Centre for International Governance Innovation

New Thinking on SDGs and International Law — Policy Brief No. 9 — May 2020

New Directions in Mining Governance and the Sustainable Development Goals in Africa

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Key Points

- If governed effectively, mining in Africa can support the United Nations Sustainable Development Goal (SDG) 1, dedicated to ending poverty, and SDG 8, promoting sustainable economic growth and decent work for all.
- The form that mining governance should take to promote SDGs 1 and 8 was captured in the Africa Mining Vision (AMV), which calls for the transformation of mining sectors across the continent.
- Changes to mining governance in Africa can promote SDGs 1 and 8 by generating more revenue for national governments, and by creating new partnerships between the public and private sectors that can enhance economic integration and reduce unemployment.
- The mining regimes' new legal frameworks aim to enhance local participation in mining activities, develop linkages to other sectors of the economy and create new opportunities for state intervention in the sector.

Introduction

Africa's mineral wealth has the potential to contribute to the achievement of SDG 1,[1] committed to ending poverty, and SDG 8,[2] promoting sustainable economic growth and decent work for all. Much of Africa's population still lives in dire economic conditions,[3] despite the abundance of natural resources across the continent. For mining to contribute to the elimination of this "paradox of plenty,"[4] where vast mineral wealth coincides with pervasive poverty, proper governance of the sector is considered key.[5] The form that mining governance should take across Africa was reconceptualized by the African Union in its multilateral AMV. Aimed at securing the "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth

1 *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res 70/1, UNGAOR, 70th Sess, UN Doc A/Res/70/1, SDG 1, online: <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>.

2 *Ibid*, SDG 8.

3 Kathleen Beegle et al, eds, *Poverty in a Rising Africa* (Washington, DC: World Bank, 2016).

4 Richard M Auty, *Sustaining Development in Mineral Economies: The resource curse thesis* (London, UK: Routledge, 1993).

5 Antonio Pedro et al, "Towards a Sustainable Development Licence to Operate for the Extractive Sector" (2017) 30 Mineral Economics 153.

About the Author

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and socio-economic development"[6] across Africa, the AMV advocates for new directions in mining governance that transform the sector from its colonial-enclave past into one that is integrated into economies across the continent.[7] This policy brief discusses the new legal frameworks governing mining envisioned by the AMV and how these new initiatives can help promote SDGs 1 and 8.

New Directions in Mining Governance across Africa

The AMV supports the realization of SDGs 1 and 8 in two primary ways. First, the reforms are aimed at accruing more revenue for national governments. During the recent commodities boom, several mineral-rich African states reformed their fiscal regimes in line with the AMV to generate more revenue from mining. These new forms of revenue generation can assist African states in providing the benefits and services needed to end poverty in accordance with SDG 1. Second, these legal reforms envision new partnerships between the public and private sectors, thus enhancing the opportunity for long-term benefits that can contribute to both economic integration and growth, while also providing more job opportunities within and outside the mining sector. Such benefits can help achieve SDG 8.[8]

Measures compatible with the AMV currently under way across Africa can be grouped into the following three categories and objectives: enhancing local participation, developing industry linkages and encouraging broader "resource nationalism."[9]

6 African Union, "AMV — Africa Mining Vision", online: <https://au.int/en/ti/amv/about>.

7 Martin Kwaku Ayisi, "The Review of Mining Laws and the Renegotiation of Mining Agreements in Africa: Recent Developments from Ghana" (2015) 16 J World Investment & Trade 467 at 473.

8 Pedro et al, *supra* note 5 at 15.

9 Martin Kwaku Ayisi describes resource nationalism as governments intervening more forcefully in their extractive sectors (Ayisi, *supra* note 7 at 473). The term is applied equally to interventions made in both oil and gas, and mining.

Enhancing Local Participation

To maximize the benefits of foreign investment in mining, many African states are introducing "indigenisation and local equity schemes,"[10] which align with the AMV's strategy to increase local inputs into mining sectors. Defined broadly as "local content requirements" (LCRs), these obligations typically demand that "a certain percentage of intermediate goods used in the production processes…be sourced from domestic manufacturers."[11] Additionally, LCRs may stipulate that foreign companies hire local labour or give preference to the local workforce in the recruitment of senior staff.[12] LCRs may also be self-imposed by governments on state-owned entities operating in the mining sector. Commitments of preferential prices for domestic firms, or implementation of discretionary guidelines aimed at restricting the entry of foreign suppliers, can encourage participation by locally owned businesses.[13]

In mineral-rich Africa, specific LCRs undertaken range from local employment quotas to the preferential treatment of companies with higher levels of local procurement. In Burkina Faso, for example, the national government introduced detailed obligations outlining that preference should be given to local businesses in the procurement of goods and services.[14] Measures were also introduced, requiring that local employees be hired to fill senior executive positions.[15] One of the measures includes a training program to ensure the progressive replacement of foreign staff in senior positions by local employees and that local personnel be employed for low-skilled jobs.[16]

Similarly, Guinea's 2011 Mining Code introduced the requirement that feasibility studies submitted for mining concessions and permits "must include a plan of support for building or strengthening the capacity of local small and medium enterprises, or enterprises belonging to, or controlled by Guineans for supplying goods and services for their activities and a plan of promotion of employment of Guineans according to the quotas established by the code."[17] In Botswana, the government implemented local participation strategies that aim to sustain greater linkages to downstream diamond industries, including cutting and polishing, and jewellery manufacturing. Measures aimed at increasing local participation include creating the Botswana Diamond Hub and securing the sales agreement with De Beers that moved the company's rough diamond sales division to Gaborone.[18]

Ghana's Minerals and Mining Act (2006), on its part, promotes local participation by reserving small-scale mining for Ghanaian citizens. The act requires gold mining companies to give preferential treatment to locally made products and to recruit local labour. This measure includes the creation of a mandatory training program designed to ensure the progressive replacement of foreign staff by local personnel.[19] Through LCRs in mining, African governments are equipped with legal tools that can promote SDGs 1 and 8. LCRs support the growth of domestic firms by creating more opportunities for participation. They can also increase the availability of decent work for local workers and promote sustainable economic growth that is not confined to the mining industry.[20]

10 Ayisi, *supra* note 7 at 473.

11 Sherry M Stephenson, "Addressing Local Content Requirements: Current Challenges and Future Opportunities" (2013) 7:3 BIORES.

12 *Ibid*.

13 Cathleen Cimino, Gary Clyde Hufbauer & Jeffrey J Schott, "A Proposed Code to Discipline Local Content Requirements" (2014) Peterson Institute for International Economics Policy Brief No PB14-6 at 1, quoted in Chilenye Nwapi, "Defining the 'Local' in Local Content Requirements in the Oil and Gas and Mining Sectors in Developing Countries" (2015) 8:1 Law & Development Rev 187 at 191.

14 Stéphane Brabant, "Current Trends in Mining Law and Regulation in West Africa" (Presentation delivered at the MineAfrica 4th Annual Focus on West Africa Seminar, London, UK, 28 October 2014) at 41.

15 *Ibid*.

16 *Ibid*.

17 Ana Elizabeth Bastida, "From *extractive* to *transformative* industries: paths for linkages and diversification for resource-driven development" (2014) 27:2-3 Mineral Economics 73 at 77.

18 *Ibid* at 79.

19 Robin Bloch & George Owusu, "Linkages in Ghana's Gold Mining Industry: Challenging the Enclave Thesis" (2012) 37:4 Resources Policy 434 at 437.

20 Nwapi, *supra* note 13 at 191.

Developing Industry Linkages

The AMV also identified harnessing industry linkages as a key area of improvement for mining.[21] Since mineral endowments are finite and prone to price volatility, integrating the mining sector into other industries can help diversify the country's economy to produce spillovers and provide long-term sustainable growth.[22] Linkages are clustered into three types. The first type is upstream (or backward) linkages, which deal with manufacturing inputs (i.e., machinery), engineering and financial services. The second type is downstream linkages (also referred to as forward linkages), which encapsulate value-added resources processing, including oil refining and raw natural gas purification. The last type is side-stream linkages, which deal with "power generation and supply, construction, process automation, logistics, marketing, transport infrastructure (rail, road and ports), [and] environmental industries."[23]

Broadly speaking, upstream linkages are the relationships between an industry and its suppliers. In mining, upstream linkages arise early in the production process "as deposits are identified, assayed and quantified; finance secured; legal and permitting issues addressed; plans for development and earthworks commissioned; and labour, raw materials equipment and utilities sourced."[24] Alternatively, downstream linkages connect extracted minerals to value-added production processes: smelting or refining, semi-fabrication or final product manufacturing.[25] Side-stream linkages are created when mining activities contribute to growth in other sectors, such as "financial services, power, logistics, communications, skills and technology development."[26]

Many African states reversed their positions on allowing investors to support the development of linkages in the 1980s when it was thought this requirement could deter foreign investment.[27] Today, supplementary investments that support the creation of linkages are widespread. Many are infrastructure-focused and require certain investments in transportation networks and power grids. Such measures can directly support increasing employment generation beyond mining and into other sectors with decent work.

Broader Resource Nationalism

In addition to state efforts to increase local participation and strengthen sectoral linkages, African states are inserting themselves in the mining industry by increasing state ownership and commercial interests in mining projects, reviewing and renegotiating contracts with foreign investors, and reforming fiscal regimes to ensure a greater share of mineral revenue.[28] Through the AMV-supported state participation mechanism, African states can directly share in the financial rewards available from mining, rather than being passive collectors of tax revenue. State participation offers a number of benefits to African countries. Of particular relevance to the fiscal regime is the ability to potentially increase government revenues beyond what the regime normally provides. There are various means of state participation in the mining sector, such as through equity participation (i.e., where the government acquires a stake in production), service agreements or production-sharing agreements.

Several African states introduced recent changes to their participatory regimes that increased the level of equity participation, installed minimum levels of equity participation and stipulated that additional levels of participation are at the state's discretion. Some examples include:

→ Côte d'Ivoire's new Mining Code, amended in 2014, which requires 10 percent state participation for zero dollars, and up to an additional 15 percent (unless the state is involved in exploration);

→ article 150 of Guinea's Mining Code 2011, which empowers the state to acquire interest in a project "on a fully paid basis up to a maximum shareholding of 35 percent," which is in addition to the 15 percent equity participation available for free upon the issuance of a mining licence for bauxite, iron ore, uranium, gold and diamond deposits;

21 United Nations Economic Commission for Africa (UNECA) & African Union, *Minerals and Africa's Development: The International Study Group Report on Africa's Mineral Regimes* (Addis Ababa: UNECA, 2011) at 101.

22 *Ibid*.

23 *Ibid* at 103, 104, 106.

24 *Ibid* at 103.

25 Bastida, *supra* note 17 at 74.

26 *Ibid*.

27 UNECA & African Union, *supra* note 21 at 107.

28 Ayisi, *supra* note 7 at 477.

- Mali's Mining Code (passed in February 2012), Mauritania's New Model Mining Convention (amended in February 2012), and Nigeria's 2007 Minerals and Mining Act, which all require 10 percent free participation and an additional negotiated 10 percent participation; and
- Togo's Mining Code (amended in 2003), where 10 percent free participation is mandatory and an additional 20 percent can be negotiated.

Recommendations

Four years after the AMV was adopted in 2009, its implementation was aided by the creation of the African Minerals Development Centre (AMDC).[29] Since 2014, the AMDC has collaborated with multiple national governments and relevant stakeholders to produce country-specific mining visions (referred to as a "Country Mining Vision" or CMV)[30] that outline methods for domesticating the AMV.[31] CMVs have been developed in 13 countries.[32] The progress made in implementing CMVs demonstrates the importance of ensuring that Africa's minerals promote sustainable development across the continent,[33] as recommended by SDGs 1 and 8. Adopting the following recommendations could help support this objective.

- Incorporating AMV principles directed at enhancing local participation, developing sectoral linkages and expanding revenue generation for the state are key. Increased government revenue could improve social and infrastructural spending, thereby reducing poverty, which is the objective of SDG 1.
- Employment is the engine of economic growth and the CMVs, to the extent that they prescribe the hiring of local labour where available, which fit squarely with the objective of SDG 8. This approach includes locals employed directly by mining companies and those sustained in business because of the rules regarding raw material procurements.
- Implementing the AMV should align with state capacity. By doing so, African states ensure they are committing to the principles in a sustainable fashion that supports long-term growth and expansion of the mining sector. For example, the development of sectoral linkages can be limited by state capacity to invest in small or non-existent industries that could benefit from mining spillovers.
- When states have the capacity to invest, the creation of an upstream or downstream linkage could greatly enhance the mining sector's positive impact on the economy. Botswana's Diamond Hub, briefly discussed above, is one successful example. Prior to the Hub's creation, rough diamonds in Botswana were shipped out of the country for polishing.[34] With the creation of the hub, more polishing now occurs in Botswana, which has resulted in new jobs and spinoff businesses.[35]

29 UNECA, "About AMDC", online: <www.uneca.org/pages/about-amdc>.

30 African Minerals Development Centre, UNECA, *Governance and Participation: Harnessing mineral resources for Africa's transformation* (Addis Ababa: UNECA, 2017), online: <www.uneca.org/sites/default/files/PublicationFiles/governance_brochure.pdf>.

31 *Ibid*.

32 Hervé Lado, "Guinea to Host the AU's African Minerals Development Center" (13 July 2018), online (blog): *Natural Resource Governance Institute* <https://resourcegovernance.org/blog/guinea-host-au-african-minerals-development-center>.

33 Further independent research that studies the direct impact of these measures needs to be undertaken. As of August 30, 2018, the author could not find any research that studies the direct impact of policy measures advocated in the AMV. However, continued multilateral support for the AMV across Africa suggests there is agreement on how mining can promote sustainable development in the region.

34 Rob Young, "Botswana: From sleepy backwater to global diamond hub", *BBC News* (21 August 2013), online: <www.bbc.co.uk/news/business-23771552>.

35 *Ibid*.

Conclusion

If governed properly, mining in Africa can help achieve SDGs 1 and 8. The AMV offers a way to govern mining with a developmental purpose. Recent legal and policy reforms aimed at "integrating the sector more coherently and firmly into the continent's economy and society"[36] can garner greater benefits from mining by increasing state intervention and revising relationships with the private sector. Measures such as enhancing local participation; developing linkages between the mining sector and the broader economy; and implementing broader resource nationalist reforms that include contract reviews, revised fiscal regimes to ensure a greater share of mineral revenue, and increased levels of equity participation in mining projects can positively contribute to ending poverty and promoting sustainable development and decent work across Africa.

Author's Note

A longer version of the section entitled "New Directions in Mining Governance across Africa" was first published in Sara Ghebremusse, "New directions in African developmentalism: the emerging developmental state in resource-rich Africa" (2016) 7:1 J Sustainable Development L & Policy 1.

36 Antonio MA Pedro, "The country mining vision: towards a new deal" (2015) Mineral Economics at 1, online: <www.uneca.org/sites/default/files/PublicationFiles/cmv_towards_a_new_deal_-_pedro.pdf>.

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Waterloo, ON, Canada N2L 6C2
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