations need to be taken into account.

A unilateral and very preponderant emphasis on corruption and lack of transparency within governments runs the danger of masking the fact that such situations are often facilitated and even perpetuated by relations that are characterised by a lack of transparency initiated by powerful external actors and by relations that mining companies at times establish with certain local decision makers and political leaders. Situations of lack of transparency and of lack of accountability appear to be particularly likely to occur in those countries that are well endowed with mineral wealth, such as Guinea and the Democratic Republic of Congo (DRC).

An overriding emphasis on internal processes characterised by a lack of transparency, coupled with essentially administrative approaches to reform in favour of greater transparency and accountability, if taken alone, run the danger of treating the symptoms of a particular 'politics of mining' and not the relations of influence and power which make such dysfunctional processes possible.

The complexities of issues referred to briefly here concerning 'governance', and of the challenges for meeting development objectives, point to the need for in-depth and country-specific treatment in order to understand the results of past reforms and to ensure that the future measures will not contribute to prolonging past trends (Campbell and GRAMA, 2003).

Consequently, in an attempt to contribute to continuing debates and in the context of the revision of past mining regimes on a wide scale, the objectives of this book are to:

- illustrate certain continuing patterns of social, economic and environmental implications of current activities in the extractive sector in Africa
- underline the need to introduce more appropriate legal, fiscal



and regulatory frameworks for mining and to do this from a developmental perspective

- raise the importance of reinforcing the institutional and financial capacities of the countries concerned to ensure that they are in a position to monitor, to enforce and if necessary, to introduce remedial measures.

In order to analyse current trends against a set of credible benchmarks, this book uses the three main areas of recommendations of the World Bank Group's (WBG's) Extractive Industries Review (EIR) which was made public in December 2003 (EIR, 2003a; 2003b). The response of the WBG in 2004 to the EIR recommendations was a pale rejoinder to what had been proposed (WBG Management Response, 2004). Whether the recommendations, had they been accepted, might have significantly altered subsequent developments is not the object of this book. What this volume is about is documenting particular patterns of resource extraction and providing an updated analysis of some of the consequences they imply. As the studies in this book illustrate, certain recurrent problems which brought about the EIR are still very much with us at present. The EIR recommendations consequently provide a useful and well-founded framework for analysing the social, economic and environmental implications of current activities in Africa in one sector of activities addressed by the EIR, activities concerning mining. The issue of whether it might be useful to go beyond the recommendations of the EIR in certain areas is discussed briefly in the Conclusion.

For different reasons, and notably because they are very centrally placed and capable of mobilising important resources in fulfilling their mandate, the Bretton Woods Institutions (the World Bank and the International Monetary Fund – IMF) have played an important role in responding to the challenges faced by activities in the extractive sector, and have been even more successful in this regard than industry responses. The uniqueness and characteristics of the resulting WBG safeguard policy regime have been analysed by David Szablowski in order to explain the WBG's success in formulating a regime capable of achieving its strategic objectives and becoming a site of global norm production (Szablowski, 2007). As a result of the role of leadership that these institutions have assumed, there have been, and continue to be, a steady flow of initiatives concerning the mining sector emanating from the multilateral arena in a continuing process that Szablowski refers to as contributing to the emergence of a transnational legal framework. The World Bank regime however:

## INTRODUCTION

proposes a schema of substantive rights and duties and a governance structure that is markedly different from that provided by most states. Unlike corporate self-regulatory initiatives, the World Bank model proposes to give substantive and procedural definition to the term ‘social responsibility’ and thereby both create new obligations and close off further claims. Accordingly, the model represents an influential attempt to arrive at a new, post-liberal social contract with regard to the development of large-scale projects in the Global South. (Szablowski, 2007: 100)

While Szablowski analyses the emergence of a new social contract from the standpoint of evolving modes of regulation and legitimacy, the point of entry to the same process proposed in this book is complementary but situated at a more global level. Adopting a political economy perspective, our focus is on the interaction between particular models of development and modes of governance. In this regard, in view of the central role played by the Bretton Woods Institutions in stimulating investment in the extractive sector more generally<sup>3</sup> and in crafting the reforms for fiscal and regulatory frameworks (involving new norms and a redefinition of responsibilities for the mining sector in Africa), it is of particular interest to see how they have responded to current challenges. Further to mounting criticism of its role in the sector, at the World Bank’s annual meetings in September 2000, its president James Wolfensohn committed to launch a review process to evaluate the Bank’s lending to the extractive industries and determine whether this lending fostered sustainable development and poverty alleviation. In June 2001, Mr Wolfensohn appointed Dr Emil Salim, a former Indonesian environment minister under President Suharto, a former director of Indonesia’s largest coal company, and chair of the 2002 UN World Summit on Sustainable Development (WSSD) in Johannesburg, to direct the independent review.<sup>4</sup>

The EIR was subsequently launched by the joint International Finance Corporation (IFC)–World Bank Mining Department and the Oil, Gas and Chemicals Department. Its terms of reference were defined as follows:

1. To better obtain and understand the views of stakeholders about the best future role of the World Bank Group in the extractive industries if it is to promote sustainable development and poverty alleviation;
2. To identify possible areas of consensus on the role of the World

- Bank Group and the relevant issues, and to identify significant alternative or dissenting views in this respect; and
3. To make recommendations on the basis of such better understanding to focus, redesign, or reconsider, as needed, future WBG policies, programs, projects, and processes in the sector (EIR, 2003c: 2).

Over the two following years, the EIR consulted with many stakeholders, including representatives of civil society, labour, industry and governments. The Secretariat held regional consultations in Latin America and the Caribbean, Africa, Asia-Pacific and Central and Eastern Europe. The EIR also conducted independent research analysing the social and poverty impacts of the extractive industries. Throughout the process, it should be noted that the WBG was an active participant in the EIR.

In December 2003, Dr Salim presented President Wolfensohn with the *Extractive Industries Review Final Report: Striking a Better Balance* (EIR, 2003a). The EIR envisioned a role for the WBG in extractive industries, but recommended important changes. The EIR recommendations were put forward in an attempt to address the failure of investments in the extractive industries to improve conditions for the poor, local communities, indigenous peoples and the environment, or to protect basic rights. The proposals were addressed to the WBG as a single institution since each of its arms, the International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), supports the extractive industries through a variety of mechanisms.

The central recommendations called on the WBG to do the following.

#### Governance

Strengthen governance first so that countries are able to withstand the risks of major extractive developments. Develop explicit governance criteria, transparently and in a participatory manner, that should be met before investments for the extractives industry.

#### Pro-Poor Policies

- Help client countries assess the advantages and disadvantages of the oil, gas and mining sectors compared with other development options and undertake a comprehensive options assessment before a project is supported.

## INTRODUCTION

- Support projects that benefit all affected local groups, including vulnerable ethnic minorities, women and the poorest.
- Provide an equitable share of the revenues to local communities.
- Ensure that poverty reduction plans are in place prior to project start.
- Support projects with voluntary resettlement. Resettled groups must be substantially 'better off'.
- Ensure that public health services associated with projects are available to all in the vicinity.
- Require health impact assessments to be conducted during project preparation.

### Human Rights and Indigenous People

- Develop system-wide policy integrating human rights into the safeguard policies and establish a human rights unit.
- IFC/MIGA should assess human rights records of sponsor companies prior to involvement.
- Endorse and comply with all four core labour standards.
- Ensure that borrowers and clients engage in consent processes with indigenous peoples and local communities directly affected by oil, gas and mining projects, to obtain their free prior and informed consent.
- All agreements with indigenous people and affected communities should be covenanted in project agreements/contracts.
- Ensure that the revised indigenous peoples policy is consistent with international law and agreed upon by a consensus of indigenous peoples.
- Convene a legal roundtable discussion prior to approval of new indigenous peoples policy.
- No support for extractive industries in areas of conflict or at high risk of conflict.
- Ensure that local grievance mechanism is in place for all extractive industry projects.

### Environment

- Increase support of renewable energy lending by 20 per cent annually.
- Ban the use of riverine tailings and suspend all support for projects with submarine tailings pending outcome of independent studies.
- Develop tailings criteria and revise cyanide guidelines to be more

consistent with UN and EU guidelines and minimise support for mines using toxins, like cyanide, and promote safer substitutes.

- Clarify the ban on financing of extractive industry in protected areas as defined by the UN Natural Habitats Policy, or as designated by national or local governments.
- Use safe, modern and well-run vessels to carry oil or hazardous cargoes.
- Establish clear guidelines on mine closures and condition financing on the setting-aside of sufficient closure funds, which should be 'ring-fenced' even after the WBG's exit.
- Emergency response plans should be in place at project outset and conform to best practices.

#### Disclosure and Transparency

- Disclosure of (revenue) payments at company and government level.
- Vigorously pursue revenue transparency at country and company level.
- Disclosure of project contracts and agreements, such as host government agreements (HGAs), monitoring documents, economic, financial, environmental and social assessments.
- Environmental and social obligations should be covenanted in loan and project agreements and those should be disclosed.
- Documents should be made available in local languages, in a timely and culturally appropriate manner.
- Produce and disclose a net benefit analysis for all projects.
- Establish an information ombudsman to oversee application of the disclosure policy and decisions about confidentiality.

#### Institutional and Procedural Change

- Phase-out support for oil by 2008, and formalise a moratorium on lending for coal projects immediately.
- Require comprehensive Environmental and Social Impact Assessments, including health impacts, for all policy lending affecting the extractive industry sectors in countries with significant EI or anticipated growth in EI sectors.
- All extractive industry projects should be classified as Category A except where there is a compelling reason to the contrary.
- Create staff incentives to ensure safeguard policy compliance and achieve poverty alleviation impacts.

- Increase the number of staff trained as human rights, social and environmental specialists.
- Involve environmental, social, human rights and poverty specialists early in the project cycle.

### THE CHAPTERS IN THIS BOOK

The choice of chapters in this book and the treatment given to the subject matter in each of them reflect a desire to explore, on the basis of country case studies, the nature of the problems identified by the EIR report and addressed by its recommendations. The report was organised around three main areas of recommendations which were set out as the enabling conditions (Bruil, 2003).<sup>5</sup> If adopted, it was suggested that these recommendations would allow extractive industries to contribute to poverty alleviation through sustainable development and the WBG to play a positive role. The three main areas were:

- pro-poor public and corporate governance, including proactive planning and management to maximise poverty alleviation through sustainable development
- much more effective social and environmental policies
- respect for human rights.

Although the recommendations in each of these areas, and detailed below, were directed specifically at the WBG, in view of the process of the transnationalisation of norms and standards that has taken place under its leadership over the last 20 years, it is useful to consider these recommendations as general benchmarks of relevance beyond WBG operations. Consequently, it will be suggested here that they represent a useful framework in which to reset the case studies in this book which are about the mining sector in five African countries.

Before summarising briefly how each of the chapters addresses a particular area of the EIR recommendations, it is important to say a word concerning the choice of the country case studies, which may at a first glance appear somewhat arbitrary. The first point of explanation must be to underline that the objective of this volume is in no way to provide an overview of mining in Africa, but rather to illustrate, through recent and original research, the developmental implications of the past reform process in the mining sector in selected countries, by using as a framework the areas of concern addressed by the EIR. The absence of

studies on the mining sector in countries such as South Africa, Zambia or Namibia must be seen in this perspective, and in no way as a simple omission or even less a lack of recognition of the importance of these experiences. The contrary is true, and in fact the richness of existing studies on these better known cases underlines their importance.

Second is the conviction of those who have contributed to this volume not only of the centrality of the relationships between regulatory frameworks, institutional arrangements and development outcomes, but also that there are key lessons that can be learned from past experiences in this area if a historical perspective and political economy approach is adopted.

Finally, the choice of the chapters reflects the emergence of a new generation of researchers working notably on Francophone countries of Africa, on which studies are too rarely available to the Anglophone public and which help to shed light on overall trends. For beyond the specificities of each historical experience of these seemingly disparate development experiences, when contextualised and seen as part of a common historical process of reform, there is in fact far more reason to treat them side by side than might appear at first glance. They bring out and are illustrative of common traits in a process of reform, the importance of which to, and implications for, the countries concerned have to a large extent been overlooked.

#### Promoting Governance that is Favourable for the Poor

The first two chapters in this book, on Ghana and Guinea, explore the extent to which mining activities have been undertaken and the revenues derived from mining have been channelled in such a manner as to contribute to meeting goals of poverty alleviation and sustainable development. As will be seen, closely associated with such issues concerning particular patterns of revenue flows are those related to particular modes of 'governance'.

With regard to this first area of consideration, and in anticipation of the discussion to come in the chapter on Guinea, the EIR suggested that the more specific blocks of governance required for extractive industries should include the following:

- promote transparency in revenue flows
- promote disclosure of project documents
- develop the capacity to manage fluctuating revenues
- develop the capacity to manage revenues responsibly
- help governments develop modern policy and regulatory frameworks

## INTRODUCTION

- integrate the public in decision-making processes at local and national levels (EIR, 2003d: 2).

The Report recommended that:

when the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) consider investing in an oil, gas, or mining project, they need to specifically assess the governance adequacy of the country as well as the anticipated impacts of the project and then only support projects when a country's government is prepared and able to withstand the inherent social, environmental and governance challenges.

(EIR, 2003d: 2)

The Report goes on to suggest:

IFC and MIGA should only support projects that benefit all affected local groups, including vulnerable ethnic minorities, women and the poorest members of the community. They should decline to finance projects where this is not the case or should redesign them to guarantee that the standards of living for local groups clearly improve.

(EIR, 2003d: 2)

What is of particular relevance to the country case studies that follow in this book is the recommendation concerning strengthening governance *first*, before large-scale activities are promoted, in order that countries are able to withstand the risks of major extractive developments. With regard to recommendations at the country level:

in light of the potential of artisanal and small-scale mining (ASM) to lessen the burden of poverty, IBRD and IDA should help governments develop policies that recognize this as a distinct sector and that distinguish between community-based and itinerant miners, giving communities clear priority over mining rights.

(EIR, 2003d: 3)

Concerning the issue of revenue flows and revenue management (a central part of the analysis presented in the first two chapters of this book) the first three chapters of the EIR Report contain precise recommendations in this regard including the following specific points:



- It is recognised that there is a risk that benefits and costs arising from extractive industries are shared unevenly. Although local communities bear the negative social and environmental impacts of extractive activities, they may not receive much of the revenues (EIR, 2003a: ch. 1). As will be seen, this point is raised in each of the five case studies.
- Again at the national level, it is suggested that the WBG has not given enough attention to helping governments develop strong pro-poor governance, especially to manage revenues prudently and transparently (EIR, 2003a: ch. 2). This recommendation has particular resonance for the experiences of Guinea and the DRC.
- It is recommended that the IFC and MIGA should ensure that there is an open, public planning process to distribute revenues in any proposed oil, gas and mining projects fairly, whether this is provided for in the national legal framework or established on a project-specific basis, and that the local community has equal access to the information it needs for meaningful participation in negotiation processes. Revenue and expenditure information should also be publicly available during project implementation (EIR, 2003a: ch. 3). As the Guinean case study will illustrate, whether there is direct support from the IFC and MIGA or not, such considerations are of direct pertinence for developments in the country's mining sector.
- Finally, and of particular relevance to the experiences of both Ghana and Guinea, it is recommended by the EIR that revenues should be shared among local, regional and national governments. Regional governments have specific demands directed to them in terms of planning and addressing such issues as in-migration and maximising development impacts through infrastructure creation region-wide. An equitable share of the revenue should be provided to local communities. The WBG, it was further recommended, should consider 'direct' or 'local and regional' poverty alleviation goals as mandatory for the extractive industries projects it finances (EIR, 2003a: ch. 3).

## Mitigating Negative Social and Environmental Impacts

The second enabling condition identified by the EIR that would allow industries in this sector to contribute to poverty alleviation through sustainable development (the area discussed in the chapters on Mali and Madagascar) involves a strengthening of the environmental and social components of the WBG interventions in this sector. The report identified the following series of key areas in its recommendations:

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- Require Integrated Environmental and Social Impact Assessments. It is recommended in the Report that the ‘WBG should take a holistic, multidimensional approach to assessments, identifying cumulative impacts of projects and socioeconomic linkages to environmental issues. Social impacts should be fully identified, including health impacts and projects’ effects on vulnerable groups.’ Further, it is suggested that a ‘strategy for impact prevention, minimisation, and mitigation is needed’. It is also recommended that ‘Extractive industry projects should be classified as Category A projects – likely to have significant adverse environmental impacts – unless there are compelling reasons to the contrary’ (EIR, 2003d: 3).<sup>6</sup>
- Updating and fully implementing the Natural Habitat Policy.
- Updating and fully implementing the Resettlement Policy.
- Revising the Disclosure Policy.
- Developing sector-specific guidance for tailing disposal, waste management and the use of toxic substances.
- Developing guidelines for integrated closure planning.
- Developing guidelines on emergency prevention and response.
- Addressing the legacy of the past (EIR, 2003d: 5).

On the critically important issue of enforcement (which is addressed in the chapters on Mali and Madagascar), it was pointed out in the EIR recommendations (EIR, 2003a: ch. 2) that the WBG safeguard policies that are in place were often not supported by effective compliance mechanisms. Furthermore, project screening was often considered inappropriate, sometimes resulting in projects being incorrectly put at a lower level. The effectiveness of the safeguard policies, continued the EIR report, was consequently jeopardised further by weak supervision, monitoring and reporting.

### Respecting Human Rights and Avoiding Violations in this Area

The third key EIR area of recommendation regarding WBG involvement in extractive industries concerns respect for human rights.

The EIR received many testimonies concerning the military and police being involved in securing company control over territory and protecting their operations. In other cases, companies were reported to be using private militia. When conflicts arise between corporations and local community interests, human rights abuses and violations are often reported.

The EIR received reports of alleged human rights violations ranging

from intimidation, torture, kidnapping and detention to rape and killing. Women and children are often the most severely harmed victims. According to information received by the EIR, the incidents of human rights violations are mostly not acknowledged by governments and courts in many developing countries. Sometimes they are acknowledged, but such cases rarely received any compensation, creating deep resentment and distrust among communities toward extractive companies as a whole. Such situations are documented by the experience of the DRC, as is seen in Chapter 5 which analyses the issue of human rights in relation to mining activities in that country.

The EIR underlined that the 'WBG and its clients have obligations under international law to promote, respect and protect all human rights' (EIR, 2003d: 5). The EIR therefore recommended that the WBG should develop a system-wide policy that integrates and mainstreams human rights into all areas of WBG policy and practice, and that the WBG policies and operations must be, at a minimum, consistent with its obligations, as a subject of international law, in relation to international human rights law.

Further, it was recommended that the WBG should ensure that it does not undermine the ability of its member countries to faithfully fulfil their international obligations, and that it should not facilitate or assist violation of those obligations. In order to permit careful monitoring, the EIR recommended that the WBG 'should systematically incorporate experienced, independent, and reputable third parties to verify the status of human rights in all relevant projects' (EIR, 2003d: 5). In this regard 'A central Human Rights Unit is essential, with regional counterparts, together with a clear policy and a mandate for monitoring, verification, and transparent annual audits' (EIR, 2003d: 5).

Regarding labour relations (given WBG endorsement of the core labour standards (CLS) of the International Labour Organization (ILO) as being consistent with and supportive of the institution's poverty alleviation mandate), IBRD and IDA should, according to the EIR recommendations, also adopt the CLS as a contractual requirement for project financing by including them as mandatory elements of the WBG's Standard Bidding Document. IFC and MIGA should adopt all four, not just two of the core labour standards as part of their safeguard policies. The WBG should work with governments, trade unions, industry groups and other organisations, as well as the ILO, to promote the implementation and enforcement of the standards.

Concerning other rights-related issues, it was recommended that

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IBRD and IDA should also work to clarify and strengthen where necessary the legal basis for resource and tenure rights. Indigenous peoples and many other communities have felt the negative impacts of extractive industry developments:

Their resettlement should only be allowed if the community has given *free prior and informed consent*, as a result of a consent process, to a proposed project and its expected benefits for them. Indeed, the WBG should not support extractive industry projects that affect indigenous peoples without prior recognition of and effective guarantees for their rights to own, control and manage their lands, territories and resources.

(EIR, 2003d: 5–6, our italics)

It was recommended that the WBG should make explicit the human rights basis for each safeguard policy. Where a policy might lie outside international human rights law, it should be brought into line with current thinking and standards. The safeguard policies should become an explicit tool for ensuring that the WBG respects human rights, and the staff in extractive industries should receive adequate training to be able to implement them in a manner consistent with applicable human rights standards. Adoption of and demonstrated compliance of human rights principles should be a prerequisite for companies seeking WBG support for extractive industries (EIR, 2003a: ch. 3).

Finally, it was recommended that the WBG should adopt a rights-based approach to development and ensure that its support for projects is directed towards fulfilling international guaranteed human rights. In particular, it should address power imbalances that affect the full exercise and enjoyment of all human rights by the poor and most vulnerable (EIR, 2003a: ch. 3).

## THE WORLD BANK GROUP MANAGEMENT RESPONSE TO THE EIR

The WBG Management Response to the *Extractive Industries Review* was made public on September 17, 2004.

The starting point of this report was to reiterate that ‘The most important role of the World Bank Group (WBG) is to help the poorest countries build capacity, grow, and reduce poverty’ (WBG Management Response, 2004: 1). The report goes on to state:

WBG investment in EI has been selective. For some time, the WBG has encouraged the development of new EI capacity by investors within an appropriate framework of government oversight and regulation .... WBG financing support of private investment has been focused mainly on projects in countries perceived by investors as risky, and where the WBG has been able to bring value not available in the market place, for example, in terms of environmental safeguards and revenue transparency.

(WBG Management Response, 2004: 1)

Although at the time of the writing of the report, ‘WBG EI investment currently accounts for less than 5 percent of its total annual investment, and an even smaller share of global new investment in EI’, the influence of these institutions stretches beyond financing activities for, as the Management Response notes:

In addition to financing, the WBG is active in helping governments create appropriate frameworks for the successful development of their resources and in developing capacity to better manage EI and related issues. WBG safeguard policies and partnership activities have been influential in helping guide the policies and behavior of others.

(WBG Management Response, 2004: 1)

A central issue considered in the chapters that follow is to examine what are put forward as ‘appropriate frameworks for the successful development of their resources’ and what models of governance have accompanied the reforms that have been introduced in this area.

Further to the WBG’s initial Management Response to the EIR (WBG Management Response, 2004; IFC, 2004a), this document was followed by a series of yearly updates, *Implementation of the Management Response to the Extractive Industries Review* (WBG, 2005; World Bank et al., 2006, 2008). Although these are not the focus of analysis in this book, several points can be made which explain why attention rests less with the responses than with the initial recommendations of the EIR.

The first is to underline that the WBG’s Management Response was, as has been noted, what can only be described as a pale reflection of what had been proposed by the EIR Review. There were major revisions such as the abandonment of the recommendations to refrain from promoting investment in zones of conflict or the modification of free prior and informed ‘consent’ to the notion of ‘consultation’. More generally, what transpires from the Management Response is a

priority given to the mandate of the IFC and its role of promoting investment in the extractive sector according to the short-term logic of return to capital invested, as opposed to the developmental concerns which the mandate of the World Bank confers on this institution.

For the purpose of the discussion that is at the centre of this collective study, two further points are of particular importance. Both relate to the critically important role that the multilateral institutions continue to assume in determining the conditions under which activities in the extractive sector are carried out. The first is that in the context of the price increases for mineral resources during the current decade, the positioning and role of the WBG have become all the more important. In this context, in 2007, Africa was by far the leading region for overall WBG financing (40 per cent), followed by South Asia (19 per cent), Europe and Central Asia (17 per cent) and Middle East North Africa (14 per cent) (World Bank et al., 2008).

Stimulated by the high levels of metal and oil prices and the resulting boom of activities in the extractive sector, the demand for increased financing from the WBG for projects has remained high. This can be illustrated by the fact that in 2007, the WBG investment in the extractive sector was US\$776.8 million, of which IFC involvement accounted for 86 per cent (World Bank et al., 2008: 7).<sup>7</sup>

Second, while the support given by the WBG to encourage the expansion of mining activities in mineral-rich countries takes the form of financial investments, it also includes technical and administrative assistance which has clearly had an impact on shaping the reforms in the countries that are recipients of this kind of support. Consequently, although the more recent tightening of capital available for investment may signal an important quantitative downturn in activities, with a duration that it is hard to predict, the qualitative impact of the WBG policies in resource-rich but indebted countries of Africa must be distinguished to a certain degree from the trajectory of commodity prices and capital markets.

It will be argued that at least as important as the financial and technical support that the WBG gives to promoting investment in the mining sector, is the role that it plays in the conceptualisation and the harmonisation of the regulatory frameworks. This latter aspect introduces an eminently political dimension to the initiatives encouraged by the international financial institutions (IFIs) in promoting activities in the extractive sector. To give but one example, that of the IFC and how it describes its role in improving access to finance, a recent report notes, 'Leasing is a new service in Africa,

and IFC's goal is to create standardized legislation and regulation throughout the continent to support regional investment and market development' (Engel et al., 2006: 17).

Therefore, an evaluation of the role that the multilateral financial institutions assume in the continuing process of shaping the conditions under which extractive industries take place should by no means be limited to their financial contribution, and as a result, evaluated primarily in terms of the amount of funds invested. Such an evaluation also needs to consider the conditions under which institutional reforms are proposed and mining projects are designed, implemented and monitored, as a result of having been initiated in the context of the regulatory frameworks and development programmes approved by these institutions. This is particularly important because, in an attempt over the last decade to renew thinking and policies in this area, the WGB has modified the manner in which its proposals are presented. The emphasis has increasingly been formulated in terms of meeting objectives of efficiency and performance standards. These are monitored on the basis of meeting specific technical and administrative criteria, which in turn are associated with institutional reforms designed to conform with a particular formulation of 'good governance'. What remains to be documented and analysed are the interconnections between the evolving discourse around a particular governance agenda on the one hand, and the development model encapsulated in the reforms recommended to mineral-rich countries of Africa, on the other.

In many ways, the recommendations that came out of the EIR went further than previous attempts to clarify these interconnections. As a result, while by no means claiming to be a complete or definitive blueprint for change, the set of concerns that the EIR identified, and the proposals it advanced in response to them, provide a useful background for the studies in this book.

## CONCLUSION

The ultimate goal of the EIR was described as proposing:

[T]o raise social and environmental considerations so they are balanced with economic considerations in efforts at poverty alleviation through sustainable development. [And as noted, it was also suggested that the recommendations] strive to a human rights-based development.

(EIR, 2003d: 7)

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Beyond proposing specific solutions that could realistically be implemented in response to the problems identified, the set of recommendations taken as a whole is of interest, as it makes clear that to limit reforms to simply implementing better norms and standards is clearly not sufficient as a means to ensure that the extractive sector serves as a lever for social and economic development in mineral-rich countries of the South.

The adoption of a broader approach, in an attempt to understand the introduction of reforms and the conditions surrounding their implementation as a 'process', is a central dimension of the Report. In other words, the fact that the Report adopted a more holistic approach underlines the recognition of the need to take account not only of the framework for development, but also of the 'development model' of which reforms and projects are a part. This appears as an essential precondition in order to ensure that activities in the extractive sector have a potentially positive impact on the economies and societies in which they take place.

From the above there flow a series of considerations which will be explored in this book, notably issues concerning the appropriation of the reform process itself, and the role played by various actors in shaping the institutional arrangements and resulting space for policy alternatives.

Further, and as the WBG recognises itself, a surge of activity in the mining sector will not on its own bring a process of economic diversification capable of promoting self-sustaining development in the absence of supportive public policies. Yet, and as will be explored in the following chapters, the question remains of the compatibility between this objective on the one hand, and on the other, the role that has been assigned to states, and more specifically state functions in the mining sector, as a result of the institutional reforms brought in at the recommendation of the IFIs.

Finally, and as the five case studies illustrate and the conclusion of the book summarises, there are the issues of the ambiguity of the social and political responsibility for overseeing the expansion of mining activities, and the blurring of the divide between the public and the private spheres of responsibility, whether it be for the elaboration of norms, monitoring these norms, bringing remedial measures or providing basic social services. These remain very much with us to the present.



## NOTES

- 1 The ambiguities concerning the multiple conceptualisation of the notion of 'governance' have been discussed in numerous studies which it would be impossible to summarise here. One dimension is however of particular interest to our analysis. This concerns the 'technicisation' of social and political processes that result when the notion of 'governance' is treated, as it often is, as entailing above all the introduction of the right set of good administrative and procedural measures. This is the case, for example, in a leading World Bank publication in 1992 on this subject which claimed not to treat the political dimensions of 'governance' which it defined: '[A]s the manner in which power is exercised in the management of a country's economic and social resources for development' (World Bank, 1992: 1). A few references are included in the bibliography at the end of this chapter to illustrate the numerous debates which characterise this literature.
- 2 A study undertaken by the UN Research Institute on Social Development (UNRISD) notes certain dangers in this regard: 'Pressure to standardize macroeconomic objectives encourages governments to restrict policy making to experts and insulates key economic institutions from democratic scrutiny' (UNRISD, 2000:1). The authors contend:

This may affect democratization in two ways. First, it may distort the structure of accountability by encouraging national authorities to be more responsive to financial markets and multilateral institutions than to fledgling parliaments and citizens. Second, social policies, which were crucial in consolidating Western democracies, may be treated as residuals of macroeconomic policy, and democratization that does not conform to economic orthodoxy dismissed as populism.

(UNRISD, 2000: 2)

- 3 From 1994 to 2002, the World Bank Group (IBRD, IDA, IFC and MIGA) involvement in the extractive industries (oil, gas and mining projects) exceeded US\$8.5 billion (EIR, 2003a).
- 4 Dr Salim was assisted by a small staff in a secretariat. The secretariat was initially situated in Washington D.C., but moved to Jakarta in February 2002.
- 5 The presentation of the three areas of recommendation is based on the EIR Executive Summary and the summary provided in *Key Findings and Recommendations of the World Bank Extractive Industries Review Final Report* compiled by Janneke Bruil for Friends of the Earth (Bruil, 2003).
- 6 As suggested in the chapter on Mali, before approving each investment, the agencies of the WBG proceed with an environmental assessment to determine whether the project in question needs other safeguard policies. Projects are classified according to four categories (A, B, C and F)

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according to their type, location, vulnerability and scale, as well as the nature and extent of their potential environmental impact.

- 7 IFC investment in mining in 2007 was US\$251 million, which represented 37 per cent of total IFC investment in the extractive sector (World Bank et al., 2008: 7–8).

Here is a brief comparison of IFC investments in the oil, gas and mining sector:

<i>Years/commitments</i>	<i>US\$ million</i>	<i>Sector commitments (%)</i>
2001	309	7.8
2002	117	3.2
2003	1,048	6.0
2004	630	11.2

Sources: IFC (2001: 3; 2002: 5; 2003: 76; 2004b: 3).

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# **I MINING IN GHANA: IMPLICATIONS FOR NATIONAL ECONOMIC DEVELOPMENT AND POVERTY REDUCTION**

*Thomas Akabzaa*

## **INTRODUCTION**

Many have argued that the mining industry in Ghana has strong potential to generate taxes and related revenue and employment, substantial enough to provide significant economic benefits to the country and improved livelihood for the population. However, over-bloated tax concessions and incentives to investors in the mining sector leave little in the way of retained earnings for visible national development efforts. The situation is exacerbated by the growing exclusive use of surface mining technology by mines coming on-stream since the reforms. This has constrained employment opportunities in the sector. Indeed the controversy surrounding the appropriateness of government taxation of private business in general is an age-old one which has been aptly captured by a recent World Bank sponsored study on mineral royalties in the mining industry globally:

In matters of mining taxation, governments rarely believe that companies pay too much tax; companies rarely believe that they pay too little tax; and citizens rarely believe that they actually see tangible benefits from the taxes that are paid.

(Otto et al., 2006: xi)

In the light of the first series of recommendations by the Extractive Industries Review (EIR) to the effect that well-managed mineral

extraction, including proactive planning, should contribute to maximise poverty alleviation through sustainable development, this chapter seeks to inform the debate by examining the extent to which there has been an impact on government revenue generation from the range of taxes, tax incentives and other fiscal concessions in the mining sector, as provided in the fiscal regime of the Minerals and Mining Law, PNDCL 153 of 1986 (Government of Ghana, 1986) and its associated collection of addendums and amendments, all now consolidated in the revised Minerals and Mining Act 703, 2006 (Government of Ghana, 2006). The chapter explores the implication of the taxation and incentive regimes on national and local retention of revenue from the mining sector for development purposes.

Beginning with an overview of the potential of the mining sector in Ghana and the dichotomy of perceptions on the contributions of the sector to national development and poverty reduction, the chapter continues with a presentation of the reforms in the sector to date. It examines the range of taxes and tax concessions provided by the fiscal regime of the Mining Code and negotiated investment agreements. Normally mining companies exact much more in the way of fiscal and other concessions, and lower taxes and possible tax deferment schedules, in negotiated investment agreements than are contained in the Mining Code. The chapter further explores the national development implications of such concessions, particularly their implication for fighting rural poverty among mining-affected communities.

The conclusion is that government revenue generation is constrained by the range of capital allowances, list of mining-related equipment and items exempted from customs and import duties, the nonpayment of capital gain taxes, dividend withholding taxes, corporate income taxes, the huge offshore sales revenue retentions and the payment of royalty at the lowest allowable rate. This results in a less visible contribution of the sector to national economic development. Similarly, the constrained employment capacity of modern mining methods, the increased expatriate staff quotas in the mines and the negative environmental and social impacts of mining activities on local communities have contributed to dwarf the contribution of the sector to national development and poverty alleviation.

#### Ghana's Mineral Wealth Is Not in Dispute, its Impact on the National Economy Is

Ghana is endowed with significant mineral wealth. Minerals such as gold, manganese, diamond, bauxite, limestone, silica salt and salt are

being exploited in commercial quantities, with gold representing by far the most important mineral mined. In addition to these, considerable resources of iron and various other industrial minerals exist. There is also growing potential for commercial gas and oil exploitation, bolstered by the announcement of significant discoveries in June 2007. Efforts to harness these resources for national development through the promotion of foreign investment to the sector have a long history, but one which has grown most remarkably since Ghana signed on to the structural adjustment programme (SAP) prescribed by the World Bank and the International Monetary Fund (IMF) in 1983. The programme necessitated reforms in key sectors of the national economy including the mining sector.

Since Ghana's mining sector reforms under the SAP, there has been a significant upsurge in mining activities in the country. From the inception of the reforms in 1983 to date, the sector has witnessed a considerable investment boom and an increased number of new mines and mineral properties at mine development and advance exploration stage, particularly in the gold sector. In addition, the sector has attracted a significant number of mining support companies such as catering, transport and security companies, explosive manufacturers and mineral assay laboratories.

The impetus and strong will to carry through these profound reforms is premised on the conviction of Ghanaian officialdom that the mining sector has a strong potential to accelerate national development and reduce poverty, particularly in communities within the periphery of mining projects. Such convictions are not exclusive to Ghanaian officialdom, but are shared by many globally. According to the final report of the World Bank-sponsored EIR, there is a strong belief in the possibility that remarkable poverty alleviation outcomes and sustained economic growth can be achieved through the generation and prudent management and allocation of revenues from resources in mineral-rich countries (EIR, 2003: 12). It is on account of this belief in the role of the extractive resources in poverty alleviation that the World Bank Group (WBG), whose proclaimed core business is to fight global poverty, is visibly involved in promotion and participation in extractive resource investment.

However, after nearly 25 years of sustained reforms in the mining sector in Ghana, the fundamental question remains: has the mining industry proved to be an effective vehicle for poverty alleviation and sustainable national development? This question is not intended to solicit a unanimous response, and as we might expect, although there



is agreement on the mineral potential of the country, there is much disagreement about the importance of the contribution of mining to Ghana's national economic development. The debate is even more intense with respect to the contribution of mining activities to poverty reduction efforts, particularly in local communities directly impacted by mining activities, where poverty is pervasive.

One school of thought strongly contends that the industry is contributing substantially to national development and poverty reduction in Ghana. Mining companies, governmental agencies promoting mining, mining sector consultants, some academics, some government officials and traditional rulers share this opinion. They argue that the country's mining sector has been a star performer and plays a cardinal role in the national economy, particularly as a result of policy reforms in the sector since 1986. They have often pointed to increased foreign direct investment (FDI) flows to the sector, rising annual mineral output and value of mineral exports, increased exploration activities and the threefold increase in the number of operating mines, as compelling evidence to support the sector's contribution to the national economy (Aryee, 2001; Coakley, 1999; ECA, 2002; Jonah, 1987; World Bank, 1999).

Statistical summaries on the minerals industry provided by the Minerals Commission (the government agency with responsibility for promoting mining investment in Ghana) give credence to this position. Mineral exploration and mining activities have been bolstered following the reforms. The sector had attracted nearly US\$6 billion worth of FDI at the close of 2005, accounting for nearly 60 per cent of FDI flows to the national economy during the period. The country now boasts 16 operating mines, six projects at mine development stage and over 150 local and foreign companies with exploration licences, mainly in the domain of gold. Total mine output for all major minerals mined increased severalfold. Annual gold production increased from 282,299 ounces in 1984 to 2,143,000 ounces in 2005, manganese from 267,996 tons to 1,719,589 tons, bauxite from 44,169 tons to 606,700 tons and diamond from 341,978 carats to 1,065,923 carats, during the same period. Total annual mineral exports rose from US\$115.3 million in 1984 to US\$995.2 million in 2005. The sector now accounts for more than 30 per cent of gross foreign exchange earnings (Table 1.1). Gold is the most important subsector, accounting for over 90 per cent of the total value of mineral exports, and recording as much as 95 per cent in 1994 and 1995, largely due to increased gold prices.

**Table 1.1** Contribution of the mining sector to gross exports value (1984–2005)

Exports	1984	1990	1995	2000	2001	2002	2003	2004	2005
Gold (US\$)	103.3	201.6	647.3	702.0	617.8	689.1	830.1	840.2	945.8
Total minerals exports (US\$)	115.3	242.3	678.9	756.0	691.4	753.9	893.6	880.0	995.2
Total exports (US\$)	567.0	896.7	1,431.2	1,936.3	1,867.1	2,015.2	2,602.6	2,739.2	2,836.2
Mineral as % of exports	20.34	27.02	47.44	39.04	37.03	37.41	34.33	32.1	35.1
Gold as % of total exports	18.22	22.48	45.23	36.26	33.09	34.19	31.90	30.7	33.3
Gold as % of all minerals	89.59	83.20	95.35	92.87	89.36	91.40	92.90	95.5	95.0

Source: Minerals Commission (2007).

However, there are a growing number of sceptics who do not view the industry in the same light, arguing that despite the commendable trends in the transformation of the mining industry, the sector has not resulted in integrated development and increased social well-being or livelihood security, nor has it reduced vulnerability of poor communities (Agbesinyale, 2003; Akabzaa and Darimani, 2001; Aryeetey, Osei and Twerefou, 2004). According to Aryeetey et al. (2004), despite the improved performance of the sector as the leading destination for FDI and dominant gross foreign exchange earner, this has not reflected visibly on the performance of the national economy. The benefits of the industry have been disproportionally appropriated by mining companies and a limited local elite who benefit in the form of consultancies and membership of the boards of mining companies, while some traditional rulers benefit from mineral royalties.

Many have argued that the current state of the Ghanaian economy does not suggest that there has been a significant positive impact from the sector despite the touted flamboyant statistics. This line of argument suggests that the sector could have performed better in terms of its contribution to government revenue, employment, improvement in

the livelihoods of communities in mining project areas and contribution to the overall GDP of the country. This is particularly imperative if Ghana is to make any progress in meeting the Millennium Development Goals (MDG) of reducing poverty by half by the year 2015. Indeed, there is conclusive evidence to suggest that poverty is acutely pervasive in the country. Ghana lies relatively low on the UN Human Development Index, ranking 131 out of 171 countries in 2006 (UNDP, 2006). According to the first report of the African Peer Review Mechanisms (APRM, 2005), which concentrated on Ghana, attaining the MDGs and achieving the envisioned goal of being a middle income country by 2015 would require an annual growth rate of 8–10 per cent (APRM, 2005: 116). That is certainly unlikely considering that the current annual growth rate is between 4 and 5 per cent.

It has been observed that the country, like many other mineral-endowed African countries, lacks any set of cogent programmes on a medium to long-term basis for the utilisation and integrated development of mineral resources (ECA, 2005). Currently, the country does not have a core national mineral policy, a necessary framework which should define the role of the sector in the overall national development trajectory. The mining sector remains largely governed by pieces of legislation that are sometimes contradictory. The result is that apart from partially meeting the foreign exchange objective, the contribution of mining to national economic development is doubtful.

Efforts have been made to consolidate legislation specific to the mining industry and to resolve some of the legislative contradictions or conflicts, as part of the mining sector reforms. The first holistic legislation specific to the mining sector was introduced in 1986, the Minerals and Mining Law, PNDCL 153 with subsequent amendments (Government of Ghana, 1986). This was replaced in 2006 by a revised Mining Act, Minerals and Mining Act 703 (Government of Ghana, 2006). These codes have been hailed as globally competitive in terms of their attractiveness to foreign investors.

There is no doubt that the fiscal and tenure provisions in Ghana's mining legislation have had significant consequences. However, the impacts of these mining codes have often been shaped by their attractiveness to new investments, the level of exploration and mining projects coming on stream, the percentage contribution of the mining sector to total exports or gross export value, and foreign exchange earnings from the sector (Aryee, 2001; Aryee and Aboagye, 1997; World Bank, 1999). The mining sector's percentage share of the nation's total exports tends to be used exclusively as a measure of the

sector's performance, with the excuse that there is a lack of data on other aspects (ECA, 2002). The major factor underpinning the restructuring of the mining industry globally is the paradigm shift to a thesis that the state should be constrained to the promotion and regulation of private investment, and not be directly involved in the management of mining projects. The state has no business doing business, is a common adage among those who follow the dominant neoliberal current of thought. This paradigm suggests that once the state has created an enabling environment for the attraction of private capital to mining, its revenue requirement for national development can be met through appropriate taxation. In other words, mineral-endowed countries could increase their revenue and related benefits with the evolution of competitive fiscal policies (Walde, 1992; World Bank, 1992).

It is clear that the mining industry can bring benefits to resource-rich countries in the form of fiscal revenues. However, the extent of these benefits will depend on the share of rents received by the countries concerned, and the manner in which they are managed (Davis and Tilton, 2002). The level of rent and related benefits that a nation can exact from the mining sector depends on the provisions that are outlined in the national mining legislation, and particularly the fiscal regime, as well as in investment agreements and stability agreements negotiated with individual mining companies. These provisions define the levels of taxes and incentive packages for investors in the sector.

#### Government Efforts at Promoting the Minerals Sector

In 1983 the government of Ghana embarked on an Economic Recovery Programme (ERP) at the instigation of, and with the support of, the Bretton Wood Institutions. According to the preamble of the ERP blueprint (World Bank, 1984), the exercise was an attempt to arrest the near collapse of the major export sectors of the economy, because of the lack of investment in these sectors over decades. The cocoa, mining and timber industries, the major export sectors of the national economy, were major targets for these reforms, aimed at improving their competitiveness and attractiveness for FDI.

The main objective of the mining sector programme was to halt the decline in and stabilise mineral production, through short-term non-monetary, monetary and economic measures. This was to be done through the rehabilitation of existing mines by the injection of financial and technical assistance from multilateral institutions, and divestiture

and liberalisation of the sector to promote an enabling environment to attract private investment (Songsore, 2003). In pursuit of these objectives, the Minerals Commission was set up as a mining investment centre in 1986. This was later followed by the strengthening of other mining-sector institutions such as the Geological Survey Department, the Mines Department, and the conversion of the Diamond Market Company (DMC) to the Precious Minerals Marketing Corporation (PMMC), in order to coordinate the marketing of all precious minerals sourced by small-scale miners.

The major policy initiatives in the mining industry included the promulgation of Ghana's first comprehensive, independent code on mining, contained in the Minerals and Mining Law, PNDCL 153 of 1986. The code evolved with technical assistance from the World Bank, and the content was in line with the World Bank's continent-wide strategy on mining (World Bank, 1992). Among the provisions of the law were the streamlining of all mineral right licensing procedures, the establishment and strengthening of supporting institutions, and a favourable and competitive fiscal regime.

The expectations and optimism expressed in the country following these reforms was that sufficient investment in the sector would catapult the mining sector to the position of lead sector for development finance, and growth pole for overall national development (Songsore, Yankson and Tsikata, 1994).

## **OVERVIEW OF THE FISCAL ELEMENTS OF THE GHANA MINING LEGISLATION**

### **Minerals and Mining Law (PNDCL 153)**

The Minerals and Mining Law PNDCL 153, enacted in 1986, constituted the first ever Ghanaian legislation that was specific to mining. One section defined a fiscal regime for companies operating in, or seeking to operate in, the mining sector. It set out a number of tax incentives to foreign investors in the mining sector, including:

- Generous capital and investment allowances that allowed 80 per cent of total investment to be written off in the first year of investment, and the balance to be depreciated at 50 per cent in subsequent years.
- Mining corporate income tax of 45 per cent of net profits, which was later reduced to 35 per cent.

- A defined mineral royalty tax rate based on a sliding rate of 3 to 12 per cent of gross value of mine production, depending on the operating margin of the company.
- Defined rates for dividend withholding and capital gain taxes, and the introduction of an additional profit tax to be paid if a mining company exceeded a specified rate of return in a given year. This type of tax is commonly applied specifically to mining and petroleum sectors, and is designed to ensure that the government participates in any windfall generated by very high metal or petroleum prices.

The regime provided for flexibility in royalty and corporate income payment schedules, and in particular, it empowered the minister responsible for mining to use his discretion to grant any request from distressed companies for deferment of royalty payments. In addition to the fiscal elements, the code introduced a number of clauses that had implications for government revenue and foreign exchange availability from the sector. The state was restricted to a 10 per cent mandatory equity participation in all mining investment, with the option of increasing its participation to 20 per cent, but paid for at a commercial price (Akabzaa and Darimani, 2001). Mining companies could maintain negotiated levels of their gross mineral sales in offshore accounts, ranging from 25 to 80 per cent. The law defined quotas for expatriate employment, with restrictions on the extent to which expatriates' income could be taxed locally. It also set out levels for stamp fees, surface rent, licences and lease fees among others (see Table 1.2).

This 1986 law remained the substantive legislation for the mining sector in Ghana, with limited amendments and addenda, until its replacement in 2006. After more than a decade of its implementation there were concerns among mining companies and international financial institutions (particularly the WBG) that the code could hardly compete with those of other mineral-endowed African countries. The Bank provided a revised blueprint, informed by the publication of results of global surveys on mining sector reforms (Naito and Remy, 2000). This survey recommended that long-term success in competing for private investment in mineral exploration depended on a combination of favourable natural endowment and effective implementation of policies. The aim was to adapt a country's legal, fiscal and institutional framework for mining sector development to the challenges of competitive global markets. The study developed a reform index rating the potential

of mineral-endowed countries to attract investment. According to this new survey and index, the 1986 code had lost its lustre, and it was suggested that Ghana was losing investment to countries such as Tanzania, Guinea and Mali which had far more liberal codes.

The uncompetitive Mining Code was blamed for lack of expansion in the issuance of exploration licences, and stagnating investment in the mining sector from 1998 to 2000 and beyond. However, the analysis failed to take into consideration other factors that could have accounted for this downturn in Ghana, such as the lack of prospective grounds and falling metal prices. Lower prices not only discouraged exploration, but forced marginal mines to close. Between 1997 and 2000 the gold price dropped from US\$400 to US\$260 per ounce, and this affected exploitation globally (Akabzaa, 2004). However the Ghanaian government accepted the argument that a revision of the code was necessary, and embarked on it with the objective of staying competitive.

### The Birth of the New Mining Act

In 2001, Ghana was obliged to put in place a process to review its code with financial and technical assistance from the World Bank. This time consultants for the review had as their minimum acceptable prototype the codes of Tanzania, Mali, a host of other perceived investor-friendly codes across the globe, and of course, the survey recommendations of Naito and Remy (2000). According to the Minerals Commission, the proposed revised law would reflect new thinking and developments in the global mining industry, and consolidate legislation on both global-scale mining and small-scale gold mining. According to the World Bank Supervision Mission report:

the objective of the review project is to develop an internationally competitive framework that will ensure a strong legal base and a stable and equitable tax regime with fair and clear environmental rules for the continuous development of Ghanaian mining in the next decade.

(Minerals Commission, 2001: 1)

### The New Mining Act: The Process Question

Reviewing the consultative processes that cumulated in the enactment of the Act may appear a digression. However it is in fact necessary, as it illustrates the skewed and uneven powers that informed the

outcomes and content of the final document. Some people have argued that the consultations demonstrated the progressive improvement in extractive sector governance in Ghana, and demonstrated the growing commitment of the mining industry, in particular, to embrace public participation in policy formulation. It is also suggested that it paved the way for all stakeholders to articulate their different positions, and that the final document was born out of consensus.

However, others suggest that the exercise was concerned more with public relations rhetoric. They assert that consultations did not meet minimum benchmarks of public participation because of the vast differences in the number of representatives from each stakeholder group, and the capacities of the participating representatives. They also contend that the final document is dominated by the positions of mining companies, and rarely reflects the perspectives of local communities and civil society. The exercise, according to these sceptics, exposed the double standards of the World Bank, mining companies and government, with respect to the concept of public participation in policy formulation.

Generally, the need for a revised law was not in dispute; it was indeed compelling. After nearly two decades of the operation of the Minerals and Mining Law PNDCL 153, many contradictions and conflicts had emerged among stakeholders in the country's mining sector. There was growing public outcry about the negative environmental and social impacts suffered by local communities in the periphery of mining projects. New mining ventures coming on-stream were surface mines requiring much more land surface than the traditional underground mines. They employed heap leaching technology, with serious potential for toxic chemicals to leach into the surrounding environment and affect water sources. This technology limited the demand for labour, and because the main demand was for skilled labour, it tended to exclude the workforce from local communities, who rarely possess any skills.

The period also witnessed growing conflicts between mining companies and communities over community resettlement and relocation, and the associated compensation payment for property, including land and houses. The communities could not see any visible social projects in their areas resulting from mining. There was waning social cohesion in communities affected by mining, and with a permeating sense of the increased corruption of local authority by mining companies. Traditional rulers were increasingly viewed by their subjects with suspicion, and largely regarded as collaborating with government and



companies to deny the communities any benefits from mining proceeds. As a result the communities began to fight back.

The traditional rulers, particularly chiefs who statutorily benefit from the distribution of mining royalties, blamed mining companies and the central government for not giving them their fair share. They argued that they were unable to embark on development projects in their communities because their share of mineral royalty was insufficient, and began to agitate for an increase in their share. This call was strongly endorsed by the Chamber of Mines. Mining companies have been accused of doing little to assist local communities, but they contend that they have fully met their obligations to pay royalties and taxes, and that local communities were not benefiting because government allocation of mining revenues to the local level was minimal.

There were similar and even more intense confrontations between mining companies and artisanal miners over land space. The artisanal and small-scale miners (ASM) were unhappy with statutory limitations on the amount of land they can lease, and the limit on the duration of their leases to three to five years. In some mining centres such as Adansi West (Obuasi) and Wassa West (Tarkwa), there is a lack of readily available prospecting grounds for ASM operators as most of the land is either in the hands of large-scale mining companies or designated as forest reserves. This means that most of ASM had no option but to encroach on the land leased for large-scale mining or on forest reserves. The resulting conflicts caused considerable and unexpected costs to the mining companies, government and local communities. It was apparent that there was little in the existing Mining Code that could be employed to resolve these confrontations.

The emerging problems were partly blamed on the processes that had led to the 1986 Mining Code. The reform process was government-centred and took into consideration government and mining companies' perspectives without giving due regard to the views and aspirations of local communities and civil society. It could be argued that government perspectives encompass the concerns and aspirations of the population, but that is a lame argument. It is inappropriate to assume that government interests are necessarily coincident with the interests of the wider public. Thus any consultations that are restricted to government and industry, with little or no participation from the local communities which are critical partners in mining projects, will almost certainly produce flawed results. There was a general feeling that to address these concerns, any attempt at reviewing the Code should be inclusive enough to address the concerns of the various

stakeholders, particularly local communities. In this sense, affected communities are in fact automatic investors since they have to forgo their land, their most important natural heritage.

An international team of consultants provided by the World Bank, together with local legal and environmental experts, drew up a matrix of issues to be included in drafting the mining bill for public discussion. A number of stakeholders were engaged to discuss the bill, including relevant governmental agencies, the Chamber of Mines, traditional rulers, mining sector consultants, a representative of small-scale miners, the Third World Network, the Wassa Association of Communities Affected by Mining (WACAM) and some representatives of district assemblies. However there was unequal representation of the major stakeholders. The existing power relations exacerbated the problem, with the government and the mining industry (represented by the Chamber of Mines) being over-represented relative to the communities affected by mining and civil society groups.

The debate centred on:

- how the proposed bill could ensure that mining companies internalise the environmental and social costs of their operations
- mechanisms for displacing local communities affected by mining projects that would ensure a fair regime of compensation for affected persons
- clear identification of taxes and tax rates
- identification of benefits and beneficiaries
- guaranteed security of tenure for mineral rights holders, for both large-scale miners and ASM
- easy transferability of mineral rights among mineral holders with little recourse to government
- equitable sharing of benefits among major stakeholders, including local communities
- maximisation of local impacts of sustainable development
- the need to mainstream small-scale and artisanal mining activities to maximise their contribution to national development.

Considerable time was spent on the need for legislative clauses to include mechanisms for sharing at the local level portions of centrally collected royalty tax. The industry representatives argued for:

- reduction of the mineral royalty rate from the scale of 3 to 12 per cent in 1986, to 1 to 3 per cent

- removal of the mandatory 10 per cent state equity and the state's golden share in all mining projects
- removal of limitations to mining in forest reserves
- limitation to the taxation of the expatriate workforce in the mines
- clauses to compel government to increase the share of royalty to communities to 30 per cent from the current 10 per cent.

By the end of 2002, a draft minerals and mining bill was being debated by the select interest groups. A revised bill was finally laid before Parliament in 2004. There were several memoranda to Parliament, particularly from the Chamber of Mines and community and civil society groups working in the extractive sector, to ensure that the final act reflected their perspectives.

Community and civil society, acting under the banner of Ghana National Coalition on Mining (NCOM), submitted a proposal with interesting suggestions. They called for:

- broader consultations with chiefs, landowners, property holders and mineral rights holders, and people affected by mining, in the granting of prospecting, reconnaissance and mining licences and leases
- retention of the minimum 10 per cent equity and the state's golden share in all mining ventures
- a clear definition of the minimum percentage of Ghanaian nationals to be included in the various categories of mine workforce in order to give meaning to the clause that proposed a gradual reduction of expatriate personnel
- ensuring companies build the capacity of mining communities during the lifespan of the mining operations
- clearly defined mechanisms for mineral wealth, particularly royalties that allow communities affected by mining to benefit from such royalties
- clear guidelines to be given for the utilisation of the share of royalties received by district assemblies from large-scale mining activities to prevent misuse of such receipts
- the definition of mechanisms for compensation schemes for land that has been appropriated for mining activities, including potential use value of fallow lands and net present worth of farm crops over the anticipated life of such crops
- the harmonisation of the duties of the Minerals Commission with those of the Environmental Protection Agency (EPA).

The proposal also suggested that the royalty rate payable to the government by mining lease holders should not be less than 5 per cent (against industry suggestions that it should be not less than 1 per cent and not more than 3 per cent). They urged that the law should make it obligatory for mining leaseholders to make their environmental audit reports accessible to the public. They argued that this was the only sure way for the public to know how accountable and responsible a company was concerning its environmental and social obligations. Parliament showed interest in these proposals, and suggested the proposal be couched in legal language for their consideration. The suggestion was embraced by NCOM and the legal proposal delivered.

Interestingly, these proposals were captured in the first draft of the Act from Parliament, which in turn received severe criticism from industry and some governmental actors. This generated a further round of consultations (but behind closed doors, and with limited participation in meetings with the key contending parties), coordinated by the Parliamentary Select Committee of Mines and the Office of the Clerk of Parliament. These behind the scenes consultations changed the fortunes of the concerned community and civil society groups. The document that was finally passed into an Act by Parliament and assented to by the President of the Republic on March 22, 2006 as the Minerals and Mining Act, Act 703, 2006, incorporated few of the NCOM demands.

#### Fiscal Provisions of Act 703

The fiscal regime defined by the new mining law maintained provisions for corporate income taxes, dividend withholding taxes, capital gain taxes and royalties as in the previous law, but abolished the additional profit tax provided for in the previous legislation. The law provides for an expanded list of items imported for the purposes of mining that qualify for import duty exemption at the country's ports of entry. It also increased the quota for expatriate employment and reduced taxes to be paid by these employees. A summary of the salient aspects of new provisions compared with the former legislation is presented in Table 1.2.

Royalty tax and rental fees are defined directly by the new Mining Code (Government of Ghana, 2006: 12). Some fiscal incentives considered important by the mining sector were also maintained in the new code. These include:

**Table 1.2** Comparison of the fiscal and related provisions of the Minerals and Mining legislations of 1986 and 2006

Items	PNDCL 153 1986	Amendments to Law 153	ACT 703 2006
<b>Incentives</b>			
Initial capital allowance	75%		75%
Subsequent capital allowance	50%		50%
Investment allowance	5%		5%
Carried forward losses for purposes of taxation	Up to five years		Up to five years
Offshore retention of sales	25% to 80%		25% to 80%
R&D allowance	Exempt		Exempt
Mineral duty	Exempt		Exempt
Import duty	Exempt		Exempt
Foreign exchange tax	Exempt		Exempt
Import licence tax or import levy	Exempt	Exempt	Exempt
Gold export levy	Exempt	Exempt	Exempt
<b>Taxes</b>			
Corporate income tax	45%	35%	25%
Royalty	3% to 12%		3% to 6%
Withholding tax	10%		10%
Capital gain tax	10%		10%
APT*	25%		0%
National Reconstruction Levy		2% of before tax profits (2001)	0%
<b>Others</b>			
Govt. equity participation in mining lease	10% free carried interest with option to increase to 30% provided additional shares purchased at market price		10% free carried interest, no option for acquisition of further shares
<b>Fees</b>	See Table 1.3 for details		

\* Additional Profit Tax

Sources: Government of Ghana, Ministry of Lands, Forestry and Mines (Mines Section) (2006, 1986), IRS (2000).

- terms for depreciation of capital expenditure on reconnaissance and prospecting
- custom import duty exemptions
- immigration quotas on number of expatriate personnel to be recruited

- personal remittances for expatriates free from tax imposed by any enactment regulating the transfer of money out of the country
- the minimum allowable amounts of companies' gross foreign exchange earnings from mineral sales to be held in offshore accounts
- free transferability of convertible currency (MLFM, 2006: 13–14).

Other taxes and incentives considered general to all companies and industries were removed and consolidated into the Internal Revenue Service (IRS) Act 2000 (Act 592).

Royalty was pegged at a reduced scale of 3 to 6 per cent. Corporate income tax was reduced to 25 per cent in conformity with other industries. Withholding tax on dividends distributed to non-residents and capital gain tax were maintained at 10 per cent of the value of dividends or capital gain. Capital allowances were maintained at 80 per cent in the first year of investment and 50 per cent thereafter. The defined rents and fees and the defined monetary values are given in Table 1.3.

The Act provides for companies to negotiate stability agreements to ensure that, for a period not exceeding 15 years, new legislative enactments and amendments will not adversely affect their operations. In addition, companies with investment portfolios exceeding US\$500 million may negotiate development agreements with the government. Such agreements enable companies to negotiate specific rates and quotas for royalties, expatriate employment, schedules for royalty payments and so on (Government of Ghana, 2006: 22–3).

Many companies have now negotiated these fiscal regimes, and have received reasonable concessions. For instance, by the investment agreement it signed with the government, Newmont Ghana Limited is required to pay a royalty at the minimum rate of 3 per cent on the total value of gold won, and in the case of mining in forest reserves, a royalty rate of 3.6 per cent (Newmont Investment Agreement, 2005). The company is exempted from payment of value added tax (VAT) on all items it imports, and for all foreign and locally purchased services and supplies to the extent that they are used in connection with operations.

#### National Development Implications of Fiscal Regime Provisions

The ability of the mining industry to deliver positive results, in terms of visible contribution to the economic development of Ghana and the fight against poverty, is dependent on the level of revenues that accrue to the central and local governments and local communities impacted by mining activities. It will also depend on the labour absorption capacity

**Table 1.3** List of Defined Rents and Taxes provided by Act 703\*

Fiscal element	Description	Amount/quantum
Exemption fees	Paid to the MC to receive exemption for duty free imports	
Licensing fees	Fees paid to obtain mineral rights	
1. Reconnaissance licence	For reconnaissance exploration rights	US\$ 10,000
2. Prospecting licence	For prospecting/detail – exploration rights	US\$ 15,000
3. Mining lease	For mining rights	US\$ 30,000
Royalty	Production base tax by mining lease holders to the government through the Internal Revenue Service	3% of value of minerals won (although law states a sliding scale of 3% to 6%)
Corporate income tax	Tax on net profit of company	25% of net profits
Withholding tax	Tax on dividends to shareholders and on management fees paid to contractors	10% on paid dividends and fees
Capital gain tax	Tax on profits on sale of mine assets or mine	10% of capital gains
Dividends	Government share of dividends	10% of declared dividends
Ground rent	Annual payment by mineral right holders to land owners or to the Office of the Administrator of Stool Lands, in the case of stool land	10,000 cedis/ha for prospecting licence holders and 30,000 cedis/ha for mining lease holders
Property tax	Rates levied on immovable property of mining companies including machinery and equipment to host district assemblies	Variable, annual rates set by by-laws
Stamp duties	1. Granting of prospecting licence 2. Granting mining lease 3. Transfer of licence or lease 4. Principal security 5. Collateral security 6. Transfer of security	5,000 cedis 50,000 cedis 1% of value of consideration 0.5% of amount secured 0.25% of amount secured 0.25% of amount secured

\* The defined fees are almost unchanged from those defined by PNDCL 153 except royalty and corporate income tax.

Sources: Government of Ghana, Ministry of Lands, Forestry and Mines (1986; 2006).

of the sector, the sector's ability to promote forward and backward economic linkages, and its level of integration with the rest of the national economy. In addition, national benefits from the sector would also be maximised if companies internalised their environmental and social costs. The minerals and mining codes are supposed to provide adequate safeguards to ensure these objectives.

Provision of adequate clauses for these purposes in the Mining Code is significant and necessary, but does not currently guarantee that the mining sector contributes to sustained national economic development and poverty reduction. The capacity of the state regulatory and policy implementing institutions to make these objectives concrete is as critical as the level of taxes. Another important issue is the effectiveness of the disbursement and utilisation of the payments. This largely depends on the existence of a culture of accountability and transparency, particularly among government, local authorities and company actors. Equally important is an environment that promotes community voices in particular.

In general, it could be argued that the new Mining Code is still too young to be evaluated, and substantial time is required to assess the impacts. However, there is significant consolidation of the provisions of the earlier code, and there are even greater incentives for companies. In these circumstances we believe such an assessment is procedurally and methodologically sound, and ethically legitimate.

The positive response to these reforms has already been alluded to in the overview of the sector. To what extent have the industry's responses to policy changes in the form of increased direct foreign investment in the sector, increased mined output and value of gross mineral exports, translated into national development and poverty reduction?

#### Contribution to National Revenue

One of the compelling reasons advanced to force state withdrawal from direct participation in mining activities is that the state's interest is better served if it limits itself to promotion and regulation of the industry and allows private investors to do the mining (World Bank, 1992). It has also been argued that prudent taxation policies should be sufficient to provide revenues for national development. However, it has also been recognised more generally that governments of developing countries face major challenges in negotiating effectively with foreign mining companies to achieve politically acceptable outcomes.

The experience of Chile is pertinent. According to Maxwell (2004),



although private mining companies produced about two-thirds of the copper output, they have contributed only about 10 per cent of the fiscal revenues of the copper sector in Chile, with the rest coming from the state-owned mining companies.

### Tax Revenue

An analysis of the structure of revenue from mining indicates that royalties, payroll taxes of local employees (pay as you earn or PAYE) and more recently a national reconstruction levy constitute the major sources of government revenue from the sector. The contributions of corporate income and dividends from government equity participation, land and related rents and fees are relatively minor. In addition although capital gains and dividend-withholding taxes are mandatory by legislation, they are not paid.

All these taxes are statutorily collected by the Internal Revenue Service (IRS), except for dividends, which are collected by the non-tax unit of Ministry of Finance and Economic Planning. Generally, IRS collections constitute 25 to 35 per cent of total national tax revenue, including import and export duties, from which mining companies are exempt. A tally of mining revenue from 1990 to 2005 shows that the total IRS receipts from mining companies, in the form of royalties, PAYE and corporate income taxes, averaged 12.2 per cent of total IRS collection for the period (Table 1.4). Mining tax revenue constituted 3.1 to 3.8 per cent of total national tax revenue during the period. In all, government revenue represents just under 6 per cent of total value of mine production.

One of the most reliable sources of government revenue generation over the last two decades has been royalty payments, which are based on 3 per cent of the quantity produced or gross sales, and independent of profitability. Royalty therefore has the advantage of being a more stable source of government income than taxes on profits, which may fluctuate widely, or yield no revenues at all. However, this has been one of the most contentious taxes. Mining companies consider royalties highly unfair as they do not take account of profitability and have the disadvantage of constituting a cost of production (Otto et al., 2006). In fact many mineral-rich countries in Africa, Latin America and Asia, such as Zambia, Tanzania, South Africa, Chile, Peru and Indonesia, have recognised the role of royalties in government revenue extraction from the mining sector and are changing mining sector fiscal policies to accommodate higher royalties. Nearly 90 per cent of government revenue from the mining sector comes from royalty

**Table 1.4** Contribution of mining to revenue collection by IRS, (1990–2005) (in billions of cedis)

Year	Corporate income	Royalties	PAYE	Reconst.	Withholding	Total mining taxes	Total IRS	% from mining
1990	2.83	1.89				4.72	52.82	8.9
1991	0.82	3.02				3.84	61.49	6.3
1992	4.56	4.55				9.10	74.73	12.2
1993	4.39	7.49	2.65		0.02	14.54	113.24	12.8
1994	7.21	12.78	4.81			24.81	166.60	14.9
1995	20.39	20.91	7.95		0.03	49.29	275.51	17.9
1996	9.16	35.49	16.83		1.25	62.74	424.49	14.8
1997	9.87	34.59	25.02		8.37	77.85	605.78	12.9
1998	14.45	49.84	31.02			95.31	785.44	12.1
1999	31.12	48.62	27.84			107.58	901.66	11.9
2000	15.79	118.74	59.24			193.77	1409.45	13.7
2001	24.81	127.36	76.11	4.25		232.53	1950.16	11.9
2002	23.50	153.45	101.46	26.47		304.89	2842.97	10.7
2003	68.14	194.39	141.05	16.79		420.36	3824.08	11.0
2004	100.33	215.74	134.38	53.19		503.62	5333.11	9.4
2005	269.89	235.95	154.37			660.21	6200.57	10.6

Source: Minerals Commission (2007).

(Akabzaa, 2004). Annual receipts of royalties from mining companies from 1990 to 2005 are presented in Table 1.4.

It has been observed that Ghana does not maximise its royalty tax revenue because of collection difficulties. Royalty is charged as a percentage of the total value of minerals won. However, inconsistencies in the valuation of the minerals make revenue tracking more difficult. Similarly, lack of uniformity in the pricing of gold and other mineral commodities produced by mining companies has led to variation in the computation of royalties. The application of different exchange rate regimes by mining companies for the payment of mineral royalties has also produced distortions in the computations (Boas and Associates, 2006). The fiscal arrangement allows for companies to defer or delay royalty payment with permission from the sector minister. Such requests are commonplace, and delayed or deferred payment of royalties has often affected government projected revenue streams and consequently government plans for such revenues.

Another significant source of tax revenue to government from the mining sector is PAYE. However the full impact of this source to government revenue is limited for the following reasons. First, the income generated from local labour in the mining sector accounts for a relatively small share of the total value of production. This is because all mines coming on stream are surface operations which use capital-intensive techniques in their operations rather than adapt to the factor endowment of the Ghanaian economy. Second, while in Ghana the income tax law provides for the taxation of all revenues, whether national or expatriate, in practice investors have obtained exemption or reduced taxation on the income of their employed expatriates in their negotiated investment agreements.

Corporate income tax receipts are relatively low. The incentives provided in the fiscal regime have particularly diminished the corporate tax liabilities of mining companies. The result is that corporate income tax constitutes less than 4 per cent of government receipts from the mining sector. The Extractive Industry Transparency Initiative, for which Ghana has committed itself to release its first aggregated report, emphasised the limited potential of the mining sector to contribute significantly to national revenue. The report revealed that only two companies qualified to pay, and paid, corporate income tax for the 2004 fiscal year. No mining company paid capital gains taxes, although nearly all mining projects have changed ownership in the last ten years. Similarly, no company paid additional profit tax and withholding taxes (Boas and Associates, 2007).

The government also obtains dividends from the profits made by mining companies through its equity participation. Before the 2006 Mining Act, government equity in mining ranged from 10 to 30 per cent, particularly from 1990 to 1996. There was progressive sale of these shares from 1997 to 2000. The new Mining Act constrains government equity participation to 10 per cent. This will significantly reduce government income from this source. Table 1.5 shows the dividends paid to the government from 1990 to 2005 in millions of US dollars.

#### Institutional Capacity and Revenue Generation from the Mining Sector

In addition to the fiscal elements that constrain the maximisation of government revenue from the mining sector, institutional capacity constraints and an apparent lack of inter-sectoral collaboration have also contributed to the problem. The IRS, which has responsibility for internal tax collection, and the Customs, Excise and Preventive Services (CEPS), which has responsibility for collection of export and

**Table 1.5** Government revenue from dividends (millions of US dollars)

Year	US\$ million
1990	2.18
1991	3.82
1992	2.85
1993	8.03
1994	6.28
1995	6.4
1996	7.61
1997	4.32
1998	2.18
1999	0.5
2000	–
2001	1.0
2002	1.0
2003	1.1
2004	3.5
2005	1.8

Sources: Minerals Commission (2007), Boas and Associates (2006).

import taxes, have both demonstrated capacity constraints. Ghana's first aggregated report of the mining sector reported that lack of formalised contacts between the IRS and other mining sector agencies for the reconciliation of figures related to royalties is a source of worry. The IRS admits that it has no dedicated desk to deal with mining issues and does not keep separate accounts for revenue receipts, making tracking difficult. CEPS has representatives at the mine sites to check on the quantity and quality of gold won. However they can only ascertain the weight. They do not determine the fineness/grade of gold bullion produced (Boas and Associates, 2007) because they have no capacity to do so.

### Locally Retained Foreign Exchange

Both the Minerals and Mining Law of 1986 and the new Minerals and Mining Act of 2006 have provisions for companies to retain at least 25 per cent of their gross foreign exchange in offshore accounts. These provisions do not promote optimal retention of rent from the sector for national and community development. The mining companies maintain various amounts of their mineral sales in offshore accounts. In many cases, the amount of foreign exchange maintained abroad is either defined in the national mineral policy document or contained in confidential stability agreement clauses negotiated by individual mining project proponents. Considering that Ghana's mining sector is nearly 85 per cent controlled by foreign companies, the gross value of the exports is not a realistic indicator of the relative performance or impact of the sector to the national economy. Indeed, it represents a gross overstatement of the real contribution, since the value of exports is not the same as foreign exchange earnings accruing to the producing country or the net export earnings.

Records from Ghana's Central Bank suggest that companies retain between 60 and 80 per cent, but on average 71.2 per cent, of their export earnings in offshore accounts. In simple terms, the retained value of minerals exports is about 28.5 per cent. In absolute terms, in the year 2000, gold exports accounted for US\$702 million. This represents 36.6 per cent of the total gross foreign exchange of the country that year. However US\$519 million of the total gold revenue for 2000, representing 74 per cent of gross gold export value for that year, was maintained in offshore accounts, and only US\$183 million, representing 26 per cent of the value of gold exports that year, was retained in

the country. In other words, although the gold sector accounted for 36.6 per cent of total gross foreign exchange, almost 27 per cent was maintained in offshore accounts and only 9.5 per cent was retained in the economy. Thus the real foreign exchange contribution in 2000 was 9.5 per cent and not the stated gross of 36.6 per cent.

#### Fiscal and Related Concessions, National Development and Poverty Reduction Imperatives

The overall result of low taxes, minuscule local purchases and labour incomes is that the industry's contribution to government revenue is grossly dwarfed by the sector's share of gross foreign exchange earnings. In 2001 tax revenue from mining was US\$31 million, representing about 4 per cent of total government tax revenues (World Bank, 2003). In all, government revenue represents nearly 6 per cent of the total value of mine production. The mining sector's share of corporate taxes in the country has equally been dwarfed by other sectors. It accounts for less than 2 per cent of total corporate taxes, compared with 29 per cent for the financial sector, 10 per cent for commerce and 16 per cent for manufacturing (ISSER, 2004). According to the World Bank (2003), various tax allowances mean that corporate income tax payments by mining companies are minimal, despite their combined turnover in excess of US\$600 million in 2002.

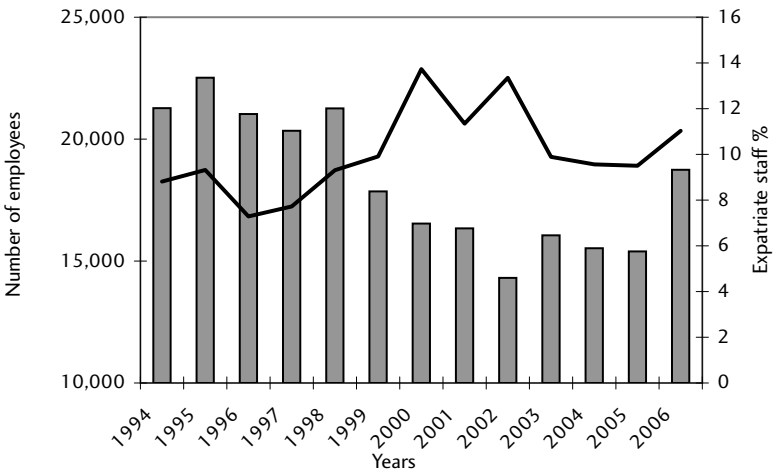
The incentives accorded to mining companies have greatly limited the share of government revenue from mining, and constrained the opportunities for government to mobilise adequate resources to fund social and development programmes. Mining has consequently not fulfilled its poverty reduction role, and poverty reduction has not been mainstreamed into mining policies. In fact, it was the anticipation of many that the new code should accommodate new societal and developmental trends that facilitate broader and more equitable participation in mineral resources development. Benefits to society are enhanced if extractive industry projects contribute to the development of much-needed infrastructure and help communities through employment and the provision of healthcare and education, all the while safeguarding environment. Unfortunately these objective conditions have not been facilitated by the mining legislation in Ghana.

The large-scale mining sector in Ghana has demonstrated a low capacity for labour absorption and is therefore not a major employer in the country. The sector's share of total employment of the working age population is only 0.7 per cent, compared with agriculture's 55 per

cent, trade's 18 per cent and manufacturing's 12 per cent, according to the Ghana Living Standards Survey report of 2000 (Ghana Statistical Service, 2000). The major reasons for the relatively poor labour absorptive capacity include the weak linkages between the mining sector and the rest of the national economy, and the shift from labour-intensive underground mining to capital-intensive surface mining.

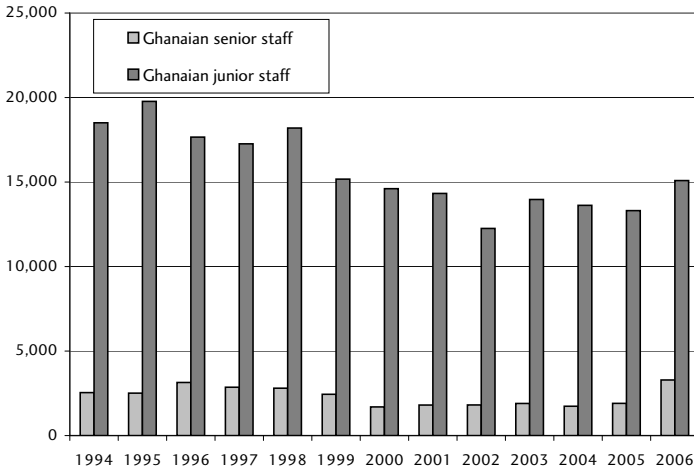
The statistics show a negative correlation between labour employment on one hand, and mineral output, export values and number of mines, on the other hand. Interestingly, while there is progressive reduction in the general levels of employment in the sector, the quota of expatriate employees in the sector keeps growing as a result of increased migration quotas for expatriate staffing in mining prescribed by the Mining Code. The percentage of expatriate staff to Ghanaian senior staff increased from 8.8 to 11 per cent from 1994 to 2006 (Figures 1.1 and 1.2). The growing population of expatriates in the mining sector has been a cause of concern for segments of Ghanaian society.

This situation has been described by the Member of Parliament for Obuasi, a major mining centre, as 'recolonization of the mining sector' through the recruitment of expatriates to replace Ghanaian workers (*Daily Graphic*, 2006: 14). His statement was in reaction to the increasing replacement of Ghanaian senior staff by expatriates following the takeover of Ashanti Goldfields Corporation by AngloGold of South Africa.



**Figure 1.1** Comparison between foreign and domestic staff in Ghana's mining sector (1994–2006)

## GHANA



**Figure 1.2** Employment trends in Ghana's mining sector (1994–2006)

### THE PARADOX OF PLENTY: GHANA'S POVERTY STATUS

Whether it is described as the paradox of plenty, the Dutch disease, the resource curse or something else, the situation is that despite the mineral resource wealth of Ghana, the country remains a highly indebted poor country. Ghana is the second largest gold producer in Africa and ranks around tenth in the world. The fact is that having abundant mineral resource is one thing, and transforming this resource wealth to meet poverty reduction targets and general national economic development imperatives is another.

Welfare indicators such as the Human Development Indices are commonly employed to measure levels of employment, poverty and social welfare that a country enjoys, and the general state of economic development. The employment of these indicators brings the level of poverty in mineral resource-rich Ghana into sharper focus. It has been suggested that Ghana, like the vast majority of mineral-endowed African states, lacks cogent programmes for the utilisation and integrated development of mineral resources (Aryeetey et al., 2004; Power, 2002; Songsoore, 2003). The sector remains an economic enclave, at the primary level of production and lacking effective linkages with other sectors of the economy.



Social Watch has brought the poverty situation in Ghana into focus (Social Watch, 2000). In its report at the beginning of the decade, the organisation stated that economic conditions represent one of the most important threats to human security in the country. It highlighted growing poverty and inequalities in access to social services, resulting from years of liberalising economic reforms. More recent studies attest to the exacerbation of these trends. According to a survey by Ghana's Centre for Democracy and Development (CDD-Ghana), two-thirds of Ghanaians face economic uncertainty. This conclusion contrasts very sharply with the picture created by years of official celebration of the two decades of neoliberal economic reforms (CDD, 2005). There is growing mass formal unemployment, underemployment and a widening of the gap between the poor and the rich. Despite a series of debt cancellations following the country's declaration of its heavily indebted poor country (HIPC) status, the national debt still stands at over US\$6 billion.

One compelling factor reinforcing poverty, especially among most of the population in rural and peri-urban communities in mining areas, has been the sustained labour redundancy programmes pursued by various mine operators, following the sale of state interests in existing mines (Baah, 2005; Songsore et al., 1994). The redundancy exercise has affected the most vulnerable segment of mine staff (junior workers), and has driven more people into unemployment (Figure 1.2). The mining sector is one of the major sectors in which the redeployment exercise has been most intense. From 1983–2003, over 15,000 workers from various mines have lost their jobs. These significant job losses incapacitate the affected individuals and their families, rendering them unable to meet their basic needs of food, shelter and access to education, environmental and health services.

Apart from the developmental constraints resulting from the limited revenue, employment generation and value addition capacity of the sector, any visible benefits from the resources that are obtained would depend on their prudent management. The revenues are often channelled to central government accounts, the consolidated fund for disbursement to all sectors of the national economy. Thus the additional challenge is to ensure the sound use of the revenues for poverty alleviation. It has been suggested that weak governance, and lack of transparency and accountability on the part of national and local government actors and traditional rulers, have combined to hamper the effective diffusion of benefits from the industry to the local level. These difficulties are amplified by the fact that the mining sector in

Ghana is rarely integrated into Ghana's development planning frameworks.

A government has the responsibility to design a legal and fiscal regime that encourages responsible exploitation of the nation's resources, while at the same time seeking a fair distribution of the proceeds between the government and firms. This requirement is all the more important because of the low labour intensity of the modern mining industry and the fact that mineral resources are nonrenewable. Direct employment in a mine is unlikely for local people, and mines located in remote areas have few indirect spin-off effects for the population at large. To obtain benefits for the whole country, the government must design a fiscal regime that captures enough of the profit to satisfy the aspirations of the country, while leaving the mining firms with sufficient profit to justify their investment.

The legislative environment for the mining industry has been largely skewed towards the promotion of the industry through the provisions of fiscal and tenure incentives, with minimum emphasis on measures to mitigate the environmental and social impacts. The reality is that the Mining Code lacks specific provisions to encourage mining companies to foster backward and forward linkages between mining and other sectors of the local economy, which could spur broader national economic development. The absence of these provisions means that the code does not address sustainability concerns. Minerals are nonrenewable resources that are exhaustible. What this means is that long-term sustainability of the national economy cannot be anchored on direct proceeds of the industry, but must take into account the development of other industrial activities that would deliver visible and more lasting spin-off effects.

### Community Development and Mining

Mining companies and governmental agencies are trying hard to convince Ghanaians that the companies are contributing significantly to the development of local communities within their operational areas (Ghana Chamber of Mines, 2005). According to them, various mining companies are carrying out community development projects in mining communities that are delivering measurable results. However, there is increasing evidence to suggest the contrary. Positive economic impacts of mining activities on communities affected by mining activities are not particularly visible.

The Mining Code is silent on measures that might be required to

effectively deliver benefits to local communities directly impacted by mining, to protect the physical environment and, particularly, the rights of vulnerable segments of the population. While the macroeconomic gains made within the mining industry under structural adjustment have been acknowledged, there is mounting evidence indicating that this growth has delivered few benefits to subsistence groups, and that overall, the negative environmental externalities generated by mining, although unquantified, are enormous. There is global consensus that mining and the waste generated from active and inactive mining sites from ore beneficiation, and their impacts on human health and the environment, are a serious and continuing problem facing government agencies, industry and the general public globally (Durkin and Herrmann, 1994; King, 1995).

Recent studies have shown that poverty is pervasive and endemic in mining communities (Aryeetey et al., 2004; Botchie et al., 2007; NSEIA, 2007). The main argument is that mining companies are annexing vast lands in their operational areas and depriving communities of their chief source of livelihood. Rampant dislocations of communities for mining activities have tended to foster poverty among these displaced communities. This arises from poor compensation packages for affected communities. Communities rarely benefit from tax revenue accruing from mining operations in their area.

Aryeetey et al. (2004), in their study, have lamented the surprisingly high level of poverty in the Wassa West District of the Western Region of Ghana. The district has attracted the highest number of exploration and mining companies since the inception of the 1980s reforms in the mining sector. It has the highest concentration of mining and exploration companies in a single location on the African continent (Akabzaa and Darimani, 2001), hosting eight of the 16 mines currently in operation in the country. In the researchers' words:

Although poverty is higher at the national level than in the Western Region using all the different measures of poverty, taking into consideration that the majority of the gold exported from this country is produced in the Wassa West District, one would have expected that the poverty levels and income distribution would be lower compared with other districts in the region. Unfortunately that is not the case. Poverty level in the Wassa West District using any of the poverty measures is higher than that of the Western Region but lower than the national poverty level. Inequality measured by the gini coefficient for the Wassa West District is around 0.408. This is

higher compared to the national figure of 0.327 but lower than what pertains in the region of 0.412. Among the 11 districts in the Western Region, the Wassa West District ranks ninth on a scale of descending income inequality.

(Aryeetey et al., 2004)

According to a recent draft report prepared as a National Strategic Environmental Impact Assessment (NSEIA) the results show that poverty is more endemic in communities directly impacted by mining activities. Spatial analysis of field data from districts with mining activities suggests that communities proximate to mining projects are generally poorer than those further away from mining, and also show a clear trend of decreasing poverty related to distance from the mine (NSEIA, 2007).

The ability of the mining industry to contribute meaningfully to poverty reduction at the community level depends on the share of mining revenues accruing to local communities in mining areas and the prudent management of local benefits. Jackson (2005) emphasises this conditionality, indicating that the sector can only contribute effectively to poverty reduction if management of national benefits from mining becomes more innovative by using the revenue to create human skills, particularly at the local level, and by sustainable use of the financial and infrastructural benefits created in host communities by mining companies (Jackson, 2005).

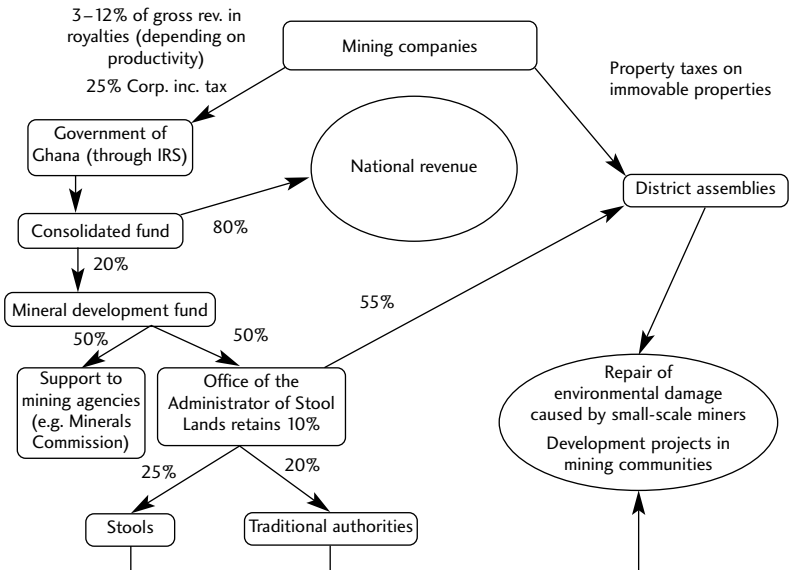
#### Retention of Mining Revenue at the Local Level

The ability of the minerals sector to contribute to the achievement of poverty alleviation targets at the community level depends on the amount of mineral resource benefits retained locally and their prudent management and allocation. Save the Children, in a study of poverty in mining communities, concluded that the only way to ensure that the revenues generated from the mining sector can be used effectively to produce discernible economic impacts in communities directly impacted by mining is to ensure and guarantee sustained accountability through transparency of information (Save the Children, 2005).

One of the contentious issues that dominated discussions during the review of the Mining Code was the level of royalties that are retained at the local level. A draft Mineral Development Fund Bill was tabled for discussion alongside the Minerals and Mining Bill, 2006. The bill proposed an enhanced percentage of royalty to be paid to the local

level for distribution among stakeholders, including a proposal for the management of the fund. However, this bill did not receive the same enthusiasm as the Minerals and Mining Bill and has since remained on the drawing board, yet to be enacted into law.

Under current arrangements, the government maintains 80 per cent of royalty revenues in its consolidated account while the remaining 20 per cent is ceded to a Mineral Development Fund set up by government, designed in principle to mitigate the adverse effects of mining within the mining communities and to promote the development of the mining industry. Half the fund (representing 10 per cent of total annual royalties) is set aside for the development of mining sector support and governmental and academic institutions. The remaining 50 per cent is disbursed among district assemblies, stools and traditional authorities with jurisdiction over a specific mining project location as follows: district assemblies 30 per cent, stools and traditional authorities 10 per cent each (Figure 1.3).



**Figure 1.3** Distribution of mining royalty among stakeholders

Source: after Botchie et al. (2007).

There have been questions raised about transparency and accountability challenges, with respect to the disbursement of royalties to beneficiaries at the local level. According to the first aggregated Extractive Industries Transparency Initiative (EITI) Ghana report (Boas and Associates, 2007), there is a lack of documentation on payment made by the Office of the Administrator of Stool Lands to the districts assemblies, traditional rulers and stools. Royalties received by district assemblies are usually paid into the general revenue pool and no special attention is given to the development of local communities. From 1993–2002, the major mining districts in the country received nearly 21 billion cedis from the Mineral Development Fund, while more than 16 billion cedis were paid to the various stools and traditional authorities in areas where large-scale mining activities were taking place (Table 1.6).

These receipts are quite substantial, and if well harnessed, could significantly contribute to economic development in these areas. However, the EITI report showed that these receipts are used for recurrent expenditure, in the case of district assemblies, and on private projects, in the case of chiefs, without any consideration for the rest of the community. This has often generated resentment among community members (Botchie et al., 2006). There is also widespread disaffection

**Table 1.6** Distribution of royalty receipts at the local level (in millions of cedis)

Year	District assemblies	Traditional councils	Stools
1993	437.21	145.65	140.77
1994	748.89	258.67	250.74
1995	1,242.57	407.28	405.27
1996	2,049.16	650.66	648.41
1997	2,071.97	747.35	653.39
1998	2,099.99	778.87	686.28
1999	227.70	82.80	103.28
2000	5,891.41	2,142.33	2,677.91
2001	–	–	–
2002	6,223.76	2,263.18	2,828.10
2003*	10,691.45	3,887.80	4,859.75
2004*	11,186.57	4,314.80	5,393.35
2005*	12,977.25	4,719.00	5,898.75
<b>Total</b>	<b>55,847.93</b>	<b>20,398.39</b>	<b>24,546.00</b>

\* Calculated from formula for sharing royalty.

Source: Minerals Commission (2007).

among chiefs and traditional rulers over the level of the share of royalty payments and land rents allotted for them in principle, while mining companies have in turn expressed discontent over the distribution and use of these funds.

### **MINING-INDUCED ENVIRONMENTAL CAUSES OF POVERTY**

Mining activities, particularly surface mining activities, have resulted in the alienation of large tracts of land from communities, depriving poor and marginalised communities of their land surface rights, and as a result depriving many communities of their sources of livelihood. The appropriation of the land of local communities for mining has often engendered social upheavals and adversely impacted on the routine livelihood activities of these communities. Such social upheavals are commonplace in communities affected by mining projects in Ghana. The growing incidence of conflict between mining communities and their chiefs on one hand, and the mining companies on the other hand, echoes the growing concerns about the effects of the mining-sector-led SAP on the population (Akabzaa, 2000).

From 1990–98, mining investment in gold in the Wassa West District resulted in the displacement of 14 communities with combined populations of 30,000. The displacement process has been criticised for a number of weaknesses. Apart from being cumbersome and subject to considerable delays, the compensation packages awarded by mining companies to Ghana's subsistence groups generally do not account for farmers who lose land to a mining project at a time when no crops are planted; strictly provide one-off payments for tree crops without factoring in the gestation period; and are not awarded to the many 'landless' hunters and palm wine tappers who have lost their means of livelihood as a result of mine expansion (Andoh, 2002).

Negative livelihood impacts resulting from mining activities are more pervasive among the most vulnerable segments of the society. Women have often borne the brunt of negative impacts of mining activities. They are usually unfairly treated when it comes to compensation for people to be resettled or relocated. Traditionally, family heads are men, and most compensation for farm crops and houses usually goes to these men, who exercise a discretionary use of the money. Women, who are often dependent on petty trading for their livelihood, commonly lose such livelihood sources during relocation or resettlement. This is because many of the new settlements are often

quite far removed from the clientele of these women traders, so they find it difficult to make sales substantial enough to support themselves and their families.

Often compensation policies do not consider the tenant status of many local people, and tenants are often not compensated for loss of livelihood. Artisanal mining is a regular livelihood activity in areas with mineral resources, and often caters for a significant number of the community, particularly the youth. However when a land becomes the subject of a mining lease, these miners are evicted without compensation. The resultant community insecurity and discontent have often occasioned cyclical violence, involving the state and mining companies on one side and disaffected communities on the other.

### The Case of Artisanal Mining

ASM is acknowledged to contribute to poverty alleviation, particularly in the rural areas where employment opportunities are rare. ASM is a vibrant and significant subsector of the mining industry in Ghana, accounting for about 10 per cent of total annual gold output and over 60 per cent of total annual diamond output. Although total employment figures for the subsector are far from accurate, the sector is estimated to employ between 100,000 and 200,000 people, mostly unskilled rural labour (Akabzaa and Darimani, 2001; Hilson 2002).

The Small-Scale Mining Regulations, which are now incorporated into the new Mining Act, impose limitations and curtail the property rights of ASM operators, and thus affect their security of land tenure. Studies have observed contentious issues pertaining to the operations of small-scale miners and land use conflicts which require urgent attention from regulatory authorities (Akabzaa and Ayamdoo, 2004; Agbesinyale, 2003; Hilson, 2002; Songsore et al., 1994). These issues include:

- the relationship between small-scale miners and multinational mining firms
- land poverty within the sector
- the role of traditional authorities
- lack of adequate institutional support
- limited opportunities for capital
- forest reserve encroachment.

The overwhelming conclusion has been that these issues are deeply



rooted in the social and economic circumstances of the small-scale mining sector and have serious implications for livelihoods.

The relationship between small-scale miners and large mining firms may at times be one of conflict, because the latter perceive the former as a threat. This is neither surprising, given the clash of interests between the two groups in relation to mining rights, nor an exclusively Ghanaian phenomenon, as conflicts between large mining firms and small-scale miners exist all over the world. These conflicts centre on the issue of access to land for mining purposes. For example, almost all lands in areas like Adansi and Wassa West districts are either in the hands of large-scale miners or have been designated as forest reserves. As a result, ASM mining activities are carried out either on the concessions of large-scale mining companies or in forest reserves. Hence the widespread conflicts between the large-scale and small-scale miners, especially the unregistered ones.

The existing regulatory and institutional framework is clearly deficient in its capacity to increase the contribution of artisanal mining to livelihoods. The regulations have a heavy impact on property rights and raise the costs of doing business within the sector, thus discouraging long-term investment of financial and technical resources by small-scale miners and/or their financiers. This directly affects job creation and income levels within the sector, because investors generally take a short-term view of their investment activity (Akabzaa and Ayamdoo, 2004).

Legalisation of small-scale mining was and remains a laudable policy objective. Yet merely legalising the activity without adequately capturing its fast-evolving and complex social dynamics may prevent the attainment of other social objectives, such as enhancing the potential of the ASM sector to contribute to better livelihoods and poverty alleviation. The capacity of regulatory institutions to monitor the legalised activity effectively and to punish noncompliance is critical not only to the realisation of the explicit regulatory objective, but also to the attainment of broader social goals such as wealth generation, job creation and growth in incomes.

## CONCLUSION

In assessing the implications of the new Mining Code for the Ghanaian economy, no one can question the positive strides relating to increased productivity in the sector. However, an evaluation of the contribution of the sector to employment creation, to government revenues, net foreign exchange retained in the national economy, and

the social and environmental impacts of the upsurge in mining activities, paint a quite different picture. The framework of recent mining legislation in Ghana, which generally seeks to encourage foreign investment, is not necessarily compatible with the attainment of social and economic development, poverty reduction and the protection of the environment.

In fact, in light of the perpetuation of generous fiscal incentives, of the migration quotas for expatriate staffing in mining, and of the stability and development agreements negotiated by individual mining companies which allow them to retain substantial proportions of their total exports in offshore accounts (all critical areas which needed to be revisited when the legislation was revised, but were not), this chapter concludes that the situation is still unsatisfactory. In spite of concern raised at the beginning of the present decade about governance of the mining sector in favour of the poor, and in spite of the adoption of the new 2006 Mining Act, the country is still very far from obtaining optimal benefits from its mining sector.

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## 2 GUINEA AND BAUXITE-ALUMINIUM: THE CHALLENGES OF DEVELOPMENT AND POVERTY REDUCTION<sup>1</sup>

*Bonnie Campbell*

### INTRODUCTION

In January 2007 the degree of hardship and exasperation suffered by the population of Guinea led to a very widespread social mobilisation, spearheaded by two important confederations of unions, l'Union des travailleurs de Guinée and the Confédération nationale des travailleurs de Guinée. Faced with a popular uprising, President Lansana Conté responded with violent repression meted out by the police and the presidential guard. For the first time in the country's history, a popular uprising threatened the regime and paralysed the state's operations. The confrontation led to an agreement between the unions and the government which included the nomination of a prime minister, Lansana Kouyaté, favoured by the unions. Among the resulting developments was the announcement in April 2007 that mining contracts which the government had signed with foreign companies would be revisited.

What makes the Guinean experience particularly striking is the uniqueness of its mineral wealth and potential, which only a few countries such as the Democratic Republic of Congo exceed. Guinea is the world's most important source of high-grade bauxite.

According to the 2005 estimates of the World Trade Organization (WTO), Guinea has reserves of 20 billion tons of bauxite which are exceptional in both their quantity and quality. The country is responsible for approximately 40 per cent of world commerce of this

resource, as well as approximately 40 per cent of the supply of bauxite to the United States<sup>2</sup> (WTO, 2005: 63). National production figures remained at approximately 17 million tons for nearly ten years, with a slight decrease to 16 million tons in 2004 and then an increase in 2005 and 2006 to approximately 19 million tons. In 2004, the value of exports from the mining sector was US\$666.9 million, out of a total value of US\$743.2 million (IMF, 2006c: 64). Of mining exports, bauxite and alumina represented US\$455.4 million, which means that this resource represented over 60 per cent of the value of the country's total export receipts if all sectors are considered.

However, while these figures underline the country's potential wealth and its high degree of integration into world markets, the impact of the mining sector on the Guinean economy is paradoxically quite a different story. This is the paradox that will be explored in the chapter. The pattern of resource extraction that emerged after independence was to be far less favourable to the country than we might have imagined. This chapter attempts to understand why this has been the case and to consider whether the reforms introduced under the auspices of the multilateral financial institutions have incorporated the concerns of the 2003 Extractive Industries Review (EIR), notably with regard to promoting governance that is favourable for the poor. In this regard, the recommendations of the Report concerning one area, that of governance, are of direct relevance to this study. As noted in the Introduction, the EIR recommendations suggested that the World Bank Group (WBG) should:

Strengthen governance first so that countries are able to withstand the risks of major extractive developments. Develop explicit governance criteria, transparently and in a participatory manner, which should be met before investments for the extractives industry.

(EIR, 2003)

After presenting a detailed analysis of the heritage of the Guinean mining sector, the chapter seeks to explore whether the reforms proposed by the multilateral financial institutions have addressed the issues raised in these recommendations in such a manner as to permit the country's rich mining sector to contribute to poverty alleviation. More fundamentally, the chapter considers the extent to which the proposed reforms are of a nature that will make it possible to address deeply rooted patterns of asymmetric distribution of the revenues drawn from the mining sector. Such an approach is useful in order to



determine whether, after 50 years, recent projects that finally anticipate fully integrating the industry to include the smelting of aluminium might, given current conditions, serve as a catalyst for the social and economic development of Guinea.

According to data produced by the International Monetary Fund (IMF), the contribution of the mining sector to Guinea's total exports in 2004 represented 92.3 per cent, which can be subdivided as follows:

- bauxite: 40.5 per cent
- alumina: 22.6 per cent
- diamonds: 6.7 per cent
- gold: 22.6 per cent (IMF, 2006c: 48).

The decrease in the country's mining receipts, of which the bauxite and alumina sectors represent by far the essential part, has been quite dramatic. The contribution of the mining sector to central government revenue has slipped from 73.7 per cent in 1986,<sup>3</sup> to 26 per cent in 1996 (Integrated Framework, 2003: 3) and to 18.27 per cent in 2004 (IMF, 2006c: 55). Figures projected by the IMF in 2004 suggested a further drop to 14.8 per cent for 2007 (IMF, 2004a: 29) (see Table 2.1). In 2006, figures for 2005–08 were subsequently revised upward by the IMF to:

- 2005: 24.3 per cent
- 2006: 27.57 per cent

**Table 2.1** Guinea: central government revenue (2000–07)  
(in billions of Guinean francs)

	2000	2001	2002	2003	2004	2005 (proj.)	2006 (proj.)	2007 (proj.)
Revenue and grants	719.8	873	876.9	952.7	1,027.4	1,325.2	1,497	1,701.4
Revenue	594.5	670.2	763.9	754.1	936	1,153.6	1,311.3	1,509.7
Mining sector revenue	146.4	166.6	145.4	105.9	171	177	195.4	223.6
% share of mining revenue in total governmental revenue (excluding grants)	24.63	24.86	19.03	14.04	18.27	15.34	14.90	14.81

Sources: IMF (2004a: 29; 2006c: 55).

- 2007: 26.69 per cent
- 2008: 29.48 per cent.

These figures, it should be noted, remained provisional, and such increases depend on the government's capacity to capture the revenue from new projects, a condition that is at the centre of what will be discussed below (IMF, 2006a: 31).

It was in answer to the declining contribution from mining receipts in the 1980s and 1990s, and as a 'rescue plan', that under the auspices of the World Bank, Guinea undertook a significant revision of its mining legislation, notably through the introduction of a new Mining Code in June 1995.

These reforms implied far-reaching measures of liberalisation, and were introduced as a way to provide new incentives in order to attract foreign investment. They also included the reform of regulations governing the conditions of employment and the repatriation of profits. According to the initiator of these measures, they were to permit a substantial increase in the quantities of bauxite and alumina produced and a rapid expansion of extraction of gold and diamonds during the decade to follow. As was suggested at the time:

The whole mining sector will soon pass under the microscope as the World Bank plans to fund a review of the current minerals code. The legal and fiscal regimes governing mining companies will be examined and harmonized, and a simplified procedure for the acquisition of mineral rights is expected to be introduced.

(EIU, 1995a: 3rd quarter, 14)

As analysed below, the 1995 Mining Code introduced greater liberalisation of the country's policies concerning its leading mining sector.<sup>4</sup> The new legislation also conferred to the sector and to the private operators who were to be increasingly responsible for its renewal, a determinant role in the country's national development strategies. As of 2002, the development of Guinea's mining sector was considered a key determinant in the strategy to reduce poverty in the country, notably in helping to pursue the four following objectives:

- boosting Guinea's economic growth, in part through the execution of mega-projects in the pipeline
- boosting the development of basic services by contributing to

central government revenues, to local government budgets and to direct actions in the field

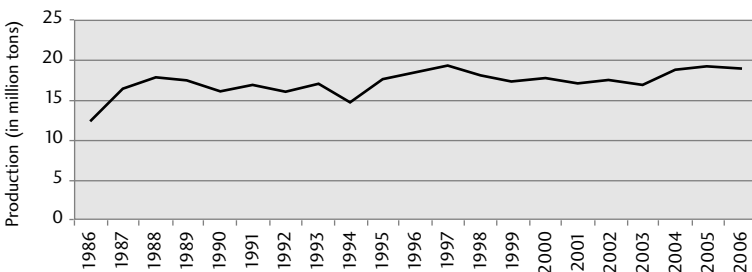
- helping to reduce unemployment, particularly for young graduates
- increasing Guinea's foreign currency assets (Republic of Guinea, 2002: 79).

Ten years after the adoption of the reforms aimed at liberalising the mining sector, it was recognised that '[a]lthough appropriate, all of these reforms to the mining sector failed to produce the positive impact on the national economy that had been hoped for' (WTO, 2005: 9). The paradox of the decline in the contribution to fiscal receipts is all the more striking in view of the relative stability of production figures over this period, as illustrated in Figure 2.1.

These trends take on particular importance when it is recognised that it is on this leading sector that the country depends to meet the performance criteria of the international financial institutions, and more basically, to permit the restructuring and diversification of its economy with a view to stimulating growth and contributing to poverty reduction.

In the case of Guinea, the introduction of the measures of economic liberalisation as of 1985 has been accompanied by very mixed results, and consequently punctuated by the repeated suspension of external funding as the country failed to meet performance criteria identified by multilateral financial institutions in the 1980s and 1990s. This happened again with the suspension in 2002 by the IMF of Guinea's Poverty Reduction and Growth Facility (PRGF).

The reasons for such disappointing results in terms of contributing to economic restructuring and development are obviously complex. A



**Figure 2.1** Guinea: national production of bauxite (1986–2006)

Source: Raw Materials Data (2007).

thorough analysis of this subject would need to take into account the interaction of factors that are historical, administrative, political and economic, and which are both internal and external to Guinea.<sup>5</sup>

In spite of this complexity, there has been a tendency in the past and until now among bilateral and multilateral financial institutions, and notably in the analyses of the World Bank, to attribute responsibility for the poor performances of sub-Saharan African countries (including Guinea) to internal factors, namely the shortcomings of local policies in contributing to economic growth: 'The evidence shows that poor policies clearly hurt Africa's long-term growth far more than a hostile external environment did' (World Bank, 1994: 31). Similarly, 'factors outside Africa also contributed to the decline of the 1970s and 1980s, though their importance is too often exaggerated' (World Bank, 1994: 21).

Reflection and policy proposals appear to continue to be focused on internal factors and blockages. There is no doubt that much of the Guinean post-independence experience has been characterised by nontransparent political processes in which political actors responsible for key decisions concerning the country's mineral resources have often intervened in the absence of minimal norms of accountability. However, without wanting in any way to minimise the importance of such factors, the perspective adopted in this chapter seeks to be broader. To this end, it will consider certain external factors by examining the complex interaction of the strategies adopted by the large mining companies present, such as those concerning the price negotiations of 1985–7 and 1991–2, as well as the policies recommended by the multilateral financial agencies, and their impact on the national policy processes. In this context, the chapter will consider certain implications of these interactions for financial stability, economic growth and diversification, and ultimately social and economic development.

Over the last 50 years, the capacity of Guinea to define and introduce its own development strategies has been closely tied to the conditions under which the country has been able to negotiate access to revenues derived from its rich bauxite-alumina sector. These negotiations have entailed several parameters including the terms and the prices on which mineral resources are sold on world markets. They have also contributed to shaping the capacity of Guinea to put in place structures for the local transformation of bauxite, and ensuring the linkage effects with other sectors of the Guinean economy with a view to meeting the stated objectives of reducing poverty. The overall results have, on any of these accounts, been more than disappointing from the standpoint of the well-being of the Guinean people.

This chapter will detail the process of integration of the Guinean bauxite-aluminium sector into world markets in the absence of countervailing internal political forces capable of ensuring that the country's enormous mineral wealth would benefit its population. In fact, the enormous social and economic costs of this process over the years led to mounting pressures for change, as illustrated in the popular revolt of January 2007 which paralysed the country and the government. This massively supported uprising serves as an eloquent testimony to the untenable nature of such patterns of resource exploitation and the domestic political processes which have presided over them.

The analysis of three different historical periods (1958–84; 1984–95; 1995–2008) will show how the evolution of the international environment and the manner in which the mineral resources of Guinea have been integrated into world markets have conditioned the impact of this important sector on the rest of the economy. In this regard, we can distinguish:

- A first period when the objective of the government was an attempt to ensure further local transformation of its leading raw material, bauxite, an objective which it failed to realise.
- A second period during which the objective appeared to focus increasingly on the more modest goal of ensuring stable returns in terms of revenue drawn from this important sector.
- A third period in which (in view of the disappointing results and at the recommendation of the Bretton Woods Institutions) the tendency was to engage in further liberalisation of the sector with a view to creating an environment capable of attracting increasing flows of investment. This strategy rested on the hypothesis that the development of Guinea's mineral resources rested, on the one hand, on opening up the sector to private operators and market forces, and on the other, on the withdrawal of public actors and institutions from the mining sector.

We shall explore, as well, certain consequences of these tendencies for the choices made concerning economic development strategies which, in spite of their importance, are most often silenced.

Among the consequences was the tendency for the structural adjustment programmes, and other measures of liberalisation subsequent to them, to weaken the institutional capacities of the Guinean state while explicitly ignoring the need for public policies in the mining sector to play a developmental role. The reforms conditioned access to new

sources of funding to performance criteria, without taking into account price fluctuations, or the terms on which contracts have been negotiated, and without multilateral financial institutions being held accountable for the recommendations that they encourage the country to follow. It is in this broader context that the issue of promoting governance that is favourable for the poor will be reset.

The hypothesis underlying this analysis is that during the three periods, the important economic returns realised from the rich Guinean mining sector have not been apportioned in a manner that benefits the country. The opacity with which the sector has been managed domestically has resulted in an overarching emphasis being given to the lack of transparency of internal revenue flows. This emphasis has tended to mask the parallel opacity of the manner in which mineral prices are negotiated and mining contracts have been and continue to be signed. Without wanting in any way to minimise the former dimension, the point made here is that the two processes are inextricably linked.

If during the first period the explanation concerning the perpetuation of asymmetrical relations governing the development of the mining sector had to do above all with the nature of relations and the negotiations between the large aluminium multinationals and the Guinean government, in the two subsequent periods, the explanation entails this dimension but in an additional and important manner, it has to do as well with the perpetuation of a particular 'politics of mining' which has continued and even flourished in the context of the weakened institutional capacity and the liberalisation measures introduced into the country as of 1984.

These conditions included, among other things, reforms favouring state withdrawal, privatisation, reduced taxes, and the introduction of new legislative and fiscal frameworks that gave private operators in the sector the role of 'owner and operator' and relegated the state to the role of 'regulator' and especially that of 'facilitator' (World Bank, 1992: 53)<sup>6</sup> of foreign investment. Over time, the domestic political context into which these reforms were introduced (characterised not only by lack of administrative transparency but increasingly as well, by a lack of institutional and political accountability) contributed to the decreased capacity of the government to negotiate in such a manner as to ensure binding results in the country's interest, and if necessary to introduce and impose corrective solutions or to formulate alternative policies. Consequently, while the 2007 demands from the unions and civil society organisations that past mining contracts be revisited were critically important in signalling the urgent and long overdue need for

a profound redefinition of past patterns of resource distribution, in the wake of the political changes further to the death of President Lansana Conté on December 22, 2008, there is reason to pay attention to whether past patterns will simply be overhauled and consolidated or redefined. For in the absence of an important redress of current asymmetrical relations, of a renewal of political processes and the emergence of policies that seek to integrate the mining sector in such a manner that it becomes a catalyst for structural transformation, recent and further investment in the bauxite-aluminium sector may well fall very short of fulfilling the expectations that have been created. An understanding of the origins and nature of the political and economic structural heritage (which has contributed to prolonging the asymmetrical relations characterising the sector to the present day) is essential in evaluating the capacity of current reforms of Guinea's mining regulations to promote development and forms of governance that are favourable for the poor.

### **A SHORT HISTORICAL PERSPECTIVE OF THE DEVELOPMENT OF THE GUINEAN MINING SECTOR (1958–84)<sup>7</sup>**

That the mining sector under Sékou Touré's First Republic (1958–84) played a critically important role in the economy may be illustrated by the fact that the sector contributed an estimated 25 per cent of GDP, 95 per cent of exports and 79 per cent of tax revenue by the end of the period (World Bank, 1990a: 32). However, the formal mining sector remained throughout this period, as it has to the present, very much an enclave with few direct links to the rest of the economy other than the employment of labour. Within the sector, one mineral has played and continues to play an overriding role, and that is bauxite.

Guinea remains involved in two of the stages in the bauxite to aluminium chain, bauxite mining and alumina refining. Throughout the 1960s and 1970s Guinean mining policies, conventions and tax formulas (such as the introduction of a bauxite levy in 1975) had as their prime objective creating conditions to encourage further local transformation of the country's chief resource, notably to include aluminium smelting (Campbell, 1991). However, mining operations at each of the three main sites, Fria, Boké and Débélé, did not translate this objective into reality. Before explaining why this was the case, it is necessary to provide a brief historical perspective.

Although the existence of bauxite deposits in Guinea had been recognised since the beginning of the nineteenth century, it was not

until the industry had undergone reorganisation under the leadership of North American interests after the Second World War that important exploitation of the resource began. War production gave a tremendous boost to the industry and brought about a massive expansion of North American production capacities. In 1948 and 1950, Guinean bauxite from the islands of Los (which include Kassa and Tamara) began to be shipped in small quantities to Alcan's Saguenay Lac St Jean smelters in Quebec. Production on the island of Kassa continued until 1965 even after installations were nationalised in 1961 by the new Guinean government which came to power in 1958.<sup>8</sup>

During the colonial period, another important project was started at Fria under the leadership of the French firm Pechiney Ugine. After the Second World War, the French government decided to explore new possibilities for developing its aviation industry. Guinea with its vast bauxite reserves and hydroelectric potential was a natural choice. The initial project, undertaken in collaboration with the public facility *Électricité de France* (EDF), was grandiose in size (US\$400 million) and foresaw installations capable of producing annually 6 million tons of bauxite, 1,500,000 tons of alumina and 200,000 tons of aluminium (Soumah, 2007: 84). It also involved developing a vast hydroelectricity project on the Konkouré River capable of producing 700MW, a railway line and a specialised port. The French government was directly involved in the planning and financing of the project, as illustrated by the fact that regional development was to be overseen by the French public agency, the *Mission d'Aménagement Régional de la Guinée* (MARG). In order to undertake the project, a long-term agreement was signed on February 5, 1958 between the private company, the *Compagnie Internationale pour la Production de l'Aluminium*, Fria, the colonial territorial authority of Guinea and of French West Africa. The agreement was for 75 years and established the terms of the various conditions, guarantees and the fiscal regime. Fria was at the origin of an international consortium which brought together Olin Mathieson Chemical Corporation (US), which held 48.5 per cent of the shares, and Pechiney Ugine with 26.5 per cent, with the rest being distributed between the British Aluminium Company (10 per cent), Aluminium Industrie AG Switzerland (10 per cent) and Vereinigte Aluminium Werke AG Germany (5 per cent). Alumina production began in 1960 and reached 457,875 tons in 1962, which represented 58 per cent of the total value of Guinean exports, rising further to 519,895 tons in 1965 (Soumah, 2007: 91).



As noted, during the colonial period, studies had also begun concerning the Konkouré hydroelectric scheme. The dam was to be located east of the Fria site. However, after the country's break with the 'Communauté française' and its refusal of French tutelage, confirmed by the September 28, 1958 referendum, the preliminary studies for the Konkouré project were kept secret by the colonial power.

In November 1961, the government took possession of the Kassa and Boké sites because of the failure of the private firm, Les Bauxites du Midi (a 100 per cent subsidiary of Alcan), to respect its agreement to transform bauxite to alumina locally by 1964. The project was taken up by a second-rank US firm, Harvey Aluminum of Delaware, which had been responsible for the production of bauxite on the island of Tamara. Significantly, the new negotiation for the Boké site between the government and Harvey coincided with the resumption of closer relations between the United States and Guinea. In 1962 Guinea was admitted to the International Bank for Reconstruction and Development (IBRD), which contributed US\$2 million to the initial activities of the agency in charge of providing the infrastructure for Boké, the Office d'Aménagement de Boké (OFAB) (Soumah, 2007: 113), and in 1964 USAID approved a loan for the new Boké project and guaranteed Harvey's initial investment.

Harvey's agreement with the Guinean government, signed in October 1963, was to become the prototype for other sites. A semi-public corporation was formed called the Compagnie des Bauxites de Guinée, CBG, in which the Guinean government held 49 per cent of shares and the remaining 51 per cent were held by an international consortium, Halco Mining, and divided among its private partners: Alcan Aluminium Ltd with 27 per cent, Aluminium Co. of America 27 per cent, Harvey Aluminum Inc. 20 per cent, Pechiney Ugine 10 per cent, Vereinigte Aluminium Werke AG 10 per cent and Montecatini Edison 6 per cent.

At the time, certain clauses concerning taxation and local transformation were considered to be important gains on the part of the Guinean government. By the mid-1970s however, President Touré denounced the private firms for not respecting their agreement, notably the clauses concerning local transformation. State participation in the project (considered when the agreement was signed as a guarantee of local control) appeared with time to be more compatible with the logic of accumulation in the industry on an international scale rather than providing a guarantee of local processing.

An agreement signed in February 1973 by the Guinean government

and the private partners of the Fria Company (Frialco) created a joint venture, Friguia, in which the government held 49 per cent of shares and the transnationals 51 per cent. Friguia mined bauxite and transformed it locally into alumina that was then shipped either to the countries of the European Economic Community (EEC) or to the Pechiney installations at Edéa in the Cameroon to be processed into aluminium. As in the case of the CBG Boké exports, output at Friguia was purchased in proportions reflecting the shares of the private partners in Frialco, which after various renegotiations were Noranda (Canada) (which had purchased Olin Matheson) 19.6 per cent, Pechiney (France) 18.6 per cent, British Alcan (UK) 5.1 per cent, Alusuisse (Switzerland) 5.1 per cent, and WAW (Germany) 2.6 per cent.

By the late 1970s, Friguia was exporting over 600,000 tons of alumina per year. The fact that local transformation of bauxite to alumina was taking place at the Fria site from the early 1960s suggests that an understanding of the conditions which explain local transformation requires us to go beyond either a too narrow economic analysis of the presence or absence of factors of production, or interpretations that offer the 'political situation' under the presidency of Sékou Touré as an explanation for non-transformation at the other sites.

For various reasons which merit further attention and which have been described in a cursory manner as 'technical difficulties', the company's output was uneven, and it was not until 1989 that for the first time since 1973, Friguia registered a financial surplus, with alumina exports reaching 600,000 tons. Consequently, it was only as of 1989 that the government was able to benefit from Friguia's profits (Larrue, 1991: 48). As will be seen, the company's profitability was to be short lived.

The site of Débélé in the Kindia area was operated jointly by the Soviet Union and the Guinean government. The agreement signed in November 1969 set the price of the ore and stipulated that:

- The Guinean state was 100 per cent owner of the capital of the resulting enterprise, OBK (Office des Bauxites de Kindia).
- The Soviet Union was responsible for the construction of the mine and the railway, and was to be reimbursed by receiving 50 per cent of the ore extracted.
- A further 40 per cent of the ore was destined for the Soviet Union according to the clauses of a long-term trade or clearing agreement between the two countries.

- The remaining 10 per cent might be disposed of by the government of Guinea on the markets of its choice. In fact, because of the integrated structure of western firms, this part went almost totally to Eastern European countries.

OBK was therefore the property of the Guinean government. The initial investment of 85 million roubles was put up by the Soviet Union at an interest rate of 2 per cent. The Soviet Union was subsequently to commit new funds for mine, railway and port improvements. Production began in 1974, and exports grew to between 2.7 and 3 million tons in 1990.

It is difficult to compare the terms of the OBK agreement with other agreements as they were very different from those of Friguia and CBG. Similarly, any comparison of the price of bauxite at OBK with that of Friguia or Boké is difficult because of the important differences in the agreements with the Guinean government, notably ownership, as well as the differences in the quality of the ore.

In keeping with Guinean mining objectives of local transformation, a further project was proposed. At Ayékoyé in the Boké area, had it come about it would have entailed production eventually not only of alumina but also of aluminium, and the development of the massive hydroelectric resources of the Konkouré River. A priority of the Sékou Touré government, the project would have permitted the mining of 9 million tons per year of very high-grade bauxite. While projections vary, had the project materialised, it was generally estimated that about 4 million tons of the total would be transformed locally into alumina and the rest exported in the first phase of the project. In the second phase, depending on the source of information, the project would have permitted the production of not only 1,200,000 tons of alumina, but also between 75,000 and 150,000 tons of aluminium. The proposal was intimately linked with the development of new sources of hydroelectric power which are abundant in the area. In spite of the continuing interest in this project throughout the 1970s and 1980s, notably among European companies (Pechiney and Alusuisse), there were difficulties in obtaining the necessary financing which explain why activities at this site were never to go ahead.<sup>9</sup> Although it never came about, the Konkouré proposal illustrates the country's potential and the government's desire throughout the post-independence period to ensure local transformation of its rich reserves of bauxite.

Production began at the country's most important site of Boké in 1973. All output was exported as raw bauxite and purchased in

proportions reflecting the shares of the private partners. Consequently, 26 per cent of Boké's production was shipped in 1973 to Port Alfred, Quebec, to be processed into aluminium at Alcan's Arvida smelters. The quantity exported increased from around 5 million tons in 1975 to around 9 million tons in 1984.

In 1974 (the coincidence of date is worth underlining) it was announced that one of the important partners of the Boké holding, Alcan Aluminium Ltd, was proceeding with the transformation of bauxite from the Boké site, not locally, as stipulated in the agreement signed with the Guinean government, but in Ireland. Alcan's project entailed the construction of installations at Aughinish, near Shannon airport, permitting the transformation of imported raw bauxite into alumina which would then be exported to be processed into aluminium at Lynemouth (UK). Annual capacity at Aughinish was set at 800,000 tons of alumina. The factory's cost was initially estimated at US\$550 million but was to double; production began in 1983.

It would be quite impossible to explain the logic of the Aughinish project in terms of the comparative costs of the factors of production. The siting of the Irish venture depended on a series of factors. On the one hand, there were the very advantageous conditions of production offered by the policies of the Irish government, and on the other, there were the markets offered by the access of Irish exports to the EEC. This favourable ensemble of elements was reinforced by generous grants and subsidies from state financial bodies in both Canada and the United Kingdom in support of the project.<sup>10</sup>

As for the consequences for Guinea, it will be recalled that the date of the abandonment of the agreement to transform bauxite at the Boké site corresponded with the confirmation that the Aughinish project was to go ahead. The favourable conditions created by the Irish policies towards foreign investment, public financial support, and finally the logic in favour of European regionalisation, created pressures and a context diametrically opposed to those required for meeting the objectives set by Guinean mining policies in favour of local processing of its raw material.

As will be seen below in the discussion of the 1985–7 bauxite price negotiations, if during the 1960s and 1970s Guinean mining policies had emphasised local transformation as a means to have access to a greater share of the earnings from the mining sector, during the 1980s the issues at stake had shifted, rendering the former objective more and more remote.

The central question appeared to be the conditions for maintaining

a minimum level of revenue through export taxes on the non-transformed raw material. Here again the results were to prove disappointing.

### **THE MINING SECTOR: NEGOTIATING UNDER NARROWING CONSTRAINTS (1984-95)**

As the 1970s drew to a close, the country approached a serious economic crisis. At that time, President Sékou Touré had made some overtures to the West by liberalising trade policies and encouraging foreign investment, but he continued to promote a planned economy and communal and mechanised farming experiments. The country's external debt mounted, and by the early 1980s had become unsustainable. The IMF and World Bank at that time undertook several detailed studies of Guinea's economy, and held preliminary talks with the Touré government on a possible structural adjustment loan. Little progress had been made, however, by the time of Touré's death in early 1984. At that time, a bloodless military coup placed the military leader General Lansana Conté in power. President Conté, eager to implement economic reform, contacted the IMF and World Bank just seven days after his takeover.

The introduction of the adjustment programme in Guinea coincided with critically important negotiations (1985-7) over the price of bauxite.<sup>11</sup> Led by Halco Mining Inc, the consortium associated with the Guinean government in CBG, these negotiations were to lower very significantly the price of bauxite internationally, and have major consequences for other producers such as Brazil, Jamaica and Suriname. Given the fragility of the Guinean political and economic situation, it is surely not fortuitous that negotiations should have taken place over the price of bauxite in this West African country. Very shortly before, Brazil had in fact refused to submit to the demand that it lower the selling price of bauxite.

The negotiating position of the private consortium entailed the elimination of the US\$13 per metric ton Guinean export levy on bauxite ore, which would have had the effect of cutting the export price by 37 per cent from its 1985 level (Freeman, 1986). It was in an attempt to encourage the implementation of Guinean mining policies in favour of local transformation (the tax varied inversely with the degree of local transformation) that a new tax system had been introduced in Guinea on the export of raw bauxite in the mid-1970s. Just over a decade later, the objective of local transformation appeared increasingly remote. The central question appeared to concern no longer the conditions

permitting eventual local transformation, but rather the conditions for maintaining a minimum level of revenue through export taxes on the non-transformed raw material, in order for public investment spending to remain at an adequate level, and consequently for the process of economic reform to go ahead.

In the end, the price negotiations which lasted almost two years<sup>12</sup> gave rise to an agreement signed with CBG for a period of three years which came into effect in January 1988, and entailed that Guinea abolish its US\$13 per ton export levy in favour of a floating levy that would reflect the price movements of aluminium (Bureau of Mines, 1987: 2; *Financial Times*, 1985). A similar renegotiation concerning the price and the export tax of alumina from Friguia also came into effect for a three-year period as of January 1, 1988.<sup>13</sup>

As noted, among other provisions under the arrangement with CGB, the 'selling price' of bauxite, from which CBG revenues and consequently taxable incomes are derived, was to be calculated by a formula linked to the world prices of alumina and aluminium, as well as world inflation. When compared with the previous bauxite levy of 1975, one consequence of the 1988 agreement was that tax payments were more closely linked to the company's financial performance and to world market alumina and aluminium prices. In principle, government taxes were to increase during world aluminium market upswings but decrease when world aluminium and alumina prices declined. Thus, the Guinean economy found itself more exposed to world aluminium cycles. As a World Bank report noted at the time, the new arrangements in the case of CBG provided for a declining trend of tax payments in the medium term not merely as a result of aluminium projections, which various studies suggested would remain flat, but because of the pricing formula itself:

there is a peculiarity in the structure of the formula which gives decreasing allowance for cost increases as time goes on. The result of this is that real tax revenues will decline under a wide range of assumptions about future aluminium price movement.

(World Bank, 1990a: 36)

The drop in tax revenues from CBG following the price negotiations, and their near stabilisation in the case of Friguia in spite of increasing output, were inevitably to have critical implications on Guinea's public finances and the government's margin of manoeuvre in carrying out its

reform programme. Before we detail these trends, several general observations will be useful.

Despite some problems with the implementation of the structural adjustment reforms, there nonetheless occurred a very significant shift towards a liberalised economy as of mid-1986. In 1988 a second structural adjustment programme (SAP) was designed and adopted to deepen and consolidate the reforms of the first SAP. The World Bank expected that, by addressing the 'domestic policy inadequacies' of the previous regime, the structural adjustment reforms would greatly improve the country's economic performance. These projections, however, were not borne out.

While the reasons for the difficulties in implementing reforms and achieving projected targets were numerous, and have to do in part with internal political and administrative considerations, it was the contribution of revenues from the mining sector which provided the framework and set the constraints for the process of economic reform. As noted, Guinea has a wide range of mineral resources. However the country's export base has remained extremely narrow: in 1992 it continued to rely for more than 73 per cent of its export earnings on bauxite and alumina (EIU, 1995b: 28). After a brief presentation of developments in the critical bauxite-alumina sector and its contribution to the country's revenue at the end of the 1980s and beginning of the 1990s, this subsection will conclude with elements to explain the constraints weighing on the Guinean economy in the context of the restructuring of the international aluminium industry.

Until 1990, the Guinean mining industry was presented in unqualified terms as the most dynamic sector of the economy, as it had been since independence. The sector had accounted for over 20 per cent of GDP, employed 9000 people, was responsible for over 90 per cent of recorded export earnings and approximately 62 per cent of the government's domestic revenue. During the period 1987-90, real growth in the mining sector averaged 5.7 per cent per year, compared with real GDP growth of 4.1 per cent (EIU, 1995b: 20).

As of 1990 the pattern became more complex, and the mining sector declined in both relative and absolute importance, as illustrated by the declining contribution to central government fiscal revenue from an average 70 per cent over the period 1987-90, to 40 per cent in 1993 and to 29 per cent in 1995. How are these trends to be explained? Certain explanations point to labour unrest and a breakdown of facilities which disrupted bauxite and alumina operations in 1990, but most frequently, explanations point to 'weakening terms of

trade' which significantly reduced the mining companies' contribution to state revenues. However, as the discussion of the 1985–7 price negotiations illustrated, the price of bauxite is not merely the outcome of the free play of market forces, but rather, in this highly concentrated industrial sector, fixed by such elements as formulas which resulted, in the Guinean case, from a difficult and long bargaining process. Furthermore, declining world aluminium prices during this period must be reset among other things, in the context of the restructuring of the industry as a whole over the 1980s which, it may be shown, involved very large expansion of supply by the large transnational companies present in Guinea, in countries such as Australia and Canada. It is within this broader framework that developments concerning output and revenues from bauxite and alumina in Guinea are discussed in what follows.

Although there was a slight decline in alumina exports from Friguia between 1992 and 1993, this factor in itself is not sufficient to explain the radical drop in fiscal revenues from the mining sector. More significant is the fact that there was an increase in the average annual production level of bauxite from around 15 million tons from 1985–90, to an average of 16.5 million tons from 1990–5. This makes it all the more necessary to explain the sharp decrease by about 50 per cent in fiscal revenue between these two periods.

In view of decreasing revenues from this sector, the first point to be made is that the explanation does not rest with a fall in output. In fact, in the early 1990s there was a slight increase of exports from the privatised SBK complex (formerly OBK). With regard to the same company, after several difficult years (notably in 1994 when production reached only 1.1 million tons) production levels at SBK increased in 1995 to 1.7 million tons. The Friguia alumina plant achieved exports of 615,000 tons in 1992 and 611,000 tons in 1993, which, as noted, is not a significant enough drop to explain the importance of declining revenues from this sector (EIU, 1995a: 10–11). During this period, Friguia had undertaken a four-year modernisation programme with a view to increasing production, updating the rail link and improving environmental protection which had come under criticism. With regard to exports, in comparison with the beginning of the decade, these increased to reach 639,200 tons in 1994 and 623,500 tons in 1995 (EIU, 1996: 17). However, an examination of the pricing formula for alumina reveals that alumina sold to the Frialco partners was done so at a loss when compared with costs in 1993–5, a trend which was aggravated by the exorbitantly high technical assistance fees required



by Pechiney Aluminium at approximately US\$10 per ton (Soumah, 2007: 94). This situation had obvious implications for the limited amount of tax revenue Friguia paid to the government over these years.

As for the country's largest bauxite mine, the Boké-Sangarédi complex which achieved output of 11.5 million tons in 1990 and 1991 and whose reserves were estimated at 4 billion tons, this project was also undertaking a major modification. An expansion scheme of US\$170 million was aimed to boost output to 13 million tons per year as of 1996, with the opening of nearby deposits at Bidi-Koum, close to the existing mines (EIU, 1995a: 21). In view of the arguments concerning the lesser quality of the ore used in subsequent price negotiations, it is useful to consider these expansions more carefully. Interestingly, it was reported at the time in the Canadian partner Alcan Aluminium Ltd's newspaper that it was anticipated that the bauxite from the reserves of Bidi-Koum would serve as of the 1990s as a 'longer term solution' to reduce the costs of bauxite. More precisely, it was suggested by the Canadian partner's bauxite committee in 1991 that bauxite from the new Guinean site would make it possible to reduce the cost of production of aluminium at Alcan's Quebec Vaudreuil plant by approximately US\$15 per ton (Alcan, 1991: 7), removing any doubt that certain analysts might have had concerning the risk that the decreasing quality of the bauxite reserves in this area of Guinea would disadvantage foreign operations. Such statements are to be kept in mind when assessing the claim made in the subsequent price negotiations that the government should be made to pay a penalty in view of the poorer quality of bauxite from the new sites, an argument that was used to justify a particular formula which led to the decrease in real tax revenues paid to the government over time, severely penalising the country.

The above summary therefore suggests the relative stability of bauxite and alumina production in the early 1990s, and the very definite interests of the companies present in continuing and expanding their activities in Guinea, as illustrated by the increase in production figures in the second half of the 1990s shown in Figure 2.1.

In spite of fairly stable production figures, the contribution of bauxite and alumina to government revenues declined for the first time in many years in 1990, to below 50 per cent, and fell further to only 26.4 per cent of the budget in 1993, representing a real decline in monetary terms of 40 per cent (EIU, 1995b: 21). Before analysing the economic implications of these figures, it is useful to give a few details

concerning the reasons for the decline in export receipts, notably from the country's most important source, CBG.

Falling export earnings as of 1990 from mining and in particular from bauxite and alumina are illustrated in Table 2.2 (page 86) and Table 2.3 (page 87).

While certain interpretations suggest that there was a 'deterioration in the terms of trade' which is said to have significantly reduced the mining companies' contribution to government revenue (as illustrated by the discussion of the 1985–7 price negotiation), the price of bauxite is not simply the result of the free play of market forces. On the contrary, in Guinea, prices are established as noted, through the introduction and modification of formulas that are the result of long and difficult negotiations.

In fact, a 1990 World Bank report pointed to the pricing formula in order to explain the decline in Guinean tax revenues, which had been anticipated and did in fact occur, as a result of the 1988–91 negotiations between CBG and the Guinean government:

[I]f current pricing and tax arrangements are maintained, Government revenues from CBG operations are projected to decline again in real terms by 25–30 per cent during the 1990s, while CBG's annual production will likely increase to 12 million tonnes. The instability and decline in the Government's revenue flow from mining taxation will likely be considerable during the 1990s.

(World Bank, 1990b: 15)

While the 1988–91 agreement between the government and CBG did not have to be renegotiated before 1995, it was Halco, the private consortium, which reopened negotiations to pre-empt modifications which might eventually have been sought by Guinea. Negotiations took place in 1991 and an agreement was reached in July 1992. Although information is not readily available concerning the precise measures accepted, the results were close to the status quo, notably with regard to the pricing formula. These negotiations were to serve as a precedent for the terms resulting from the negotiations of 1995 between Friguia and the Guinean government.<sup>14</sup>

In spite of the relative stability of the production of Guinean bauxite and alumina until 1995, and in spite of the increases which took place subsequently, the disproportionate decrease in tax revenue accruing to the government from CBG as of 1992, in comparison with the revenue earned by the company, suggests that the pricing formula and

**Table 2.2** Guinean central government financial operations (in billions of Guinean francs)

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996 planned	1996 revised
<b>Total revenue</b>	101.9	172.7	199.6	274.9	362.1	412.5	478.4	548.0	n/a	547.8	664.3	660.3
Tax revenue	86.3	129.7	148.8	207.9	271.2	310.5	334.9	378.3	n/a	376.3	476.0	474.0
Mining sector	75.1	107.3	111.3	150.7	197.6	190.0	162.7	145.4	n/a	110.7	127.4	127.4
Non-mining sector	11.2	22.4	37.5	57.2	73.6	120.5	172.2	232.9	n/a	265.6	348.6	346.6
Non-tax revenue	2.8	8.2	14.0	14.5	22.6	19.5	26.2	22.0	n/a	25.2	40.1	38.1
Grants	12.8	34.8	36.8	52.5	68.3	82.5	117.3	147.7	n/a	146.3	148.2	148.2
<b>Total expenditure</b>	139.3	205.6	276.4	347.5	458.4	515.2	597.2	650.3	n/a	643.5	735.1	749.2
Current expenditure	88.2	119.8	152.9	187.7	230.0	280.3	305.7	313.5	n/a	329.6	355.1	368.2
Investments	51.1	85.8	123.5	159.8	228.4	234.9	291.5	336.8	n/a	313.9	380.0	381.0
<b>Balance</b> (commitment basis)	-37.4	-32.9	-76.8	-72.6	-96.3	-102.7	-118.8	-102.3	n/a	-95.7	-70.8	-88.9
Change in arrears	3.6	-1.2	29.3	-12.9	68.4	57.6	-309.4	-12.6	n/a	-17.2	0.0	-3.1
<b>Balance</b> (cash basis)	-33.8	-34.1	-47.5	-85.5	-27.9	-45.1	-428.2	-114.9	n/a	-112.9	-70.8	-92.0
Mining sector/ tax revenue (%)	87.0	82.7	74.8	72.5	72.9	61.2	48.6	38.4	n/a	29.4	26.8	26.9
Mining sector/ total revenue (%)	73.7	62.1	55.8	54.8	54.6	46.1	34.0	26.5	n/a	20.2	19.2	19.3

Sources: Economist Intelligence Unit (1993a: 24; 1995b: 12, 26; 1996: 14).

**Table 2.3** Guinean central government financial operations (in % of GDP)

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
<b>Total revenue</b>	15.0	19.0	17.0	16.9	18.3	17.1	16.4	15.9	n/a	15.0
Tax revenue	12.7	14.2	12.7	12.8	13.7	12.9	11.5	11.0	n/a	10.3
Mining sector	11.1	11.8	9.5	9.3	10.0	7.9	5.6	4.2	n/a	3.0
Non-mining sector	1.7	2.5	3.2	3.5	3.7	5.0	5.9	6.8	n/a	7.3
Non-tax revenue	0.4	0.9	1.2	0.9	1.1	0.8	0.9	0.6	n/a	0.7
Grants	1.9	3.8	3.1	3.2	3.5	3.4	4.0	4.3	n/a	4.0
<b>Total expenditure</b>	20.5	22.6	23.6	21.4	23.2	21.4	20.5	18.9	n/a	17.7
Current expenditure	13.0	13.2	13.0	11.6	11.6	11.6	10.5	9.1	n/a	9.0
Investments	7.5	9.4	10.5	9.8	11.5	9.8	10.0	9.8	n/a	8.6
<b>Bakance</b> (commitment basis)	-5.5	-3.6	-6.6	-4.5	-4.9	-4.3	-4.1	-3.0	n/a	-2.6
Change in arrears	0.5	-0.1	2.5	-0.8	3.5	2.4	-10.6	-0.4	n/a	-0.5
<b>Balance</b> (cash basis)	-5.0	-3.7	-4.1	-5.3	-1.4	-1.9	-14.7	-3.3	n/a	-3.1

Sources: Economist Intelligence Unit (1993a: 24; 1995b: 12, 26; 1996: 1).

the tax regulations negotiated with the major aluminium companies present in Guinea were not consistent with the government's objective of obtaining stable revenues from the mining sector. The results, which are confirmed by the Guinean tax returns, serve to underline the weakness of the negotiation position and capacity of the Guinean negotiators during this crucial period.<sup>15</sup>

Before referring briefly to how such constraints were to impact on the country's attempt to reform economically, we should question which other options existed that might have broadened the government's room for manoeuvre. While alternative policies did exist in principle, such options became most unlikely from the 1980s because of the fact that the multilateral financial organisations decided against the possibility of funding projects involving local transformation in Guinea (Campbell, 1991: 46–9).<sup>16</sup>

Concerning the restructuring of the aluminium industry internationally, during the 1980s each of the private partners in the Boké and Fria ventures had found alternative sources of alumina, whether by intensifying activities at existing sites or by developing new ones, notably in Brazil, Greece, Ireland, Spain, Surinam and Venezuela (Campbell, 1996b: 122–74). Particularly in view of what has been noted about the country's hydroelectric potential, although such new developments did not in themselves preclude the possibility of local transformation during this period in Guinea, they made it less likely.

In other words, the restructuring of the world aluminium industry, as well as the resulting new patterns of ownership and control, were to have direct implications for a bauxite-producing country that had attempted over the years to persuade its private partners to transform its raw material locally. In a similar manner, it is this global context that (in interaction with internal factors specific to Guinea) conditioned the ability of the country to reach several of its objectives, whether these concerned developing its enormous hydroelectric capacity, ensuring local transformation of its natural resources, increasing its fiscal revenues or reaching certain environmental objectives.

Further to the political changes in 1984, the Guinean economy underwent major restructuring. Towards the end of 1985, under the leadership of the IMF and the other international lending agencies, the government of President Lansana Conté, the Comité militaire de redressement national (CMRN), adopted a two-year Programme intérimaire de redressement national (PIRN) which had been conceived

to bring economic redress and re-establish balanced public finances. The programme had five major aspects:

- monetary reform
- liberalisation of foreign trade and domestic prices
- privatisation or liquidation of the majority of state owned ventures
- administrative reform
- legislative reform (particularly affecting business, commerce and new investment).

The PIRN was replaced in 1985 by the Programme de réformes économiques et financières (PREF), designed to transform Guinea from a centrally planned to a market economy. This programme, which closely mirrored the World Bank and IMF recommendations, permitted rescheduling of Guinea's considerable backlog of external debt in April 1986 and the introduction of a first structural adjustment loan. Agreement was also reached with the IMF, and a three-year structural adjustment facility (SAF) credit of Special Drawing Rights (SDR) 36.8 million was endorsed in 1987. The second phase of the structural adjustment programme (SAP II), launched in mid-1988, continued with further reforms of the management of public finance and accelerated restructuring of the civil service and public sector. The SAF expired in mid-1990, but Guinea was unable to negotiate a new facility with the IMF until November 1991. The reason for this delay was Guinea's failure to meet a number of criteria written into the original SAF agreement, notably delays in the privatisation of the state fuel distribution company and failure to reduce the size of the civil service.

In fact, not only were loans introduced with considerable delays, but also 'a significant amount of IMF funding was never drawn because of the failure to meet the conditions tied to it' (Clapp, 1994: 315).

Indeed, the low level of foreign exchange in Guinea due to falling terms of trade and diminished balance of payments assistance, especially in 1988, hindered the implementation and operation of the financial and trade sector reforms specifically, and of all reforms more generally.

(Clapp, 1994: 315–16)

The uncertainty of concessional funding and export revenues in 1988 was not an isolated situation but part of a pattern. In November 1991,

a Three-Year Programme (1991–4) was approved by the World Bank and an Enhanced SAF (ESAF) agreed upon by the IMF. Conditions attached to the ESAF required Guinea to:

- further reduce the size of the civil service
- continue the privatisation programme
- reduce public utility subsidies
- respect promises of public spending restraint.

As with many previous funding arrangements, the ESAF was blocked for several months because of unsatisfactory budgetary performance (EIU, 1996: 5). This in turn delayed funding from other sources, notably the World Bank and the Paris Club, for which the IMF seal of approval was a prerequisite to reopening credit lines and consideration of debt rescheduling. To add to the country's problems (and in a manner which appears to repeat itself), it was anticipated that the 1993 budget (overseen by the IMF) would be extremely difficult to achieve because of the unrealistic revenue projections on which it was based, notably with respect to fiscal receipts from the mining sector.

The anticipated outcome was not long in materialising. Government revenues in 1995 proved to be very much below expected levels. Consequently, after having approved a third and fourth instalment of the ESAF of SDR57.9 million (US\$86 million), which was to have been made available in November 1996, the IMF decided to suspend its funding until after the meetings planned with the country in the autumn of 1996 (EIU, 1996: 6).

Among the various measures proposed to remedy the weakness of public finances, multilateral financial institutions insisted on the improvement of the management of customs services, the introduction of a value added tax of 18 per cent and the liberalisation of regulations concerning the mining sector in order to attract new investors. In this regard, the World Bank had (as noted in the introduction of this chapter) encouraged and overseen the introduction of a new Mining Code which became law in June 1995. The new code (which is discussed in the last section of this chapter) sought to stimulate the sector by reinforcing rights concerning mining exploration, by making the fiscal regime more attractive and providing more generous conditions concerning the repatriation of profits (EIU, 1996: 13).

Although from the second half of the 1990s there was an increase in the levels of production, notably of bauxite, this favourable

development was not of itself to lead to a positive impact in terms of the reform of the economy.

From 1988–91 the momentum of reform weakened, and in certain areas was even reversed. Although the reasons for this are numerous, and include historical, social, and political internal factors and important weaknesses in administrative and technical capacity, an additional and complementary factor was the severity of external economic and financial constraints. These resulted from insufficient external assistance to Guinea's balance of payments, and from insufficient and unstable revenues accruing from the mining sector. With regard to the former, there was a:

drop in balance of payments assistance over 1988, due primarily to the fact that no funds were released to Guinea from the IMF that year, reflecting unmet conditions on a Structural Adjustment Facility which had been approved in mid-1987.

(Clapp, 1994: 311)

Above all, however, the decrease in revenues from bauxite and alumina placed extremely severe constraints on the country's financial operations. 'This depletion of the foreign exchange narrowed the margin of manoeuvrability for the central bank, and eventually forced the government into substantial arrears on its debt service payments in 1988' (Clapp, 1994: 311).

As shown in Table 2.2, mining sector tax revenues as a percentage of total central government revenue declined from 73.7 per cent to 46.1 per cent from 1986–91 and to 20.2 per cent in 1995. Further, as seen in Table 2.3 which presents the Guinean central government financial operations as a percentage of GDP, fiscal revenue from mining decreased from 11.1 per cent to 7.9 per cent from 1986–91, to reach 3 per cent in 1995.

Given the absence of structural diversification of the economy, and consequently the absence of a dynamic alternative, the contraction of mining revenues obviously placed very tight constraints on the country's public finances. The lessening of such constraints however remained a precondition for structural reform and economic diversification. Rather than seeking to mitigate the constraints, resulting in part from the reconfiguration of the international mining industry (notably with regard to the pricing of bauxite), the reaction of multilateral financial institutions, and notably the World Bank, was to introduce a 'rescue plan' which took the form of the new 1995 Mining Code. This



plan failed, however, to take into consideration the reasons for the spectacular drop in mining receipts over the preceding ten years. In the absence of such consideration, the strategy proposed appeared more as a 'fuite en avant' or escapist strategy that sought to attract increasing flows of foreign investment on increasingly liberalised terms.

As elsewhere in sub-Saharan Africa, Guinea's economic adjustment and recovery rest, at least in part, on an increase in the country's capacity to import. While imports did increase from 1986-8, the near stabilisation of export revenues created severe balance of payments difficulties in 1988. The trade balance improved in 1989 (through a contraction of imports) and in 1990, but the prospect of stable or declining mining sector revenues severely constrained Guinea's efforts to restructure its economy. To illustrate this, Guinea was forced to revise its budget in 1992 and 1996, in spite of already existing severe spending restraints, because of a major shortfall in tax receipts from the bauxite companies. Debt service payments had to be reduced and state investment pruned back even further. The Guinean experience would therefore seem to illustrate clearly not only the importance of external constraints which conditioned the adjustment experience, but also the fact that under certain circumstances these factors may interact amongst each other in a cumulative and dynamic fashion so as to become all the more constraining.

Consequently, and as suggested in the first two sections of this chapter, the evolving nature of relations of ownership and control in the international aluminium industry and the resulting strategies are undoubtedly critical factors for understanding the context in which events such as the 1985-7 price negotiations took place, and at least in part, the outcome of such events. The prolonging of the terms which resulted from these negotiations, and the levelling of and then decrease in contribution to government revenue provided by the country's two major sites during this period, Boké and Fria (which had been projected by the World Bank as of 1990, and materialised over the next five years), were to have critical implications for Guinea's public finances, and more generally for the government's room for manoeuvre. In the absence of sufficient sources of revenue from other sectors (gold or diamonds), the situation resulted in the country remaining extremely dependent on the continued and yet uncertain contributions of concessional funding in order for government programmes to be maintained.

Without in any way discounting the role played by dysfunctional internal administrative and political processes, the unstable and

declining supply of foreign currency, resulting from the low level of mining revenues which characterised the situation from 1984–95, together with other external constraints, were sufficient to severely compromise the reform process itself, which aimed at encouraging a more diversified and integrated pattern of growth which might eventually have become self-sustaining. As we shall see in the final section of this chapter, the continuation from 1995–2008 of the asymmetrical relations inherited from the past was to continue to weigh upon the financial capacities of the Guinean government and on the structural relations of power, determining its capacity of negotiation and its room for manoeuvre in defining national development strategies in line with the objective of reducing poverty.

### **CONSEQUENCES OF THE PAST MINING LEGISLATION AND THE PROSPECTS FOR LOCAL TRANSFORMATION (1995–2008)**

The reform of the fiscal and regulatory frameworks introduced with the mining legislation in 1995 under the auspices of the multi-lateral financial institutions was (as has been suggested) part of a broader process of opening up the Guinean economy to foreign investment. It involved a reduction of tax rates, and not only the withdrawal of the state from the sphere of production and planning, but also a redefinition of its regulatory and redistributive roles.

In September 1996, in the context of the introduction of the new Mining Code, the Guinean authorities were encouraged ‘with the help of the IMF and the World Bank to redefine ... the conditions of economic management with a view of re-establishing the fiscal and economic balance of key indicators’ (FMI, 1999: 2, our translation). While the reforms of the mining sector were presented as a necessary condition for the renewal of economic growth, in view of the asymmetrical relations existing between the mining industry and government representatives, and more generally because of the nature of the political processes in place governing the mining sector, the results were to prove otherwise.

In fact, there is reason to question whether the manner in which the economy was opened up through the new code and the generous concessions offered to foreign investors in the mining sector did not

represent more a strategy of flight in the face of decreasing mining receipts than a development framework for the economy. As will be seen in this section, the conditions surrounding the development of the extractive sector offered by the new legislation tended to place constraints on revenue mobilisation and favour the perpetuation of enclaved activities which were to have little impact on more long-term economic and social development. Most notably, in spite of the recommendations of the EIR to the World Bank Group to the effect that it was important to ‘develop explicit governance criteria, transparently and in a participatory manner, which should be met before investments for the extractives industry’, such conditions do not seem to have been heeded in the case of policies pursued in Guinea since the publication of these recommendations.

As of 2000, in the context of increasing world metal prices, the country’s long-standing objective of attracting large projects that would contribute greater local value added appeared to have become reality.<sup>17</sup> Contracts for various projects were signed, including three destined to transform Guinean bauxite into alumina locally. The most important of these was with Global Alumina, which by virtue of a contract signed in 2004 and ratified in May 2005, involved the construction of an alumina plant with a productive capacity of 2.8 million tons per year at Sangarédi. Some of the shares in this project were subsequently sold to BHP Billiton. It was initially expected that the project, estimated to cost US\$2.5 billion, would make it possible to export the first shipments of alumina towards the end of 2009. The second project, signed in November 2005, involved Halco, the consortium in which Alcan (subsequently to become RioTinto Alcan in 2007) and Alcoa are the leading partners, and which holds 51 per cent of shares in CBG.<sup>18</sup> It also concerned the creation of a new alumina plant with a capacity of 1.5 million tons per year, which was also initially anticipated to enter into operation in 2009. Finally, the third project was that of Rusal (Compagnie des Bauxites de Kindia), which undertook a feasibility study aimed at the expansion of the production capacity of the Friguia refinery from its past capacity of 700,000 metric tons per year to 1.4 million tons. The estimated costs of this expansion project were put at US\$350 million (Bermúdez-Lugo, 2004: 21.1). Rusal foresaw constructing an alumina plant with a capacity of 2.4 million tons per year and producing a feasibility study for an aluminium smelter with a capacity of 240,000 tons per year at the bauxite site of Dian-Dian, to the north of Boké.

The announcement and signing of the three contracts for these mega

projects were well received not only by national actors but also by multilateral actors, which welcomed the development of capacity for local transformation of the country's rich bauxite reserves:

Moreover, several major private sector investment projects that are planned over the next five years in the mining sector, including a large aluminium smelter, are expected to contribute significantly to overall growth and are likely to have spill over effects into other sectors of the economy.

(Republic of Guinea, 2001; see also World Bank, 2004: xi)

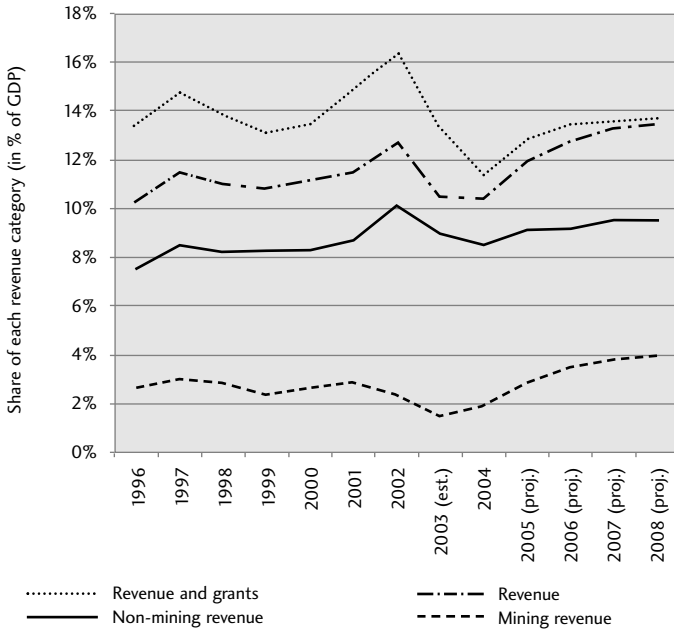
According to the multilateral financial institutions, the achievement of the country's poverty reduction objectives depends on growth which can be stimulated by these mega projects in the mining sector. In view of the heritage of asymmetrical governance of the Guinean mining sector, at both international and domestic levels, it seems particularly important to consider the conditions under which the new sites are to be developed, and the potential consequences of the proposed projects of local transformation for the Guinean economy and poverty reduction of the Guinean people.

#### Evaluating the Contribution of the Guinean Bauxite/Alumina Sector

The confidence and optimism expressed by various sources concerning the bauxite-alumina sector's future contribution to the economy must be set against past patterns and an analysis of these trends. As noted, although mining revenues experienced a large decrease at the beginning of the 1990s, the adoption of past mining legislation proved incapable of reversing these trends, which were to continue over the following years. As suggested in Table 2.3, revenue from mining still represented 10 per cent of Guinea's GDP in 1990; Figure 2.2 shows that in 2002, this percentage had dropped to 2.4 per cent (World Bank, 2004: 10), with stabilisation at 1.5 per cent in 2003 (IMF, 2004a: 30) and 1.9 per cent in 2004 (IMF, 2006a: 31). Projected figures suggest an increase in the sector's contribution as new projects are started up.

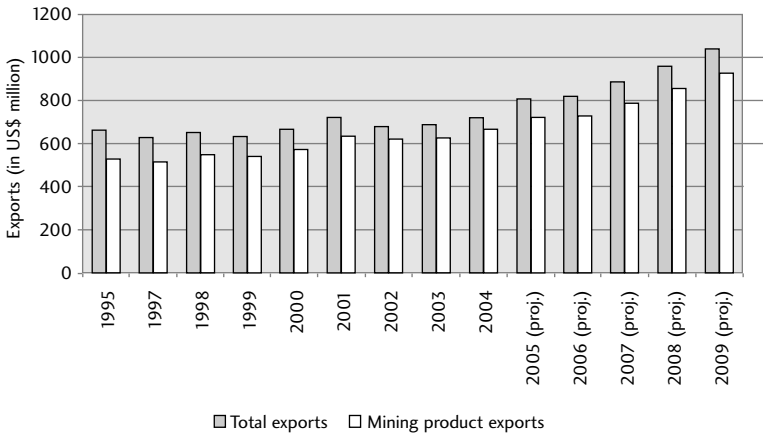
Paradoxically, the declining contribution of the sector to state revenue up to 2004 has to be set against the stable and even increasing value of exports from mining from 1997, as shown in Figure 2.3. Further, and in a parallel fashion, up until 2004, no decrease in the level of production can be observed at the three most important Guinean mining enterprises, *Compagnie des Bauxites de Guinée*

## MINING IN AFRICA



**Figure 2.2** Guinea: central government revenue share (1996–2008)

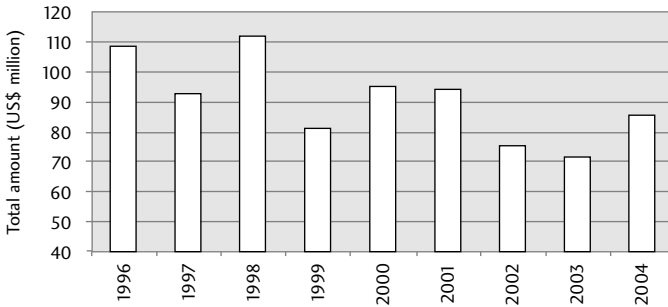
Sources: World Bank (2004a: 10), IMF (2004a: 30; 2006a: 31).



**Figure 2.3** Guinea: exports of goods (1995–2009)

Sources: IMF (2006c: 48, 64; 2004a: 34; 2006a: 35).

## GUINEA



**Figure 2.4** Guinea: export and mining taxes (1996–2004)

Source: Republic of Guinea, Ministry of Mines and Geology, Research and Projection Department (2005).

(CBG), Compagnie des Bauxites de Kindia (CBK) and Alumina Company of Guinea (ACG) (Friguia up until 2000). However, mining taxes and export taxes taken as a whole were clearly on the decline as of 1998, according to the data provided by the *Bulletin de statistiques minières* of the Ministry of Mines and Geology (see Figure 2.4).

The decrease in mining and export taxes which can be observed to 2004 needs to be set against the objectives of the poverty reduction strategy adopted by the government, which spoke in 2002 of ensuring ‘substantial’ revenue mobilisation in order to finance the poverty reduction measures, to protect the most vulnerable groups and to safeguard tax revenues (Republic of Guinea, 2002: 58). Three years later, the Ministry of Planning spoke however of a ‘severe financial crisis’ which the authorities would have to confront (Republic of Guinea, Ministry of Planning et al., 2005: 14), while the Ministry of the Economy and Finance recognised that the years 2000–04 were characterised by the country’s ‘worst’ economic performance in ten years: ‘The average annual GDP growth rate was 2.99 percent, as opposed to a target of 5 percent set in the PRSP [*Poverty Reduction Strategy Paper*]’ (Republic of Guinea et al., 2004: 12). According to a government source, the decrease in mining receipts appears, along with rebel attacks and the lack of external support, as one of the root causes of the deterioration of the economic situation in Guinea (Republic of Guinea, Ministry of Planning et al., 2005: 14).

By placing strong constraints on the state budget, the decreases in mining revenues have also had important consequences on the social situation in the country. While it is impossible to trace a direct relationship between mining performance and the country’s ranking on the

Human Development Index, it is nonetheless useful to recall these figures in order to summarise the evolution of the social situation over the past years more generally.

According to 2003 figures, Guinea ranked 156th on the United Nations Development Programme (UNDP) Human Development Index among a total of 177 countries. Apart from being an indication of the poor state of social development, when compared with data for several years, this ranking also reveals that the country's situation has remained relatively stable and has not been characterised by a significant improvement. From 167th in 1997, Guinea reached 150th in 1999, and fell back to 160th in 2002, where it remained in 2005.

Perhaps a more direct illustration of the impact of the sector on the country's social situation is revealed by its effect on social spending. If in 2002 it was estimated that the mining sector's contribution to government revenues covered the equivalent of 15.88 per cent of public expenditure on health, education, clean drinking water, the development of infrastructure and so on (Republic of Guinea, 2002: 78), a similar contribution was not maintained in subsequent years. On the contrary, the contribution of mining is not considered sufficient to ensure the country's struggle to reduce poverty in the coming years, and the World Bank has in fact called on Guinea to look to non-mining revenues in order to ensure future social spending.

In order to maintain fiscal stability and at the same time finance poverty reduction, the government must stabilise its debt-to-GDP ratio at sustainable levels and mobilise additional revenues. If it fails to increase non-mining revenues as a percentage of GDP, as projected under the base case scenario, in 2004 the World Bank recommended that the government would have no other choice but to cut expenditures by 1 per cent of GDP in 2004 and by almost 3 per cent of GDP in 2006 (World Bank, 2004: 9).

There can be little doubt that the building-up of pressures resulting from such constraints, coupled with increasing prices for basic necessities (the price of rice and gasoline doubled in 2004), compounded by low wages and a high rate of inflation, led to the social mobilisation of January 2007 – a national strike which paralysed the country and led to demands for social and economic reforms.

Consideration of how the country is to satisfy those demands raises an apparent contradiction concerning the role that multilateral financial institutions have in the past attributed, and continue to attribute, to the country's rich mining sector. While suggesting that the mining sector is highly strategic for the country's economic development, at the same

time these institutions appear to recognise that, in spite of the signing of contracts for three new very large mining projects, the sector will not be capable of mobilising the resources necessary to meet the criteria of financial stability and to finance poverty reduction. Consequently, the mobilisation of non-mining revenue will be necessary.

The mining sector's disappointing impact on the rest of the economy more generally is well recognised by the report of the Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF)<sup>19</sup> on Guinea. According to this document the sector's disappointing performance has its origins in the Guinean economy's heavy dependence on the mining industry, as well as the particular character of this industry, which explains why to this day it remains largely an enclaved activity:

Guinea's current position as a global trading partner, which is highly dependent on mining activities, has not led to genuine poverty reduction. This is primarily due to the fairly capital-intensive nature of the mining sector, its weak ties to the rest of the economy and to the weakness of the State tax base, which leave little room to use government revenues from the mining sector in poverty reduction programs. If Guinea's role in the global economy is to benefit the poor, then a sharp increase in non-mining exports, particularly the agricultural sector, will be necessary.

(IF, 2003: 8–9)

In spite of this recognition in a widely respected and circulated 2003 report, only two years later in 2005, the mining sector in Guinea continued to be put forward as capable of reducing poverty through its capacity of generating cumulative positive impacts on the rest of the economy:

A coherent implementation of the policy will enable the mining sector not only to generate substantial revenue for the government, but also, and above all, to exercise a spill-over impact on other socio-economic sectors, thus contributing to poverty reduction.

(WTO, 2005: 11)

In contrast to such ambitious objectives and positive outcomes, available data suggest that the cumulative impacts of the industry on the rest of national economic development remain rather modest.

Let us take the example of employment generated by the mining



**Table 2.4** Guinea: the major mining companies and their contribution to national employment (2001)

Company	Permanent jobs	Indirect jobs
CBG	2,541	3,000
ACG	1,600	2,000
SBK	1,436	1,800
SAG	872	1,000
HYMEX	110	100
AREDOR	500	300
SMD	192	150
<b>Total</b>	<b>7,251</b>	<b>8,350</b>

Source: Republic of Guinea (2002: 78).

sector. While this area of activity provides the majority of jobs available in the industrial sector, including an important number of permanent positions in mining and jobs created through subcontracting (see Table 2.4), and represents the second-ranking employer after the civil service (Republic of Guinea, 2002: 78),<sup>20</sup> it is estimated however that only approximately 8 per cent of the active population is employed by this industry (WTO, 2005: 6). Even this figure fails to capture the relatively limited scale of the impact of the mining sector on poverty reduction for the country as a whole: 'At the same time, it has provided little opportunity to reduce rural poverty, as most employment is still based in the agricultural sector' (IF, 2003: v).

### EXPLAINING THE GUINEAN MINING SECTOR'S CONTRIBUTION TO THE NATIONAL ECONOMY

For the multilateral financial institutions, the explanation for these disappointing results resides in the overly generous exemptions which have been granted in the past to the companies operating in the sector, measures which consequently should be reviewed. The explanation rests above all in the shortcomings in the system responsible for the management of taxes and duties (weaknesses in the administration of taxes), which represents a key factor explaining internal blockages. The poor administration of public finances is often identified as one of the principal causes of the disappointing results concerning the capacity of the country to mobilise mining revenue and fiscal receipts more generally (FMI, 1999: 2). The past tax system was considered too heavy, and according to the analysis of the World Bank, this encouraged fraud and tax evasion.

In 2002 there were no fewer than 14 different taxes on income and profits, eleven property taxes, four taxes on goods and services, and 15 different taxes on international trade transactions, each of which was characterised by its own specific regulations (World Bank, 2004: 10).

There is surely much truth in these affirmations. However, the perspective proposed here is to see how these internal blockages and problems of poor management have remained as an accompanying feature of the asymmetrical integration of Guinea into world markets, and notably the international aluminium industry. External relations of influence and the internal relations of power appear to have been prolonged rather than redefined following the introduction of the reform measures in the mid-1980s and with the new mining regime in 1995. The reforms have inevitably entailed dimensions which have had far-reaching implications for the longer-term development of the country. These include:

- the significant redefinition of the role of the state in relation to the mining sector
- the nature of incentives and exemptions
- the terms and conditions under which the mining sector is to be managed
- the failure to see the sector as a lever for the integrated national development of the country.

#### The Redefinition of the Role and Functions of the State

Concerning the role of the state, specific measures reducing state participation in the country's new mining projects were introduced in the 1995 Mining Code. In this regard, Article 167.2 states concerning the bauxite, alumina, and aluminium sector:

- In view of the high level of investment, the state will not take a free share of the capital of a company exploiting a substance of noteworthy interest (which explicitly includes bauxite).
- Should the state wish to consider participation in the shares of such a company, the terms will be determined with the investor at the time of drawing up of the contract.
- In any case, state participation in the shares of such a company will be limited to a level which will not impede the control of operations by the investors (Diallo, 2004: 13, our translation).

The stringent withdrawal of the state, as a result of the reform of Guinean mining legislation, is also confirmed by a 2004 United Nations Industrial Development Organization (UNIDO) study:

Up until 1995 the state was systematically a partner holding 50 per cent of shares. Today its participation does not exceed 15 per cent in small projects and it is not provided for at all in large projects; in any case the state is not to hold a minority interest which would allow it to obstruct decisions. It should be satisfied henceforth with taxes which take into account international competition.

(UNIDO, 2004: 21, our translation)

According to *Mining Journal*, the 15 per cent participation was to be limited only to gold and diamonds projects and was not expected in bauxite-alumina projects (Wright and Sylla, 2002: 1). Such an interpretation would suggest that the Guinean government would not have shares in the three new transformation projects mentioned earlier. The gains to be derived from the growth of mining activities in the country were consequently 'to come from taxes on the operations of companies and through economic spillover effects that the mining activities produce' (UNIDO, 2004: 21, our translation).

### The Nature of Incentives

With a view to offering competitive investment conditions in a context of geographic diversification of bauxite sourcing on international markets, the 1995 legislation introduced a series of advantages for foreign mining companies that planned to invest in Guinea. By virtue of this legislation, mining enterprises were entitled to sign agreements with the state which made them eligible for tax and customs concessions, and for special provisions concerning exchange rates and mining taxes (WTO, 2005: 64). According to the World Trade Organization (WTO) Secretariat, although the National Assembly must approve each agreement, the specific provisions they contain are set out in annexes which are 'protected by business secrecy' (WTO, 2005: 64).

As a result of this provision, each company established in Guinea has a specific tax and legal agreement. This situation creates important administrative problems for the state, among other things because companies do not have the same tax base. Further, such terms concerning the negotiating of mining contracts have the potential to impede close monitoring concerning the transparency of the basis on which mining revenues and consequently mining taxes are calculated, leaving

room for discretionary practices.<sup>21</sup> This situation existed at the time the three mega projects were negotiated in 2004–05. It remained the case in spite of the fact of Guinea’s adhering to the Extractive Industries Transparency Initiative (EITI) as of December 2004, and in spite of the government issuing, through the Ministry of Mines and Geology, the decree creating the Permanent EITI Implementation Committee, with the mandate of organising all the data on the mining sector and implementing audits concerning payments and revenues.<sup>22</sup>

Concerning the impact of exemptions on the government’s fiscal revenue, the World Bank recognises that ‘[t]ax exemptions severely limit Guinea’s revenue collection performance’ (World Bank, 2004: 10). Furthermore, the institution identified the ‘large number of import duty exemptions, often unjustified, which particularly favour the mining sector’ (World Bank, 2004: xi), as one of the three main factors constraining revenue mobilisation in Guinea. In 2001, exemptions to import duties alone exceeded the duties collected. The World Bank, which estimates the real current cost of fiscal exemptions that favour the mining sector in terms of lost revenue at 20 per cent of total revenue (or approximately 3 per cent of GDP), adds in this regard: ‘The real value of exemptions may be higher than actually recorded since many of them have been granted informally over the years to individual traders, either as a favor or on a rent-seeking basis’ (World Bank, 2004: 11–12). This hypothesis is in fact confirmed by the October 2006 Second Annual Progress Report (APR) concerning Guinea’s PRSP prepared by the IMF:

In discussing mining, the APR did not mention the fiscal revenue losses implied by wide-ranging tax exemptions, the distortions introduced by the abundant regulatory discretion allowed by current laws for investment in mining, and the discriminatory impact of these policies on non-mining investment. A review of the legal framework for mining and its administration is urgently needed.

(IMF, 2006b: 4)

### The Guinean Tax System

In a study undertaken for the Ministry of Mines and Geology, James M. Otto provided an analysis of the Guinean tax system in which he compared it with that of other mining states with which Guinea finds itself in competition in international markets. The study had as its

objective to determine whether the system in existence at the time, as defined by the 1995 Mining Code and 'model agreement' (1996 Convention for concessions), offered a good balance between the needs of investors and those of the state in terms of fiscal revenues. According to the results of this study, the 1995 Code was well designed but complex, and 'not globally competitive' (Otto, 2005: 6). Consequently, the author presented certain recommendations aimed among other things at lowering the income tax level from 35 to 30 per cent, allowing unlimited loss carry forward, imposing a new 10 per cent withholding tax on loan interest, and eliminating the 5 per cent investment allowance (Otto, 2005: 34).

By recommending a general reduction in the level of taxation, Otto proposed introducing a system of taxation that would be more efficient, competitive and attractive in the eyes of potential investors. However, he also emphasised the need to eliminate various measures authorised by the 1995 legislation which permitted, as we have seen, tax exemptions or tax holidays. He also recommended abolishing the procedure permitting the negotiation of parallel fiscal agreements for each mining project, indicating that such practices were no longer put forward by most mining-rich countries:

In the past, some nations experimented with a variety of 'economic rent' type mechanisms, but today, few, if any governments try to tax a new mine according to a specially designed system. Instead, taxes are applied more-or-less uniformly to like types of mines within the nation.

(Otto, 2005: 10)

According to Otto, the practice of granting tax exemptions in negotiated agreements represents 'a danger': 'Once a precedent is established every investor will request the holiday and reduction' (Otto, 2005: 43). Finally according to Otto, it would be useful to introduce legislation specifying the modalities by which tax revenues are to be shared:

Guinea currently allows the Minister of Mines and the Minister of Finance to specify which taxes and fees, or portions of them, go to the government, local groups and funds. A matter as important as tax revenue distribution is in almost all nations specified by law and not left to the discretion of politically appointed ministers. It is recommended that the law be amended to clearly identify which taxes are to be distributed to whom and at what percentages. A

dedicated percentage of royalty should be set aside for affected communities.

(Otto, 2005: 59)

While these recommendations, notably concerning ministerial discretion, pointed to the need for greater transparency and accountability, taken alone they treat the symptoms of a particular ‘politics of mining’ and not the relations of influence and power which make such dysfunctional processes possible.

#### Individual Agreements for Specific Mines

Thanks to the negotiation of specific individual agreements, companies have benefited from fiscal exemptions that are over and above the advantages already set out in the 1995 Mining Code, and which the authorities attempted to abolish in October 2004 further to one of the key recommendations of the Public Spending Review by the World Bank, which was linked to the implementation of the country’s PRSP (WTO, 2005: 64–5; IMF, 2004b: 4). Nevertheless, in 2005, mining companies continued to benefit from a special status as noted by the WTO: ‘The incentives given to approved mining enterprises are still much more attractive than those for non-mining enterprises under the Investment Code’ (WTO, 2005: 54).

Consequently, beyond the reform of the tax system (the consequences of which should not be minimised), of at least equal importance are the conditions under which new contracts for large projects that provide for the local transformation of Guinean bauxite have been negotiated and will be negotiated in the future. One of the negotiations concerning a proposed integrated project merits special attention. In October 2004, the Minister of Mines and Geology of Guinea signed an agreement with Global Alumina Corporation (the ‘Global Agreement’) providing for the construction and beginning of operations permitting bauxite to be transformed locally. The agreement provides a good illustration of the risks that are presented by this type of negotiation, which has continued to take place in spite of the fact that, in principle, the Bretton Woods Institutions oversee the development of the sector. This Basic Agreement, as well as the amendment that was signed in May 2005 (which modified certain of the terms of the former, was subsequently unanimously ratified by Guinea’s National Assembly and then adopted two months later by presidential decree (Global Alumina

Corporation, 2005: 1)), have also been examined by Otto, who concluded that:

- The agreement bears little resemblance to the fiscal system in the 1995 Code Minier and the 1996 Convention.
  - The initial agreement fiscal terms, before amendment, are so much in favor of the investor, that it is doubtful whether future politicians will honor it. In the context of global best practice, the agreement clearly does not provide a 'fair' share to government.
  - The 2005 amendments are an improvement but will act as a dangerous precedent as future investors will demand similar treatment.
- (Otto, 2005: 9)

The study by Otto illustrates that a tax system 'which takes into consideration international competition' (UNIDO, 2004: 21) can, in theory, be compatible with a tax system which offers an appropriate portion of taxes to the state. However, as we have seen, in spite of the clauses present in current mining regulations, the conditions governing the distribution of mining revenues have depended on specific contracts which can be negotiated between state representatives and companies. The content of these contracts depends not only on the technical capabilities of the government representatives concerned, but also on the nature of the political processes that have been perpetuated, and on the country's negotiating capacity, which has been significantly affected over the last few years by the forms of liberalisation that have been introduced.

The role of 'regulator and promoter', which has been attributed to the Guinean state, as proposed by the World Bank in its 1992 study on the future mining sector in Africa (World Bank, 1992), does not appear to have given rise to a negotiating capacity which takes into account the needs of the country with regard to economic and social development in the medium and longer term. On the contrary, weakened institutional capacity has been compounded by the perpetuation of political processes or of a 'politics of mining' lacking in both transparency and accountability. In such a context (and as the example of the Global Agreement appears to suggest) in the absence of the thorough revision of past contracts as demanded in 2007 as a result of the popular mobilisation (the outcome of which is still uncertain), the important benefits that could be derived from the launching of the new mega projects in the bauxite-alumina sector, notably with regard to tax revenues, risk once again (as was the case in the two previous periods identified) not being channelled to the country's advantage.

## CONCLUSION

In the World Bank Group's 2004 response to the recommendations of the EIR it was stated that 'Governance is at the heart of the development process: the overall framework of governance within which EI development takes place will be a major determinant of its contribution to sustainable poverty reduction' (World Bank Group Management Response, 2004: 2). While only a few years have elapsed since this statement was made, the analysis presented here has attempted to provide elements of the structural heritage within which more recent reform measures have been introduced into Guinea. It is against this background that certain preliminary observations can be made concerning the capacity of current measures to respond to the challenges the country is confronted with. In view of the recently planned mega projects, to what extent has the World Bank Group's recognition of the need for better resource governance been translated into reforms favouring more transparency and better revenue-sharing agreements, notably before mega projects go ahead? And more fundamentally, to what extent do current reforms go to the root of the challenges facing the country with a view to achieving sustainable development and poverty reduction?

As noted, the popular uprising of 2007 led by the unions and civil society organisations which paralysed the state's operations and the economy was not only a testimony to the degree of widely felt hardship and desperation of the population. As revealed by the announcement in April 2007 that mining contracts which the government had signed with foreign companies were to be revisited, the uprising may also be seen as a manifestation of the awareness among the population of profound difficulties characterising the governance of the country's natural resources. The process that was set in motion came as a clear recognition that existing mining agreements were unfavourable to the country, as increasingly had become officially recognised, notably by a former mines minister (Soumah, 2007: 192–5). While some pointed to the lack of technical expertise as an explanation for such contracts, more fundamental is the issue of the opacity of the manner in which the country's resources have been managed over the past decades. A striking example of the mismanagement of a company in which the government held a 49 per cent share, but from which it did not derive the benefits it should have, was Friguia (Soumah, 2007: 94–102).

What is particularly striking in the case of Guinea is the extent to which the reform process (initiated as of 1985 by the multilateral



financial institutions) appears to have led to the perpetuation of internal political processes which overviewed the wealthy mining sector but which lacked minimum criteria of accountability. Lack of accountability can be illustrated by the existence of processes which made it possible to short-circuit the National Assembly when necessary, as illustrated by the undisclosed annexes of contracts referred to above, as well as to bypass the minister responsible, as happened after the departure of former Mines Minister Fassiné Fofana, with the establishment of a special 'cabinet' created to advise the President (Caba and Sylla, 2007).

In the face of mounting criticism, the response of the international lending institutions has been to encourage greater transparency in revenue flows. In this regard, in December 2004, in the context of Guinea's adherence to the principles of the Extractive Industries Transparency Initiative, the Minister of Mining and Geology once again 'requested [World] Bank support for the improvement of the management of the mining sector in order for it to contribute more to the socio-economic development of the country and to poverty reduction in Guinea' (EITI, 2006b). Various measures have been proposed to encourage a more successful mobilisation of tax revenue, and to counter the negative effects of the exemptions discussed earlier. Among other measures, attempts were to be made to introduce a more transparent import tax regime, to reinforce the capacity of the national Customs Services (*Direction Nationale des Douanes*), to introduce mechanisms permitting independent auditing, and to improve the supervision of the informal sector through the introduction of provisions which make it possible to guarantee the sector's contribution to central government revenue (Republic of Guinea, 2002: 58).

Without wanting in any way to minimise the need for an improvement in the administration of revenue derived from the key mining sector, this chapter has sought to draw attention, beyond the importance of internal factors, to the broader conditions which help to explain why during the three periods studied, the potential economic contribution of the bauxite-alumina sector has largely not been captured by the country. If during the first, the explanation had to do above all with the nature of negotiations between the Guinean state and the aluminium multinational companies, during the next two, the explanation concerns this dimension but also importantly appears conditioned by the nature of the liberalisation measures introduced into Guinea from 1984 under the auspices of the multilateral financial institutions. These reforms, which included, among other things, state

withdrawal from ownership, privatisations, reduction of taxes and the introduction of new legislative and fiscal frameworks that accorded private operators a privileged position, were to have very far-reaching implications. Among these, in view of the externally driven nature of the reform process, the state was placed in an increasingly fragile position concerning its capacity to formulate policies, to negotiate in a manner so as to ensure binding solutions, and if necessary to introduce and impose corrective measures with a view to achieving long-term development objectives.<sup>23</sup> With regard to their role in correcting past dysfunctional administrative practices (it is not claimed here that this was the intended result), the reforms appear to have been quite compatible with the perpetuation of particular forms of political process. Most striking is the fact that, over a period of 20 years, they entailed no minimal obligations to rectify the opacity of past practices.

In the context of discussions in which the EIR Report was a central element, reforms have been proposed by the multilateral financial organisations to improve the administrative capacity of the state in the mining sector in Guinea, notably through the World Bank recommendations with regard to reinforcing institutional capacity and adopting a strategic plan 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 the state in order to transform the mining sector into a source of growth for the rest of the economy. There appears to be little attempt to respond to the observations made for example 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' (Commission for Africa, 2005: 128).

While discussion about how development can be achieved by promoting activities at the community level is without doubt important, much less is said about, and little emphasis is given to, the role that states need to assume in ensuring a positive impact on social and economic development at the national level (World Bank, 2005).

The mining sector continues to be seen not as a catalyst for promoting structural transformation in order to bring about national economic integration, but essentially as a source of tax revenue.

Although it is suggested concerning the reform process that ‘[a] high priority is the rationalization of the current tax exemption regime that favours the mining sector and certain key importers conspicuously and excessively’ (World Bank, 2004: 12), in the context of discussions about how to improve the sector’s contribution to the local economy, the principal recommendations that have been formulated do not address the issue of the dissymmetry of the country’s negotiating capacity, the narrowness of the country’s margin of manoeuvre, or the conditions that might contribute to broadening that margin. On the contrary, multilateral financial institutions have continued to invite the government to adopt a position of prudence with regard to the mining sector, notably by not introducing a level of taxes or duties that might act as a ‘dissuasive factor’ concerning foreign investment:

[c]learly, government will have to *walk a fine line* in mining, balancing potential revenues against the incentives that are necessary for Guinea to compete with other countries, notably with regard to bauxite and its derivative products.

(World Bank, 2004: 12, our italics)

Given the nature of the historical integration of the Guinean bauxite-alumina sector into world markets and the interaction of the latter with internal political processes, the country’s positioning relative to this ‘fine line’ has clearly acted as an impediment, not only to the effective mobilisation of mining revenues over the last decades, but also to the emergence of a sufficient margin of political space at the disposal of the Guinean government, should it wish to use it, to permit the mining sector (and notably the new projects of local transformation) to effectively contribute to the social and economic development of the country. The implications of maintaining such tight constraints on the country no longer need to be demonstrated. As the events of January 2007 showed, the viability of past institutional and economic reforms, together with the domestic political processes that have presided over the management of the mining sector, have been unequivocally rejected by the Guinean population. However, the continued attempt to cast the eminently political nature of policy choices, and the terms on which negotiations have been carried out, as essentially technical issues, summarised by a narrow notion of ‘governance’, fails to address broader issues such as the terms on which the country’s rich mining sector has been integrated historically into the international aluminium

industry, and the prolonging of a particular ‘politics of mining’ that has made past patterns possible.

Although it is obviously still too early to determine how the political transition of the post Conté era will unfold, among the critical issues that will certainly condition the possibility of the emergence of more transparent and accountable political processes is the redefinition of the asymmetrical relations which have characterised the country’s integration into world markets, its access to a much more equitable share of the revenues derived from its enormous mineral resources, and a loosening of the financial constraints under which it has been placed for over two decades.

While there has clearly been growing recognition on the part of the WBG for the need for better resource governance of the mining sector, and although the WBG did not participate directly in their capitalisation, rather than seek a delay and encourage the building of capacity in this area before new Guinean mega projects were undertaken so as to minimise risks, the option was to welcome the fact that large projects were going ahead. Further, to the extent that the multilateral financial institutions continue to favour measures which encourage the bypassing of the state, whether with regard to revenue collection or in defining guidelines for relations between companies and communities, they run the risk of contributing to the erosion of what may be considered developmental functions of the state. Such measures may well contribute to delaying the establishment of political processes that allow the population to hold its leaders accountable, and consequently to state legitimacy. In spite of the changes in political leadership at the end of 2008, the tendency on the part of the donor community to side-step the state rather than recognise the need for the reinforcement of institutional and negotiating capacity, should it continue, raises the danger of contributing to prolonging past internal political processes and patterns of revenue distribution rather than redefining them. In the context of political transition that opens the possibility of the renewal of former practices, the perpetuation of such patterns entails, as demonstrated, far-reaching social, political and economic consequences, as well as responsibilities, which do not seem to have received the attention which they deserve.

## NOTES

- 1 I would like to express my sincere appreciation to Myriam Laforce of the Groupe de recherche sur les activités minières en Afrique of the Université

- du Québec à Montréal for her valuable assistance in the preparation of the chapter.
- 2 Guinea's contribution to United States has decreased slightly recently (US Geological Survey, 2006: 32).
- 3 According to data presented in Table 2.2.
- 4 In addition to its important bauxite reserves, which make it the first world exporter, Guinea has other mining reserves, estimated as follows: iron: 12 billion tons; gold: 500 tons; diamonds: 25 millions carats; nickel: 73 million tons; chalk: 40 million tons; graphite: 11,000 tons.
- 5 An interesting contribution is by Clapp (1994: 307–29).
- 6 According to this study, the government's role is to create a favourable environment for the activities of the private sector. This would require 'a clearly articulated mining sector policy that emphasises the role of the private sector as owner and operator and of the government as regulator and promoter' (World Bank, 1992: 53).
- 7 For an analysis of the sector during the colonial period see Suret-Canale (1970) and Campbell (1983: 65–82).
- 8 The description that follows is drawn from Campbell (1991: 33–9).
- 9 For more details see Campbell (1991: 36).
- 10 This project is described in detail in Campbell (1983: chap. IV).
- 11 For a detailed account of these negotiations see Campbell (1986).
- 12 Well-informed sources suggest that the World Bank did in fact take part in these negotiations in view of the drastic implications such a significant price reduction would have on export earnings. These are so necessary to the reform process which it, the IMF and other multi- and bilateral donors were by now heavily involved in conceptualising and financing. Any reduction of output, as in fact occurred at CBG from 11 million to 9.6 million tons per year, or in price, implied shortfalls that would have to be financed by grants from the international community or else entail an equivalent reduction in the country's investment programme.
- 13 The contract signed between the government and CBG which came into effect in 1988, just as the contract with Friguia, must be seen as a complete package including a pricing formula, provisions for minimal tonnage to be purchased, tax arrangements, provisions to finance infrastructure and so on. In this chapter, emphasis is placed on only the most critical elements. For a more complete discussion see Campbell (1996a).
- 14 By this time the partners of Friguia were 30 per cent Pechiney, 30 per cent Noranda Aluminium, 20 per cent Alcan and 20 per cent Hydro Aluminium. The fiscal concessions obtained by the consortium from the Guinean government included the abolition of the export tax, previously set at \$12.50 per ton of alumina. The new fiscal regime was to be put in place for a period of 15 years and to be re-examined every five years.
- 15 Based on interviews at the World Bank in 1992, where officials interviewed confirmed that they were to be part of the 1991 negotiations in

- Conakry but in fact were not, as these were moved at the last minute to Pittsburgh where the head office of Alcoa is located.
- 16 The explanation rests no doubt in good part with the premises built into the feasibility studies commissioned by the World Bank and undertaken by international consultants concerning the future development of the hydroelectric potential of Guinea. In the various scenarios considered for the period 1985–2000, no increased hydroelectric capacity was projected in the national scheme to meet the needs of additional local transformation of bauxite in Guinea, because it was assumed by the World Bank, as industry experts declared, that such expansions were destined to take place in countries such as Australia, Brazil and Canada. From the point of view of a mineral-rich developing country, this paradoxical situation is revealing of the fact that the different objectives pursued by the multilateral financial institutions, whether developmental or financial, may in fact at times be in conflict rather than compatible.
  - 17 Guinean bauxite reserves had, by 2005, attracted exploration on the part of the following major aluminium companies: BHP Billiton had obtained seven permits in the Boffa region, Boké; CVRD of Brazil had obtained 20 permits in the north and central zones of Guinea; Mitsubishi of Japan had three blocks covering 24 exploration permits in the Boké, Gaoussi, Lélouma, Pita and Dalaba regions; OSWAL Chemicals of India had permits in the Boffa, Fria and Dubréka regions, and finally Chalco had permits in the Kindia, Mamou and Pita regions.
  - 18 In 2004, with the sale of 4 per cent of the Comalco Ltd shares to the other shareholders, Halco's property structure was redefined as follows: Alcan Inc. 45 per cent, Alcoa Inc. 45 per cent and Dadco Group 10 per cent. As mentioned earlier, and as the US Geological Survey from the Department of the Interior of the US government reminds us, until now, and while waiting for the new refinery project to firm up, 'Halco shareholders bought bauxite from CBG [which is owned 49 per cent by the Guinean Government] for use in their own production processes' (Bermúdez-Lugo, 2004: 21.1).
  - 19 The Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF) is a multi-agency, multi-donor programme that assists the least developed countries to expand their participation in the global economy, enhancing their economic growth and poverty reduction strategies. The IF program was first mandated by the WTO Singapore Ministerial Conference in December 1996. The participating agencies are the IMF, International Trade Center, UNCTAD, UNDP, World Bank and the WTO (Integrated Framework, 2003). For more information see <http://www.integratedframework.org/>.
  - 20 As noted earlier, the mining sector employed 9000 persons at the end of the 1980s, which suggests a rather modest evolution, ten years later.
  - 21 On this topic, see Dalein (2006: 2).
  - 22 On this topic, see EITI (2006b).

- 23 An illustration of the constraints under which the government is placed and the budget rigidity that results is suggested by the mechanism through which the country repays its creditors, and notably the IMF, through advance tax payments owed by the large mining companies. 'The main mining companies agreed to provide Guinea with tax advances of US\$18 million in August 2005 (0.5 per cent of GDP); these resources are to be used to pay external creditors, including the IMF' (IMF, 2006a: 18-fn 21). According to this document, the same mechanism was to be used for settlement of future payments to the Fund.

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### **3 MINING, POVERTY REDUCTION, THE PROTECTION OF THE ENVIRONMENT AND THE ROLE OF THE WORLD BANK GROUP IN MALI**

*Gisèle Belem*

Since the beginning of the 1980s, the international financial institutions (IFIs) and developing countries have assigned a high priority to the development of the mining sector to meet the goal of improving national economic conditions, and ultimately reducing poverty. Faced with the environmental and social impacts of the mining industry, these objectives have however constantly been challenged. It is in this context that the World Bank, a leading promoter of natural resource extraction as a development strategy, has been invited to question and revise its involvement in setting up and encouraging extractive activities in countries rich in mineral resources. The Extractive Industries Review (EIR) was one such initiative, and its recommendations called for a re-evaluation of the Bank's involvement, with the intent of creating a better convergence between the Bank's poverty reduction objectives and the potential social and environmental impacts of activities of this industry. If such self-questioning, as well as the search for appropriate solutions, demonstrates a renewed interest in the issues raised by mining, the steps taken further to the EIR report fall short of an approach within which not only the economic but also the social and environmental dimensions are fully integrated and given sufficient attention.

In order to illustrate this fragmented approach and to provide sufficient background for the case study of Mali that follows, the first section of this chapter presents the principal issues in the debate concerning mineral resource extraction. In the second section, we focus

on social and environmental measures that have been proposed within the framework of the EIR. The environmental questions raised by two mining projects in Mali (Sadiola and Morila) are the subject of the third section. An analysis of how the different problems associated with mining in these two projects have been treated will enable us to illustrate certain shortcomings that emerge as a result of the segmented manner in which the issues raised by the mining industry in developing countries are approached.

## **PROBLEMS ASSOCIATED WITH THE MINING INDUSTRY**

In the last few years, there have been intense discussions concerning the investments of transnational mining companies in developing countries. Their potential negative impacts on the economic, social or environmental situation of host countries have been strongly criticised in both industrialised and developing nations. Since the 1950s, these investments have been challenged by a broad spectrum of development economists, who have associated an abundance of natural resources with a 'curse' on those countries that possess them (Prebisch, 1950; Singer, 1950). They question the contribution of these investments to economic development, given the various distortions they generate, of which the best known is the so-called 'Dutch disease'. It has thus been shown that a number of countries rich in natural resources have experienced slower economic growth than countries lacking this wealth (Auty, 1993; Reed, 2002; Ross, 2001; Sachs and Warner, 2001). Further, the economic performance of these countries has at times declined as the dependence on mineral exploitation increased (Weber-Fahr, 2002).<sup>1</sup> Finally, the enclaved nature of mining is perhaps its most central characteristic: these operations are often very poorly integrated into the host countries' economies.

The potential economic effects of mining activities on the countries or regions where these occur go beyond the usual statistical indicators such as contribution to GDP or to exports. The indirect backward and forward linkages between the mining industry and the rest of the host economy are of critical importance.<sup>2</sup> The ramifications of these linkages, represented in economic terms by the multiplier effect, make it possible to measure the increase in national economic activity resulting from mining operations (Eggert, 2001; McMahon and Remy, 2001). The debates concerning the economic and other impacts associated with mining have assumed an increasingly central place since the

beginning of the 1990s, because of the expansion of mining industry activities in developing countries, where the social and environmental effects are particularly flagrant.

From an environmental perspective, large-scale mining projects have numerous repercussions, the most important of which are:

- the destruction of natural habitats as a result of the dumping of tailings and discharges
- soil degradation and acid mine drainage<sup>3</sup>
- riverbed pollution
- chemical soil contamination
- air emissions (dust, pollutants)
- the use of scarce water and energy resources
- workers handling chemical products
- the different risks associated with exposure to toxic substances (Boocock, 2002; Reed, 2002).

These types of impacts, at times unanticipated when mining projects start operating, are very likely to persist after the mining operation closes if they are not dealt with satisfactorily. The so-called 'orphan mines'<sup>4</sup> therefore generate substantial and truly long-term environmental damage, which can at times become irreversible. The question of the responsibility for dealing with these impacts constitutes one of the most controversial issues in the mining industry (Eggert, 1994). Mining companies themselves tend to avoid taking such responsibilities, which may involve costs, at times reaching hundreds of millions of dollars. This of course affects the profitability of extractive industries.<sup>5</sup> Consequently, in the absence of adequately implemented laws, the costs resulting from abandoned mining sites become a significant environmental liability for the country where the mine was located.

Turning to the social consequences, we might expect to see a positive impact of mining activities on human capital, to the extent that transnational corporations can provide employment, training and education for their employees. It is however important to note that these positive effects are often limited. Open-pit mines are, for instance, much more capital than labour intensive, thus reducing the expected effect on the labour market. Given the high technological component required for this kind of operation, it is typically expatriates rather than nationals who occupy the technical posts (Cox, 1994; Lanning and Mueller, 1979). Furthermore, mining projects exacerbate income disparities and directly affect the local community living near the site, through:

- population displacement
- increased migration of workers into the project zone
- price inflation resulting from this migration
- the abandonment of agricultural activities
- expropriation of fertile land to satisfy the mine's requirements
- increased public health problems (Pegg, 2003; Reed, 2002; Ross, 2001).

Finally, mining is one of the industries with the highest industrial accident rates. As Warhurst (1998) emphasised, the majority of environmental disasters or human rights abuses that have contributed to increasing social sensitivity to the problems associated with industrial development can be attributed to the mining and petroleum industries. The gravity of the mining industry's environmental impact, the multiplication of industrial accidents and the social problems associated with this industry have therefore contributed to mobilising civil society groups. Among other demands,<sup>6</sup> these groups have applied pressure on multilateral financial institutions that support the expansion of this industry in developing countries. There can be little doubt that such pressure was in fact one of the elements which led to the setting-up of the EIR.

### **THE EXTRACTIVE INDUSTRIES REVIEW: PUBLIC ACKNOWLEDGEMENT OF THE PROBLEMS**

The issues raised by mining operations are particularly apparent in developing countries, to which, over the last 20 years, mining companies have increasingly been transferring their activities. These relocations have been encouraged by a number of factors, including the desire of developing countries to be integrated into the world economy.<sup>7</sup> For the multilateral financial institutions, the policies favouring greater integration of developing countries have in most cases taken the form of the promotion of foreign investment as the motor of economic growth (Campbell, 2003). As a result, resource-rich countries have been solicited to open up their economies to investment and international trade as a condition of gaining access to loans provided by these institutions.

Furthermore, for many of these countries, the mining industry has been designated as the motor for economic growth. Thus, since the 1980s, the World Bank, through the International Bank for Reconstruction and Development (IBRD) and the International Development

Association (IDA), has supported large-scale institutional reforms within developing countries to revise mining codes, privatise public enterprises and cut subsidies to national mining industry (EIR, 2003). Parallel to this, the World Bank Group has encouraged the expansion of the mining industry in these countries through multiform support to the private sector. In this context, the International Finance Corporation (IFC) has assisted private sector development and offered loans to mining companies, while the Multilateral Investment Guarantee Agency (MIGA) has proposed guarantees for investments against political risks. The World Bank Group has also set up the International Centre for Settlement of Investment Disputes (ICSID), which operates through conciliation or arbitration.<sup>8</sup>

The first social and environmental reviews of industrial activities were formalised in 1993. Previously, the IFC and MIGA had applied the Bank's policies. While the content of these norms was intended to be substantive, their application remains problematic. In reality, there are still many limitations on the accountability of companies, particularly when they choose to reimburse IFC loans rather than implement the safeguard policies (Oxfam, 2007: 2). Large companies may be tempted to sell off their sites when they are nearly depleted to smaller-scale companies with less visibility, thereby evading their responsibilities (Walker and Howard, 2002). As for the application of these norms, lack of human resources within the agencies remains a problem. The IFC has increased its staff responsible for monitoring safeguard policies from just one in 1980 to 80 in 2002, for 1280 companies receiving financing. For its part, in 2000 MIGA had only three employees working specifically on these issues. So if the regulatory framework of the World Bank Group was intended to be substantive and restrictive, it has encountered many problems in its application.

In the face of the inefficiency of the measures that are recommended, criticism of the World Bank's support of the extractive industry has been steadily increasing. The main criticism concerns the overt conflict between the Bank's principal mission of poverty reduction, and its involvement in the development of extractive activities in poor countries. It was in this context, and in response to demands of civil society organisations, that in 2000 the Bank undertook, as was noted in the Introduction to this book, an assessment of its activities in the extractive sector. Notably it took account of the social and environmental impact of mining through the creation of the EIR. At the end of this process, the Review concluded that 'There is a continuing role for the Bank Group in supporting EI provided its involvement



supports poverty reduction and sustainable development' (World Bank, 2004: iii). As has been shown, the pursuit of this involvement was, however, accompanied by recommendations relative to:

- governance that is in the interests of the poor
- better policies for the management of environmental and social impacts
- respect for human rights.

With regard to social and environmental issues, the recommendations argued in favour of an integrated perspective in undertaking an evaluation of these issues. To do this, it was suggested that a holistic and multi-dimensional approach is needed in order to identify the cumulative aspects of impacts and establish linkages between socioeconomic dimensions (one of which is health) and environmental dimensions. Beyond evaluation, effective control requires that a strategy be elaborated for preventing or minimising such impacts (EIR, 2003).

These recommendations found an echo within the World Bank, which reacted in 2004 by proposing a reassessment of its safeguard policies with the goal of strengthening them. As well as the substantive dimension, with technical recommendations on the management of environmental impacts and the protection of biodiversity (World Bank, 2004), this reinforcement concerns as much procedural aspects relative to impact assessment and the participation of local populations. As a result, in February 2006, following a revision process, the IFC safeguard policies were replaced by Policies on Social and Environmental Sustainability and by Performance Standards. At the practical level, observing IFC-defined performance criteria becomes the responsibility of companies, which are now charged with evaluating and managing the risks and impacts of their operations, under the supervision of the IFC, which then reviews the assessment submitted to the agency (IFC, 2006).

This revised procedure demonstrates the multilateral financial institutions' recognition of problems of poverty reduction and environmental protection associated with mining operations. However, as the case of Mali's gold industry will show, the approach proposed reflects a selective way of dealing with the problem. It ignores the structural dimensions that constitute the major obstacles to effectively establishing a regulatory framework for mining projects generally, and IFC-supported projects in developing countries in particular.

## **MINING IN MALI AND THE MAJOR ISSUES: POVERTY REDUCTION AND ENVIRONMENTAL PROTECTION**

Mali is a landlocked country in the heart of West Africa. As a nation entirely located in the tropical dry zone, it is subject to climatic vagaries, a fact that does not prevent it from being essentially agricultural. Cotton was for a long time the principal export product, and Mali was the continent's largest producer. Since 1997, however, gold has displaced cotton, and as a result, during the 1990s, the country rose to the fourth rank of African gold producers. The agropastoral sector (cotton, rice, fruits and vegetables, food gathering and cattle) and mining sector (gold production) constitute the two pillars of the Malian economy. Despite these apparent 'success stories', for several decades Mali has been, and still remains, in the group of 'low-income nations and least-developed countries' according to international financial institution (IFI) criteria. Since independence in 1960, the pursuit of social progress has translated into the adoption of a number of different development strategies, which have accompanied and reflected the successive political regimes: socialist, military and market economy (Koné, 2000). Following the difficulties – particularly financial dependence – encountered in applying earlier strategies, in the early 1980s the country committed itself to the path of liberalising its economy, adopting structural adjustment programmes (Géronimi, Diallo and Sidibé, 2005).

### **Regulatory and Fiscal Reforms of the Mining Sector**

The liberalisation reforms have had the objective of re-establishing macroeconomic equilibria, controlling debt, bringing about market reform and overhauling the framework for private enterprise. Economic liberalisation in particular meant the state's withdrawal from productive activities, and in parallel, the promotion of private initiative as the motor for socioeconomic development. During this period, the nation reformulated the legal and regulatory framework governing economic activity, in such a way as to attract foreign investment and promote the private sector. In this perspective, the mining sector was identified as the essential motor for economic growth and therefore also for poverty reduction. In Mali, the discovery of considerable gold-production potential led the funding agencies to encourage the government to reform the mining sector in order to make it more attractive to foreign investors (Hatcher, 2004).

The 1991 revision of the Mining Code was consistent with this

action plan. The Code introduced a significant liberalisation of the legal framework of mining by offering fiscal and customs advantages. Subsequently, the funding agencies identified a number of further constraints to developing this sector. Among these were the mismatch between the Mining Code and Mali's tax and customs systems; the latter were ill-adapted to the evolution of this sector; insufficient basic geological data; insufficient local resources; and the low level of involvement of national mining operators (MMEE, 1998). With the objective of resolving these constraints, but also in view of the concern about competitiveness relative to other nations in the subregion, in 1999 Mali once again modified its Mining Code to make it more attractive and to provide more incentives (Hatcher, 2004). The desired goal was to provide the mining sector 'with legislation that would act as an incentive, within a stable political environment, a balanced fiscal and customs arrangement and an efficient public administration' (MMEE, 1998, author's translation). The new 1999 Code was therefore intended to provide more incentives for foreign investors. The comparison of these regulatory changes sheds light on the general orientation of the regulatory framework generated by these reforms. Table 3.1 illustrates these changes.

An overall analysis of these conditions for mining operations reveals an increase in the advantages for mining companies in 1999 over 1991. Yet as we shall see, the social and environmental requirements for companies have been strengthened, reflecting an inverse trajectory to that which applies concerning economic and financial conditions.

#### Fiscal and Customs Incentives

Revisions to Mali's Mining Code have led to a reduction in benefits to the state and increased advantages conceded to the mining companies. These advantages involve less government participation in the capital of companies, lower taxes and accelerated depreciation. Mining royalties paid to the state consist of a special tax on certain products and an *ad valorem* tax. The suppression of the latter in the 1999 Malian Code had the effect of cutting royalties in half, from 6 to 3 per cent. In the 1991 Malian Code, mining activities were excused from paying taxes during the first five years of production. This tax-free period was removed in the 1999 revision. The 1999 regulations however offer mining companies the opportunity of accelerated depreciation of their factors of production. In brief, if some incentive measures of the 1991 Mining Code have been eliminated (notably the tax advantages), other clauses, such as

**Table 3.1** Mali: tax and customs measures in the 1991 and 1999 Mining Codes

Item	1991 code	1999 code
Foreign capital participation	Maximum 85%	Maximum 90%
Government participation	Minimum 15% free equity (priority shares)	Minimum 10% free equity (priority shares)
Depreciation allowances	Straight-line	Accelerated
Tax on business profit	35%	35%
Tax waiver	First 5 years of production	No waiver
Special tax on certain products (ICSP)	3%	3%
Ad valorem tax	3%	Eliminated
Tax on revenues from securities	No	Yes
Import duties	Exoneration	Exoneration
Export duties	No	No
VAT	Exoneration during the first 3 years of production	Exoneration during the first 3 years of production
Duties and taxes on petroleum products	Customs exoneration	Permanent exoneration

Source: MMEE (1991; 1999).

accelerated depreciation and reduced state participation in share capital, compensate for this. It follows from this that the economic and financial regulatory framework remains resolutely attractive to the mining industry.

### Social and Environmental Dimensions

While mining codes have become increasingly economically and financially attractive, the social and environmental dimensions have followed an opposite trajectory, calling for greater responsibility by the mining companies. Contrary to the 1991 Mining Code, the 1999 revision addressed the questions of population displacement as a result of mining activity: relocation now became the responsibility of the mining company. Furthermore, after a five-year tax free period, the mining companies were now required to pay taxes to support local communities (MMEE, 1999: article 109). In addition, the companies were obliged to provide housing, sanitary infrastructure, schools and leisure facilities for mineworkers and their families. In term of employment, companies are bound by the 1999 Mining Code to respect Mali's

general employment conditions and give preference to hiring Malian personnel, when their qualifications are equivalent to those of non-Malians (MMEE, 1999: article 126). Finally, under the 1999 Mining Code, health and safety at the workplace became subject to protection and prevention regulations consistent with recognised international norms for work involving transportation and the handling and storage of explosives (MMEE, 1999: article 124).

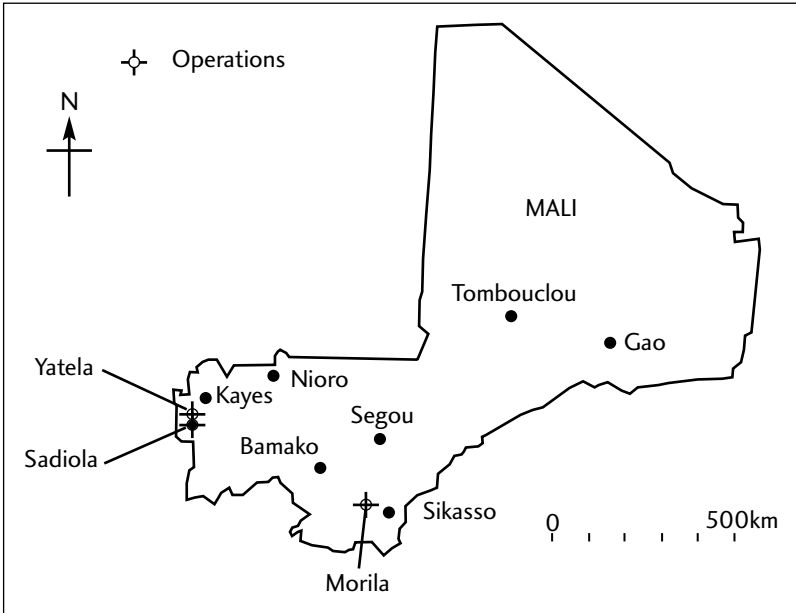
On the environmental side, the 1999 Mining Code was much more explicit and demanding than the 1991 Code, in which companies had almost no obligations for environmental protection. In the 1991 Code, rehabilitation and resolution of incidents were conducted on an ad hoc basis. The introduction of the 1999 Code opened the way to a real recognition of environmental risks, by making the provision of mining permits conditional on companies providing a feasibility study and a development and production plan. This includes a study of the environmental impact, an attenuation plan of the impact, as well as an environmental monitoring plan. Permit holders granted exploitation rights are also required to open accounts and deposit funds in a trust account to cover the costs of environmental preservation and rehabilitation.

Despite its adoption, the 1999 Mining Code has not been applied to all the mining projects currently operating in Mali, as a result of the fact that authorisations for conducting mining operations usually have a renewable 30-year duration (MMEE, 1999: article 43). However, the mining companies are now compelled to implement the environmental clauses of the 1999 Mining Code. They are therefore obliged to conduct environmental and social impact studies and to conform to the requirements of rehabilitation, preparing the procedures to be applied in mine closures and respecting national employment legislation. In general, these reforms, particularly those in the 1991 Code, have generated what amounts to a true 'gold rush', which has, over the period of a few years, raised Mali from the sixteenth to the fourth rank of Africa's gold producers (after South Africa, Ghana and Tanzania). Map 3.1 shows the location of the principal mines operating in Mali in 2005.

The exceptional expansion of the Malian mining sector since the beginning of the 1990s has led to a significant improvement in macro-economic indicators, to which we turn in the next section.

### The Economic Results of the Adopted Policies

The incentives offered to companies, particularly in the 1991 Mining Code, have generated noticeable economic benefits. Gold production



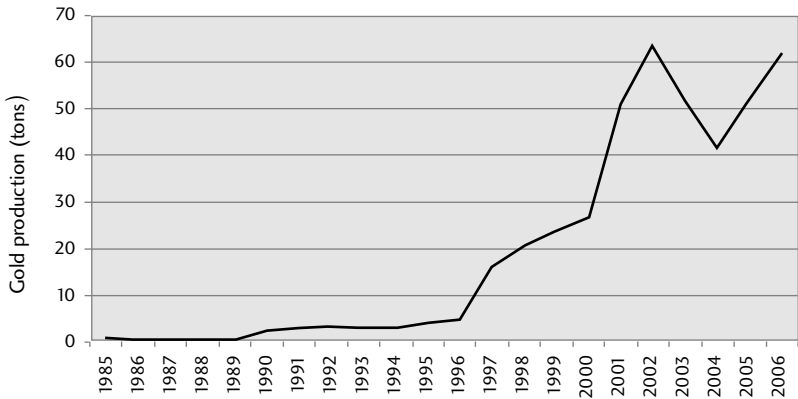
**Map 3.1** Location of principal gold mining operations in Mali

Source: AngloGold Ashanti (2007).

constitutes the country's leading source of foreign exchange. This is illustrated in Figure 3.1.

These developments are essentially the result of the massive arrival of foreign investors in the country. Six mines were operating in Mali in 2007: the Sadiola, Morila, Yatela, Kalana, Loulo and Tabakoto mines. A seventh mine, Syama, is in the process of reopening after having been closed since 2001. Together, these mines hold the promise of extracting more than 530 tons of gold over the next 20 years. From 1997 to 2005, the proceeds from this production benefited the Public Treasury to the order of about US\$1.5 billion (DNGM, 2005).<sup>9</sup> Gold thus represented 60 per cent of exports in 2005 (EIU, 2007). Since 1997, gold has displaced cotton as the leading contributor to GDP.

Beyond this, the four mines in operation from 1985 to 2003 generated 3440 jobs (3246 in 2003). Of the job-holders, 3061 were Malians, representing a 94 per cent local employment rate. These jobs provided salaries as well as social security contributions. At the community level, the expenditures by the three principal mines from



**Figure 3.1** Gold production in Mali (1985–2006)

Sources: DNGM (2005), EIU (2007).

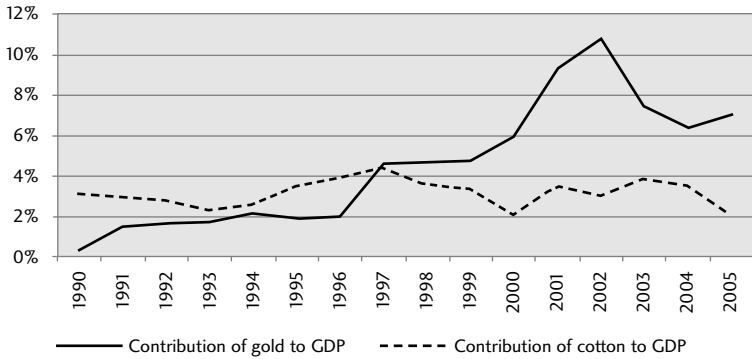
1997 to 2005 amounted to US\$13,900 for the Sadiola and Yatela mines and US\$2545 for the Morila mine (from 2001–05) (AngloGold Ashanti, 2005). In general, the benefits from mining operations to the national economy, in particular state revenues, are substantial. As well as these payments to the National Treasury, the national revenue fund, the benefits can also be significant for certain local communities living close to the mining sites. Yet, while these economic results appear to be positive, the social, sanitary and environmental conditions have become increasingly critical, particularly in the mining regions.

#### Responsibility for the Social and Environmental Dimensions of Mining

Since analysis of the social and environmental problems at the national level is more complicated and less easy to interpret, we shall focus on the two most important mining projects in Mali, the Sadiola and Morila mines. Table 3.2 provides an overview of the characteristics of these two projects.

Both of these mining projects operate under the 1991 Mining Code, but it is interesting to note certain special features that distinguish them from each other in terms of environmental and social impacts. First, the Sadiola mine includes the IFC among its shareholders, which means it is required to conform to this institution's obligations in terms of safeguard measures. This mine started up in 1996, in what was almost a regulatory vacuum concerning both environmental protection and community management. Despite the lack of national obligations

# MALI



**Figure 3.2** Mali: the contribution of gold and cotton to GDP (1990–2005)

Source: DNSI (2005).

but since it was operating under the IFC requirements, the Sadiola mine conducted an environmental impact study in 1994, the first in Mali (Envirolink, 1994). It seems at first sight therefore that Sadiola is operating under tighter environmental and social obligations than the Morila mine, which is not subject to IFC requirements. However, Morila started operating at a time when Malian legislation,

**Table 3.2** The principal mines in Mali

Item	Sadiola	Morila
Establishment agreement	1992	1992
Feasibility study	1993	1999
Mining permit	1994	1999
Productions start-up	December 1996	October 2000
Reserves	116 tons	103 tons
Lifespan of the mine	13 years	10 years
Type of mining operation	Open-pit	Open-pit
Operating company	SEMOS SA	MORILA SA
Shareholders	AngloGold 38% IAMGOLD 38% State of Mali 18% IFC 6%	AngloGold 40% Randgold 40% State of Mali 20%
Operating company	AngloGold Ashanti	AngloGold Ashanti



particularly environmental laws, was beginning to acquire real substance. Table 3.3 summarises the environmental requirements under which these two mining projects have operated since they were first created.

Table 3.3 allows us to see that the mining projects in Mali started operating in the absence of adequate national environmental legislation. Consequently, the Sadiola mining project was subject only to IFC environmental requirements. From 1999 onwards, the environmental requirements started to become stricter. A number of environmental conditions had to be satisfied to obtain an operating permit. However, the obligation to respect these requirements depended on how significant the project promoters considered the environmental impact to be, since Malian legislation did not establish national norms to which they

**Table 3.3** Environmental legislation governing the Sadiola and Morila mines

Item	Period	Sadiola (1996–2005)	Morila (2000–05)
IFC requirements	1996–2005	Safeguard measures* <ul style="list-style-type: none"> <li>• Environmental assessment</li> <li>• Natural habitats</li> <li>• Involuntary population displacements</li> <li>• Indigenous communities</li> <li>• Cultural heritage</li> <li>• Forced labour and child labour</li> </ul>	Not applicable
Requirements of the 1991 Code	1996–99	<ul style="list-style-type: none"> <li>• Rehabilitation and ad hoc intervention in the case of impacts</li> </ul>	Not applicable
Requirements of the 1999 Code	2000–05	<ul style="list-style-type: none"> <li>• Environmental impact study</li> <li>• An impact attenuation plan</li> <li>• An environmental monitoring plan</li> <li>• Compensation for landowners receiving prejudice</li> <li>• A rehabilitation fund</li> </ul>	
Requirements of national environmental legislation	1999 2001	<ul style="list-style-type: none"> <li>• Legislation relevant to the environmental impact studies</li> <li>• Legislation on the waste management and other types of pollution.</li> </ul>	

\* These are the policies that are of direct relevance to mining projects. Other policies relating to pest and disease control, protection of the forests and dam safety make up the rest of Mali's safeguard policy. It is important to note, moreover, that the policies are different from the positions adopted by the Extractive Industries Review, the latter aimed at strengthening safeguard policies.

Sources: MMEF (1991; 1999), IFC (2007), Government of Mali (2001–04).

**Table 3.4** International norms and voluntary initiatives adopted by AngloGold Ashanti Ltd

Initiatives	Initiator	Description
Environmental management system (according to ISO 14001 requirements)	The company (subsidiary)	Environmental management policy, health and safety and community relations.
World Bank directive on the quality of the ground water	IFC / World Bank	Norms not be exceeded for different contaminants.
WHO directives on the quality of surface water	WHO	Norms not be exceeded for different contaminants.
AngloGold directives for dust and noise management	The company (head-quarters)	Norms beyond which corrective actions are implemented.
AngloGold directives for the management of mining waste	The company (head-quarters)	Norms on the ways of treating and stocking mining effluents.
International code for the management of cyanide	Multiparty initiative (UNEP companies, NGOs)	Procedures governing the production, transportation and use of cyanide for producing gold.
Strategic framework for the closure of mines	Australian mining association	Procedures for closing down mining sites.

Sources: AngloGold (2004), SEMOS (1997–2005), AngloGold Ashanti (2000–2005a).

had to conform. During the whole period under consideration (1996–2005), Mali had no national environmental norms for water, atmospheric or noise pollution, nor for the management of mine tailings. For this reason, both IFC policies and national requirements left considerable leeway in the self-assessment by the mining companies of the environmental damage resulting from their activities. Furthermore, the lack of Malian environmental norms and technical guidelines on the use of cyanide, mine closures, the elimination of waste products or rinsing of acid rocks, left the mining industry a relatively free hand in adopting voluntary corporate initiatives for handling such impacts. In the case of Sadiola and Morila, therefore, AngloGold Ashanti, the operator of both mines, adopted various international norms and corporative initiatives regarding the environmental impacts of its mining activity.

Adopting these norms, combined with national legal requirements and those of the IFC, has the advantage of providing an almost complete framework for managing the environmental impacts of

mining operations. These norms for water and noise pollution, dust and tailings are conducive to a quantitative assessment of impacts, and enable the company to provide shareholders with detailed reports on such impacts. However, impact assessment remains the prerogative of the company, or private consultants whom it hires to conduct audits, the results of which are then transmitted to shareholders. Generally, then, the regulatory framework adopted for the purpose of encouraging the management of environmental impacts has two types of shortcoming. First, the norms (whether voluntary or, as in the case of the IFC, intended to be binding) are defined outside the country; and second, it is difficult to ensure that the companies do in fact comply with these norms. It is this second point in particular that becomes problematic in the case of Mali, and, more specifically, for the two projects with which we are concerned.

### Environmental Management

The two mining projects raise a series of issues with respect to environmental impacts. Both projects have generated a major population increase in the mining region, a consequence of which has been substantial pressure on wood resources in these regions. Deforestation constitutes one of the most immediately visible environmental problems in the mining regions. Yet in many ways mining activity itself also generates appreciable environmental risks. The absence of environmental standards generally leads to mining companies adopting the indicators of the World Health Organization (WHO), the World Bank or South Africa, AngloGold's country of origin. Since the norms originate elsewhere, the government's ability, or lack of it, to control their application, remains a critical dilemma for ensuring that these standards are respected.

A good illustration of the government's limited capability for environmental monitoring of the mining industry is the use of cyanide in mining operations. The use of cyanide in the gold extraction process is addressed neither in the Mining Code nor in any specific regulations. AngloGold, the operator of the two main mines, has taken measures regarding the use of cyanide by voluntarily adopting the International Cyanide Management Code. The application of this code is verified by external foreign audits; the state has no control over this monitoring. Reports undertaken to assess the operations of mining companies have recommended the use of this cyanide code by the government departments overseeing mining activities, in order to control all uses of cyanide in Mali. It is to be noted that this voluntary code does not

include all the activities that raise issues of security associated with the use of cyanide. Nor does it cover the environmental consequences during the stages of design and construction of storage systems for industrial residues, the long-term effects of closure or the rehabilitation of the mining site itself (ICMC, 2006). Given the problems raised by the increased use of cyanide and the risk of mining acid drainage, closure plans have been revised, notably at the Sadiola location. Following the difficulties encountered in monitoring the rate of extraction (an issue to which we return below), a study conducted for the government by a consultancy group recommended increasing the estimated costs of mine closure and long-term follow-up since 'acid drainage of the mine is likely to be a very real problem in the medium- and long-term at Sadiola' (CSA Group, 2004: 94).

At the environmental level, the mining companies are conforming to the 1999 Mining Code, but in the absence of any mining-specific national environmental standards, they are using international norms or those of the World Bank Group, without tying these norms to monitoring procedures or restoration, should these become necessary. To illustrate, the IFC policies are mandatory and the organisation carries out regular follow-up studies which consist principally of evaluating the reports produced by mining companies. The IFC's recommendations mainly involve publishing the predictions of environmental consequences, according to safeguard policy requirements. Company performance is controlled by the company itself or by external auditors hired by the company. The IFC has foreseen no form of sanction in the case of non-respect of the norms, instead calling essentially for corrective measures. For this reason, the difference between Morila and Sadiola in terms of environmental management lies mainly in the regularity and amount of detail in their social and environmental reports. The AngloGold head office monitors the operations of its subsidiary companies. Both companies have their own internal monitoring groups and regularly hire consultants for ad hoc audits. Consultants make recommendations and are frequently contracted to oversee the application of their recommendations. The state, for its part, as both a shareholder and also as required by the Mining Code, receives regular reports (monthly, quarterly and annually) from the companies (MMEE, 1999: articles 73–5). National legislation requires mining companies to conform to current international norms; however, there are no specified consequences should they not be respected.

Responsibility for environmental impacts, particularly in the long term, is therefore limited despite the IFC requirements, national

legislation and international norms and initiatives that make up the regulatory framework within which mining activity takes place in Mali. The main shortcoming in this framework for environmental issues lies in how the responsibility of mining companies for long-term environmental impacts is defined. It is to be noted that producing 1 gram of gold generates about 500 kg of waste (mine tailings and barren rock), which lead in the long term to acid mine drainage. This acid mine drainage can last several generations. However an analysis of the Malian regulatory framework, including both the legally binding measures and the voluntary initiatives, leads to the conclusion that this dimension is not taken into account. The initiative within the strategic framework agreement for mine management which Anglo-Gold has adopted is aimed principally at ensuring conformity to the legislation (which in this case is clearly inadequate) to obtain authorisation to close sites. So in discussions leading up to the closure of certain mines in Mali in the near future (particularly the Yatela mine), mining companies have proposed limiting their responsibility to a period of five years. This question is still being discussed but raises the problem of who will assume the environmental costs beyond the five-year period. While neither the companies nor the IFC have integrated this dimension into their initiatives and obligations, it seems that in such a scenario, the Malian state will have to assume this environmental liability, without the means to follow it through to the end. If dealing with long-term impacts poses a problem, this difficulty also arises with the immediate effects of mining activity, to the extent that links are beginning to emerge between environmental effects of mining activity and the health of people living in proximity to the mines.

### Health

Communities living around mining zones lack basic infrastructures and social services. In considering health, while the mining companies have contributed to developing public health infrastructures (building a clinic for mine workers in the case of Sadiola and providing the equipment for a community health centre), it should be underlined that the local population's lack of income limits their access to healthcare. Furthermore, the facilities created for mining employees are not accessible to the rest of the population. At the same time, major health needs are apparent.

In general, the application of the regulatory framework and the weak participation by national actors, particularly the state, has contributed to creating tensions between the companies and the

communities in which they operate. The communities receive little information about the procedures and results of environmental management. An example is the control of water quality. While the World Bank provides water quality norms to which the companies are required to conform, it is the companies themselves that take the samples in the villages and analyse them.<sup>10</sup> They do not show the results to the communities. This leads to social tensions, because many people believe that their health problems are the result of mining-related pollution, even if the analyses provided by the companies show they are respecting limits imposed by the WHO.

A number of health problems (notably miscarriages and deaths) have been identified as a result of international non-governmental organisation (NGO) studies conducted in 2004 on communities living around the Sadiola mine. However there has been no study on a national scale to establish the incidence of environmental impacts generated by mining projects on public health. In fact, overall, the information available to government structures on the mining sector comes from the mining companies themselves. The state has conducted very few studies on the economic, environmental, social and health effects of the mining projects. Since the relevant documentation on mining activity originates from the companies, the content of these documents only concerns those dimensions that the companies have identified as relevant. For instance, questions about health are rarely raised in these studies. Yet these questions are of crucial importance for the populations living near mine sites.

Two studies were conducted in order to identify the effects of environmental impacts on the health of the population living in the region that is host to the Sadiola mine. These sociodemographic and epidemiological surveys were commissioned by the Société d'Exploitation des Mines d'Or de Sadiola (SEMOS) and were conducted by a government agency, the Institut national de recherche en santé publique. The first stage of these studies was sociodemographic and was completed in 2005. This survey examined the population's perceptions of the impact of mining operations on their health. On the basis of the questionnaire that was administered, respondents reported a high level of miscarriages in some of the villages in the mining zone. The highest level was found in village of Yatela, close to the Yatela mine, where there were four miscarriages out of every five pregnancies over the previous five years. A proportion of 0.37 for the whole mining zone around the Sadiola mine was reported, compared with 0.36 for the control group living in villages considered outside of the radius of

mining impact (INRSP, 2005). Whereas the local population perceives these health-related problems as caused by the mines, only a medical survey, which is the second stage of the study, will be able to confirm or contradict these perceptions. This second study was not yet available at the time of completion of this chapter. So in this case too, the inability of the state to initiate and conduct studies of this magnitude results in the mining companies commissioning studies of which they are themselves the object. This creates a conflict of interest.

In summary, the weakness of Malian national institutional capabilities to ensure adequate follow-up of mining activities represents a major limitation of mining as a contributor to poverty reduction and protection of the environment. In fact, beyond the development of social and environmental norms (by the international institutions or by the companies themselves), poverty reduction and environmental protection require an integrated approach for regulating the mining industry, capable of taking into account both the consequences of the economic conditions of mining operations and the need to strengthen national institutional monitoring capabilities. The low priority assigned to these dimensions, despite the revision process recommended by the EIR, leaves the problems of the mining industry's contribution to development largely the same as in the past, as the case of Mali illustrates.

#### The Effects of Weak Institutional Capabilities on the Enforcement of Regulatory Frameworks

As we have mentioned, the Malian mining industry operates within the regulatory framework of the 1991 and 1999 Mining Codes, which are applied in conjunction with each other. All currently active mines are operating under the 1991 Mining Code. In reality, operations that started up before the adoption of the 1999 Code continue to operate under the old Code, although the companies can choose to adopt the new Code in its entirety. Yet according to several government administrators of the mining sector in Mali,<sup>11</sup> companies try to take advantage of the clauses that are favourable to them from both codes, particularly when it comes to taxation and customs duties. This situation creates tensions and conflicts between the government mining administration and the companies.

In general, several factors contribute to reduce the possibilities for monitoring by the mining minister, who is responsible for overseeing the mining sector. Until 2002, there was no structure within the mining administration responsible for monitoring and controlling mining

activities. Monitoring was done by the staff of the Direction nationale de la géologie et des mines (DNGM), who are also responsible for geological research (DNGM, 2002). However, in the 1980s, the structural adjustment programmes led to substantial personnel cutbacks in the public service and reduced the possibility of hiring more civil servants. Once the mining companies started operating, they proceeded to recruit Malian personnel and it was precisely specialists from the mining ministry that they hired, thereby depriving the ministry and particularly the DNGM of those who were most competent to oversee this sector. Another requirement of structural adjustment was that the Malian government create a single centralised fund for the state budget, which meant suppressing the various funds used to encourage the industrial sector, depriving the mining ministry of its Mining Fund which had previously served to finance its own activities. Under these conditions, this ministry, as well as the operational structures charged with monitoring and controlling the mining industry, found themselves seriously limited in both the human and financial resources essential to carry out the role assigned to them by the country's legislation.

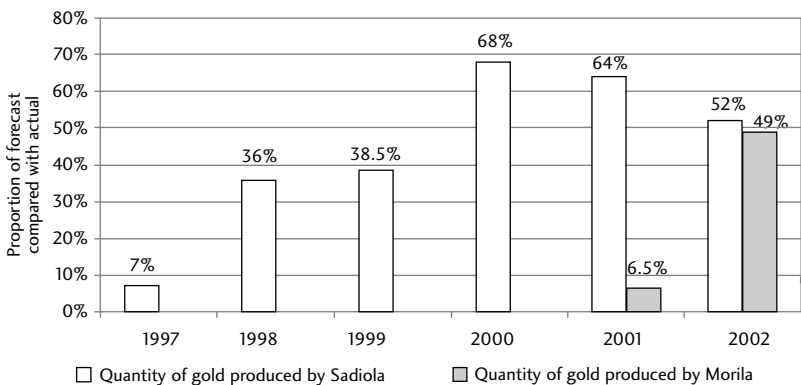
These shortcomings were felt all the more harshly since, as suggested above, Mali was experiencing a veritable boom of its mining industry, and it urgently needed state resources to provide a framework within which the sector would operate. The inadequacies in the state apparatus therefore had the dual effect of failure to maximise the economic and financial benefits of the mining industry for the national economy, while at the same time encouraging foreign private companies to provide social and health services and schooling, as well as ensuring the protection of the environment, with the risk of seeing these concerns sidelined.

Recognition of the government's loss of control over the industry led the Malian authorities to tackle the issue of the quality control and monitoring of the mining societies. As a result, a commission was set up with the mandate 'to determine the appropriate ways and means of improving the contribution of the exploitation of mines for the national economy and to ensure the monitoring and effective control of mining activities' (DNGM, 2002). When its study was completed, it became apparent that extraction was proceeding at a faster rate than had been proposed by the mining promoters in the feasibility studies. This had the effect of reducing a mine's operating life. Figure 3.3 shows the extent of the divergence in forecasts and real extraction rates between 1997 and 2002, the year in which the study was conducted.



For the Sadiola mine, the quantity produced was 41.6 per cent more than the company's projection for its first five years of operation. It produced seven years' projected output in these first five years. Thus, as a result of this intensive extraction schedule, the mine's operational lifespan had been reduced by two years (11 instead of 13). The company responsible, Semos, justified this increased extraction rate by referring to fluctuations in the world price of gold and an over-estimation in 1993, when the feasibility study was done, of the amount of oxide ore that would be extracted up to 2002. In the case of the Morila mine, after the 1999 feasibility study, a second study conducted two years later reassessed the gold reserves, raising this figure from 103 tons to 160 tons, and projected an extraction rate rising from 2.4 to 3.12 tons per year from 2002 onwards (CSA Group, 2004). At such a pace, the government is expecting the life of the mine to be reduced by four years. Furthermore, by concentrating on production in the richer mining zones, this mine recorded an exceptional production level in 2002, with record revenues for the mining companies.

It should be noted that the two mines operated under the 1991 Mining Code, which provided five years' tax exemption beginning from the first year of production. Technical considerations might account in part for this intensive exploitation of the mine's resources (AngloGold Ashanti, 2000–2005b), but it also seems that the accelerated extraction was encouraged by the fiscal exemptions offered.



**Figure 3.3** Divergence between actual production and the feasibility study estimates for the Sadiola and Morila mines

Source: DNGM (2002).

Concentrating production during the tax-free period considerably reduced the taxes that the companies paid to the state. Mining companies' failure to follow their time schedule for operating a mine has a substantial effect on both company revenues (which are revised upwards) and state revenues (which are revised downwards). Even if the state does receive significant amounts of money, it still receives less than it might have done because of the administration's inability to monitor mining operations, and particularly the extraction rate, in a continuous manner. This situation is all the more disturbing since it has environmental consequences, particularly if the mine closure procedures are not adapted to take account of the more intensive extraction schedules (CSA Group, 2004). Finally, difficulties were also found in assessing the financial data provided by the mining companies, particularly with respect to the level of investment, and estimating production and operating costs.

In summary, with regard to both economic and financial considerations, the central issue is the capacity of the state to verify that the revenues it receives are determined appropriately, without overdependence on the companies' own figures, and without allowing the mining companies to make preferential contracts with their affiliates. In addition, even if the national macroeconomic indicators point to a strong improvement in the country's economic situation, these difficulties illustrate a certain inequity in the distribution of earnings from mining operations. As our analysis has illustrated, Malian governmental institutions have limited capability to ensure the adequate application of the country's legislation when it comes to economic and financial affairs. It would seem, therefore, that the industry has developed more rapidly than the institutional capacities of the country, and that there has even been a weakening of these capacities as a result of the redefinition of the role of the state.

The macroeconomic and institutional reforms (as contained in the structural adjustment programmes) that preceded the reform of the Malian mining sector led to a weakening of the technical and financial capabilities of the state. These institutional weaknesses have had striking implications for environmental protection and the possibility of the mining sector becoming a real motor for social development. For this reason, the mining regions are caught in a plethora of social, educational, health and environmental problems which are all the more significant to the extent that they are directly affected by mining projects. This situation occurs within a context in which the adoption of international environmental norms and initiatives, the creation of community

development funds, and the perspective of development projects within the framework of mining companies' corporate social responsibility have transferred the satisfaction of social needs and the need to protect the environment to these same companies, without any further questioning of the role of national state institutions in this process.

## **CONCLUSION: POVERTY REDUCTION, THE PROTECTION OF THE ENVIRONMENT AND MINING OPERATIONS**

The regulatory frameworks proposed by the World Bank have provided companies and developing countries with a measuring rod for evaluating mining operations. However, recourse to self-assessment by the companies themselves (even if this is followed by a review of the results by the IFC) raises the problem of the application and enforcement of these norms. The current approach masks the real difficulty, which is created by the weakness of resources within national institutions that have the role of ensuring that the rules of operation in this sector are in fact respected. The lack of acknowledgement of the importance of the role of national institutions in the implementation of regulatory framework proposed by the EIR is reflected in the concurrent promotion of reform policies weakening these same institutions.

As was suggested in the first part of this chapter, for the country to see economic growth based on the exploitation of mines, it is necessary to control the distortions caused by the country's dependence on exporting its mining resources, and to integrate this industry into the national economy. Yet the Review did not address this issue in a detailed manner, and subsequent management responses from the World Bank Group have ignored it. This can be explained by the ideological positioning of international financial institutions. They tend to adopt the conventional economic perspective, according to which it is possible to solve all problems related to the resource curse by adopting appropriate public policies, such as taxing mining income and reinvesting this revenue in creating other forms of capital such as technology, education, health or social infrastructures (Daniel, 1992; Mikesell, 1997). Yet these policies are difficult to implement in the liberalised economic context of most developing countries that have mineral resources. The Malian case provides a good illustration of the difficulty associated with deploying such policies, where it is precisely the generous incentives to mining companies that encourage the industry to expand. The option of a strategy of incentives, combined with appeals to corporate social responsibility in the framework of short- and

medium-term assessment of the impact of mining operations, has become the preferred approach. Under these conditions, the development needs of host countries are circumvented.

From an economic perspective, foreign investments are not governed by international agreements; they are merely the object of bilateral, regional or multilateral accords which only cover certain specific aspects. These agreements are essentially directed towards protecting investments, but they make no link between international investments and national development objectives. They call on the civic responsibility of companies to include the development objectives of host countries in their agenda (UNCTAD, 2003). Yet the deregulation and liberalisation processes have led to a number of modifications in the conditions governing mineral resource operations. As we have seen, these conditions involve the tax, customs, economic and financial measures that have been reformed in order to attract more foreign investment. The principal consequences of these incentives have been to alter the ownership of resources, transferring them from the public to the private realm, and to facilitate access to land, while at the same time securing the companies' property rights. Finally they have involved revision of the ways of calculating royalties and taxes to reflect profits rather than turnover (Eggert, 2000).<sup>12</sup> The impact of these reforms has been to alter decisively the distribution of mining income between companies and governments, contributing to reducing the possibilities for governments to adopt policies that counter the economic distortions generated by this economic imbalance and the massive exportation of minerals.

On the one hand, the integration of the mining industry into the local economy depends on a number of factors. As Abugre and Akabzaa (1998) have pointed out, lowering of transportation costs reduces the incentive for mineral processing close to mining sites. On the other hand, promoting the transformation of primary products brings developing countries face to face with tariff barriers that the industrialised nations maintain to protect their own manufacturing industries, while there are no barriers on importing primary products (Pegg, 2006). In addition, technological transfers are limited by intellectual property rights. Creating links between the industry and the local economy is generally left to the discretion of the mining companies, in spite of the unequal negotiating power between companies and the government. In view of this, even a company that conformed scrupulously to the social and environmental requirements could not claim to be contributing to poverty reduction or to the protection of

the environment if its economic and financial practices generated inequalities or involved negative social impacts in the host country. Consequently, the macroeconomic structural factors, by their very nature, limit the scope of the social and environmental requirements (particularly those of the IFC), as strict as these might be. Focusing on these dimensions is all the more problematic in view of the fact that it is difficult for either the IFC or national governments to ensure that the recommendations associated with them are respected.

In summary, the strategy applied to the mining industry is one of liberalisation which aims essentially to create conditions to attract investment, while the ways in which these investments contribute to development are rarely taken into account. As a 2005 UNCTAD report on the role of direct foreign investment in development stated:

Accordingly, and to the extent that there is a degree of ‘automatic progress’ surrounding the unpacking of FDI (Foreign Direct Investment) once local operations are established, the development dimension reduces to the design of appropriate strategies by the host country to attract FDI by abandoning policies that might hinder the establishment of local affiliates.

(UNCTAD, 2005: 15)

From this it follows that in adopting incentive-oriented policies, fiscal and more generally developmental issues are largely side-stepped. Because of this, the manner in which mining activities impact on poverty reduction and their consequences for the environment are given far less consideration. These limits reflect the extent to which the social and economic benefits of this industry depend on the institutional framework that determines the conditions for extracting resources, and on the good will of the companies concerned.

## NOTES

- 1 During the 1990s, in sub-Saharan Africa there was an overall 0.8 per cent reduction in GDP. The reduction was 1 per cent per year for countries dependent on minerals: that is, 25 per cent more than countries without such dependence.
- 2 Upstream, it is principally a matter of local purchases by the mining company in the form of products and services. These purchases stimulate the national or regional economy. Downstream, the potential linkages

involve the transformation of minerals at the mining site, which allows the host country to increase the value-added of the exported product.

- 3 Acid mine drainage is considered to be the most significant environmental impact of mining operations. It occurs typically when oxidized waste (rocks) from a mine in operation come into contact with water. This contact then produces acid which can infiltrate surface water or the water table.
- 4 A mine is considered 'orphan' or abandoned when its owner cannot be found, or when the owner refuses to rehabilitate the site, or when the owner is financially incapable of doing this.
- 5 By way of example, rehabilitation of the site of the Faro mine located in the Yukon and closed since 1998 cost US\$145–150 million (Repetto, 2004).
- 6 Groups representing civil society also contest the role of transnational corporations. The latter are under strong pressure to become more socially and environmentally responsible.
- 7 Other factors have encouraged the relocation of companies. For transnational corporations is it a matter of identifying sites where the financial costs and costs associated with the regulation of their activities are lowest. The governments of industrialised countries, for their part, play a role in promoting their commercial and economic interests abroad, providing support in various ways for their companies to becoming increasingly transnational. Within developing countries, the need to obtain foreign exchange to pay off debt, as well as the wish to attract foreign investment, which is seen as increasing employment, transfer of technology, growth and development, have created competition between governments to attract mining corporations.
- 8 These policies cover environmental assessment, natural habitats, the involuntary displacement of populations, indigenous communities, the cultural heritage and forced labour and child labour. Before approving each investment, the agencies of the World Bank Group proceed with an environmental assessment to determine whether the project in question needs other safeguard policies. Projects are classified according to four categories (A, B, C and F) according to their type, location, vulnerability and scale, as well as the nature and extent of their potential environmental impact.
- 9 Exchange rate: US\$1 = 550 francs (CFA).
- 10 Comparative analyses have also been conducted from time to time by laboratories outside the country, particularly in the United Kingdom and Canada.
- 11 Interviews conducted by the author between October 2005 and January 2006.
- 12 This latter policy has the advantage of making taxes conditional on the profits declared by the mining companies.

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## 4 MINING AND PROTECTION OF THE ENVIRONMENT IN MADAGASCAR

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### INTRODUCTION

At the start of 2005, the Malagasy prime minister, Jacques Sylla, declared that ‘the government [has] set the objective of attaining an annual economic growth rate of 15 per cent from 2008 onwards, in other words triple the 5.3 per cent that it was in the year 2004’. Furthermore, he affirmed that ‘Madagascar will have to attract more direct foreign investment to reach this objective’ (Cocks, 2005).

The volume of foreign direct investment (FDI) reveals an upward trend since 2004 when there was US\$47.22 million of investments, compared with US\$14.22 million a year earlier. The lower figure for 2003 undoubtedly reflected the political and social crisis the country had been experiencing since 2002. Madagascar is still far from the performance of 2001, when the total FDI was almost US\$115 million (Cocks, 2005). This variation over time reflects the growing internationalisation of the Malagasy economy. The costs of this internationalisation have yet to be known. At the invitation of the international financial institutions, particularly the World Bank and International Monetary Fund (IMF), the Malagasy government now counts principally on FDI to achieve ‘economic development’ and thus attain its adopted objectives of ambitious growth for the coming years. Large-scale mining investments play an instrumental role in this process.<sup>2</sup>

There is a paradox underlying this, so it is of interest to examine what is at stake in Madagascar’s reliance on mining for its

development. The ‘Great Red Island’ of the Indian Ocean possesses an exceedingly rich biodiversity, accompanied by a social context characterised by the substantial poverty of much of its population. Analysing the relationship between natural resources and development is therefore unavoidable when we try to understand why a country that is home to such a variety of resources remains, despite everything, so economically poor.

The Extractive Industries Review (EIR) addressed in a very explicit manner the dialectic between the objectives of economic growth and the fight against poverty, as set out by the World Bank Group (WBG) (EIR, 2003a, 2003b). Our approach proposes to question these three dimensions in the light of the EIR report, by analysing a mining project in the Tolagnaro region in south-eastern Madagascar. We hypothesise that the underlying ‘development model’ which informs both the conception and the realisation of this project is based on the thesis that export growth contributes to reducing poverty while at the same time protecting biodiversity. It is in this context that this chapter will enable us to better understand how the WBG’s objectives are founded on a redefinition of the role of the state, the capacities of which are constantly being stretched to the limit, particularly as the arbiter of the stakes of mining development and its environmental consequences.

The Malagasy case corresponds a priori to the spirit of the EIR, with the adoption of legislation aimed at creating a balance between the imperatives of economic development and those of protecting the environment, within a perspective of sustainable development. Given the scope of FDI in the mining sector and the major leverage role this sector has acquired in the country’s growth, the Malagasy government has adopted the priority objective of providing the sector with a legal framework that will act as an incentive to investors. To this has been added a legal framework aimed at ensuring that mining sector projects conform to protection of the environment. Our objective is to understand better both the current dynamic in the mining sector, and the increased application of environmental policies in Madagascar. To do this, it is appropriate to first consider the existing legal framework so that we can subsequently analyse the mechanisms by which its components are articulated and the role of different socioeconomic stakeholders that intervene in promoting these two objectives.

## **THE MINING SECTOR IN MADAGASCAR: MAJOR TRENDS AND THE ROLE OF THE WORLD BANK IN REFORMING THE SECTOR**

The mining sector has been at the centre of the political, juridical and socioeconomic challenges facing Madagascar, particularly since the end of the 1980s. The increasing number of large-scale projects presented to the Ministry of Energy and Mines (MEM) for exploration and/or operating permits is an indicator of the development of this sector, which has been accelerating progressively since 2001. For instance, the number of permits granted for large-scale projects increased from 26 in 2001 to 36 in 2003, and for small-scale projects from 429 to 640 over the same time period (Yager, 2003).

Among the most important investments that have been approved in recent years are the first facilities of the QMM and Dynatec projects, located respectively in the south and east of Madagascar. These mark a major turning point for the Malagasy extractive industry, with a cumulative FDI by 2010 anticipated at nearly US\$2 billion (Ralevazaha, 2005). Other significant projects have also been announced, such as those of Ticor Ltd (ilmenite), Pan African Mining Madagascar SARL (uranium and diamonds), Omnium Minier International (lignite), Platinum Works Inc. (sapphire) and Majescor, in partnership with the world leader De Beers (diamonds).<sup>3</sup> The Malagasy Ministry of Energy and Mines is also responsible for issuing permits for mining hydrocarbons (petroleum activities), and among the current large-scale projects, a number of multinational corporations are undertaking petroleum exploration and research in several regions of Madagascar as well as off the coast. Exxon Mobile, Norsk Hydro and Statoil, Sterling Energy and Vuna Energy are all in the process of undertaking exploration and petroleum research in several Malagasy regions inland and offshore.

Despite foreign investors' increasing interest in the Malagasy extractive sector, this sector's contribution to the national product remains marginal, and represented less than 5 per cent in 2004.<sup>4</sup> However, available data on the mining sector, particularly for 1996–2000, shows that mining exports doubled during this period, increasing from US\$16 million to US\$37 million. The figures remain substantially below predictions; illegal exports are believed to be in the order of US\$200–500 million annually, representing about 10 per cent of GDP (World Bank, 2003a: 3). From 1990 to 2001, mining investments increased on average by US\$3.6 million per year (MEM, 2003).

In this context of strong growth, the QMM ilmenite extraction project in the Tolagnaro region represents one of the most significant in the mining sector in recent years. It reflects the liberalisation process of the Malagasy economy, which started in 1983 with the adoption of the first structural adjustment programme, followed by further programmes. Macroeconomic stabilisation has been the central element since the start of the 1980s. Structural adjustment subsequently integrated a 'fight against poverty' dimension as a reply to criticisms, particularly from UNICEF, exposing the social costs of adjustment.<sup>5</sup> It was in 1996, at the time that the World Bank declared the 'Fight against Poverty' as the principal mission of structural adjustment itself (Fishlow, 1996; World Bank, 1996a), that the Malagasy government published a Political Economy Framework Document (DCPE), which it reconfirmed in June 1999. The document declared that poverty reduction would be achieved above all by establishing a socioeconomic environment conducive to growth: that is, through economic liberalisation. This strategy was reformulated at the beginning of the new millennium in an action plan entitled the Poverty Reduction Strategy Document (DSRP), of which the three principal axes were:

- improving economic performance by incorporating the poor in a participatory process
- developing basic essential services (education, health, drinking water and increasing the social security net) to help the most vulnerable sectors of the population
- setting up an institutional framework conducive to economic growth and the reduction of poverty, and strengthening institutional capacities, in order to improve governance and the relationship between the public administration and those it serves (INSTAT, 2000: 22–3, our translation).

This process falls within the scope of the overall liberalisation programme, and is a response to the World Bank's definition of 'development', based largely on 'seizing the opportunity' that economic growth offers to the poor, particularly in sub-Saharan Africa (Killick et al., 2001; World Bank, 1994). This interpretation of development remains unquestioned in the final report on extractive industries. In Madagascar, the 'opportunity' takes the form of the following objectives for the coming years:

A mean [annual] growth of 9.3% for 2000–2010 (in contrast to

average growth of 7% for 2000–2015) is needed in order to reduce poverty so that only one-third of the population will remain below the poverty-line by the end of the period. These perspectives can be envisaged if the opportunities offered by the world market and the rhythm of implementing reforms are respected. The government will take these growth levels as the basis for programming actions to combat poverty and will ensure that the conditions for their realisation are satisfied. *These conditions involve in particular decisions on investments in the large-scale mines*, the tourism sector and telecommunications, maintaining the dynamism of the export-manufacturing sector, revitalising the agricultural sector to enable it to ensure an average value-added sectorial growth of more than 4%, a return to competitiveness in the manufacturing sector outside the duty-free zones and moving ahead with the programme of privatising state corporations.

(INSTAT, 2000: 23, emphasis added, our translation)

It is in this context that the development of the mining sector in Madagascar and corresponding legislation need to be understood – in other words, in an interrelationship involving the economy, the environment and the fight against poverty, of which the rural population has been identified as the vector. This ‘development model’, on which, using Michel Callon’s terminology, the *problématisation* (Callon, 1986) of the Tolagnaro mining project is based, therefore reflects the proposition that export growth contributes to reducing poverty while at the same time protecting biodiversity.

We have shown that the mining sector is relatively marginal in the Malagasy economy compared with other sub-Saharan African countries, but the growth of this sector and its environmental and social impacts merit our concern, particularly when a project targets a region that is particularly fragile, as is the case for the south-east of Madagascar. From the perspective of the ecosystem, the Anosy region,<sup>6</sup> where the project is located, contains two distinct ecological zones: a humid region along the coast and an arid inland region, as well as a very wide variety of landscapes, ecosystems and animal and plant species in close proximity to each other (QMM, 2001a). These characteristics make Anosy one of the most diversified regions in Madagascar. One of the principal problems of this region is precisely the degradation of these resources, particularly the forest resources.

As in most sub-Saharan African countries, the principal cause of the degradation of natural resources lies in the hypothesis of

‘underdevelopment’, an argument advanced notably by the World Bank. The blame is attributed to the vicious circle of poverty, low agricultural productivity and resource degradation (Cleaver and Schreiber, 1998; World Resources Institute, 1985). The underlying argument of this ‘Washington diagnosis’ goes beyond the scope of this chapter. We should recall, however, that the perception by both the government and the lending agencies of what remains of the coastline forest on the whole reflects the hypothesis that the rural population is the principal vector of degradation (Sarrasin, 2005). In this logic, forest resources are at the receiving end of strong pressure from village populations, who in effect depend on the forest for firewood, charcoal and building timber. The assessment made by QMM, for instance, points out that there remains, in the Mandena mining region (in the first phase of the project), 3.6 km<sup>2</sup> (360 hectares) of parcels of degraded coastal forest, of which the essential part is expected to disappear by 2020 if the use of these resources continues at the present rate (QMM, 2001a: 5.71).

Despite the recent ‘sensitivity to the environment’ cultivated by World Bank economists (World Bank, 1996b, 1996c, 1997, 2002a, 2002b), the problems and solutions in this sector continue to be presented as essentially economic. For the banking institution, one of the principal obstacles that restrains the mining sector from occupying a more substantial place in national production remains the failure to recognise the real potential of the Malagasy subsurface (World Bank, 2003a: 9). The Malagasy government, which shares this reading of the situation, included in its March 14, 2003 Declaration of Mining Policy a section specifically devoted to strengthening the geological infrastructure and the updating of geophysical data.<sup>7</sup> Knowing that the sector consists essentially of small-scale artisanal operators, we can understand that, from the point of view of the Bank’s analysts, the principal problem lies in bringing about the potential offered by large-scale mining projects that could attract direct foreign investments. The output of the resulting projects would be destined for export and would contribute to the generation of foreign currency. It has been in this spirit that the legal framework of the mining sector in Madagascar has evolved over the last 20 years. In other words, the goal has been to create conditions that are favourable to large-scale investors. It is precisely the consequences of such policies that the EIR addressed, questioning the effects of the liberalisation of the legal framework on poverty and the environment.



## THE ORIGIN OF THE CURRENT LEGAL FRAMEWORK OF THE MINING SECTOR AND THE ROLE OF THE EXTRACTIVE INDUSTRIES REVIEW

The EIR was a process initiated in 2000 with the goal of conducting an independent and complete assessment of World Bank Group (WBG) activities in the extraction of primary products (mines, petroleum and so on). Its report was therefore produced after the overhaul of the Malagasy Mining Code, officially enacted into law in 1999. Nonetheless, because of the challenges of attempting to reconcile the development of this sector and the protection of the environment, Madagascar represents an interesting case of study in light of the EIR recommendations, particularly in view of the number of laws, regulations, ministries and agencies involved. (See Tables 4.1 and 4.2.)

The legal framework for the Malagasy mining sector is the result of a wave of reforms enacted mainly at the end of the 1990s, anchored principally on the DCPE, the policy document adopted in 1998 (MEM, 2003). It seems that the arrival in Madagascar in 1987 of QIT Fer et Titane Inc. (a subsidiary of Rio Tinto) at almost the same time, and the founding agreement of the company in 1998, contributed to making the existing legislation more favourable to large-scale investors. The executive director of QMM, Serge Lachapelle, asserted that:

in 1987, the laws were not favourable. We had worked hard with the State to set up our founding agreement, and this was signed in 1998. This convention, which in Madagascar is a law, has adapted the fiscal arrangements to this style of mining project and provides a framework for the project. Moreover, the new law on large-scale investments is largely inspired by our founding agreement.

(Ralevazaha, 2005, our translation)

QMM's influence is especially evident in article 154 and subsequent articles of the new Mining Code concerning guarantees of juridical, fiscal and customs arrangements as well as exchange rates benefiting the investor (Tecsult, 2003a: 3–16). These conditions received favourable treatment in the Project for the Reform of Mining Sector (PRSM, 1998–2002) and the Project for the Governance of Mining Resources (PGRM, 2003–08), which together constitute the true pillars of the wave of reforms of the legal framework of the mining sector in Madagascar. The PRSM, of which the five-year term ended on 31

December 2002, effectively achieved its objectives: the redefinition of the role of the state, legal and regulatory reforms, and as of May 2000, the establishment of the Madagascar Mining Registry Office (BCMM). Mining royalties were in the order of US\$2 million per year, with a weak tax performance ratio of 10 per cent, representing already a significant limitation on the economic potential of this sector.

Subsequently, in June 2003, the Malagasy government signed the PGRM, benefiting from a credit of US\$32 million (World Bank, 2003a). In the framework of this project, the World Bank presented itself as being the only stakeholder in a position to adopt an integrated approach with respect to the reforms to which the government has committed itself. The Bank has also become a major catalyst for potential further financing from other funding sources, at the same time as providing an environment conducive to private sector investment.<sup>8</sup> Replying to the EIR recommendations, the World Bank then reaffirmed its financial leadership as well as its role in defining the challenges and solutions associated with the mining sector (World Bank Management Response, 2004).

In Madagascar, this position has been clearly asserted by the PRGM, which has the overall objective of helping the Malagasy government create a strategy for accelerating the pace of development of the mining sector and of contributing to poverty reduction in the country by reinforcing governance and transparency in how mineral resources are managed, particularly artisanal, small-scale mining activities.<sup>9</sup> To achieve this, the PGRM is relying on support for small-scale operators, encouraging private investments in mining and decentralising administrative control over mining resources. Among short-term measures, it foresees the improvement and application of the legal and regulatory framework, certification and improvement in gem marketing, particularly through setting up the Madagascar Gemology Institute (IGM), the *Comptoir de pierres* (the gem purchasing facility) and a one-stop service for exporting gems.

All these policy orientations are to be considered upstream of the performance criteria identified by the World Bank. Among other objectives, these are intended to:

- increase the officially declared production by mine operators
- implement development plans that include the management of mining resources
- increase the collection of mining royalties
- increase annual investments in the mining sector

- increase the value of annual gold and precious metals exports (World Bank, 2003a: 2).

This wave of reforms also reflects Madagascar's adoption of a market economy system: that is, the creation of a legal framework that is attractive to and encourages the development of the national private sector, through seeking foreign investment, as well as through the withdrawal of the state from the productive sector, as witnessed by the following summary statement:

Experience in Madagascar shows that although Government is committed to policy reform and to improvements in the legal and regulatory framework, enforcement of the new regulations can be blocked by governance issues and institutional shortcomings. In addition, the general trend towards a state that withdraws from direct participation in economic activities and the operational aspects of implementing public policy requires systematic thinking on how to improve the interface between the public and private sector for the purpose of generating a more dynamic mining sector, in such a way that will allow the affected communities to benefit directly from the surge in activities.

(World Bank, 2003a: 17)

It is within this context that mining legislation in Madagascar has been evolving.

## **THE EVOLUTION OF MINING LEGISLATION IN MADAGASCAR**

The EIR recommended to the WBG that it not support reforms that excluded the participation of the population, or reforms that omitted environmental assessments of the investment processes, or the creation of new contract models that caused prejudice to social benefits, local community rights and the protection of the environment. Further, the interests of multinational corporations should not prejudice the national private sector (EIR, 2003b).

Current regulation of the mining sector in Madagascar is a global answer to these concerns, and is based principally on a series of laws and regulations adopted from 1999 to 2001.<sup>10</sup> These reforms were adopted principally to provide a legal framework favourable to large-

scale investments in the mining sector (in particular, providing guarantees of the juridical, fiscal and customs arrangements, as well as exchange rates) while at the same time ensuring compatibility with the objectives of environmental protection (Tecsult, 2003a, 2003b; World Bank, 2003a).

The 1999 Mining Code is in fact intended to update and simplify the mining regime, taking account of the constitutional provisions by transferring certain powers to the autonomous provinces in a manner consistent with the spirit of Madagascar's Environment Charter.<sup>11</sup> This Charter constitutes the law (90-033) establishing the general framework for enforcing the environmental policy through various regulatory texts (see Table 4.2 for the mining sector), including the Mining Code. One of the major challenges of this investment code is precisely its focus on environmental protection, by integrating measures already adopted by the departments and agencies involved, and incorporating the protection of title-holders' rights and environmental rights, particularly protected areas, within the new list of mining infractions.

The 1999 Code also defined the public administration's new roles. The administration is now obliged to limit itself to the overall management, monitoring and control of permit-holders' actions to ensure they fulfil their obligations, as well as to oversee the application of legal and regulatory provisions in matters of mining and the environment. Certainly, the multiplication of institutional stakeholders involved in environmental management raises a certain degree of role confusion, as we can see in Table 4.1. The problems mainly arise at two levels. The National Environmental Office (ONE) and its overseeing ministry have been in constant competition since the latter was set up in 1994, each trying to get its expertise recognised in order to increase its own operating budget (Sarrasin, 2002).

For instance, the control and associated monitoring by ONE of the project environmental management plan (PGEP) for a mining project (in association with the decentralised territorial communities) introduces the whole game of political influence and negotiations, which poses real problems in implementing the environmental components of the Mining Code. In the end, this weakens the integrity of the project assessment process. The issue of permits and the application of the PGEP, which is the responsibility of the mining ministry, and putting 'concern for the environment' into practice, are not necessarily a major priority, thereby adding to the confusion about how decisions are applied on the ground.

**Table 4.1** The role of agencies involved in environmental management of the mining sector in Madagascar

Name	Roles
Ministry of the Environment	<ul style="list-style-type: none"> <li>– Grants or refuses authorisation for operations submitted to Environmental Impact Evaluation (EIE)</li> <li>– Decrees administrative sanctions against parties in violation</li> <li>– Signs the specific conventions adopted for eligible mining projects</li> <li>– Issues discharge of environmental responsibilities</li> <li>– Presides over the technical assessment committees (CTEs)</li> <li>– Assures together with the ONE and the Unit and with the Collectivités Territoriales Décentralisées, the control and monitoring of the Project Environmental Management Plans (PGEs) for mining operations submitted for environmental impact study (EIE).</li> </ul>
National Environmental Office	<ul style="list-style-type: none"> <li>– Assures intersectorial coherence and the technical content in term of analyses, norms, effectiveness of attenuating measures and rehabilitation in elaborating and assessing EIEs and PGEs</li> <li>– Technical support for elaborating rules for the Environmental Commitment Plan (PEE)</li> <li>– Decides on the eligibility of an applicant for a special convention relative to an EIE assessment</li> <li>– Participates in the CTE.</li> </ul>
Mining Ministry	<ul style="list-style-type: none"> <li>– Establishes the restricted areas under the conditions specified in the mining code, authorises works within foreseen protection zones and determines additional protection zones</li> <li>– Decrees administrative sanctions against those contravening these prohibitions</li> <li>– Makes the decision to approve or reject PEEs on the advice of the Unit or the ad hoc assessment committee, depending on the particular case.</li> </ul>
Environmental Units	<ul style="list-style-type: none"> <li>– Act as an interface between operators of mines and the Environmental Administration.</li> <li>– Answer all operators' questions concerning the interpretation of regulations applicable to the mining sector concerning protection of the environment, assessment of the EIE or PEE, the control of their PGEP or PEE and procedures for discharge of environmental responsibilities.</li> <li>– Participate in elaborating technical directives for the description of mining projects as well as attenuation and appropriate rehabilitation measures as a function of the type of mining operation.</li> <li>– Are members of the CTE.</li> <li>– Present mining projects to the CTEs and assure the control and monitoring of the PGEs.</li> </ul>

Table 4.1 continued

Name	Roles
Provincial Directorates of the Mining Ministry	<ul style="list-style-type: none"> <li>– Decide on issuing or refusing Environmental Authorization for mining operations covered by a PEE to holders of a PRE permit,<sup>1</sup> on the technical advice of the Unit.</li> <li>– Communicate to offenders a warning according to the MECIE Decree.<sup>2</sup></li> <li>– Ensure that the Mining Inspectorate integrates and controls the PGE and PEE of the mining operations during its inspections and makes a report on this which it transmits to the CTE.</li> </ul>
Office of the Mining Register (OK)	<ul style="list-style-type: none"> <li>– Responsible for locating on the plot plan the restricted zones by indicating their legal and geographical situation, according to data provided according to the conditions of the current Decree.</li> <li>– Transmits to ONE and the ministry of the environment the list of restricted zones created in virtue of the Mining Code as well as legal and geographical data.</li> <li>– Assumes a 'one-stop' role for the deposit of studies and environmental plans for the mining projects, and transmits files top the competent authorities.</li> <li>– Delivers environmental authorisations to holders of mining permits.</li> </ul>

**Notes**

1 PRE permit: the research and mineworking licence reserved for small operators by the Mining Code (Republic of Madagascar, 2000: 2).

2 MECIE (Mise En Comptabilité des Investissements avec l'Environnement) Decree: Decree No.99-954 of December 15, 1999 relating to the compatibility of investments with the environment (Republic of Madagascar, 2000 : 2).

Source: Republic of Madagascar et al. (2000).

The EIR devoted a whole section of its final report to recommendations aimed at strengthening the environmental and social components of WBG interventions in the extractive industries (EIR, 2003a: 54–9). Among these recommendations, it is suggested that countries with a significant or rapidly growing extractive sector (as is the case of Madagascar) adopt a procedure of environmental and social assessment before investments in the extractive sector take place. However, given the substantial costs of conducting an impact assessment, these conditions are applicable essentially only to large-scale international mining investments.

The case of Madagascar illustrates in a direct manner the concerns addressed by the EIR recommendations about the process for evaluating large-scale mining projects, but this does not by any means suggest by the same token that the obstacles, inconsistencies and implementation

**Table 4.2** Environmental components of the legal framework for mining operations in Madagascar

<b>Laws, decrees, ministerial orders, other ordinances (legal texts)</b>	<b>Environmental component</b>
Mining Code No. 99-022	<ul style="list-style-type: none"> <li>– Chapter II – Protection of the environment (the obligation of all persons and corporations to take the necessary protective measures to minimize and repair all harm that may result from work conducted in the framework of its activities and to conform to a PEE).</li> <li>– Chapter III – Exclusion zones (establishes the exclusion zones for all mining activities).</li> <li>– Chapter IV – Sanctions (establishes the sanctions for persons and companies contravening the Articles of Chapters II and III on protection of the environment).</li> <li>– Mining permits regime (establishes the environmental requirements according to the type of permit requested).</li> </ul>
Mining Sector Decree No. 98-394 on the application of the Mining Sector Law	<ul style="list-style-type: none"> <li>– Emphasises the objective of protecting the environment and integrates relevant measures adopted by other departments specialised in this matter.</li> <li>– Specifies the notion of mining infraction and establishes the list of criminal acts and misdemeanours, as well as their respective sanctions.</li> <li>– Protects title-holders' rights and those of the environment, particularly the protected areas, develops the core elements of the new list of mining infractions.</li> </ul>
Large-scale Mining Investments Law No. 020/2001	<ul style="list-style-type: none"> <li>– Requires the mining permit holder to respect the Law [...] subject to the conditions of guaranteed stability or derogations specified in the present Law and, particularly, those of the Mining Code of the Malagasy Environmental Charter as well as their respective regulation (Article 111).</li> </ul>
Decree Establishing the Conditions of Application of Large-scale Mining Investments Law No. 2003-784	<ul style="list-style-type: none"> <li>– Requires the mining permit holder to contribute to the costs of the environmental impact study for all mining projects up to an amount of US\$333 million (MGA 600 billion).</li> <li>– The maximum amount of the contribution is set at US\$378,879 (MGA 682 million).</li> </ul>
Decree to Make Investments Compatible with the Environment (MECIE) No. 99-954 N2004-167	<ul style="list-style-type: none"> <li>– Requires mining investment projects to be subject to an environmental impact study.</li> <li>– Requires holding public meetings as part of the environmental assessment (involvement of local communities).</li> <li>– Enumerates the conditions and the process for obtaining the environmental permit in the framework of a mining project.</li> <li>– Establishes the rules of conduct and sanctions for those who contravene them.</li> </ul>

Table 4.2 continued

Laws, decrees, ministerial orders, other ordinances (legal texts)	Environmental component
Interministerial Ordinance on Regulation of the Mining Sector in the Matter of Protection of the Environment No. 12032/2000	<ul style="list-style-type: none"> <li>– Establishes the competencies (roles) of the different structures or government bodies (Ministry of the Environment and minister responsible for the mining industry) relative to providing environmental permits, the control and monitoring of the PEE, EIE and PGEP with the support of environmental committees, Decentralized Territorial Committees and ONE.</li> <li>– The holder of a mining permit is required to apply for an EIE before a project is started and before project termination.</li> </ul>

problems are necessarily resolved. The first difficulties often emerge because of the absence of a clear and coherent legal framework, which is the situation in Madagascar. On the contrary, there is a multitude of all kinds of laws, regulations, ordinances, involving a host of different ministries and agencies, often with competing missions. In this context, and before turning directly to the case of QMM in Tolagnaro, we need to explore further the consistent and inconsistent elements in Madagascar's mining and environmental legislation.

The Law on Large-Scale Mining Investments and the Inter-Ministerial  
Order on the Regulation of the Mining Sector With Respect to  
Protection of the Environment

In a manner which echoes the confusion created by the plethora of agencies and roles associated with implementing the 'environmental component' of mining legislation, the Law adopted in 2001 on Large-Scale Mining Investments (LGIM), is juxtaposed with the 1999 Mining Code through the introduction of a special regime for exchange rates, fiscal, tax and customs arrangements which applies to large-scale investments in the mining sector. Project promoters are required to invest more than US\$111 million and to respect the maximum ratio of borrowed funds to their own capital of 25 per cent. This law strengthens and also extends the guarantee of the stability of the application of the special regime provided to the beneficiaries throughout the eligibility period. The advantages that are guaranteed include, among others, the free circulation of funds (in foreign currency), various forms of tax exemption in the first five years, and customs duties exemption on certain import and



export operations. The principal objective of this law is to attract large-scale investments to Madagascar.

The Inter-Ministerial Order details and reinforces the legal provisions enunciated in the Law on the new Mining Code and its implementing order. Article 2 specified in this regard that:

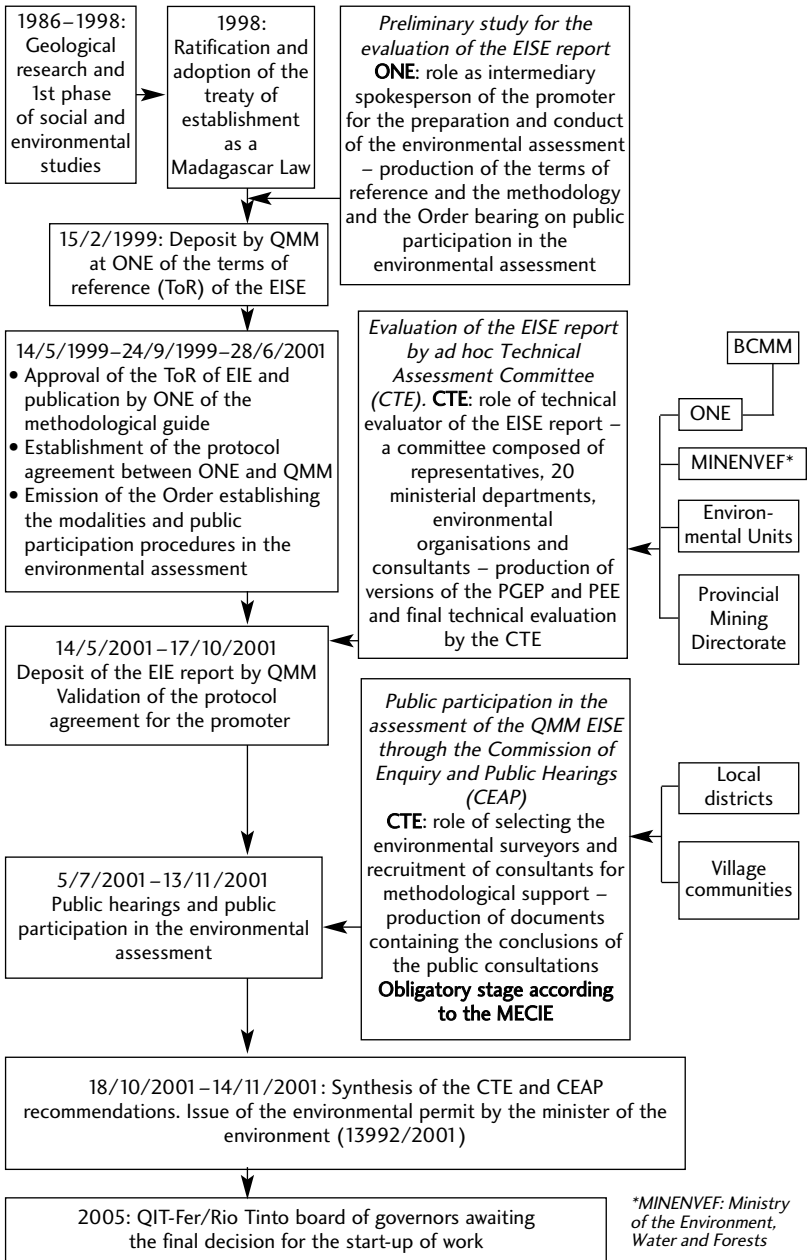
holders of mining permits or mining authorisations cannot conduct research or mining operations by virtue of their permits or authorisation, unless they obtain in advance environmental authorisation with respect to conducting these operations. Such authorisation is to be issued by the competent Authority in conformity with the provisions of the present Order, except under the conditions which are presented below (our translation).

As can be seen in Table 4.2, the Order explicitly describes the role of each entity in the field of regulation specific to environmental protection, then identifies the roles defined in the regulatory framework specific to each sector (for example, the roles and jurisdiction of the ministry responsible for mining under Law 99-022 relating to the Mining Code, or the roles and jurisdiction of ONE in the framework of the Environmental Charter).

We can note that taken as a whole, the regulations in force governing Madagascar's mining sector and the role of the associated agencies reflect two principal objectives which are difficult to reconcile. It is necessary to seek a balance between the growth of the (industrial) mining sector in order to increase its contribution to the national economy (attracting substantial foreign investment by offering an incentive framework, as has been the case for the QMM project, for instance) and ensuring that the development of this sector remains in conformity with the Environmental Charter.<sup>12</sup> If these objectives are indeed commendable, the process that QMM had to go through in order to obtain its environmental permit (see Figure 4.1) reveals that the multiplicity of stakeholders involved and the complexity of the relations between them (and ultimately the jurisdictional conflicts and difficulties in getting mines operational) create a very important series of obstacles to be overcome.

Beyond the existence of a formal legal process of environmental and social impact assessment in Madagascar, Figure 4.1 reveals potential governance problems in a context in which political conditions remain fragile and the national economy depends largely on foreign financing. Consultations conducted within the framework of the EIR have shown

# MADAGASCAR



**Figure 4.1** Stages for obtaining a mining permit: the case of QMM

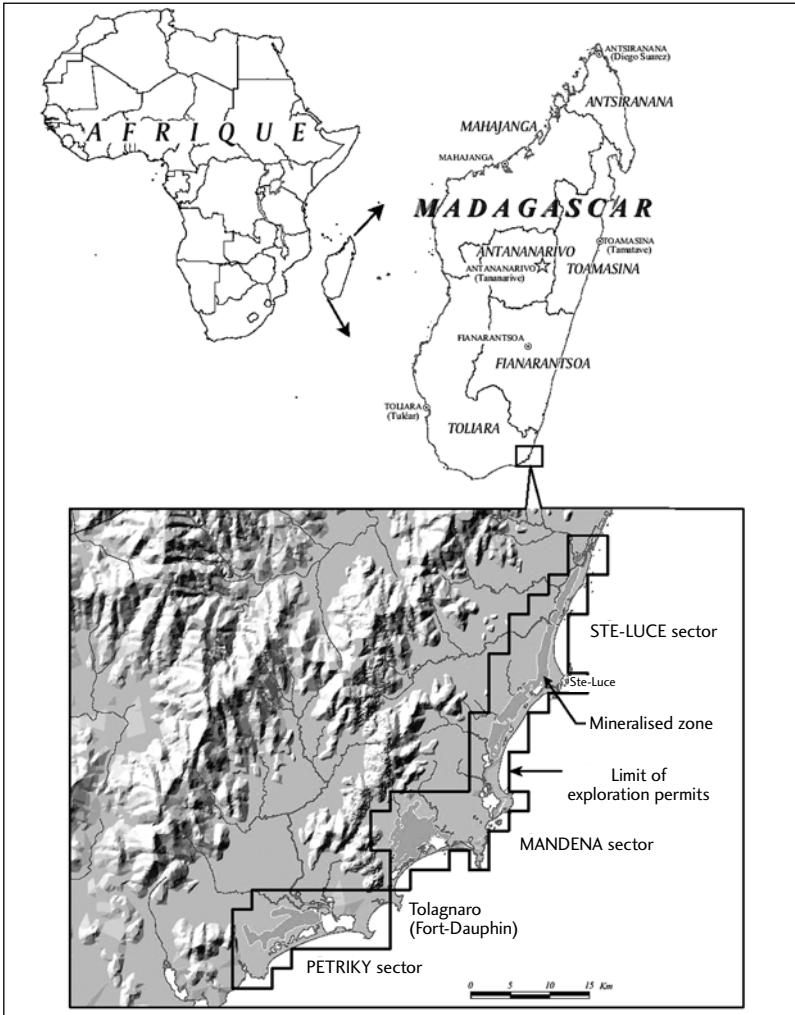
that the protection of the environment is hard to reconcile with economic development, particularly in the mining sector. The structural adjustment to which the Malagasy economy has been committed since 1983 has called for a series of reforms which are far from creating greater convergence within the sector in a manner compatible with environmental protection and poverty reduction:

Civil society representatives suggest that rather than strengthening government regulation, the zeal to implement policy reforms to attract investment has led to diminution of state power and regulation just when it is most needed for protecting the environment, indigenous peoples, and local communities. Transnational companies have been the main beneficiaries, and loopholes remain in legal and regulatory frameworks.  
(EIR, 2003b: 6)

In the case of Madagascar, as well as the special regimes that take the form of investment guarantees in effect in the mining sector, the Malagasy government is currently pursuing its programme of signing bilateral and multilateral guarantees for foreign investments. We can cite, for instance, the Agreement to Promote and Protect Investments (APPI), signed in 2004 with France and Mauritius, joined later by China, Germany, Great Britain and Italy. The Malagasy government has also joined the Multilateral Investment Guarantee Agency (MIGA), the World Bank's insurance branch, which provides non-commercial risk coverage that guarantees principally against political risks. By liberalising the legislative framework for trade relations and investments, these initiatives have made it even more complex and difficult to implement Malagasy environmental legislation, as the EIR has suggested.

QIT Madagascar Minerals SA (QMM) has not only profited in recent years from this liberalisation of the Malagasy economy but since its early activities in the country in 1986, it has been at the source of the major reforms within the mining sector. Since 1987, environmental policy has followed the same rhythm of change with the adoption of the Environment Charter (MEP, 1990) and the 'Making Investment Compatible with the Environment' (MECIE) decree during the 1990s. We should note, nevertheless, that this period also corresponds to the end of the first phase of the Environmental Programme (PE1) that had as its objective the creation of the institutional foundations of the action plan and the struggle against environmental problems that the QMM project has seriously put to the test.

## MADAGASCAR



**Map 4.1** The mineral deposits of the Tolagnaro Project

Source: QMM (2001 a :1 –4).

### THE TOLAGNARO MINING DEVELOPMENT PROJECT

QMM, a registered Malagasy company, mines and extracts mineralised salts at the Mandena, Petriky and Sainte-Luce sites in the region of Anosy in the south-east of Madagascar. In 1998, the National Mines

and Strategic Industries Office (OMNIS) formed QMM as a joint venture with QIT-Fer et Titane Inc., to explore the east coast of Madagascar, prospecting for mineralised sands containing a significant source of titanium oxide in the form of ilmenite ore. This prospecting led to the discovery of a potentially major ore deposit, located near Tolagnaro in the south-east of Madagascar (QMM, 2001a). The projected mining operation would allow for the extraction of ilmenite, and small quantities from these deposits of zircon, for a period of about 60 years. This appeared to contribute to achieving the World Bank's 'strong scenario' which projected by 2010 a 20-fold increase in mining production in Madagascar and a 30-fold increase in exports (World Bank, 1998; 2003). Following environmental impact studies and despite assessments which revealed potentially significant effects on the biodiversity and population of the region, in 2001 the project received its environmental permit for the Mandena sector (see Map 4.1), the first phase of the project, work on which started in 2005.

Implementation of a mining project as important as QMM's is not without its impacts on the physical, biological and human environments (QMM, 2001a: chap. 5). We are aware of the divergent views about the assessment methods used, as well as their direct influence on the diagnosis and elaboration of solutions needed to set up such a project. Our analysis will focus therefore mainly in the consequences of this assessment. As the EIR (EIR, 2003a) pointed out more generally, we recognise in the case of this project that the impacts on the natural and human environments are numerous and complex, during both the construction phase (port, infrastructure) and when the mine becomes operational (extraction from the sands and mineral separation), extending potentially over the 60-year period. The focus of our analysis, within the limits of the legislation that we have presented earlier, lies principally in understanding how the interests of different stakeholders converge, if the goal is that the project should make a real contribution to the 'development' of Madagascar in general, and of the Tolagnaro region in particular.

An important stage in this convergence of interests consists in the project becoming the necessary 'solution' (*passage obligé*) to the whole problematic issue of development. In other words, it should be an initiative that is seen as necessary for the development of the region (which is the objective of mining and environmental legislation), for 'the fight against poverty' and for the preservation, or at least a better management, of natural resources. In this process, the various forms of impact of the project tend to be presented as being generally positive for the

region, in order to draw in all the stakeholders involved, and ideally get them to support the implementation of the project.

Although we do not intend to give a definitive opinion with regard to this specific case, this is consistent more generally with one of the EIR's recommendations, that companies be required to commit themselves to participatory processes with local communities and groups directly affected by projects, in order to obtain their approval of those components of the project that affect them most directly. The result is inevitably a series of multiple compromises from which the actual project emerges. This poses a certain number of fundamental questions on how the whole issue should be approached:

- Which group of stakeholders are the principal beneficiaries of the project?
- By whom and why is the mining project labelled 'positive' for the region?
- What are the grounds for opposition to the project?
- Who are the other stakeholder groups and how successful has the project been in generating their interest and mobilising them in favour of the project?

The following section proposes some clarifications.

#### Mining Development at Tolagnaro: a Project with Different Stakeholders

A mining development project such as QMM in Tolagnaro is only possible through the mediation of the different stakeholders' interests and the relations between these interests. To understand the socio-political stakes in the QMM project, and consequently some of the problems to be foreseen in its implementation, we shall be using an approach derived from political sociology. This approach 'is concerned with the genesis of facts, with the history of groups and institutions, with the transmission of social rules, with the conditions that contribute to providing a legal framework (or codification) of roles' (Lagroye, 1997:15, our translation).

From this perspective, we believe that the Tolagnaro mining development project, as it was conceived and perceived, resulted from a social construction. In other words it could only be realised when some stakeholders, or groups of stakeholders, persuaded other stakeholders to mobilise and intervene in the process. Herein lies the structural hypothesis that guides our whole approach. Another hypothesis assumes that the capacity of a project to achieve its designated

**Table 4.3** Typology of the stakeholders involved in the Tolagnaro mining investment project

Actors	Characteristics
Promoter	Beyond the profitability of the project, the promoter is seeking approval for the social environmental characteristics of its project.
Malagasy Government	In economic and political contexts characterised particularly by strong external dependency, we hypothesise that the political decision makers (elected or otherwise) have their own interest in the mining project, to the extent that this constitutes a catalyst for international multilateral and bilateral financing, both public and private.
NGOs and conservation scientists	These are individual or institutional stakeholders coming from the 'scientific' milieu. The objective is to protect the natural environment (flora and fauna) from degradation caused principally by human beings. The <i>problématisation</i> therefore proposes the hypothesis that these stakeholders – biologists, anthropologists, primatologists, international and Malagasy NGOs – are a priori sceptical about the mining project.
Rural population	Economically impoverished, they depend on natural resources for housing, heating and food. The <i>problématisation</i> proposes the hypothesis that these stakeholders are aware of their long-term interests and maintain a paradoxical position with respect to the project: it constitutes 'an opportunity to be seized' but their precarious conditions of survival limit access to it.
Funding agencies	The funding agencies, particularly the World Bank, emerge as 'catalysts' of thinking and action aimed at converting a private investment project into a true 'development' project, by organising and 'translating' information so as to gain the support of the other stakeholders for their strategy of economic liberalisation.

objectives depends on the extent of mobilisation, the convergence of interests and the resources of the stakeholders affected by the project. Under these conditions, the Tolagnaro mining development project brings on stage five principal groups of stakeholders, whom we identify, albeit rather rudimentarily, in Table 4.3.

The group represented by the promoter, QMM, constitutes a stakeholder in itself, which can be broken down into the joint venture partners, Rio Tinto and the Malagasy State, and their intermediary, OMNIS. It was in 1998, following the ratification of enabling legislation by the Malagasy National Assembly of a convention establishing the juridical and fiscal framework of the project, that the convergence

of interests between the company and the state was confirmed. The Rio Tinto group, which is one of the major mining groups at the international level, operates in more than 40 countries throughout the world, particularly in mineral mining, extracting copper, diamonds, gold, iron, coal, aluminium, borax and titanium oxide.<sup>13</sup> The state became a project partner through OMNIS, a carry-over of the military government of Didier Ratsiraka,<sup>14</sup> and the government agency mandated to promote the development of the nation's petroleum and mineral resources. For mining activities, OMNIS has the task of appraising geological data and has assumed the function of an office for encouraging mining activities. So the government is indirectly implicated in the promotion of this project through QMM, and we can place it in the 'project promoter' group of stakeholders.

In Madagascar, this situation needs to be set within a political landscape strongly characterised by the transition towards a democratic regime and a major withdrawal by the state from the productive sector – which is not without influence on the dynamic of the stakeholders, as the World Rainforest Movement has described:

Madagascar's government has given the go-ahead and the company has spent US\$41 million in anticipation of work starting in 2005. The election last year of Marc Ravalomanana brought to the presidential palace a young, self-made tycoon promising progress. A darling of the west, he is keen on Rio Tinto's proposed ilmenite mine, in the hope that it will generate jobs and funds for the exchequer. Marc Ravalomanana has recently met with U.S. Secretary of State Colin Powell on May at [sic] the US. Powell said Washington would support President Ravalomanana in his 'efforts to institute political and economic reforms'. The news a month later is of the World Bank granting \$32 million International Development Association (IDA) credit to 'help Madagascar manage its mineral resource more effectively'.

(World Rainforest Movement, 2003)

What is the government's interest in this project, given the weak – although not negligible – fiscal benefits for the country? Did the EIR not insist on the need to share the mining sector's financial benefits equitably, not just at the national level, but also at the local level (EIR, 2003b, 9–10)? Part of the answer lies in the way the problems underlying the mining project have been addressed. This can be understood only if we burrow into the broader conceptual and ideological context within which the project is situated. It depends more specifically on one or more



key stakeholders succeeding in getting their definition of ‘development problems’ – to which this project purports to provide answers – accepted. In a way, this is a process of *a posteriori* construction of the problems in keeping with the solutions available to the decision makers (Callon, Lascoumes and Barthe, 2001; Lascoumes, 1994). The World Bank has been instrumental in this process by depicting the mining project as an integral part of the ‘development model’ that we described earlier. Under these conditions, the project no longer simply represents a private initiative by a transnational corporation with which the Malagasy government can choose whether to be associated, but instead it has become *the only possible response* to Madagascar’s development problems, and in particular, to the problem of poverty. QMM summarised the whole problem in the following terms:

To improve economic performance, by ensuring the poor participate in the project. It is a matter of setting up a framework conducive to economic growth, particularly through foreign investments in those sectors with strong growth potential, especially tourism, fishing and mining. Moreover, the accent is on the need to restart both small-scale and large-scale agriculture, as well as the need to preserve the environment .... To develop basic essential services (education, health, drinking water) and broaden social security nets to profit the most vulnerable members of the population. ... To put in place an institutional framework conducive to economic growth and the reduction of poverty, and strengthen capacities, in order to improve governance and how the public administration relates to those who are administered.

(QMM, 2001a: 2.8, our translation)

To the extent that the World Bank is one of Madagascar’s principal funding sources, we can understand that the government had to quickly define its own ‘interest’. Its participation in setting up QMM testifies to how it mobilised for the project. This situation put the government in a position of both judge and jury,<sup>15</sup> which is not without its impact on other groups of stakeholders, such as non-governmental organisations (NGOs) and the rural population.

#### Interests that have Yet to be Clearly Defined

If the project promoters – the Malagasy Government and Rio Tinto, through the intermediary of QMM – display functional coherence based

on a ‘shared development model’, they do not seem to have succeeded in attracting the ‘interest’ of the other principal groups of stakeholders, such as the NGOs and particularly the rural population in the project. Yet their ‘interest’, and even more so their ‘mobilisation’, is indispensable for the long-term success of the project. To cite just a few examples, Friends of the Earth published a report concluding that the project would not be compatible with the sustainable development of Tolagnaro, nor with that of the country as whole. They particularly singled out QMM as failing to halt the growing degradation of natural resources, which the company had declared it was able to significantly attenuate, especially through replanting of the forests. In other words, this particular stakeholder does not share the problem definition that purports that the project is not just a source of economic growth, but also a catalyst for reducing poverty and the ‘rational’ management of natural resources. Its position, as well as that of several members of the associated groups of stakeholders, has been summarised in the following terms:

We also challenge the company’s contention that it will consistently follow ‘best practice’ or observe the highest industry standards in performance of the project. Specifically, the SEIA neglects to examine: worst case scenarios; the actual returns to the government and people of Madagascar of income generated by the mine or how they will be distributed; and whether tourism can co-exist with such a large extractive venture. One of our most serious judgments is that *the ‘stakeholder’ process, in which the company has placed such confidence, was not properly conducted or the views of local communities reflected in the report.* Viable plans have not been set out, to mitigate the large number of serious cultural and economic losses which they will suffer. We also cast considerable doubt on the economic security which the project will supposed [sic] provide to the Malagasy government and people. Not only is the Mandena mining project dependent on external funding for the new port, but many other aspects appear to be contingent on new public funding which will not derive from the company. Because of these multiple deficiencies, in our view the project would not be compatible with true sustainable development in southeast Madagascar, or for the country as a whole.

(Nostromo Research, 2001, our italics)

This argument not only suggests that the project has generated strong opposition from environmental groups such as Friends of

the Earth, Conservation International and WWF, but also shows that the underlying process of interest in the project – that is, the rationale used to convince the other groups of how the problem is to be conceptualised – is insufficient to mobilise all the groups of stakeholders. That the interests of the conservationist NGOs conflict with those of the project promoters comes as no surprise. Clearly, all forms of destruction of natural resources – most vitally, the systematic destruction that is required to dredge the mineral sands – are a long-term threat not only to the biodiversity but also to the legitimacy of this stakeholder group itself.

In fact, the situation created by the project presents this group with a paradox: on the one hand, destruction of natural resources will increase the relevance of the conservationist NGOs' position (that is, the urgency of conserving what remains of the resources); on the other hand, accelerated destruction points in some ways to the failure of this group of stakeholders to make their interests prevail and to mobilise other groups – particularly the Malagasy government – in this direction.

If the NGOs had found that their interests coincided with those of the project promoters (including the government), this would have added symbolic value and facilitated the adhesion of other stakeholders to the promoters' position, and their mobilisation would not be as necessary as that of the rural population directly affected by the project. The position and interests of the rural population are however neither homogenous nor necessarily consistent. The exploratory process proposed here does not allow us to identify all the subtleties underlying the plural interests of a 'rural population'. Further, their heterogeneity and lack of resources do not enable this population to present a clear and unified position in the face of the project. This limits their influence in elaborating and carrying out actions. We hypothesise that, in this situation, the position of the conservationist NGO groups is in part a reflection of the concerns of the population towards the project.

If most of the NGOs have yet to define where they stand on this question, the rural population – the pivot of the growth-poverty-environment equation which is at the core of how the problem is conceived – did not seem to have coalesced at the time that the environmental authorisation was approved. There is a strong divergence between the definition and the use of physical space and resources, but also between the project promoters' expectations and those of the local population. We propose to explore this in the next section.

## The Rural Population: a Group of Stakeholders 'Necessary' for the Mining Project

The Final Report of the EIR clearly recommended that companies investing in the mining sector engage in a participatory process with communities and groups directly affected by their project (GRAMA, 2005; World Bank Management Response, 2004). If the World Bank fully supports this recommendation, it is not just out of concern for good governance. From a political sociology perspective and in the particular case which we are analysing, the participatory process associated with setting up a mining project involves not only respecting the rights of the community affected by the project, but also, and more importantly, enabling the community affected by the project to find its own interests served by the project and mobilise in favour of the project going ahead. While there are no villages directly located on the site of the ilmenite deposit that QMM intends to develop, nearly 6000 people live within a few kilometres of the Mandena mining site, the first phase of the project. In a context marked by even greater poverty in rural areas than in urban zones, for 80 per cent of the population agriculture represents the principal source of income (QMM, 2001c: 3.8). At the Mandena site, land generally belongs to the state, but the rural population use the natural resources on a daily basis for their survival, particularly wood, medicinal plants and honey. The women in the villages collect reeds from the swamps (*mahampy*) and make them into hats, baskets and mats, which provides additional revenue to the family, when it is not the sole source of income. There is also some grazing land for zebus in the region, but essentially at the perimeter of the mining zones, and some fishing in the lagoon located parallel to the coast, close to Mandena. As elsewhere in the region, health standards and educational levels are low (QMM, 2001a: 3.3).

These fragile socioeconomic conditions allow us to better understand why the promoters' strategy of getting the local population 'interested' is essentially a matter of appealing to their economic interests. The Mining Code foresaw 70 per cent of the mining royalties returning to the regions: that is, to the autonomous provinces.<sup>16</sup> In the absence of countervailing provisions, one-third of this percentage (23 per cent of the total) was to be redistributed to the communes where the mining site is located. In the logic of the promoters' 'development model', the positive spin-offs of the project for the region in terms of reducing poverty necessarily depend on the share of the revenues generated which will go towards satisfying the essential needs of the

population, particularly in health, education and infrastructure. This depends also on Rio Tinto and QMM respecting the guidelines by which the company is required to adopt precise measures to ensure that its investments contribute to poverty reduction (QMM, 2001a: chap. 4).

While the rationale used by the promoters to generate interest in the project by the rural population is based on the explicit objectives of fighting poverty, the project's beneficial effects in this area are not only completely hypothetical, but founded essentially on a moral obligation to protect the environment and the requirement to be a 'good corporate citizen'. These conditions are not enough to convince the rural population that the project will be beneficial for them. The following extract summarises well the complexity of the impressions that have emerged:

The deployment of Company machinery and mechanical appliances during the period of opening up routes and boring has been experienced as a demonstration of the company's strength and of the power of its money. The villagers are extremely impressed: in a positive way (attracting the youth – girls and boys – as well as children) and in a negative way (anger against the company that, because it is rich, is invading the territory). The hiring of numerous employees in the villages has nevertheless created links with the population and we can identify a certain pride in being employed by this company, a pride among the employees as well as their families, and in the hamlets where they live and their villages.

(QMM, 1992: 216, our translation)

This assertion shows how much opinions can seemingly overlap, practically invalidating the very existence of the 'rural population' as a group of stakeholders with their own common interests. In the end, the perception, opportunity or problem the mining project presents becomes that of individuals who, in the context of survival, are disposed to make a number of compromises to improve their conditions. However, characteristics and perceptions common to the whole rural population allow us not only to insist on the relevance of such a group, but also to identify other obstacles to this group's mobilisation for the project. One of these aspects involves how the rural population relates to the environment: that is, its life space. In Madagascar's rural zones, space is not only inhabited, used, but it is also an object of people's thoughts, the object and source of systems of representation

which in turn model the people's perceptions, attitudes and behaviour. This means that the QMM project becomes integrated into a spatiotemporal universe onto which the cognitions of a cultural group are projected, and which is a key determinant of how space figures in their thinking. Given this perception of space, the changes brought by the mining project, altering and remodelling this space, would certainly exert an effect on the social, cultural and economic world of the population (QMM, 2001a: 3.35). Among the fears is how the people relate to *fady* (taboo) places. This evokes in a direct manner the relation between physical and spiritual spaces, of which ancestors are the vector:

Despite the discussions that have taken place and the assurances that will have been given, the future of Evatra is of great concern as much to the population of Fokontany as those living in the surrounding area.... 'In Evatra, the people are now very worried, there's a lot of talk: Will the old village be displaced? And the *kibory*, what are they going to do with them? The Fokonolona are afraid.' We asked them if there had been any cases in the region where the *kibory* had been touched. This had already happened since there are ancient burial places in the area of Tolagnaro. The name of the town was said to mean 'there where the bones of the dead are plentiful'. The bones are still there. Except, it was made clear, they are the cemeteries of *vazaha* (foreigners). 'It is not the Tanosy who are buried there but the Vazaha. There were no Tanosy buried in this *kibory* of Vazaha, none.' In all the villages where we conducted our interviews, we asked where the *fady* places were located. Invariably, we were told that the company employees had already asked this question and had assured them that the *kibory* would not be disturbed. Every time, we were also told: 'We don't accept that the *kibory* be touched' ... an affirmation immediately followed telling us the location of the *fady* places.

(QMM, 1992: 225, our translation)

Beyond this relationship to space, the other potential obstacle to mobilisation is economic in nature: in other words, directly reflecting the project promoters' logic. We have already referred to the fact that the incomes of rural families include the sale of reeds (*mahampy*). The revenue is all the more important that it is often the sole source of cash between harvests for purchasing food and other primary necessities.

The fear of losing access to *mahampy* was often raised explicitly by the rural population during consultations that preceded the QMM impact study (QMM, 2001a: 3.41), and shows how the problem is conceptualised in the region. It is not enough to make massive investments in equipment and infrastructure – the social and environmental impacts of which are moreover substantial – or to create jobs (skilled or unskilled) that very few villagers will be able to occupy. As the EIR appropriately put it:

There is a risk that benefits and costs arising from extractive industries are shared unevenly. Although local communities bear the negative social and environmental impacts of extractive industry activities, they may not receive much of the revenues.

(EIR, 2003a: 5)

Here, the logic of how the project is conceived is short-circuited: if the poor rural population is not in a position to profit from the ‘opportunities’ the project is proposing, especially in terms of jobs, the people will not be in a position to improve their living conditions, which is precisely what is required to reduce poverty, but also – in the logic of the promoters – to protect natural resources. The following example shows the extent to which the rural population finds it difficult to mobilise for a project from which it is largely excluded:

A tour of the surrounding villages yielded conflicting views: most people, barefoot and in rags, knew a mine was planned, but exactly where and when, and its likely impact were a mystery. ‘It will destroy traditional agriculture, no way’, said Karae, head of Houtotmotre village. After conferring with other elders he added: ‘Though, with the drought we don’t have any crops, so then again maybe we have nothing to lose.’ Albert Mahazoly, 45, was recently laid off from a sisal plantation which was just about the only way of making money in Ankity village. Now his family were among those queuing up for sacks of maize from the World Food Programme. This was a humiliation Mr Mahazoly was not planning to tolerate for long. ‘I’m ready to go to the mine. I’ll do whatever they ask me,’ he said. The possibility that his unskilled labour might not be wanted came as a shock. ‘But I’ll do anything,’ he said. And so the circle is closed: deprived, impoverished and plundered.

(World Rainforest Movement, 2003)

This situation is exacerbated by the potentially explosive prospect of bringing in 800 foreign workers during the construction phase, into a zone where there are more than 3000 unemployed youths. While it is both possible and desirable that the QMM project will create jobs for the Tolagnaro population, the expectations created by the project promoters to convince other groups of stakeholders that they can and will find their interests satisfied through the project seem out of proportion. It is not enough to engage in a participative process as proposed by the EIR; the communities and groups directly affected by the project have to be able to contribute to influencing the relationship between the various stakeholders. The equation used by the promoters – with the support of the WBG – that presents the project as a source of jobs and fiscal revenues, is already hard to achieve. However, the presentation of a mining project as a source of protection of natural resources can be seen as revealing of the challenges and illustrative of just how difficult the diverse groups of stakeholders have found it to understand one another and to do so over the course of the last 15 years, despite the numerous attempts that have been made to attain this.

## CONCLUSION

This chapter has sought to contribute to a better understanding of how, within a context of redefining the role of the state and liberalising the legal framework, foreign direct investments constitute a vector for important changes, not just for the national and regional economy, but for the social and environmental conditions in the area where a mining project is to operate. In the context of the EIR, our presentation of the case of QMM in Madagascar has allowed us to explore some of the issues emerging from relations among certain groups of key stakeholders involved in setting up the project. This has been done by identifying how the promoters have attempted to generate the rural population's interest in the project, to convince them that it serves their interests and to mobilise them.

The wave of reforms of the mining sector in Madagascar was a reaction to the influx of a large-scale project (QMM), which influenced the elaboration of laws and decrees regulating the mining sector, particularly with respect to the advantages provided to large-scale investors. The process by which different interests underlying the project converge (or fail to converge) is not merely a matter of answering the question of how to develop the Tolagnaro region. In approaching the



subject a number of hypotheses have been put forward concerning the identity of the stakeholders involved, their objectives and their inter-relationships. Each stakeholder has its own interests, more or less well defined. This has enabled us to understand better why the promoters' presentation of the project of the mining operation is that of a positive and inevitable outcome in which each group has been invited to find its own self-interest.

As we have shown in this chapter, the 'development model' on which the establishment of the Tolagnaro mining project is based rests on the hypothesis that export-led growth will contribute to poverty reduction while at the same time protecting the environment. The introduction of the environmental protection dimension into the legal and regulatory framework of the mining industry was provoked by two factors:

- the extent of real risks of damage to the environment, as revealed by environmental impact assessments
- the need to reply to the government's environmental policy objectives (and consequently to conform to the requirements of certain funding agencies and international organisations that allocate funds to the country in the environmental field).

These conditions coincide with the core elements of the EIR on governance in the interest of the poor, and the WBG's interventions on environmental and social components. The QMM project, mediated by the reform of the mining sector, has contributed to implementing a regulatory framework favourable to private investments in Madagascar's mining sector. This is consistent with the policy of economic liberalisation, the explicit objectives of which are to transform the role of the state in the industrial mining sector from operator (which it had been) to sector regulator and promoter, which in turn presupposes opening up to foreign private investments. Because of the complexity, scope and potential difficulties of setting up a large-scale investment project, the case of Madagascar is symptomatic of the conditions under which the mining sector is evolving in sub-Saharan Africa. Under these conditions, to what extent can the stakeholders affected by a mining project, both upstream and downstream, assert their competing interests in the dominant 'development model'? The manner in which these problems have been approached illustrates that the rural population is often put in the paradoxical position of being considered, because of their rural-traditional way of life, one of the principal causes of the

environmental problems, and concurrently, the principal beneficiaries of the advantages provided by an industrial mining project such as the one at Tolagnaro, which is presented as a necessary and unavoidable solution for their survival.

## NOTES

- 1 The author expresses his gratitude to the *Fonds québécois de la recherche sur la société et la culture* for its financial support of the research presented in this chapter. He would also like to thank Haja Ramahatra for his help in gathering information used in this chapter.
- 2 Particularly in the QIT Madagascar Minerals' ilmenite project (QMM, 2001a; 2001b) and the Dynatec nickel and chrome mining project.
- 3 For more detailed information on these projects, the reader can consult the corresponding websites.
- 4 Information provided by the chief of staff, Henry Roger, during the *Journée francophone des affaires*, Montreal, February 2005.
- 5 See particularly Sarrasin (1999), Cornia and Helleiner (1994) and Jolly (1991).
- 6 *Anosy* or *nosy*, in the Malagasy language, means 'island'. Before becoming the name of this region in the south-east of Madagascar, *Anosy* referred to an island on the Fanjahira river, now known as Efaho. The region is divided into two regional subdistricts (*sous-préfectures*): Tolagnaro and Amboasary, the latter consisting of 38 communities, of which Tolagnaro is the only one with the 'municipality' status.
- 7 See the declaration of mining policy (Republic of Madagascar, 2003).
- 8 As the Bank itself has stated: 'The Bank has been leading the policy dialogue in mining in Madagascar, and is the only donor capable of providing an integrated approach to the technical assistance to the given to Government for institutional development and regulatory reform designed to encourage the expansion of private investment in mining in a socially and environmentally sound way' (World Bank, 2003a: 19). Beyond the financial and 'ideological' catalysts that the World Bank Group represents for a country like Madagascar, the Bank remains a principal source of funding. World Bank financing is principally through the International Development Agency (IDA). By way of comparison, the debt owed to the IMF represented in 2005 only 6.49 per cent of the total loans and bilateral financing. The IDA provided more than 65 per cent, and other important sources were bilateral, principally from France but also from the United States, Germany, Japan and Italy.
- 9 See on this subject the Madagascar Mining Registry Office: <http://www.bcomm.mg/pgm/index2.html> (accessed October 7, 2006) and World Bank (2003a).

- 10 Law 99-022 of August 19, 1999 on the new Mining Code; Decrees 2000-170 and 2000-308 of March 15, 2000 establishing the conditions of application of Law 99-022 of August 19, 1999 on the Mining Code and the creation of a Madagascar Mining Registry Office (BCMM); Ordinance 7802/2000 of July 24, 2000 concerning the different models of permits and exclusive authorization for establishing perimeters; Inter-ministerial Ordinance 12032/2000 on regulating the mining sector with respect to protection of the environment; Law 2001-031 of October 8, 2002 establishing a special regime for large-scale investments in the Malagasy mining sector (République de Madagascar, 1999a). (Our translation of the titles of the laws and ordinances.)
- 11 See on this topic Law 99-022, on the Mining Code (Republic of Madagascar, 1999b).
- 12 Particularly by way of specific regulatory mechanisms, such as the MECIE ('Making Investment Compatible with the Environment'), the Inter-ministerial Ordinance on regulating the mining sector with respect to protection of the environment and also the Mining Code, which includes articles that relate specifically to the environment.
- 13 For more information, see Rio Tinto (2007).
- 14 Created in 1975 by President Didier Ratsiraka, when the military government was at its apogee, OMNIS was then referred to as the Military National Office of Strategic Industries (*Office militaire nationale des industries stratégiques*) and was accountable directly to the president of the Republic. It was subsequently, at the end of the 1990s, renamed the National Mines and Strategic Industries Office (*Office des mines nationales et des industries stratégiques*) and placed by government decree under the control of the Ministry of Energy and Mines.
- 15 Through the environmental assessment process conducted by QMM and presented to the Malagasy National Environment Office (see Figure 4.1).
- 16 Article 238 of the Implementing Decree.

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# 5 GOVERNANCE, HUMAN RIGHTS AND MINING IN THE DEMOCRATIC REPUBLIC OF CONGO

*Marie Mazalto*

## INTRODUCTION

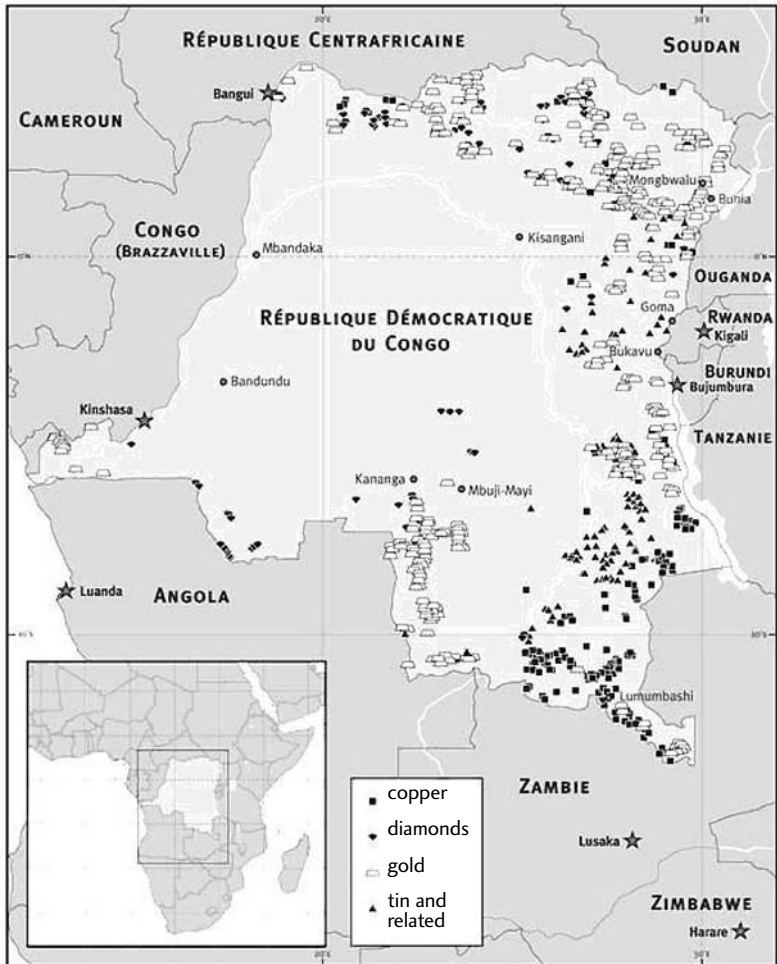
In view of its geostrategic importance, the Democratic Republic of Congo (DRC) conditions the stability and development of central Africa and of the Great Lakes region more generally. The United Nations considers that over the last decade, this area has been the most unstable part of the world, with its epicentre in east DRC (Biliaminou, 2007). In March 2007, the Security Council underlined the importance of the exploitation of natural resources as a major destabilising factor. Indeed, conflicts have overthrown several states in the area, leading to harmful consequences with regard to the situation of human rights (EURAC, 2007), especially in border areas. Illegal exploitation of natural resources has increased, supporting and maintaining these conflicts.

With a vast territory of almost 2,400,000 km<sup>2</sup>, abundant and varied natural resources (wood, minerals, water, fauna, flora, and so on), sharing borders with nine other countries and more than 250 ethnic groups, the DRC represents the ‘heart’ of central Africa. It is also its ‘soft underbelly’. Recognised as possessing exceptional mineral diversity and in substantial quantities, the DRC is thought to have most probably 50 per cent of the world’s cobalt reserves, 10 per cent of its copper deposits, 30 per cent of its diamonds, as well as having an important potential for gold, uranium and manganese (Hocquard, 2006). The DRC is today the world’s leading cobalt producer.



## MINING IN AFRICA

The national economy has been based historically on the exploitation of mineral resources. The mining industry flourished under Belgian colonisation and later under the Mobutu regime. In the 1980s, the country provided 6 per cent of world copper production (Hasselback, 2007) and the mining sector alone ensured approximately 60 per cent of the state's tax receipts (Karsenty, 2006). In the 1970s and



**Map 5.1** Principal minerals in DRC

Source: Géoatlas.

1980s, Gecamines – the state mining company – represented on average more than 60 per cent of export income (AFDB/OECD, 2006). Although activity in the Congolese mining industry slowed down after the 1980s, it has an enormous potential on which the majority of economic and political actors count to revive economic growth and the social development.

The ‘geological scandal’<sup>1</sup> which is the way certain analysts have characterised the DRC is however also the archetype of what some have described as ‘the curse of raw materials’ (Neary and van Wijnbergen, 1986). No other country in Africa presents such an extreme combination of potentialities and problems. The conflicts that have succeeded each other since independence in 1960 (Lanotte, 2004) reveal how difficult nation-building can be.

Indeed, the mining resources of the Great Lakes region have been the prey of countless parties (Martineau and Boulanger, 2006: 2, 4). During the last decades, tensions have increased as a result of the grab for raw materials and mining revenues. With the centre of power located in the west of the country and mining resources located mainly at the peripheries, the potential for dissension has been multiplied. This dichotomy creates certain tensions, and in particular on the eastern borders where the state can only count on very weak representation (Raeymaekers, 2007).

The 1960–5 civil war, the Katangese conflicts later on (1978), the secessionist or centrifugal armed uprising, as well as the more recent conflicts (1996–8, 1998–2002, 2007–08) have all scarred the history of a country where the economic and social system has always been structured around revenues from mining. These resources are the main reason for the 42 years of dictatorship, for the 15 years of political transition, and the seven years of armed national and international conflicts. Between 1998 and 2004, the death toll throughout the whole territory,<sup>2</sup> including all nationalities, has been estimated at 4 million (Coghlan et al., 2006). More than 3.4 million inhabitants were displaced, including 411,000 to neighbouring countries, and 17 million people still suffer from food shortages. Added to this there are also the pandemics, acts of physical and psychological violence, raping, executions and so on. The majority of victims are civilians, far from the battlefields, ‘collateral casualties’ as a result of the degradation of basic infrastructure, lack of public services, shortages in food supplies, proliferation of diseases and so on.

In keeping with the third major area of recommendations identified by the Extractive Industries Review (EIR) as enabling conditions in

order for the extractive industries to contribute to poverty alleviation through sustainable development, and needed to be met by the World Bank Group (WBG) in order for it to play a positive role, the analysis of this chapter will focus on the relations between mining activities and the respect for human rights. It takes as its point of departure the World Bank's observation, 'Many countries fail to make best use of the benefit streams provided by the extractive industries. Unfortunately, the Democratic Republic of Congo is among these countries' (World Bank, 2007: 13).

Within this framework, this chapter will examine the reforms undertaken in the mining sector and their implications for promoting or impeding the respect of human rights. The DRC provides a striking illustration of the complexity of the stakes raised by the issue of human rights, which is increasingly considered as one of the main 'development' issues for countries of the South.

In countries with fragile institutions, the mining sector is recognised by many to have produced more misery than wealth for local populations. It has been shown in this regard that countries rich in natural resources may be characterised by worse economic performances than less endowed countries. No consensus has yet emerged to explain such an apparent paradox (Collier and Hoeffler, 2005; Ross, 1999) and this manner of approaching such issues is itself the subject of debate. However, twelve of the states that are most dependent on mining production and six that depend on petroleum are classified by the World Bank as heavily indebted poor countries (HIPC) and have among the worst ratings on the Human Development Index (HDI), according to data compiled by the UN Development Programme (EIR, 2003a: 15).

In such a context, given its mandate to 'fight against poverty', the WBG has proposed that the mining sector be transformed into a macroeconomic lever for growth and development, in order to enable the DRC to achieve the Millennium Development Goals (MDGs) (DRC and UN Congo, 2004).

In the DRC, as in many African countries, the reform measures strongly encouraged by the international financial institutions (IFIs) have emphasised an overall redefinition of the architecture and role of the state (Mazalto, 2005a). Such a strategy and the risks it represents can be illustrated by the policy adopted by the same institutions a few years earlier (in 2000) in Chad, where under different circumstances an attempt was made to use oil revenues in order to reinforce a weak state (Magrin, 2003; Tulipe, 2004).

In the DRC mining sector, these reforms have led to creating a new legal framework and a new set of standards aimed at improving practices as a means to achieve development objectives. While, on the one hand, these reforms provide a legal framework for rights, on the other hand, they are often the vehicle for a heavily technical approach that tends, in the name of promoting ‘good governance’, to deny the political dimensions of the socioeconomic considerations associated with the management of this sector. Encouraged, conceived and most often implemented from abroad and/or with the strong participation of international experts, the very origin of these reforms creates problems of the legitimacy of their application and appropriation by the national and local authorities. Further, and as was illustrated in the first two chapters of this book, the model of development based on resource extraction that is promoted presents a number of difficulties in terms of the national redistribution and local appropriation of the wealth produced.

Insofar as human rights are best promoted through the implementation of equitable wealth distribution mechanisms, and since this requires the existence of legitimate institutions established throughout the whole territory, the links between the reforms put forward to promote mining activities and their implications for the respect of human rights merit detailed analyses. Furthermore, in the DRC, the institutional reforms currently being undertaken in the name of promoting ‘governance’, with the goal of introducing the rule of law, raise a number of questions which still remain to be answered. In this chapter we attempt to provide certain elements towards an understanding of these issues.

It was in response to grave concerns raised concerning the lack of impact of mining activities on poverty reduction, and notably in the face of criticism of its own involvement, that the WBG became involved in this area. As noted, among other initiatives but of central importance, the WBG commissioned the EIR in order to help revise the institution’s practices in the sector (EIR, 2003a, 2003b). The central place given to the respect for human rights in its recommendations by the EIR initiative has been a factor contributing to the emergence of the human rights agenda as an essential component in order for investments to contribute to the objectives of programmes to ‘fight poverty’.

While the setting-up of the EIR was a commendable initiative by the IFIs to monitor their practices in the extractive sector, the major contribution of the report which resulted lies in proposing concrete solutions to the problems identified. In this context, we cannot help but draw

attention to the gap that exists between on the one hand, the diagnosis and the EIR recommendations, and on the other, the low priority assigned to them by the WBG in its subsequent practices.

The principal recommendations made by the EIR concerning rights can be summarised as follows:

1. The WBG is strongly encouraged to adopt a human rights-based approach to development.
2. Human rights obligations must be considered at all stages of every project, from design to implementation and monitoring. To guarantee the application of these standards, the WBG should include independent reviews, hiring expert external consultants, capable of analysing the human rights situation.
3. The International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) must assess the past records of companies with which they cooperate in terms of their respect for human rights. It is important to guarantee that projects financed by the WBG are developed and implemented according to the standards of the Universal Declaration of Human Rights. The adoption of these principles and the proof of their respect must be a prerequisite for any mining company seeking support from the WBG.
4. Since the WBG has adopted the fundamental labour standards of the International Labour Organization (ILO), the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA)<sup>3</sup> must insist that these standards be written into the contracts of any funding project by including them as compulsory elements for contracts to be awarded. They must also adopt the four, and not simply two, fundamental labour standards included in the eight fundamental conventions which establish the labour principles and laws. These are: the freedom of association (the right to organise and to bargain collectively); the abolition of forced labour; equality (non-discrimination); and the elimination of child labour (ILO, 2005). The WBG must collaborate with governments, trade unions, industry groups and other organisations, as well as with the ILO, to promote the respect of these standards.
5. The promotion of gender equality and of women's rights should be a priority for the WBG, given its objective of poverty reduction.
6. The WBG is also invited by the authors of the EIR report to increase their efforts to certify that the Group's participation in any project is conditional on respecting the rights of indigenous peoples.

With the recommendations proposed by the EIR expert group in mind, we turn now to the role of the IFIs in restructuring the mining sector in DRC. By comparing the development policies that have been introduced in this country's mining sector with the priorities promoted by the EIR, we shall be in a better position to understand the implications of WBG policies in this particular area.

The extent and depth of the reforms undertaken particularly since 2002 in the strategic mining sector, in which the multilateral financial institutions have invested heavily, require us to monitor how the reforms have been implemented in order to examine their potential to promote development directed towards poverty reduction, conducive to the promotion of and respect for human rights.

In the case of DRC, a prerequisite for any analysis of the complexity of the issues at stake requires the adoption of a historical perspective capable of considering the orientation these reforms have taken, the role of the IFIs and the conditions in which they have been elaborated and adopted. This contextualisation then leads to questioning how the recovery of the mining sector is linked to poverty-reduction objectives which in turn give legitimacy to the resulting activities. The very particular situation of DRC raises a series of considerations around issues related to the promotion of human rights in a post-conflict nation, in a context of only very recent commitment to 'democratisation'.

To the extent that the issue at stake, from the perspectives of the IFIs, concerns moving from the current state of affairs to a situation where the rule of law prevails,<sup>4</sup> the mining sector merits careful examination. The study of recent changes in the Congolese mining sector will allow us to reconsider the recommendations of the EIR and assess more generally the issue of the social and political responsibility for the promotion and protection of human rights in a context such as that of the DRC.

### **THE ROLE OF THE IFIs AND OTHER FINANCIAL INSTITUTIONS IN THE DRC: TOWARDS A REDEFINITION OF THE ARCHITECTURE AND ROLE OF THE STATE**

To what extent can we assess how the interventions of the principal financial institutions in the DRC have contributed to the promotion of human rights? Part of the answer can undoubtedly be found in an analysis of the particular nature of the interventions,

notably by examining the reforms accompanying the proposed development programmes.

As shown elsewhere in general terms, since the years of the structural adjustment programmes it seems that multilateral funding institutions have attempted to impose what appear as standardised development programmes based on new regulatory modes in an attempt to deal with structural poverty on a massive scale (Saldo-mando, 2005: 53). These have been combined with constantly increasing preconditions attached to financing, and characterised by a short-term agenda. In many ways, these programmes seem poorly adapted to the capacity of the countries to which they are directed to implement them (this includes both human and material capacities), to the financial and administrative liabilities left by previous governments, to the political culture and to the major social problems related to transition processes or post-transition contexts.

Starting in 2001, under the auspices of the World Bank and IMF, development programmes have been restructured to ensure that multilateral and bilateral initiatives become more coherent. Developing a harmonised framework for their actions was part of the process of elaborating the ‘world partnership for development’, as defined by the MDGs. An illustration of this can be seen in the enactment of a US law in December 2006 encouraging collaboration between the United States and its international partners to increase aid to the DRC (USA, 2006).

The degree of mobilisation in this regard can be considered impressive if we take into account the amount of funds invested, the diversity of actors involved, and the diversity of aid that was proposed, which resulted in extensive economic, administrative, technical, legal, political and humanitarian support. The desire to support and collaborate with the Congolese government around a particular vision of development culminated in 2006 with the elaboration of a joint intervention programme, intended to create convergence between the various development initiatives.

This mobilisation was conditional on three factors:

- pursuing a strategy to further the reform of the state
- adopting international development agendas and standards
- democratising and stabilising the political environment.

Through the massive support of bilateral and multilateral funding agencies, two major events in the political history of the country

occurred in 2006. The first was the adoption of the new Constitution in February 2006, further to the constitutional referendum which had been held on December 18–19, 2005; and second, in October 2006, the presidential election took place.

Shortly after the election of Joseph Kabila, the country's creditors confirmed their increased support to the DRC: 'After consultation with the government, we will develop appropriate flexible mechanisms to continue our engagement and ensure effective coordination of support for the development of the country' (Solana et al., 2006: 1). As of March 2007, the World Bank committed itself to invest US\$1.4 billion in the DRC (over the period 2008–10), in the form of grants and loans.

Convergence of the various aid programmes reached its highest point during the same year (2006), with a World Bank initiative, in collaboration with the United Nations, to develop a 'common strategic framework' to support the DRC. The resulting September 2006 document *Country Assistance Framework* (CAF) (UNDAF, 2007) became the reference framework for all development programmes supported by the European Commission, the United States, China, the United Kingdom, Belgium, Germany and France. The declared objective was to enable the DRC to achieve the MDGs as soon as possible, namely in five years. The *Framework* is structured around five objectives:

- effective management (which is to lead to drawing up of a 'governance compact')
- pro-poor growth
- the provision of basic social services (education, water and health)
- providing a social safety net
- HIV/AIDS treatment and community development.

This concerted initiative reminds us how, in Sun City (South Africa) in April 2002,<sup>5</sup> the international community, along with leading Congolese political actors, signed a political agreement with a view to ensuring a jointly managed transition. The International Committee for the Accompaniment of the Transition (CIAT) and MONUC (United Nations Mission in the Democratic Republic of Congo) oversaw the political transition. With the election of the new government, CIAT was replaced by a new mechanism for monitoring and political-economic coordination, with the support of the same countries, which signalled the renewed commitment by the international community to intervene in support of the DRC (UNSC, 2006).



Prior to the introduction of new mechanisms to monitor the proposed development programmes, as of 2001, the reform of the state had already been initiated. As a result, in the mining sector, the adoption of new norms in order to promote 'good governance' was facilitated by the reform undertaken in 2002. This led to the adoption of the new Mining Code and new mining regulations, the reform of the land tenure system and a new Investment Code.

For the IFIs, the legal framework was considered as the essential vector to establish new development norms and to guarantee their application within the programmes put forward as a means to reduce poverty. In Africa, these programmes have led to a substantial reconfiguration of the nature of the state. A new architecture has been constructed within which new approaches are adopted, the most striking feature of which has been the treatment of development issues in a more technical manner. The objective of such approaches has been to reinforce the institutional, legal and management control mechanisms, in order to guarantee that new 'good governance' or 'effective management' practices are put into practice. Such an emphasis was put forward in order to put an end to practices that have been described as reflecting those of 'patrimonial states', in which resource flows tended to contribute above all to the personal enrichment of an elite, henceforth designated as 'corrupt'. Consequently, the new approaches to development policies were presented as the way to reorganise the state and to establish good management practices for public affairs. Reinforcing the rule of law, ending the economic crisis and ensuring repayment of outstanding debt, were put forward as the key pillars at the heart of the new development agenda.

These reforms have been accompanied by a desire to transfer a maximum number of state prerogatives to the private sector, among other reasons, in order to reduce the financial burden associated with certain state functions. More specifically, this overhaul involved reducing to the minimum the production and distribution functions of the state, through a dual logic of decentralisation and privatisation. Such a transfer was made possible by the enabling environment introduced through the strengthening of the legal framework. In such a context, the notion of rights takes on a pivotal role in the equation that makes the reform of the legal framework an essential requirement for both macroeconomic recovery and the strategy to reduce poverty.

Another major element of the reform, promoting investments, is closely tied to economic liberalisation policies aimed at attracting foreign investments in the mining sector. The state is largely displaced

from this sector by resorting to major bilateral and multilateral assistance and to foreign direct investment (FDI). To reach this objective, achieving an appropriate and secure new legal framework is of pivotal importance to the success of the reform process. Ensuring the rule of law is no longer considered to be an instrument of social change, but rather it implies establishing the appropriate legal framework required to ensure the optimisation of free market mechanisms and securing investments.

In this context, in the mining sector, the main orientations introduced by the reform (Mazalto, 2005a) have as their objective opening up the sector to foreign private investments, liberalisation, leading to the progressive dismantling of state companies, reducing the financial burdens borne by companies (Otto et al., 2006) and reinforcing administrative control mechanisms, with the espoused purpose of fighting against corruption and promoting transparency. According to analyses of the evolution of African mining codes, the reform opened the way, in the case of the DRC, to the introduction of what has been characterised as a third-generation mining code, in which the role of the state is reconfigured and seen above all as that of facilitating investment and regulating mining activity (Campbell, 2004).

The 2002 Mining Code thus reflects the creation of a new environment characterised by one of the most liberal tax and customs regimes in Africa, designed to ensure the profitability of projects through transparency and efficiency in granting licences and providing investment security (DRC, 2005).

Another important dimension was to significantly restrict the state's room for manoeuvre (Bond, 2002). Private investors are given more powers, as holders of mining rights, as investors, as operators, as buyers and sellers, and as taxpayers. The funding agencies thus intend the state to cease its functions as a producer, retaining above all only the function of facilitating investment and providing security to the sector. State revenues are henceforth to be dependent on revenues resulting from the exploitation of resources by private capital, and in most cases foreign capital.

In economies where growth is dependent on economic rents, as Pourtier (2003) has pointed out, in its interventions, the state is encouraged to maximise its capacity to accumulate. Its income derives mostly from exploiting and exporting raw materials. The country is transformed into an immense reservoir of raw materials in which the central challenge is to manage to the best the flow of revenue resulting from resource exploitation, marketing and exporting. It is the state's

role to ensure that it obtains its revenues through the strict application of its sector laws (taxes, royalties and so on). It also has to guarantee a fair redistribution of mining revenues among the different sectors of the population, through decentralisation within a legal framework. We find such a conception for overseeing the mining sector in certain recent documents produced by the WBG: 'There is no immediate role for governments in short-term metals supply management. Markets are working to balance supply and demand, and higher prices are part of this process' (World Bank and IFC, 2006: 10).

The linkages between the social and economic dimensions are presumed to flow naturally one from another to the point where the introduction of macroeconomic policies and the reconfiguration or even the reduction of political space are presented as a normal consequence of the introduction of policies in favour of the poor. Indeed, following this logic, policies of decentralised redistribution permit public institutions to have the financial means and political will to satisfy the needs of the local population for basic services (education, health, sanitation, housing and so on). For their part, the companies are invited to scrupulously respect the legal frameworks, to guarantee that they will continue generating revenue for the state and, on a voluntary basis, to commit themselves to resolving certain negative externalities, such as pockets of poverty around mining sites, or pollution (for example, cyanide residues). Rather than regulations being promulgated in the national arena, these voluntary obligations are based on standards and norms which emanate from what has been described as a 'new transnational legal order', such as those, for example, which guide practices concerning environmental impact assessments (Szablowski, 2007).

In contrast to what is generally understood by a human rights-based approach to development, that proposed through the reforms recommended by the IFIs appears to resemble a logic favouring the promotion of private property rights. Such an approach appears to aim to harmonise the modes of regulation in the public domain with those of the market (maximisation of opportunities, a favourable environment and so on). It is therefore in such a perspective that the objective of the promotion of human rights is reset. Their promotion and respect are seen as a function of the achievement of standards defined in the set of legal and technical constraints, as for example exists in setting up a mining project. Such frameworks serve as the basis permitting the regulation, which becomes almost automatic, not only of financial but also political and social equilibriums – or in other words, of the social

peace. In a nutshell, what is involved is the introduction of new modes of social regulation of the public sector and of access to social services.

However, this process of the privatisation of rights involves a profound redefinition of the role and functioning of public institutions, which tends to reduce their space and their already limited options for social and political intervention. In brief, the function of these institutions is seen henceforth as to implement reforms, secure investments and regulate the operating practices of the companies. This is precisely where contradictions arise. In a country such as the DRC, does the state really have the means to guarantee the strict application of the law? Beyond the development of a legal framework and the institutional reconfiguration of the mining sector, what human and financial resources are available to ensure that the framework is really implemented, notably in view of the fact that it is presented as the guarantor of the struggle against poverty? The issue of means or resources is unfortunately too rarely broached.

As an illustration of the way that reforms have led to the substantive restructuring of institutions, we could cite the example of the creation of the Steering Committee on the Reform of Public Enterprises (*Comité de pilotage de la réforme des entreprises publiques*: COPIREP), set up in 2002. Its main purposes have been to reorganise the public finances and to boost the competitiveness of the principal sectors of the economy. To achieve this, COPIREP, which is supported technically and financially by the World Bank, rapidly became a key centre of power. It presides not only over the introduction of the Investment Code by the National Agency for the Promotion of Investments (*Agence nationale pour la promotion des investissements*: ANAPI), but also the introduction of the Mining Code, the land registry and the Forest Code, and the export agencies. It is responsible as well for improving the mining administration's functioning and reforming public sector enterprises. ANAPI is also in charge of implementing the antiterrorism law, fighting against money laundering and providing care for the most vulnerable sectors of the population. This excessive centralisation of the new legal and institutional structure in the mining sector is in strong contrast with the IFIs' call for promoting decentralisation and participation of the local population, with campaigns against poverty, as the basis of democracy in the DRC.

In the EIR final report, the recommendations adopted a rights-based approach, including civil rights and allowing for participation in the public sphere. Proposing broader participation as a condition for

improving the operation of mining activities amounts to raising the issue of the democratisation of the sector.

In the DRC, the political and economic democratisation of mining governance is all the more important because up to now, the local populations have profited very little from the positive outcomes of development programmes in this sector.

The Mining Registry Service (*Service du cadastre minier*: CAMI) created as part of the reforms illustrates some of the limitations of the reforms in view of the fact that the history, culture and the political and social dimensions of the sector are not – or are barely – taken into account in the institutional changes. CAMI, a public institution, is a major stakeholder, since its purpose is to provide security for mining property, to manage procedures for licensing, and when appropriate, to terminate mining rights. For this reason, for mining investors, CAMI could be considered as the Congolese ‘shop window’. Shortly after its creation in 2003, however, following a series of complaints from foreign companies, CAMI was charged with being poorly managed and partiality on the part of some its personnel. After its first director general was dismissed, CAMI was closed down in 2004 and its organisation was examined by a foreign auditing firm to see how it could be restructured (Kuediasala, 2007). Since November 2005, four directors-general have succeeded each other at the head of CAMI.

Intended to ensure the correct application of the new Mining Code and regulations, the institutional reforms rapidly revealed insufficiencies which resulted in serious dysfunction. The Congolese State, even with new institutions, is not yet able to guarantee an environment providing investment security and good management of a mining sector that is in full expansion. These embryos of the rule of law still seem to be limited in their ability to intervene effectively, essentially because of liabilities that are intrinsic to the institutional culture, with roots that stretch back to long before the war (Willame, 2007). The clear lack of resources considerably limits the state’s new role of guarantor of ‘good governance’, without even adding the fact that outside interventions on the Congolese agenda may have contributed directly to weakening the transitional government, which in effect lost political control of the directions the reforms were taking. In the end, these various dimensions may well have contributed to delaying any true appropriation of the new standards of functioning and development objectives by national and local leaders.

Now that we have presented why the reforms that have been introduced raise an important number of questions, one of these merits

more careful attention. Are the reforms that have been implemented adapted to the country's needs, and can they, by reviving its economy, lead to progress towards development that is respectful of the ways of life and interests of the local population? Can they be conducive, in the long term, to sustainable development? The study of the mining sector provides some interesting points of reflection on this subject.

## **REVIVING THE MINING SECTOR AND POVERTY REDUCTION: THE COMPLEX ISSUES OF APPLYING THE LEGAL FRAMEWORK AND PROMOTING HUMAN RIGHTS**

### **The First Steps towards Transparency: Rigorous Monitoring of the Mining Sector**

In a context that made reviving the mining sector particularly difficult, several studies were commissioned to examine practices in this area, notably because mining occupies such a strategic role in national recovery. The publication of some of these reports took on the form of major political events because they officially acknowledged the shortfall between what was really happening on the one hand, and the objectives of good governance and the struggle against poverty that had provided the original reason for the reform process, on the other. As in 1982, when the Blumenthal Report<sup>6</sup> revealed serious and substantial administrative shortcomings in the Congolese mining sector, the more recent reports revealed serious dysfunction at the highest levels of the state, and they also provided analyses of the major contextual constraints in understanding some of the factors limiting reforms that had been observed in the DRC. Three reports in particular merit our closer attention.<sup>7</sup>

- The first series of reports was written by an Expert Group set up to examine illegal exploitation of natural resources in the RDC. This group was created by a UN Security Council resolution adopted on July 2, 2000. The group produced a number of reports for the Security Council, all of which were made public, except for the last one, dated October 2003, classified as confidential (Kassem et al., 2003).
- The second was the 'Kalala Report' (Budimbwa, 2006), named after the DRC Minister of Human Rights, presented to the Human Rights Committee at the UN General Assembly in March 2005.
- The third report, known as the 'Lutundula Report' (Lutundula

Commission, 2005), compiled the results from surveys carried out by a special subcommittee of the Congolese National Assembly. These surveys focus on the mining contracts cosigned by rebel groups and government authorities during the first war of 1996–7 and the ‘first African continental war’ of 1998–2003<sup>8</sup> (De Villers, Omasombo and Kennes, 2002). Although a moratorium on signing new mining contracts was passed in 2007 by the Ministry of Mines, the complete Lutundula Report had yet to be examined by the Congolese Parliament, even though the Parliament was the principal commissioner of the study. It seems that some of its conclusions, considered too politically sensitive, have persuaded the past two governments to avoid its presentation before the Parliament.

What conclusions should be drawn from these reports? First, mining remains a very sensitive issue economically, politically and socially. The three reports emphasised that before and during the transition, the mining sector was managed in a manner that was beyond any standard of ‘good governance’. It was characterised by inadequate accounting mechanisms, an absence of transparency and numerous human rights violations.

The weakness in the capacity of the state to control mining areas makes it almost impossible to implement a coherent mining policy, under the effective control of its own institutions. The conclusions of the Kalala Report depict a post-conflict situation marked by numerous human rights violations (tortures, the use of child soldiers, assassinations, kidnappings, rapes, various brutalities inflicted by the armed forces). In several mining provinces, the members of the Armed Forces of the Democratic Republic of Congo (FARDC) have been found guilty of extensive exactions against local populations. Reforming the army to improve the situation has therefore become one of the government’s crucial challenges to bring peace to the country’s main mining areas.

The gap observed between the policies, laws and resolutions that have been adopted and the climate of almost total impunity which reigns in the mining sector is emphasised in all three documents. On these issues, the reports on illegal mining operations by the group of experts revealed that the majority of belligerents diverted mining incomes for their personal benefit and/or to finance military operations, with a direct impact on human rights violation. The Lutundula Report corroborated these conclusions, and confirmed that the adoption of new mining legislation would not be sufficient to restore the rule of law and a situation capable of mobilising the government and

investors around a development project that would truly reflect national interests. After a long and difficult enquiry process (NIZA, 2006), the Lutundula Special Subcommittee submitted its report (Lutundula Commission, 2005) to the Congolese Parliament, which then delayed its public circulation until February 2006. This report revealed that dozens of contracts had been signed since the end of the 1990s, and that they were totally lacking in transparency and were probably illegal<sup>9</sup> or at the least, not in the country's interest. The report thus recommended the abrogation or renegotiation of these contracts. Its authors also recommended that lawsuits be brought against a certain number of politicians and financial backers, some of whom were very close to the centre of power in the DRC.

The Lutundula Report also exposed how the Congolese government had arbitrarily exempted certain joint ventures from paying taxes, over periods extending from 15 to 30 years. A number of state civil servants were directly identified as advancing their own personal financial interests through these negotiations. As for the participation of the state, which according to the 2002 Mining Code had to be a minimum of 5 per cent of profit-sharing in mining projects,<sup>10</sup> in certain contracts this was reduced to a foreign presence which left little doubt concerning the absence of public control mechanisms over the development of such projects.

In short, what emerges from these reports is that the revival of the mining activity has been based on a logic of attributing rights almost completely outside the legislative and institutional mechanisms that had been adopted for the good management of the sector. The Kalala Report provided a number of hypotheses to try to account for this. The 'patrimonial' modes of political regulation which had been used by corrupt elites as a source of enrichment for decades had become part of the political culture; this was the foundation on which the reforms were implemented without the introduction of any countervailing mechanism to hold these individuals responsible, and without any means for reforming the processes of political and economic power broking in the mining sector.

Further, in the DRC, the new legal frameworks seemed all the more difficult to enforce because of insufficient governmental resources (Human Rights Watch, 2005), both human and material, as they had been to a large extent diminished by the objectives of debt repayment and reducing the costs of running the state. In spite of the commitment to reforms, a number of decisions with regard to the functioning of the mining sector have very disquieting implications for protecting human rights. Moreover, certain of these



decisions imply commitments that the country has made for several decades into the future.

The publication of these official reports created a major political crisis for the government during the period of transition, as the reports directly or indirectly identified members of the government, the directors of foreign mining companies and a number of senior international civil servants. These reports marked a critical turning-point in the country's history. For the first time, there was official recognition of the problem of collusion between the political system and financial dealings, which up until then had always had total impunity, counter to the interests of the state and the population.

Commissioned by the state and by the United Nations, these reports, based on official sources, confirmed a number of hypotheses which had been widely held by most analysts and observers of the DRC since the Mobutu era. The reports on illegal mining operations, presented by the UN Expert Group to the Security Council, confirmed that natural resources continued to be plundered, despite the withdrawal of foreign troops. Fifty-four political and business leaders from the DRC, Rwanda, Uganda and Zimbabwe were accused of being directly involved in the illicit trading of high value-added minerals (Tegera and Johnson, 2007). Beyond the accusations of failure to respect the country's legislation, it is easy to understand that these charges targeted the political and economic elites' direct or indirect support of situations that have led to massive human rights violations.

Despite the denial by many of those accused, the charges contained in the three reports had major consequences within succeeding governments. With the publication of the UN expert group's latest report, President Kabila found himself, for instance, obliged to dismiss three of his closest ministers, accused of being directly implicated in illegal practices and transactions contrary to the state's interests.<sup>11</sup> These accusations raised a number of questions.

First, the new Mining Code contained ambiguities, notably by stipulating, among other clauses, that even though being a minister means 'ineligibility to benefit from underground or surface mining activities ... this prohibition does not concern the acquisition of shares in mining companies' (DRC, 2002: Tit. II, chap. I, our translation). However, in reality owning mining rights differs little from being a shareholder in a company that owns them, especially if the shareholder holds the controlling interest.

A second problem relates to the context in which the new laws are implemented, which involves encouraging major increases in

investment in a context of ‘good governance’. In the DRC, the wealth accumulated by the national and international elites from state revenues derived from the mining sector has had deep historical roots. Practices observed under colonialism, then during the regimes of Mobutu and Laurent-Désiré Kabila (the current president’s father, who was assassinated in January 2001) (De Villers et al., 2002), were characterised by considerable continuity (Braeckman, 2003). However, with the introduction of the reforms, some of the established practices were challenged, in the name of international policies to ‘fight corruption’ and to introduce ‘good governance’.

The question that arises here is clearly one of the transition from a political and economic system in which a certain elite had effectively appropriated mining revenues for personal enrichment, to a more equitable and sustainable pattern of redistribution based on public control, firmly entrenched in ‘good governance’ practices.

Finally, the responsibility of the IFIs received very little mention in any of the three reports. Kalala Budimbwa pointed out nonetheless the role that multilateral funding agencies should assume in reforming the sector, and called on them to make long-term commitments so that the mining sector could be completely reorganised and so that raw materials and mining resources would no longer be sold off at giveaway prices (his term was ‘*bradage*’) (Budimbwa, 2006).

This call resonated in a context where the transition government was still signing mining contracts relatively opaquely. Concerns expressed within the World Bank questioned the nature and limitations of the Bank’s intervention during periods when turmoil was at its zenith. A WBG internal memorandum, released by the media, however, raised serious questions about how the Bank should be supervising reforms being adopted by the government. Particular concern was expressed about prior consultations required before signing important contracts, as well as the ways to ensure transparency and ensure public access to relevant information:

The Bank’s mining memo referred to three joint venture deals worth billions of dollars, signed last year between the state-owned copper mining company Gécamines and three international mining groups. Analysts say the deals would account for at least 75% of Gécamines mineral reserves and have raised questions over whether Congo has maximised state revenues from them.

(Mahtani, 2006)

In response to the repeated calls to reform political processes after his election, President Joseph Kabila officially urged his government to ensure:

the strict application of the Mining Code in order to allow the State to recover the revenue generated by mining operations, to use these funds for the economic development of the country and the fight against fraud and the plundering of mining resources.

(Kabila, 2006, our translation)

This declaration is revealing of the magnitude and the complexity of the task of reforming the mining sector and redefining the role played by the state in this regard. In March 2007, reacting to expressions of concern coming from national and international civil society, as well as repeated calls by funding agencies, the Minister of Mines released a memorandum (McKay, 2007) declaring a moratorium on any new mining activities until the contracts signed between 1996 and 2003 had been re-examined (*'revisités'*).<sup>12</sup> In April 2007, the Minister of Mines, Martin Kabwelulu, acknowledged that more than 50 per cent of the mining contracts signed in the DRC were, in his words, probably 'disadvantageous' for the state and should therefore be renegotiated, while declaring at the same time that none of the contracts would actually be cancelled. By creating this space for negotiations, some Congolese NGOs offered to assist the ad hoc ministerial committee, Commission ministérielle chargée de la revisitation des contrats miniers (DRC, 2007) that had been mandated to re-examine some 60 mining contracts, 41 involving companies operating in Katanga, eleven in the eastern province of Kivu, six in Eastern Kasai and five in Maniema province.

The re-examination process began in June 2007 and created a tense political climate, in particular because of the reservations expressed by some pressure groups at risk of losing the advantageous financial arrangements they had negotiated. Considering the political and financial pressures exerted on the government, this initiative has been severely criticised by civil society as being both opaque and insufficient. At an August 2007 Civil Society Forum (CSF, 2007), a number of groups called for a re-examination of twelve further mining contracts by a Civil Society Forum Committee of Experts.

Although the Lutundula Report remains a significant landmark in resolving the DRC's problems, many observers remain pessimistic about the feasibility of modifying contracts which have been endorsed with the support of the presidency. This is all the more the case since,

with his re-election as head of state, Joseph Kabila has retained a number of the political and economic actors involved in the erratic management of the transition government.

Beyond the process of economic recovery, the continuing irregularities, the lack of transparency and the lack of opportunity for civil society participation in the process, are maintaining the Congolese mining sector in a state of tension between two contradictory cultures (opacity and corruption versus transparency and legality). We should recall that in 2007 only six of the 237 mining companies present in the DRC published their mining production data (IMF, 2007). The potential state revenues from the extractive sector (mining and petroleum) are still largely unknown and thus probably underestimated, just as the principal mining regions of the country lie, at least in part, outside the central state's control.

### The Complexity and Diversity of Regional Realities

In the DRC, national development indicators cannot be understood without taking into account territorial disparities. These disparities reflect four main factors:

- the nature of the productive processes responsible for developing mining resources
- economic imbalances among the provinces
- uncontrolled violence
- the inability of the centralised political authorities to maintain control.

Each region is affected by a different permutation of problems, at least when it comes to the question of the impact of the mining sector on the population's living conditions and on promoting human rights.

This complexity is likely to be reinforced by the new administrative regions created by the Constitution, which increased the number of provinces from 11 to 26. In each province Assemblies, whose members are elected by universal suffrage, have seen their powers reinforced by the policy of decentralisation. But implementing the new Constitution, which created a 'united decentralised state', is being hampered by the complexity of local dynamics.

### *The Nature of the Productive Processes Responsible for Developing Mining Resources*

The main mining regions are Katanga, Western and Eastern Kasai, and Kivu. The Eastern Province and Équateur also possess

important deposits of iron, gold and diamonds, while bauxite and phosphate deposits are principally found in Lower Congo. The nature of productive processes varies considerably according to the types of minerals and the history of mining development in each province. Productive processes strongly affect human rights and the respect of economic, cultural and social rights.

In the province of Katanga, located in the south of the country, the exploitation of copper, uranium, silver and cobalt has historically dominated a province that forms part of the Copperbelt, extending into Zambia. This is the province with the most important mining potential, containing, according to Baracyetse (1999), the world's greatest unexploited copper reserves as well as a significant mining infrastructure, even if much of this is in an advanced state of decay. The Shinkolobwe uranium mine, located near the town of Likasi, has become the symbol of these mines, which have gained a sad notoriety by the number of deaths they have provoked. The uranium extracted was used to make the atomic bombs that fell on Hiroshima and Nagasaki. Officially, the site was sealed off when the country gained independence, following industrial exploitation of the uranium deposits from 1921 to 1959. However, at the end of the 1990s, small-scale miners (in French: *creuseurs* meaning 'diggers'),<sup>13</sup> including children, extracted copper from the site, and heterogenite (rich in cobalt), regardless of any safety requirements. Although a January 2004 presidential decree closed access to the Shinkolobwe site, in July 2004, the collapse of part of the area mined caused ten deaths among the 6000 illegal *creuseurs* working on the site. In August 2004, to displace the miners' families, the village of Shinkolobwe, where 15,000 people lived, was burned to the ground. According to EMAK (the trade union representing Katanga's small-scale miners), the majority of those expelled had no intention of changing what they were doing. Left completely to their own resources, without any form of official or unofficial support, and without any alternative source of income, these *creuseurs* will probably return to work illegally on this highly contaminated site, risking new exposure to ionising radioactivity.

In Katanga, access to small-scale mining sites has become a crucial part of the provincial economy. Today, some 20 per cent of these small-scale miners are former employees of Gecamines, laid off when the company was restructured. Rehabilitating mining sites is also a tendentious question, raising the issue of how responsibilities are to be shared among the industrial producers, the state and the creditors of the Congolese mining sector. However, at the present time, according to a

UN report (Dupin and Mialaret, 2004), the small-scale miners' trade union, the Mining Environment Service,<sup>14</sup> and the Small-Scale Mining Technical Assistance and Training Service for Small-Scale Mining (SAESSCAM)<sup>15</sup> do not have the means to guarantee the application of mining regulations, or to provide assistance to small-scale miners. Looking back at the history of the Katanga mining giant Gecamines helps us understand part of the region's mining history.

In the past, the Congolese State had concentrated on developing what was known as the Upper Katanga Mining Union (*Union Minière du Haut Katanga*: UMHK), controlled by Belgian industry until it was nationalised in 1966 and converted into the *Société Générale des Carrières et des Mines* (Gecamines). Gecamines currently produces copper, cobalt, zinc, nickel and uranium in such quantities that it is one of the world's major sources of these materials. The real motor of the Congolese economy, the UMHK and later Gecamines has been recognised as providing the inhabitants of Katanga with one of the highest standards of living in the country, through job creation and significant investments in educational, medical and sporting infrastructure for company employees and their families. For example, Gecamines runs its own hospitals. Until 2005 the Swende hospital, located in Lubumbashi, was the most important hospital in Katanga province. Based on what has been described as a 'paternalist management model', widespread in Africa (Hernandez, 2000), the UMHK and later Gecamines played a major role in providing access to basic services, developing the economic and social structure in the provinces where it was operating. For this reason, the 'bankruptcy' of Gecamines at the beginning of the 1990s created major socioeconomic transformations in the region. By 2005, nonferrous ores and other concentrates represented only 17.2 per cent of the country's total exports (AFDB/OECD, 2007). The crisis of copper prices and years of drastic fall in production also had disastrous social consequences on the region's economy: 'The whole population of the Katanga basin which depended on this company found itself from one day to the next in a situation of absolute poverty' (DRC, 2006b: 35, our translation).

With the restructuring of the industrial and quasi-industrial activities of Gecamines, 'each day ... 50,000 to 70,000 creuseurs are invading numerous mining sites in Katanga to look for heterogenite, an ore exceptionally rich in cobalt. These people work under terrible conditions for hardly more than a dollar per day' (NIZA and IPIS, 2006: 6, our translation). A recent report was produced by the NGO Global Witness (2006a) which has worked on this subject extensively,

investigating the deplorable working conditions in small-scale mines. 'The tragedy of the miners' comes from the absence of adequate equipment and safety measures, child labour, contamination risks and mortal accidents. The lives and working conditions of small-scale miners remain a crucial issue in the DRC. It is indeed surprising to note the inadequate mobilisation around this issue by the actors providing development funds, given the importance of human rights challenges which these conditions pose to the population.

In view of the fact that mining incomes are one of the only sources of revenue for workers, in a context of extreme poverty, the degree of disorganisation is more or less consciously accepted, and maintains this status quo. Certain more optimistic observations point to the growth of the informal economy that is said to have allowed, through the development of urban and peri-urban agriculture, the generation of at least subsistence-level survival in the mining towns of Lubumbashi, Likasi and Kolwezi.

'It seems that the mentality of receiving assistance, so characteristic of the inhabitants of the copper towns, is now dying out. For them, Gecamines was the only lifeline. Beyond it there was nothing' (Bruneau et al., 1986: 252, our translation). Today, investments are starting up again. Exploiting Katanga's mining potential might be the solution not only for the area, but also more widely for the entire country. Yet one issue remains unanswered: how will this recovery benefit the local populations who have adopted the logic of subsistence, as a response to the failure of public authorities to provide for their basic needs?

In Eastern Kasai diamond production dominates the regional economy. In 2005, non-industrial diamonds from this area represented 42.6 per cent of the country's total exports (AFDB/OECD, 2007). Over recent years, observers have been reporting some improvement in humanitarian conditions, thanks to the stabilisation of 'open conflicts'. On the other hand, the working conditions of the 800,000 gold washers in the area condemn whole sectors of the population to extreme poverty, working and living in severe physical and economic insecurity.

The Bakwanga Mining Company (*Société Minière du Bakwanga*: MIBA), the country's leading diamond company, 80 per cent under state ownership, is on the brink of bankruptcy today. In 2006, its deficit amounted to some US\$140 million. This industrial giant had however experienced much more profitable times, from its creation in 1961 until crumbling at the end of the

1990s, to the ultimate benefit of the informal sector. This collapse provoked a major economic and cultural shock in the region. Ever since independence, Bakwanga had been organised on an economic and social paternalist model; MIBA provided a number of welfare benefits to miners' families. In the same way as Gecamines in Katanga, the company played a role in the socioeconomic development of the country, of Eastern Kasai and of the town of Mbuji-Mayi. Schools, hospitals, energy resources, agricultural services and housing benefited the population of the city of Mbuji-Mayi and its surrounding area. Today, miners' families are plunged into extreme poverty; MIBA is very much behind in paying salaries (eight months on average). In 2007 strikes spread, with employees demanding the payment of wages and respect for the rights of retired and laid-off employees, as well as the provision of food (Okapi Radio, 2007). Diamond production, despite constant increases in output, remains the object of bitter struggles for the control of the production channels and zones of exploitation.

The province of Northern Kivu depends on the exploitation of cassiterite and coltan (colombo-tantalite), an essential material for high-technology industries, in particular for cellphones (Martineau, 2008). In Southern Kivu, gold, diamonds and cassiterite are the main minerals extracted. Controlling the production process is thus a major issue, especially because small-scale mining potentially represents an enormous source of self-financing for regional development (Pourtier, 2005: 1). However, important trafficking is developing in these border provinces (Bruyland, 2007b). Small-scale production is dominant in these areas, and between 30,000 and 200,000 *creuseurs* (according to Pourtier, 2004) extract the ore for subcontractors who resell it, transporting it to Rwanda, to networks of traffickers and smugglers. A *creuseur* can earn up to US\$4–5 a day in gross income, but major racketing networks of gold and diamond washers result in a substantial loss of income by the local population.

The porous borders between the two Kivu provinces and Rwanda, and between the district of Ituri and Uganda, continue to encourage fraudulent trade, often deadly but still flourishing. According to a 2002 Belgian Commission of Enquiry, traceability in the diamond trade is almost impossible to ensure in the area and this situation harms local populations in a direct manner:

The informal diamond economy has become the symbol of the loss



of the State's influence .... Diamonds are extracted from thousands of small mines in numerous different locations. We do not really know how many diamonds come from the Congo, Angola or the Central African Republic. Statistics are meaningless. The rebels and government soldiers benefit less from the diamond trade than from maintaining a system of scarcity within an informal economy based on diamond extraction.

(Belgian Senate, 2002, our translation)

### *Imbalances among Provinces*

For a long time, economic imbalance among provinces in the DRC has been determined by the presence of resources and the patterns of resource exploitation (water, wood, and mineral deposits).<sup>16</sup> In the 1970s, the mining sector represented nearly 70 per cent of the Congolese GDP, but today it is down to barely 10 per cent. This drastic reduction of the contribution of resource exploitation in the DRC has further ignited conflicts of interest around the sensitive issue of the distribution of mining income. Confronted by a state that is clearly fragile, but also one undergoing major and rapid reorganisation, the mining sector is one of the keystones to the political unity and social stability of the country. Because of the vast size of the country, the mining provinces located in the east have been largely cut off from control by the political power centre in the west of the country. Yet historically, in the DRC, the state's functioning and legitimacy have depended above all on state control over the principal mining regions.

The importance of the decisive role of the mining provinces in determining peace and maintaining national unity has been well illustrated by the violently suppressed secessionist attempts of the rich provinces, Southern Kasai (1960) and Katanga (1960–1963), which had been supported by a number of foreign powers. The invasions by neighbouring countries during the two Congo wars underline the continuing importance of the mining provinces in maintaining national peace and unity. The source of all political crises since independence, the resource issue leads to some fundamental questions. How can mining income be shared equitably between the producing provinces and the rest of the country? What is the central power's legitimacy, and what methods of control can it adopt to ensure that mining income is collected and redistributed? Clearly despite what is prescribed in the legislation, mining income is still today failing to benefit the population as a whole.

If the issue of frontiers with neighbouring countries is an important stake in the mining problem, that of the borders between producing

and non-producing provinces is no less problematic. As Jean-Luc Piermay has pointed out, ‘The main characteristic of borders is that they create differentials: differentials in prices, income, regulations, distribution networks, how things are organised’ (Piermay, 2005: 608, our translation).

Mining resources determine not only economic borders (zones of exploitation), but also social boundaries (mining increases inequalities) and political boundaries (the power base of political parties). On the other hand, they flout administrative borders, giving conflicts a regional dimension by drawing in the whole Great Lakes region.

In Katanga, the true ‘economic lung’ of the country, there are more than 150 mining companies operating, including ten majors, which are currently investing in major expansions (Bruyland, 2007a). After years of crisis, the price explosion of certain minerals from 2000 (copper, cobalt, and rare minerals) inaugurated a new mining cycle in Katanga and stirred up a new struggle for control. With the increase of cobalt and copper prices, the province of Katanga became the new Eldorado for investors. The conditions for attributing Gecamines’ concessions, the country’s largest mining company, are at the centre of discussions. When the DRC was cut off from multilateral assistance between 1991 and 2001, from 1996 Gecamines’ assets began to be sold at giveaway prices to finance the running of a state in crisis.

In an attempt to avoid the complete bankruptcy of the company and to spark the economic revival in Katanga, the Congolese government decided as of 2003 to restructure Gecamines by privatising it, as the IFIs had long been recommending (Mazalto, 2005a). According to a 2006 Organisation for Economic Co-operation and Development (OECD) report:

the Government Economic Program (PEG) had already in 2004 foreseen such reorganisation, with World Bank funding, of a series of companies with negotiated ‘voluntary’ worker layoffs. This started to be applied in public companies, such as Gecamines and the Congolese Post and Telecommunications Service (*Office Congolais des Postes et Télécommunications*: OCPT), in spite of strong resistance from the trade unions.

(AFDB/OECD, 2006: 242, our translation)

The objective was to stimulate production through private sector funding and through initiatives which almost always involved joint ventures. Some of these were signed before 1997, and in fact were

singled out as unacceptable in the Lutundula Report, because they had principally benefited foreign investors rather than the Congolese State. For Paul Fortin, general manager of Gecamines, the main advantages of restructuring were to be the financial consequences which would guarantee the state an income of US\$7.5 billion (through various taxes and revenues) for the next 30 years, as well as US\$2 billion for the company and US\$7 billion to the various partners (Fortin, 2007). The social and economic benefits to the population were presented as:

- community development: according to the Mining Code, 40 per cent of mineral royalties must be paid to the province and to the local authority where the projects are developed
- an employment programme: approximately 6,000 new jobs would be created over the next five years.

With World Bank funding (Fortin, 2007), the Gecamines management committee introduced a programme to lay off 10,000 of the 25,000 employees during the year 2003. Because of the company's deplorable financial results, it was a matter of paring down the workforce (Fortin, 2007) to match the productive capacities. Those 'departing voluntarily' received a modest payment out of a total fund of US\$45 million, varying from US\$40,000–50,000 for the management-level employees, and from US\$2,000–10,000 for other professional categories. Under current financial conditions, Gecamines does not have the means to guarantee the security of its workers.

Furthermore as it does not have the means to exploit all its concessions, the company enters into short-term contracts with small-scale foreign companies which assume responsibility themselves for extraction and securing control of their part of its concessions, which would otherwise be subject to what some would consider as 'plundering' by local small-scale miners. This method of private subcontracting contributes to the recruitment of former Gecamines miners and the small-scale local miners, thus reducing the employer's contribution which is normally required to be paid (to cover services such as health-care, transport costs and children's education). The small-scale miners, in effect self-employed, are remunerated at a fixed rate, under conditions frequently below ILO norms. This situation has contributed to the increased insecurity that miners in Katanga are facing, both financially and in terms of the duration of their work contracts, material employment conditions and possible assistance in case of an accident.

The study of Gecamines shows the extent to which, in the DRC

mining provinces, the mining sector reforms have had a limited positive impact on the rights of local populations, on the rights of women and children, and on labour rights that remain largely flouted. It would seem that inhuman conditions observed around mining sites are tolerated in the name of moving ahead with the application of the reforms. This observation holds true in most of the mining provinces, even if the production techniques, the state's capacity to intervene and the international economic actors (IFIs, private sector companies) differ.

The adoption of a new Mining Code undoubtedly contributed to an increase in investments in this sector. But as for promoting rights, the law seems totally out of touch with Congolese political, economic and social realities. This context ought to have been recognised more clearly, in view of the fact that it interferes with the application of the new mining legislation.

The current decentralisation policy represents both an opportunity for harmonising practices and a new risk for breaking up the country. What legitimacy will the Mining Code acquire in view of its provisions (DRC, 2002: Art. 242) for mineral royalties to be divided 60 per cent for the central government, 25 per cent for the provincial administration and 15 per cent for the local authority where the mining company is operating? The absence of effective regulating capacity explains more generally, and in large part, the continuing conflicts and human rights violations in the mining provinces (Kasaï, Kivu and Katanga). Given the importance of the interests at stake, the conditions necessary for effectively applying the country's mining legislation do not in fact exist at present.

The Constitution instituted a 'Governors Conference chaired by the Head of the State' (DRC, 2006a: Art. 3) to make arrangements for applying the clauses of the Mining Code. However, the legal framework, which allots 40 per cent of royalties to the mining provinces, seems to be conditional on two principal factors. Firstly, the current needs of the central state are immense, notably to pay off debt – still significant even after part of it was cancelled – and to restore its authority and legitimacy. Yet the mining provinces are counting on the fact that mining revenues be 'assigned exclusively to constructing basic infrastructures of community interest' (DRC, 2002: Chap. III, Art. 242, our translation). These provinces are applying political pressure so that they will receive their constitutionally guaranteed rights. As Bonne (2003) has remarked, 'Regimes are unlikely to devolve real power and resources to rural leaders they do not trust and/or cannot control.' This reality, a

reflection of the history of the country, is sufficient grounds to explain why revenues are likely to be withheld by the central authority.

### *Uncontrolled Violence*

There are three principal factors contributing to maintaining an overall climate of violence surrounding mining activities in DRC:

- living conditions and working conditions of populations around mining sites
- corruption and threats which dominate the mining economy
- the armed conflicts which continue to proliferate in the country's border regions.

At present, the majority of Congolese mining sites are exploited without any control over payments to workers or of job safety standards. Many international NGOs, as well as the ILO, have focused particularly on child labour. A recent study in heterogenite mines in the south of Katanga Province estimated that several thousand children under the age of 7 years were employed as *creuseurs* (Groupe One, 2006). The presence of uranium on some sites endangers in a most direct manner the lives of workers and of the local population (Mazalto, 2005b). Several independent initiatives have been introduced. The ILO has attempted to improve living and working conditions for those working in the Katanga mines (Abedi, 2007). The aim is to strengthen 'good governance', ensure the respect of legislation and rights, and encourage negotiations involving social dialogue between all interested parties.

Corruption and the use of threats continue to dominate relationships between the different actors in the mining sector. The various reports mentioned previously (the UN Expert Group, Kalala, Lutundula) give a good idea of the practices observed at the highest levels of the state, and raise the issue of how 'power is exercised in the management of a country's economic and social resources for development' (Campbell and Ahado, 2007: 1). At both the provincial and local levels, such practices, which combine corruption and threats, often directly involve the principal economic actors and the representatives of public authority.

Uncontrolled violence often assumes a 'war-like' logic that is still very present, even though conflicts have officially ended. Illicit traffic in minerals feeds into the arms trade and finances the militias who control

the still highly strategic mining zones. The reports of the Expert Group on the illegal exploitation of natural resources in the DRC surveyed the principal conflict zones directly linked to the mining economy (Kassem et al., 2003). The mining zones located in the east of the country (Ituri, Northern and Southern Kivu) and in the north of Katanga are still areas where the local populations are under constant threat. It is precisely in these zones that the mining economy is least well organised, where the small-scale sector dominates, as opposed to the provinces where Gecamines and MIBA exploit minerals on an industrial scale. During and after the transition, violence perpetrated against civil populations by the army (FARDC) is a continuing leitmotiv of the majority of MONUC reports (MONUC is the UN mission in the DRC). Arms traffic, ethnic violence, sexual violence, kidnappings and exploitation of local populations, population displacements, child soldiers, are all part of the day-to-day experience of most inhabitants of these regions.

The NGO Human Rights Watch has written a report on *The Curse of Gold in Democratic Republic of Congo* testifying to the human rights violations observed in dozens of mining sites they visited:

Gold has been a critical factor in human rights abuses in north-eastern DRC. The DRC government, its neighbours, the UN international donors and the private sector need to work together to stop the trade in illegally smuggled gold and other resources.

(Human Rights Watch, 2005: 129)

Similarly, the district of Ituri, in the Eastern province, has over the past few years gradually become one of the most dangerous areas in Africa. In the Kivu region, armed factions are fighting for the control of resources. The areas where arms sales are most intense are the mining zones, border zones, farming areas and urban zones (Berghezan, 2006: 46). The lack of control at the borders between Ituri and Uganda, and the Kivu provinces and Rwanda, encourages the development of arms trafficking, of precious stones and minerals smuggling, sustaining a local guerrilla force that is part of the destabilisation of the east of the country. In this context, in 2007, Northern Kivu still had to deal with the presence of a significant number of soldiers of the Rwandan army.

This rapid overview reveals the importance of the challenges existing in applying the national mining policy to promote and respect human rights. The January 2007 UN Security Council's report on the DRC showed just how complex are the stakes linking the armed groups, the various states of the region and criminal networks, to which have to be

added the various forms of large-scale corruption (UNSC, 2007a). However, the situation at the borders seems to have improved since the end of the transition period. The links between resource exploitation and armed activities nonetheless remain very much in place.

To what extent can such a culture of violence continue to dominate, despite the fact that, at least in theory, the sector has undergone serious reform (Dufresne, 2007)? According to a report commissioned in 2005 by the UN Economic and Social Council, part of the explanation may lie in the extremely insecure status of those working for the armed forces, as well as civil servants and other government officials. ‘Underpaid or unpaid, these “legal representatives” probably contribute to encouraging impunity, corruption, harassment and assassinations, particularly of journalists and human rights advocates’ (Pacéré, 2007). This climate, which approaches a state of anarchy, has to be understood in its historical context, for since independence, under the Mobutu regime, these practices have become part of a strategy of governance by terror.

*The Lack of Control by the Central Power and the Weakness of Institutions*

When the IFIs recommended restructuring the country’s strategic sectors, did they really take into account the importance of the political and economic context in determining the likely effectiveness of reforms? With reference to the conditions in which the reforms were undertaken, Kabanda has noted:

Unfortunately, it was in a climate of political uncertainty and division among the Congolese political actors that, paradoxically, the international community and the European Union chose to invest in a fundamental reform of the political process in the Congo. This process ought to have been truly inclusive and especially to have been supported by all the representative forces of the country in order to lead to a credible and acceptable result for the majority.

(Kabanda, 2006: 2, our translation)

After adopting the first reforms in 2002, the country waited a whole year, until June 2003, before electing a government of national unity, named the ‘transition government’.<sup>17</sup> At its head, Joseph Kabila and other former rebel leaders followed a consensual logic based on negotiation. The three main military factions (PPRD, RCD and MLC),

which had been transformed into political parties (CRR, 2006), participated in the government.

The degree of serious political instability reflected the weakness of the institutions at both central and provincial levels. These two factors raise the question whether the newly formed government had the capacity to implement the mining reforms adopted by governments whose legitimacy was widely challenged. In this context, even the legitimacy of the reforms advocated by the IFIs can be questioned, especially since they are being implemented by a 'fragile State' (Châtaigner and Magro, 2007). As Bayart (1996) has noted, although the former Zaire has a strong sense of being a nation, the state's legitimacy 'in a changing world' (World Bank, 1997) still faces important challenges. This climate, propitious for the violation of rights, received clear confirmation in the 2006 'Growth Strategy and Poverty Reduction Document' (*Document de la stratégie de croissance et de réduction de la pauvreté*: DSCR), published during the transition government:

The restructuring and liberalisation of the mining sector that started in 2004 throughout the country led to the expropriation of peasants from their land to the benefit of mining concessions, to fraud and to certain parties seizing the lion's share as a result of the signing of very unfavourable contracts.

(DRC, 2006b: 35, our translation)

If the reforms have made restructuring the mining institutions and legislation possible, under the difficult conditions that we have described, these reforms seem to have been introduced mainly from the state capital, Kinshasa, seat of the central power. How can we expect them to be applied when, in such a vast country, the state is still too often represented by armed forces, notorious for their acts of plundering and massive violations of rights? The decentralisation policies designed to give the provinces financial autonomy can only work under certain conditions.

First, the mining revenues have to be collected and redistributed by the central state, through protected and secure procedures, a situation which is not yet the case today. According to IMF figures, in 2006 the Tax Recovery Directorate (*Direction Générale des Impôts*) collected approximately US\$100 million out of the anticipated US\$250 million (DIA, 2007a). The current challenge is therefore to strengthen the presence of the state in all provinces in order to ensure not only better tax recovery, but also the equitable redistribution of these revenues



throughout the whole national territory. To be able to do this, the political leadership has to be able to count on suitably trained and adequately paid local authorities that have the means to guarantee that the revenue collected is used appropriately.

Second, restructuring the local administrative grid in the whole territory is one of the main challenges of the reform. Indeed, at both the national and local levels, embezzlement of funds thrives on a lack of control by the representatives of the state and civil society and upon a generalised situation of sectoral disorganisation.

Third, the central state has to be in a position to adopt a mining policy adapted to the needs of the different provinces, with fund traceability mechanisms and capable of rendering of accounts. Both private investors and government employees must be subjected to these policies, in order to create common obligations of transparency and collaboration.

Even if the legislation has provided for the application of such mechanisms, the lack of funds, of human resources and of local expertise persist and are likely to compromise their introduction in the principal mining regions. However, it is precisely these measures that could give teeth to the new mining legislation in order to break out of the plundering logic that has dominated the sector for decades. At present however, the reform has been introduced in a context characterised by the effective lack of control by the central power and by weak institutions. We can only speculate concerning the real probability that the state will apply the most costly and potentially the most restrictive clauses (notably concerning social and environmental aspects) in a climate that continues to be marked by such a degree of impunity. It would appear that resorting to imposing a system of rights and standards has become the option privileged by the IFIs to mitigate the weakness of the state.

## **THE MINING SECTOR AND THE INTRODUCTION OF A SYSTEM OF RIGHTS AND STANDARDS: THE HUMAN RIGHTS SITUATION IN THE DRC MINING SECTOR**

### **The Different Systems of Rights**

The restructuring of the Congolese mining sector has above all aimed at promoting the rights of investors and the security of the population, in order to provide a guarantee of social peace. Beyond respecting the new legislation and reinforcing public control mechanisms,<sup>18</sup> the IFIs encour-

aged the state and investors, as partners in development, to join international initiatives and to adopt what are presented as transnational 'good governance' standards. As Campbell (2005) has emphasised, however, in doing so, the political and social dimensions at stake and the rights and standards that are recommended tend to be treated above all as procedural considerations and issues of good administration, 'in terms that are principally procedural'.

As a result, what becomes apparent is that the perspective of the IFIs concerning human rights is to adopt an approach that associates these rights with a series of norms to guarantee an increase in the achievement of the performance standards of multilateral institutions, states and investors:

What are the human rights objectives for the performance standards?

- Helping clients understand human rights as risk in their business.
- Helping clients use human rights to identify opportunities for value creation.

The challenge is to take accepted human rights norms and translate them into practical and generally applicable standards for investment in the private sector in developing countries.

(Kyte, 2005)

Codes of conduct thus become the preferred instruments of the international community (Campbell and Mazalto, 2004). This pragmatic approach contributes to depoliticising the issues raised by rights. According to Brugvin, 'these new instruments of control by citizens aim to compensate temporarily for the lack of national and international public regulatory systems' (Brugvin, 2002: 1, our translation). However, this option generates the complex question of the social and political legitimacy of the different levels of authority and forms of control.

At the beginning of the new millennium, the reform of the Congolese mining sector was thus characterised by the approval of a dual process: the country's adherence to new development standards which incorporate both public law (the rule of law) and private law. Transnational initiatives encouraged a technical and managerial logic of control based on the voluntary mobilisation of economic and political actors around human rights, understood narrowly however, as involving one dimension, providing basic human security. In fact, the responsibility of the economic actors was limited to adhering to

international codes of conduct which concentrate on the transparency of standards and ensuring the security of sites where mines are operating, as well as the areas surrounding the concessions.

We can also note that the majority of transnational initiatives introduced in the country are concentrated in subsectors with high human risks, such as diamonds, because of the deadly conflicts in Central and West Africa (Sierra Leone, Nigeria, Rwanda and the DRC). In the DRC, diamond exploitation alone contributes up to 75 per cent of the money paid to the National Treasury. There are nearly 1 million small-scale *creuseurs* throughout the country. The main objectives of the international codes of conduct concern reinforcing control over practices in each sector and the transparency of revenue management. Reference is also made to the improvement of the living conditions of the small-scale miners. In this context, in 2003 the Congolese State signed the Kimberley Process Certification Scheme adopted by the UN General Assembly. It subsequently joined the Diamond Development Initiative (DDI) (Partnership Africa Canada, 2005), aimed at ensuring that diamond production would benefit local communities and national governments. Joining the Extractive Industries Transparency Initiative (EITI), in 2005, with strong World Bank backing, beyond its objective of promoting greater traceability of mining revenues, was intended to promote the productivity of small-scale producers and to ensure the development of the production zones (DRC, 2007).

The tendency to resort to certification schemes and mechanisms based on transnational expert systems can be observed in many countries of the South. It proposes what appears as an interesting solution for the mining industry, which is increasingly challenged concerning the social, economic and political consequences of its activities. However, and as suggested in the Introduction of this book, this dual process of both transnationalising and privatising national regulatory mechanisms has questionable consequences. Among other reasons it:

suggests a generalised process through which areas of national public legal responsibility are systematically privatised and uploaded to the transnational sphere. Economic globalisation has triggered new local demands for the social regulation of private sector development .... Thus national law and politics are converted into transnational laws and politics.

(Szablowski, 2007: 290–1)

As can be seen, the reform of the Congolese mining sector is based simultaneously on privatising mining companies, adopting free-market laws aimed at encouraging foreign investment, and establishing a control system over public affairs through the adoption of transnational regulatory mechanisms based on private law. These new mechanisms come as an answer to a social demand for better control of mining practices. However, they reflect above all the concerns of competitiveness and the short-term considerations of private actors, which operate under conditions that fall largely outside systems of public accounting based on the notion of the rule of law. Issues such as the integrated management of the sector and the redistribution of wealth to the benefit of the whole population are most likely to be side-stepped by these regulatory instruments, for these mechanisms seem to reflect a logic in which control is externalised. On the one hand, this tendency contributes to depoliticising human rights by reducing them to the objectives of providing security for investments, sites and people; on the other hand, it tends to weaken the authority and legitimacy of the state, by confining it to the roles of regulation and redistribution, neither of which it can fulfil however because of its lack of means.

The issues raised here are revealing of what could be characterised as a bicephalous rights system. The complexity of this regulatory system raises questions about the hierarchy of the standards involved, their legitimacy and the conditions of their coexistence. It also brings us back to the responsibility of the various actors concerned, particularly when we recognise that private law systems address the concerns of the leading industrial actors, the major corporations, without solving the issue of the compliance of mining-operation rules by small companies and small-scale miners, who represent the majority of producers in the DRC.

What remains to be explored is the extent to which these various instruments will indeed help promote the civil, economic and social rights of the population, as well as maintaining peace in the mining zones where violent confrontations are still frequent.

### The Human Rights Situation in the Mining Sector in DRC

If international norms have been superimposed on the Congolese legal system to ensure that minimal standards for mining operations are respected and to attempt to relegitimise these activities, to some extent and at least temporarily, a similar phenomenon can be observed with regard to maintaining peace. The main mining regions in conflict zones

were still, as of the end of 1999, under the control of the UN Mission in the DRC (MONUC), which is the most important peacekeeping mission in the organisation's history.<sup>19</sup> Its mandate consists of supporting the peace process and protecting the civilian populations threatened by physical violence in the Ituri and Kivu provinces. The numerous MONUC reports<sup>20</sup> show just how extensive this task is, and will continue to be until the state acquires an effective and legitimate judicial system to guarantee 'the essential protection of human rights in the DR Congo' (Yacoubian and MONUC, 2007, our translation).

In March 2007, an IMF mission recognised that the situation was difficult. What about the country's social development now that the DRC 'has emerged as a new hot spot for the global mining industry which has been forced to search in increasingly difficult areas to find untapped sources of mineral wealth' (Hoffman, 2007: 1)? In a context in which the expansion of mining is encouraged, how are the populations affected by the accompanying development programmes, when the country continues to be the prey of violent conflicts in regions relatively inaccessible to the public security forces and characterised by institutions which lack capacity to control and enforce?

The various official reports, financial indicators and HDIs all point to living conditions that are still very difficult, even a few years after the end of the war. They also underline the size of the challenges of redistributing the gains of growth and promoting human rights. An April 2006 IMF report concluded that successive civil wars (1993, 1997 and 1998–9) had had very negative socioeconomic effects. The Bank estimated that between 70 and 80 per cent of the population was living below the poverty line (defined as US\$1 per day), compared with approximately 30 per cent in 1993 (IMF, 2006: 5).

According to the IMF, some limited progress in macroeconomic growth has accompanied the mining sector reforms (IMF, 2006: 24). Foreign investments are returning to the country and this is bringing some growth: 5.1 per cent in 2004, 6.5 per cent in 2005 and 5 per cent in 2006 (DIA, 2007b). The recovery is mainly explained by the positive performances of the mining, construction, telecommunication and wholesale sectors. The increase in exports in 2004 resulted mostly from the rise of cobalt prices and the increase in mining production of 35.3 per cent compared with 2003 (AFDB/ADF, 2005). On the other hand, the majority of the Congolese population do not benefit from the positive effects of this growth. Much work still has to be done to apply Article 58 of the Constitution: 'Every Congolese has the right to enjoy the national wealth. It is the state's duty to redistribute it

**Table 5.1** Human development and health indicators in DRC\*

Economy and access to services	Health
<ul style="list-style-type: none"> <li>• 80 per cent of the Congolese population is economically vulnerable: more than cent of urban population lives with US\$1 per day. 55 million people live on US\$0.30 per day (2005).</li> <li>• Gini Index of Income Inequality: 42 per cent, revealing the existence of distributive injustice, with an almost endemic discrimination and exclusion in the country.</li> <li>• 92 per cent of households do not have enough to eat at least once a day (less than three meals). 75 per cent of the population is undernourished and without regular access to drinking water.</li> </ul>	<ul style="list-style-type: none"> <li>• Calorific deficit in children below 5 years of age: about 30 per cent of weight insufficiency. One child in five does not survive beyond the age of 5.</li> <li>• Malaria causes 52.4 per cent of registered deaths; tuberculosis 40 per cent. Sleeping sickness affects approximately 12.5 million people.</li> <li>• Maternal mortality rate (990/100,000 births) and child mortality rate (118.7/1,000) are among the highest in Africa.</li> </ul>

\* 'Rich countries neglect the humanitarian crisis in the Democratic Republic of Congo', warned the NGO Oxfam International. Since the call made on February 13, 2007, donor countries have only given \$94 million (14%) of the \$682 million needed for the Humanitarian Action Plan (HAP) developed by the United Nations, Red Cross and agencies. During this three-month period, deaths linked to the conflict are estimated at 100,000 people (Oxfam press release, May 13, 2006).

Sources: AFDB and ADF (2005) and AFDB (2006).

equitably and to guarantee the right to development' (DRC, 2006a, our translation). Yet, despite the richness of the soil and subsoil, in the main mining towns, such as Mbuji-Mayi in Eastern Kasai, the population continues to live in dismal poverty. Countless women and children attempt to survive through small-scale diamond mining, as *creuseurs*. The existing climate of violence in the informal concessions coincides with a complete lack of any form of security for the workers.

In Katanga, it is true that some communities living close to the mining sites occasionally benefit from social projects by large foreign companies. They may also benefit from the infrastructural programmes built to help the sites operate: roads, electricity and running water, but such benefits are not guaranteed and remain inadequate. Consequently it would appear that the main development challenges concern making the mining zones more secure and ensuring that policies for the equitable redistribution of mining incomes are implemented. Beyond this, in view of the existence of regional disparities and the diversity of the forms of

production (industrial sector, small mines, small-scale industry), the complexity of the situation represents a major challenge for the government, which has to develop approaches that reflect the extent and diversity of needs.

Responding to the human rights situation goes far beyond obtaining 'good' macroeconomic development indicators, because it depends on the state's capacity to redistribute equitably the benefits of growth, apply security standards at the mining sites and guarantee peace at the national borders. For local populations to escape from conditions of bare survival, they must also be protected from cycles of inflation which force up the price of basic food products. (These have mostly been imported since the adoption of a free trade policy in the 1980s.) Thus, the human rights situation in the mining sector in the DRC remains extremely alarming. It seems likely that only an integrated approach to development, combining policies to secure mining zones, to stimulate both mining and agricultural activities among the local populations, and providing macroeconomic stability, would be in a position to improve the situation.

Such an integrated approach to development would also benefit from an increasing mobilisation of civil society, both in the DRC and at an international level. As recommended by the IFIs and the EIR report, there is currently a will to place social participation at the centre of a rights-based approach to development. Given the inadequacy and dysfunctional nature of any form of multistakeholder dialogue in the sector, in May 2007 the public authorities in the DRC, working together with the mining companies and civil society, initiated a new joint-action framework which was to be continuous. According to UN sources (Okapi Radio, 2007), the objective of this round table was to generate a social dialogue among local NGOs, the mining companies and the Congolese State.

Henceforth, all problems, especially those related to human rights violations, were to be discussed within this council before being brought into the public arena. This initiative testifies to the need to develop participatory mechanisms and better public control over the introduction of laws. Creating new political spaces, as in this scheme, has resulted in the mobilisation of citizens, whether experts or not, who are concerned to integrate their involvement in a process of participation and appropriation of current development policies being implemented in their country.

## CONCLUSION

No other country in Africa has as much mining potential as the DRC. As certain analysts have remarked, nowhere else has the disintegration of the state reached such an advanced stage (Misser and Vallée, 1997).

For Colette Braeckman, during the last few years, the DRC has been running a true obstacle course:

constitutional referendum, legislative and presidential elections, setting up an elected Parliament .... A pedestal of legitimacy has been built, divergent political currents exist, and alliances are negotiated. At this stage, it appears that the worst is not certain to happen, that the most pessimistic forecasts are being contradicted by facts.

(Braeckman, 2006, our translation)

Now that the country is emerging into a post-crisis stage, the issue of the conditions necessary to permit implementing reforms takes on considerable importance. In this regard, studying the human rights situation constitutes an appropriate entry point because of the holistic approach it requires and because the international community formally recognises this dimension as a priority in order to measure the effectiveness of progress that has been achieved.

One of our hypotheses was that the promotion of human rights presupposes creating mechanisms for equitable wealth distribution, and requires the existence of legitimate institutions throughout the whole country. We also postulated that promoting rights requires a developmental approach that goes beyond ensuring the existence of legal and administrative measures, and also entails the corporate and political responsibility of the different actors in order to guarantee the protection of rights. It seems essential to take into account these two dimensions in a country as complex as the DRC, since (as in many other countries of Africa) their implementation represents a major challenge. Analysing the issue of rights comes down not only to questioning the capacity of the mining sector to contribute to sustainable development, but also to evaluating the experience of this country with regard to the development programmes recommended by the multilateral funding institutions.

Kirsti Samuels has pointed out in this regard that 'Although there is growing focus on the rule of law in post-conflict countries, there is little guidance on how to approach such rule of law reform, nor how the strategy adopted ought to differ from that in developing countries' (Samuels, 2006: 6). In the short term in the DRC, the attempt to



restore the rule of law seems to depend on achieving performance criteria and promoting corporate governance. Human rights, translated into the language of development standards to promote good governance, may well contribute to reinforcing the legitimacy of the activities of certain economic and state actors. But the issue of rights, which are in fact eminently social, cultural and political, goes well beyond such a managerial perspective. Paradoxically, and beyond the EIR recommendations, these dimensions seem to have been given relatively low priority in the development programmes presently being applied in the Congolese mining sector.

In the context of current discussions concerning the orientations of development programmes, the EIR recommendations represent an interesting contribution as they have the merit of giving priority to a rights-based approach and the conditions necessary for implementation of rights. However, if the main EIR recommendations are considered in the light of WBG policies in DRC, many questions still remain unanswered:

- Can it be considered that the passage to a so-called ‘democratic’ regime, but one that lacks functional and therefore legitimate institutions in most of the provinces, is sufficient to guarantee the application of the proposed new legal frameworks or even the EIR recommendations?
- How is it possible to imagine that the mining provinces in the DRC could be pacified and the new standards of the Congolese legal framework applied when the Congolese army itself, already very poorly equipped, is only just slowly beginning the necessary process of reintegrating the various militias?
- How could this come about in view of the fact that the presence of private security forces, which presently control the perimeters of the mining sites, is likely to increase with the massive return to the country of foreign investors?
- How can better living conditions be provided to the millions of *creuseurs* currently threatened with expulsion by the upsurge of industrial mining activity?
- Under what conditions can international norms and standards that are introduced in the DRC, especially those concerning the mining sector, be integrated into the Congolese sociopolitical system?
- Will the attempt to re-establish ‘mining legitimacy’ by reforming the legal and institutional frameworks be sufficient to ensure that the

practices of a sector involving high human and environmental risks evolve in a positive direction?

- In this context, will the manner in which the reforms are implemented – in which the management of mining liabilities (social and environmental) relies mainly on a state which lacks the means to do this – ensure that they receive the support they deserve from bilateral funding agencies and the IFIs, which have committed themselves to promoting sustainable development in the DRC?
- Does the superimposition of the different systems of rights, encouraged by the IFIs, really constitute a transitional measure with a view to reinforcing national legal frameworks, or does it mark the passage to a legal system intended above all to support the promotion of investments based on the respect of voluntary international standards of private rights? If the latter is the case, are the mining sites not likely to be converted into true territorial, cultural, economic and legal enclaves? Under these conditions, how will it be possible to think about an integrated approach to policies to ‘fight against poverty’ which would really take into account the specificities of each region as well as the needs of the country as a whole?
- Can the willingness to involve Congolese civil society in the mining sector, mainly through trade associations and civil society organisations – trade unions, and specialised legal teams and human rights associations – lead to their acquiring a strategic role to encourage the appropriation and the diffusion of new standards by and among the Congolese population?

Our analysis of the Congolese mining sector leads us to suggest that the participative option of development programmes needs to be clarified, but the extent to which constraints in the political arena will condition the emerging forms of participation remains to be seen.

Finally, we could question the perception of the Congolese population with respect to human rights (Gbago, 1997), which are so central to international concerns. Under what conditions could this concept find an echo in a country that is still suffering from significant instability in the eastern provinces, and where extreme violence is still present, particularly against women and children? Respecting and/or reconstructing economic, cultural and social equity and tolerance among different sectors of the population, through the mobilisation of local initiatives and resources available, with the benefit of support programmes – all preconditions to opening up space for political intervention – would

appear as important avenues to be explored. Studying the reforms that have been introduced in the Congolese mining sector raises in a very direct way a further and complementary issue, the corporate and political responsibility of the actors engaged in the reform process. Designing and adopting new frameworks constitutes only the first step in a process that must be capable of leading to mechanisms that permit the appropriation and implementation of these changes.

## NOTES

- 1 Believed to be an expression of Cecil Rhodes, founder in 1880 of the South African company De Beers.
- 2 This expression simplifies reality: the human consequences of conflicts must be considered in their regional dimension. Many Rwandan refugees, for example, died on Congolese territory.
- 3 The World Bank is composed of two distinct development organisms, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA), and is under the control of its 185 member countries. The IBRD works for middle-income countries and creditworthy poorer countries, whereas the IDA is devoted to the poorest countries.
- 4 Translation of the French expression '*d'État de fait à État de droit*'.
- 5 With the Pretoria Peace Agreements (South Africa, March 1, 2003), the Presidents of the DRC, Joseph Kabila, and of Rwanda, Paul Kagamé, signed an agreement to end a four-year-long war in the DRC and to safeguard the stability of the Great Lakes region.
- 6 In 1982 Erwin Blumenthal, a German banker and senior member of the IMF, was mandated by the IMF to reduce the kleptomania of the Mobutu regime. He published a condemnatory report. Following this assignment, he resigned and denounced the continued aid and increase in payments by the World Bank and the IMF.
- 7 Other confidential reports could be included in this list: Ernst & Young (2006) and Duncan and Allen (2006).
- 8 Result of the resolution no. DIC/CEF/04 of April 2002 (Inter-Congolese Dialogue, 2002).
- 9 For example, the four-year contract signed in April 2003, between MIBA (Bakwanga Mining Company), 80 per cent controlled by the Congolese State, and the Canadian company Emaxon required MIBA to sell the majority (88 per cent) of its production to the Canadian company, in exchange for a US\$15 million loan, at a price half that prevailing in the small-scale market. This illustrates how some inequitable agreements can still today deprive the state, and therefore the population, of the income from mineral resource exploitation.

- 10 According to the Mining Code, 5 per cent of the shares of mining companies must be ceded to the state to enable it to prospect for new deposits. This share is from 12.5–25 per cent in the case of a partnership with state companies in default.
- 11 The three accused are the Minister of Order and Public Security, accused of illegal diamond and cobalt trade; the Minister Delegate in the Presidency, denounced for having participated in signing inequitable and exploitative joint-venture contracts with Zimbabwean and South African companies; and the Minister of Planning and Reconstruction, also president of the National Commission of the Fight against Corruption and shareholder of the Sengamines company, specialising in the diamond trade. The report of the expert group on illegal exploitation of natural resources also reveals the alleged participation of the person in charge of the security services, presumably involved in various forms of trafficking, especially the arms traffic. Accusations are also directed at the former Minister of Foreign Affairs in the government of Laurent Désiré Kabila, currently director of MIBA, the biggest state company specialising in diamond exploitation and trade.
- 12 The term used (*revisités*) is significant. Renegotiating contacts already signed is a complex process which requires several stages (Africa Mining Intelligence, 2008).
- 13 ‘*Creuseurs*’ is often maintained in English texts, as it refers to the very particular situation in the DRC, with many small-scale informal miners.
- 14 The Mining Environment Service is a public service which is part of the Ministry of Mines.
- 15 With its own juridical personality, SAESSCAM is an autonomous public service with specific responsibility for small-scale mining.
- 16 For more information about ores in the DRC, see Euromines (1999).
- 17 This government’s executive was composed of a president and four vice-presidents.
- 18 In 2006, the terms of reference of the Mining Plan were established in order to define the orientations, objectives and means of policy in the sector.
- 19 For more information, see the many reports written for the Security Council by the expert group on the situation in DRC (see UN, 2007).
- 20 MONUC chief William Swing held a meeting at the Africa Center for Strategic Studies in Washington D.C., on May 3, 2007. ‘War, Peace and Beyond’ was the title of his presentation, in which he explained MONUC’s achievements and the challenges lying ahead not only for this mission but for the entire UN peacekeeping operations more generally.

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# CONCLUSION: WHAT DEVELOPMENT MODEL? WHAT GOVERNANCE AGENDA?

*Bonnie Campbell*

In the context of the revision of past mining regimes in Africa on a wide scale and in an attempt to contribute to a better understanding of the issues at the centre of continuing debates, the objectives of this book were to:

- illustrate certain continuing patterns of the social, economic and environmental implications of current activities in the extractive sector in Africa
- underline the need to introduce more appropriate legal, fiscal and regulatory frameworks for mining and to do this from a developmental perspective
- raise the importance of reinforcing the institutional and financial capacities of the countries concerned to ensure that they are in a position to monitor, to enforce and if necessary, to introduce remedial measures.

In order to analyse current trends against a set of credible benchmarks, the book used as a framework the three main areas of recommendations of the World Bank Group's (WBG's) Extractive Industries Review (EIR) which was made public in December 2003. These concerned:

- pro-poor public and corporate governance, including proactive planning and management to maximise poverty alleviation through sustainable development
- much more effective social and environmental policies
- respect for human rights.



With regard to the mineral rich countries of Africa, in view of the central role that the WBG has assumed in shaping the ‘appropriate frameworks for the successful development of their resources’, the evaluation of the impact of mining activities in this book has been undertaken in the context of the regulatory frameworks and development programmes approved by these institutions. For the new regulatory frameworks have played an important role in conditioning the orientation of reforms, and the manner in which mining projects are designed, implemented and monitored.

Beyond proposing specific solutions that could be realistically introduced to address particular problems, the set of recommendations put forward by the EIR, if considered as a whole, underlines that to limit reforms to simply implementing better norms and standards is clearly not sufficient as a means to ensure that the extractive sector serves as a lever for development in mineral-rich countries of the South, and notably in Africa.

Following the suggestion implicit in the EIR recommendations for the need to adopt a broader approach in order to understand the introduction of reforms and the conditions surrounding their implementation as a ‘process’, the set of studies in this book has attempted to take account not only of the framework for development introduced through the reforms, but also of the ‘development model’ of which reforms and projects are a part.

Consequently, underlining the analysis of each of the chapters in this book is the assumption that past reforms have shaped, and continue to shape, the choice and design of the particular ‘development model’ and an evolving ‘governance agenda’ introduced through the reform process that has overhauled the mining sector in the countries studied over the last two decades.

### **WHAT ‘DEVELOPMENT MODEL’?**

As was made explicit in the account of the important mining project analysed in Chapter 4 on Madagascar:

The World Bank has been instrumental in this process by depicting the mining project as an integral part of the ‘development model’ that we described earlier. Under these conditions, the project [QMM] no longer simply represents a private initiative by a transnational corporation with which the Malagasy government

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can choose whether or not to be associated, but rather it has become the only possible response to Madagascar's development problems, and in particular to the problem of poverty.

With regard to the content of the development model that has emerged in the policy environment of the 1980s and 1990s and under the leadership of the World Bank, Szablowski summarises:

the new agenda advocated comprehensive privatisation of state companies, an end to restrictions on foreign ownership and the repatriation of profits, lowering rates of taxation and royalties, restructuring labour laws to permit greater flexibility, and the termination of performance requirements such as those mandating local sourcing or local hiring. In addition, mining legislation had to be rationalised, administrative processes simplified, technical services to the industry (such as modernisation of the mining cadastre) improved, and 'subjective' elements of bureaucratic discretion removed from the permitting and approvals processes.

(Szablowski, 2007: 34)

At the centre of this model was the redefinition of roles and responsibilities assumed by public as opposed to private actors. To this end, the role of government was presented above all as that of creating a suitable environment for the private sector. This perspective was set out explicitly in the 1992 World Bank study *Strategy for African Mining*, which recommended: 'A clearly articulated mining sector policy that emphasizes the role of the private sector as *owner* and *operator* and of government as *regulator* and *promoter*' (World Bank, 1992: 53, our italics). And as Szablowski summarises:

In short, government was to cease being an owner-operator pursuing social or political goals through its operational involvement in the mining industry. It was instead to become an efficient and 'apolitical' regulator focused upon the facilitation of private investment and the technical aspects of permitting and regulation.

(Szablowski, 2007: 34)

Over a period of more than two decades, the adoption of the proposed reform package:

was presented explicitly as a question of regulatory competition in

the race to attract investment. Efforts to promote the neoliberal reform agenda emphasised the idea that early reformers were ahead of their rivals. Levels of taxation in particular were presented as subject to regulatory competition in this regard.

(Szablowski, 2007: 34–5)

Among the difficulties that arose from the resulting measures was that the ability of states to respond to pressures, notably from communities affected by mining, became circumscribed by the legal and practical conditions to attract foreign investment. One coping strategy for dealing with the lack or shortage of room to manoeuvre which was caused by the need to respond to (if not reconcile) these competing internal and external pressures, involved ‘a formal award of rights to the investor accompanied by an informal delegation of local regulatory responsibilities’. And as Szablowski goes on to summarise, ‘it appears that states themselves are involved in transferring legal authority to mineral enterprises to manage social mediation’ (Szablowski, 2007: 27).

Another coping strategy adopted by states suggested by the same author is one of ‘selective absence’ (Szablowski, 2007: 28). In fact:

While state legal regimes appeared to mediate between investors and community interests, in practice the state absented itself from substantial parts of the process. Furthermore, the legal framework established by the state effectively delegated informal responsibility to mining firms to bear the cost of responding to local claims for social mediation.

(Szablowski, 2007: 45)

An analysis of the impact of the measures of liberalisation of the African mining sector over the last two decades (Campbell, 2004) confirms the extent to which what in the past were considered public functions were increasingly being delegated to private operators: ‘These include not only service delivery, but standard-setting, rule implementation and enforcement’ (Szablowski, 2007: 120). The tendency is therefore one in favour of ‘an increased (and often reluctant) assumption of state-like responsibilities by transnational mining enterprises at the discreet behest of weak governments’ (Szablowski, 2007: 59).

In conjunction with the retreat of public actors from key areas of involvement in mining activities, including participation, regulation and planning, together with the transfer of certain state functions to

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private actors, another key impact of the reform process has been to circumscribe policy space and the range of policy options open to governments. The overriding emphasis on minerals to be mined on an industrial scale and destined for export, as has been recommended, has seriously constrained the potential contribution of mining activities more generally to industrial diversification and infrastructure development. Alternatives would require that the entire mining sector be taken into consideration, as well as the promotion of resource diversification towards other minerals than those for export. This would include other useful substances and construction materials such as manganese, phosphates, zinc, granite and clay minerals, which are used in numerous areas such as construction, agriculture and ceramics.

Certain implications resulting from the redefinition of the roles and responsibilities of public and private actors for social and economic development and the protection of the environment have been illustrated in the preceding chapters.

With regard to the objective of promoting pro-poor public and corporate governance, including proactive planning and management to maximise poverty alleviation through sustainable development proposed by the EIR, Chapter 1 on Ghana detailed some shortcomings in the current patterns of mining activities. It described how the range of capital allowances, exemptions, tax concessions and so on has restricted the contribution of the sector to national economic development. It also drew attention to the question of the adequacy of the new regulatory frameworks, and explored the national development implications of such concessions, particularly their implications for eradicating rural poverty among mining affected communities.

Similarly, Chapter 1 documented how the constrained employment capacity of modern mining methods, the increased expatriate staff quotas in the mines and the negative environmental and social impacts of mining activities on local mining communities have contributed to dwarf the contribution of the sector to national development and poverty alleviation.

Further, the chapter on Ghana drew attention to the flawed nature of the participatory process that resulted in the new mining legislation in 2006. With regard to the role of government, it pointed to insufficient capacity to enforce and to the lack of a development planning role assumed by the government and concluded:

Benefits to society are enhanced if extractive industry projects contribute to the development of much-needed infrastructure and

help communities through employment and the provision of health care and education, all the while safeguarding the environment. Unfortunately these objective conditions have not been facilitated by the mining legislation in Ghana.

With regard to the recommendation of the EIR concerning the need for more effective social and environmental policies, as Chapter 3 on Mali illustrated, the weakness of the country's national institutional capabilities to ensure adequate follow-up of mining activities represents a major limitation which impedes mining activities from contributing to poverty reduction and the protection of the environment. In this regard, macroeconomic and institutional reforms contained in the structural adjustment programmes that preceded the reform of the Malian mining sector led to a weakening of the technical and financial capabilities of the state. These institutional weaknesses have had severe implications for environmental protection and the possibility that the mining sector might become a real motor for social development. For this reason, the mining regions are caught in a plethora of social, educational, health and environmental problems which are amplified because they are affected in a direct manner by mining projects.

The trends identified in Mali are in fact part of a pattern which exists more generally elsewhere in Africa. They can be explained if they are reset in a context in which the adoption of international environmental norms and initiatives, the creation of community development funds, and the identification of development projects which emanate within the framework of the corporate social responsibility of mining companies, have transferred the satisfaction of social needs and the need to protect the environment to the mining companies present, without further questioning, and largely silencing the role of national public institutions in this process.

For beyond the need to develop social and environmental norms and the capacity to enforce them, poverty reduction and environmental protection require an integrated approach for regulating the mining industry, one capable of taking into account both the consequences of the economic conditions introduced to attract mining activities and the need to strengthen the capacity of national institutions to monitor them. The low priority assigned to these dimensions in recent reforms, despite the revision process recommended by the EIR, in many important respects leaves the problems of the mining industry's contribution to development largely unchanged from the past, as the case of Mali illustrates.

## WHAT GOVERNANCE AGENDA?

The process of the redefinition of the role and responsibilities of the public actors in mining, and the weakening of state institutional capacities as a result of the reform process discussed above, raise a series of critical issues and challenges which have generally not been addressed by current discussions and reforms placed under the general rubric of improving 'governance'. The reasons for this merit closer attention than they appear to have been given.

In this regard several points need to be raised. The ambiguity and confusion that arises as a result of the polysemic nature of the notion of governance, and notably the consequences of the manner in which it is conceptualised and used by the multilateral financial institutions, should be underlined. The tendency within the donor community has been to treat the notion of 'governance' as entailing above all the introduction of the right set of good administrative and procedural measures. However, such a perspective runs the danger of contributing to an over-technical approach to social processes. It can then act as an obstacle to the clarification of the precise reform agenda proposed in the name of improving governance. There are in fact numerous 'governance agendas'. However, the attempt to treat social and political aspects of such processes as if they could be 'managed' through the introduction of technical and procedural approaches and solutions runs the risk of blurring the distinction between the technical and political domains. As a result, such an approach is likely to contribute to the 'depoliticisation' of social issues and objectives around which priorities are given and decisions are made.

Further, in the context of an overriding emphasis on technical and administrative aspects of 'governance', current attention given to 'capacity building for resource governance' in developing countries, unfortunately misses the key point that past reform measures which have sought to open up the extractive sectors for investment have done so in a manner that has severely weakened the political and institutional capacity of national governments. Consequently, it becomes a circular argument to call for the reinforcing of local capacity if the nature of past and ongoing reforms that weakened local capacity is not questioned.

More fundamentally, and as the case studies illustrated, in spite of the recommendations of the EIR to the effect that the WBG 'develop explicit governance criteria, transparently and in a participatory manner, which should be met before investments for the extractives

industry', these conditions do not seem to have been heeded in the case of policies pursued in Guinea (Chapter 2) and the DRC (Chapter 5) since the publication of these recommendations.

With regard to Guinea, while the more recent recommendations proposed by the WBG point to the need for greater transparency and accountability, and echo those of the EIR, in practice, the proposed measures remain 'procedural' rather than 'substantive' in nature. They have been directed at improving administrative and management issues and not the relations of which such procedural issues are the reflection. Consequently, taken alone, they treat the symptoms of a particular 'politics of mining' and not the relations of influence and power which make such dysfunctional processes possible.

Similarly, with regard to the negotiations of particular mining contracts, as noted, the conditions governing the distribution of mining revenues have most frequently depended on particular agreements that have been negotiated between state representatives and specific companies. The largesse of the concessions contained in certain of these contracts reflects not only the often weakened technical negotiating capabilities of the government representatives, but also the nature of the political processes and modes of political and social regulation that have been perpetuated over the last decades.

In this regard, over time, the domestic political context into which reforms in the mining sector have been introduced (characterised in certain cases and to different degrees by a lack of administrative transparency, and also by a lack of institutional and political accountability) contributed to the decreased capacity of the government to enforce existing regulations in such a manner as to ensure binding results in the country's interest. Such a context has also severely limited the capacity of the government to introduce and impose corrective solutions or to formulate alternative policies should this become necessary. However, 'weak governance' issues have tended to be framed not in terms of weakened political control, but rather as essentially dysfunctional administrative processes (of which 'corruption' is perhaps the most emblematic) which could be remedied by the introduction of the correct set of good administrative procedures. As the case study on Guinea illustrated clearly, the past patterns of reform of regulatory regimes initiated by the multilateral financial institutions have paradoxically at times proved surprisingly compatible with prolonging rather than redefining the relations that engender corruption.

To continue with the experience of Guinea, in the context of the recent period of political transition, there is reason to question whether,

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in the absence of an important redress of current asymmetrical relations, of a renewal of political processes and the emergence of policies that seek to integrate the mining sector in such a manner that it becomes a catalyst for structural transformation, recent and further investment in the bauxite-alumina sector may not fall short of fulfilling the expectations that have been created. In this regard, if we are to evaluate the capacity of current reforms to promote forms of governance of the mineral-rich countries of Africa that are favourable for the poor, it would appear essential to understand the origins and nature of the political and economic structural heritage that has contributed to the prolonging of asymmetrical relations characterising the sector. Because the issue concerning the respect of human rights addressed by the EIR raises the social, cultural and political dimensions of development, consideration of this aspect of the reform process of the mining sector, and as recognised by the EIR, may be seen as a necessary precursor to the technical and managerial dimensions which are usually put forward as being at the heart of discussions on 'governance'.

Chapter 5 on the DRC illustrates a historical experience that may be described as extreme, and one in which the process of reform of the mining sector coincided with the massive return of foreign investment. However, the approach to reform which was privileged based on the rapid liberalisation of the sector, appears to have been poorly suited to generating a model of development capable of correcting or even limiting the far-reaching human rights violations which are directly related to mining activities.

In the absence of the consolidation of patterns of social and economic development in the principal mining regions of the country, the introduction of measures intended to achieve 'good governance' as the vector for promoting the respect of human rights objectives has, to date, produced results which it would be difficult to describe as other than embryonic.

Nonetheless and as massively documented in reports produced by the government and international organisations, the links between archaic modes of resource extraction in the mining sector, highly asymmetrical patterns of resource distribution, and the violation of human rights continue most often to be ignored.

The result is a situation characterised by a disconnection between on the one hand, the existing regulatory framework, national norms and the international standards to which the state and foreign investors are expected to comply, and on the other hand, daily practices that can be documented through first-hand observations. Several factors account for such a situation:



- the nature of the productive processes used to exploit mineral resources
- the economic inequalities and disequilibrium among provinces
- the continuing uncontrolled violence
- above all, the lack of control exercised by the central government.

The study of the reform process of the mining sector in the DRC initiated by the multilateral financial institutions provides a particularly striking case for the examination of issues concerning human rights as recommended by the EIR. As will be recalled, the latter provided benchmarks concerning a wide variety of areas in which human rights must be respected, including working conditions, and the rights of women and children. As Chapter 5 suggests, it appears that the reform process that has taken place over recent years in the DRC has not taken into account the recommendations formulated in this area by the EIR. On the contrary, violations of human rights continue to be perpetuated on a wide scale.

The experience of the DRC suggests that the issue of the respect of human rights involves far more than ensuring that macroeconomic indicators become positive or that a situation of relative social peace exists in the vicinity of mining sites. This area of concern raises the question of the capacity of the state to ensure that the massive returns to investors give rise to the creation of national wealth that can be redistributed in an equitable manner among the population on a national scale. Similarly, the restoration of peace on the eastern borders of the country represents another priority objective if the integrated development of the mining regions, and more generally of the country, is to be achieved. However, the achievement of these two objectives appears to be dependent on the prior establishment of legitimate institutions throughout the country, as well as the appropriation by the Congolese of the levers of control over the mining sector. In this regard, the experience of the DRC appears to illustrate the limitations of a process of reform initiated from abroad, without full account having been taken of the specificities and complexities of the national situation.

## THE EXTRACTIVE INDUSTRIES REVIEW AND BEYOND

Among the reasons for the pertinence and usefulness of the EIR framework is most notably, as mentioned above, its recognition that to limit reforms to simply implementing better norms and standards is clearly

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not sufficient as a means to ensure that the extractive sector serves as a lever for development in mineral-rich countries of the South.

As noted, the Report adopted a more holistic approach which underlines the need to take account not only of the framework for development, but also of the 'development model' of which reforms and mining projects are a part.

### Mining and the Choice of Development Models

With regard to the current 'development model' and as illustrated in the case studies, the mining sector continues to be seen by the international financial institutions not as a catalyst for promoting structural transformation in order to bring about national economic integration, but essentially as a source of tax revenue. This was pointed out in the context of discussions concerning how to improve the Guinean mining sector's contribution to the local economy, with regard to the reform process. Although it is suggested that a 'high priority is the rationalisation of the current tax exemption regime that favours the mining sector and certain key importers conspicuously and excessively' (World Bank, 2004: 12), the principal recommendations do not address the issue of the dissymmetry of the country's negotiating capacity, or the narrowness of the country's room for manoeuvre, or the conditions that might contribute to widening the room for manoeuvre.

In response to the disappointing results in terms of local benefits resulting from mining activities, recent calls for the revision of fiscal, legal and environmental frameworks and mining contracts in countries as different as Zambia, Tanzania, Guinea and the DRC, illustrate the need to respond to new demands for the social regulation of private sector development, to accompany the rapid process of liberalisation that has opened up mineral-rich African economies to investment. While there has clearly been growing recognition on the part of the WBG of the need for better resource governance of the mining sector, as noted, governance issues continue to be seen essentially as concerning the introduction of the right set of good administrative procedures. Such an approach to reforming institutional arrangements, updating mining regimes and regulatory measures in an attempt to respond to 'governance gaps' (in order to ensure the formal legality of activities which take place in the context of the current liberalised model of development) may in fact overlook the issue of their effective legitimacy. This is particularly the case concerning the legitimacy of mining activities for communities affected by such activities, because of the

nature of the 'development model' that such regulatory measures are intended to ensure. Not the least of these problems results from the frequent lack of capacity on the part of governments to enforce the regulations on which the legitimacy of mining operations is presented to rest. More fundamental, however, is an issue illustrated by the case studies in this book: the capacity of the proposed model to meet the challenges of development which it claims to be able to address, most notably with regard to poverty reduction.

As these chapters reveal, a process of reform capable of taking account of the interconnections between models of 'development' and 'governance agendas' involves much more than the introduction of 'appropriate frameworks for the successful development of their resources', understood essentially in terms of administrative and procedural issues. Such interconnections rest on deeply rooted, country-specific and historically established patterns of the allocation of resources and power. A renewal of such patterns implies a redefinition of past modes of political and social regulation, and the availability of the political space necessary to introduce policies that are the expression of the new constellation of relations.

Further, there is need to examine closely certain assumptions that underlie the reforms that have been introduced as part of the 'development model'. Generally these reforms appear as the vehicle for the hypothesis that economic growth resulting from investment and notably foreign investment, attracted through increasingly generous incentives, will bring economic and social development and poverty reduction. This might be the case under certain quite specific conditions. It would be more likely to apply when investment strategies are integrated into, and reinforce, local development strategies that have been determined by the country itself, and which reinforce medium and longer-term intersectoral objectives. It would also be more realistic in a context in which governments have the political and institutional capacity to negotiate, to implement, to monitor, and if necessary to bring remedial actions. Can it be said that these conditions exist in African countries after 20 years of structural adjustment measures, of which one explicit objective was to ensure state withdrawal and a redefinition of its role and functions, resulting in a weakening of its institutional capacity? The answer is very far from certain.<sup>1</sup>

Paradoxically, a 1996 World Bank study showed clear recognition of the need for supportive public policies of the kind that have largely been excluded because of the manner in which the role of the state in mining in Africa has been redefined. The document underlined that a

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mining boom will not in itself lead to a process of economic diversification capable of generating long-term sustainable development, in the absence of effective public policies that encourage such a process. In fact, in this study on Latin America and the Caribbean, the World Bank recognised that 'exploration successes will not necessarily translate into mines, related industries, employment, and the increase in national wealth if the requisite conditions are not in place' (World Bank, 1996: 3).<sup>2</sup> Such recognition and the policy reforms that it implied do not seem to have been present, however, in the design of the development model that has informed the reforms introduced in the mining sector in Africa over the last decade.

### A Developmental Role for the State in Mining

The EIR recommendations were meant to address the failure of investments in the extractive industries to improve conditions for the poor and local communities, indigenous peoples, the environment, or to protect basic rights.

In the context of discussions of which the EIR Report was a central element, reforms have subsequently been proposed by the multilateral financial organisations to improve the administrative capacity of states in the mining sector. An example is the World Bank 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, 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.

(Commission for Africa, 2005: 128)

While there is discussion about 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 that states need to assume in ensuring a positive impact on social and economic development at the national level.

With regard to the issue of reinforcing institutional and political capacities in order to ensure better control over the development of mining activities, it seems paradoxical that the multilateral financial institutions should continue to favour procedures that facilitate bypassing the critically important links between the revenue collecting functions and developmental functions of the state. In this regard, as Chapter 2 on Guinea illustrated, the main mining companies have agreed to provide the country with tax advances, but these resources are to be used to pay external creditors directly – notably the IMF. Such patterns, which circumvent state functions and consequently place to one side the urgent need for the reinforcement of institutional capacity and state transparency, underline the relevance of the recommendation of the EIR concerning strengthening governance first, before large-scale activities are promoted, in order that countries are able to withstand the risks of major extractive developments. The perpetuation of such practices since the EIR Report raises the issue of the danger of contributing to prolonging internal political processes and patterns of revenue distribution, rather than contributing to their redefinition.

What appears to be at stake is the need to redefine the manner in which issues of ‘governance’ are approached and particular governance agendas defined, in order to ensure that activities in the extractive sector reinforce rather than undermine policy processes contributing to longer-term economic and social development objectives, the protection of human rights and the protection of the environment.

This leads to a further critical question: by whom is the governance agenda to be defined? As Szablowski has suggested, with growing awareness and mounting criticism concerning what appeared as a pattern of increasingly negative examples of social and environmental consequences due to activities of foreign mining companies, for many audiences the state was seen as too weak (Szablowski, 2007: 40) and for some ‘too complicit to offer a convincing check on the actions of corporate giants’ (Szablowski, 2007: 60). As a result, the multilateral arena has become the site of construction of a new ‘transnational legal ordering’ as an answer to these key issues.

However, such initiatives emanating from the multinational arena, or the initiatives of the countries that are home to mining enterprises,

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formulated in terms of 'reinforcing resource governance', have tended to fail to address the critical question of the asymmetrical relations of power and influence within the countries where mining activities take place. These condition the internal patterns of resource distribution. Nor has there been consideration of the eventual implications of the externally driven nature of the reform process, notably in terms of its capacity to undermine the legitimacy of state actors.<sup>3</sup> This is somewhat paradoxical given the fact that reinforcing the legitimacy of public institutions may be seen as a precondition to ensuring future social and political stability, notably in countries in which growing mining investment is anticipated.

Whether future multilateral responses will address the issue of the political responsibility of mineral-rich countries and their capacity to respond to the rising demands for social mediation remains an open question. A broadening of policy space would appear to be a prerequisite in order for those who hold positions of responsibility in mineral-rich countries to be effectively in a position to better determine the development and governance agendas of their countries and ensure the adoption of longer-term sustainable development policies that conform and reinforce the development objectives which have been set out.

While the extent to which the WBG's management responses have incorporated the EIR recommendations could be debated at length, this is not the objective of this book. What can be underlined though is the fact that the call by the WBG for such a review signalled a turning point. In this regard, as suggested by the three main areas of recommendations, the EIR had the merit of raising issues concerning the need for better regulatory capacity in a holistic manner. Because its recommendations focused on the practices of the WBG in a particular sector, the manner in which they were formulated left aside the complex issues of reinforcing the regulatory capacity of states and examining the implications of attributing the overriding responsibility for developing the mining sector of the countries concerned to private actors.

The case studies in this book have used as a framework the body of recommendations and the approach proposed by the EIR, which made it clear that to limit reforms to simply implementing better norms and standards is clearly not sufficient as a means to ensure that the extractive sector serves as a lever for development in the mineral-rich countries of Africa. They lead us to conclude that it is essential to adopt an encompassing approach to understanding past patterns of reform and their impact on mining activities in Africa. Such an approach needs to

be historical, country-specific and two-pronged. On the one hand, there is a need to consider the design of the 'development model', the role it has assigned to public and private actors, and notably, the place it assigns to supportive development strategies to meet development objectives. On the other, and in a very much interconnected manner, it is essential to examine the compatibility of the particular governance agenda put forward in favour of the introduction of such a development model and to legitimise the pattern of resource distribution which accompanies it. In this regard, as has been suggested, much more attention needs to be given to the issue of the legitimacy of the reform process itself. And as Szablowski concludes, the fact that *de facto* legal authority is being transferred from national to transnational regimes (Szablowski, 2007: 299), suggests the need for work to be done regarding the development of rigorous public legitimisation strategies in the transnational legal orders. With regard to the thrust of the reform process itself, to the extent that the initiative for this process remains externally driven, the issue of the reinforcement rather than the erosion of state legitimacy remains unresolved.

The attempt to reduce the analysis of social, political and economic processes which have been determined historically, to management solutions that might be considered universality valid, as the governance paradigm as presently used by much of the donor community would appear to suggest, leads to contradictions and problems of coherence. These in turn raise two fundamental issues:

- the impossibility of managing from the exterior issues that are as complex as those concerning institutional and economic reforms
- the absence of political responsibility of multilateral and bilateral donors for the reforms and policies that they propose and at times impose.

Ultimately, responsibility to define, monitor and enforce norms and standards must rest with national governments and the communities concerned. The past process of reform, including the redefinition of the role of the state through the introduction of increasingly standardised legal and fiscal frameworks with a view to creating a favourable environment for investment but at the expense of its capacity to respond to the challenges of development, is neither viable nor in the interest of either local populations, their governments or foreign investors.

By exploring certain aspects of the impact of past reforms in a set of mineral-rich African countries, this book has attempted to

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contribute to better understanding of continuing debates and policy reform proposals in the context of the revision of past mining regimes.

## NOTES

- 1 This argument is developed in UNCTAD (2005).
- 2 Quoted in North–South Institute (1998: 78).
- 3 A different but related issue raised by Szablowski resulting from the externally driven nature of the reform process concerns the implications of the preference for technocratic legitimization processes over political ones among project sponsors and corporate-oriented transnational lawmakers such as the Multilateral Investment Guarantee Agency (MIGA) and the International Finance Corporation (IFC). He suggests that the tendency to include political legitimacy measures in a transnational regime but to make them subject to technocratic measures, while understandable, represents a legitimization loophole (Szablowski, 2007: 300–1).

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