

TERMS OF REFERENCE FOR THE REVIEW OF AFRICA'S MINING REGIMES

I. Background

The mineral wealth of a considerable number of African countries and its potential as a stimulus to economic growth and development has been eloquently documented. Moreover, increased attention has been directed to the role which mineral wealth might potentially play, in the face of difficulties facing other potential leading economic sectors, notably agriculture (price instability, subsidies, etc).

The 2007 Big Table on “Managing Africa’s Natural Resources for Growth and Poverty Reduction” jointly organized on 1 February 2007 by the Economic Commission for Africa (ECA) and the African Development Bank (AfDB) recognized that, historically, Africa had not gained the best possible benefits from the exploitation of its natural resources. The meeting noted that in the 1990s, many African countries embarked on a scale of reforms - which did not have any historical precedent - and formulated generous investment laws and regulations to attract foreign direct investment (FDI) to their natural resources sector. The meeting also observed that there has been a paradigm shift in the 2000s with a surge towards a more societal-oriented development. In addition, the Big Table noted that the natural resources sector is witnessing a commodity price boom, fuelled by global resource scarcity and the entrance in the commodity market of new global resource-demanding players such as China and India. Given Africa’s unique resource endowment, this offers a window of opportunity for African States to extract better terms from natural resources exploitation and to catalyze growth and poverty alleviation across the continent.

In view of the above factors, it appeared most appropriate and urgent to evaluate past experiences in natural resources development in Africa and put forward recommendations as to how mineral rich African countries might best ensure that their natural resources contribute to the economic and social development of their societies in a sustainable and equitable manner. To achieve this, the 2007 Big Table recommended the establishment of an International Study Group (ISG) to review Africa’s mining regimes.

II. Objectives

The overall objectives of the ISG are to review the extent to which Africa’s current mining regimes promote sustainable development of the mining sector, including artisanal and small-scale mining as well as the broad national and regional economy, and to propose key elements for future change in the form of templates, toolkits and guidelines to formulate the next generation of Africa’s mining regimes. For the purpose of this review, a broad view is taken of the

expression “mining regimes”. It includes policy statements, legislation and regulations, contracts, guidelines, codes of conduct, standards, operating practices, and international agreements applicable to mineral operations.

Key sustainable development objectives to be taken into account include the following:

1. To secure national and regional policy space to develop regimes and options that advance developmental goals and are sensitive to national specificities;
2. To develop governance institutional capacity to be able to customize mining regimes to suit local developmental needs;
3. To ensure that the minerals socio-economic linkages into the local and regional economy are optimized;
4. To develop multilateral and regional governance and regulation through e.g. the African Peer Review Mechanism (APRM), the Extractive Industries Transparency Initiative (EITI), and the Regional Economic Communities (RECs); and
5. To ensure the development of the minerals sector on a sustainable basis.

III. Issues to be covered

To assist in the formulation of a framework for mineral resource development, the following issues, inter alia, will be considered.

- governance and institutional capacity in the mineral resources sector;
- mechanisms for enhancing the integration of mineral operations into the broader national or regional economy;
- mechanisms for enhancing local benefits;
- mechanisms for enhancing local and national employment;
- mechanisms for ensuring environmental sustainability of the minerals sector;
- managing and allocating mining revenue;
- land and community rights and relations;
- gender and child labour in the context of mineral operations;
- global trade and other economic issues affecting the African mining sector; and
- security of supply.

The study will evaluate and, where judged desirable, develop instruments regarding the following:

- the types of licences required for mineral operations and their incidents;
- the conditions to be satisfied for obtaining each licence;

- the processes by which these may be acquired or granted, including access to information, who makes or participates in the decision to make a grant, who is consulted and how a decision is made;
- specifically, of what sort; after what processes; and what obligations they impose;
- procedures for assessing and regulating social impacts;
- land tenure: the relationship between the general regime and the mining regime; the impact of mining operations on other interests in land;
- the various elements of the fiscal regime;
- financial regulations, including exchange control;
- local retention of earnings from mining;
- security of tenure provisions: their scope, formulation, location and implications;
- dispute-settlement provisions;
- agreements for selling, refining or processing minerals;
- permits and processes for exporting minerals;
- industry and State reporting requirements;
- planning for mine closure including environmental, social and economic aspects of closure; and
- regulatory and monitoring institutions: their respective roles, responsibilities, powers, capacities.

The review will evaluate the entire mining cycle including (i) exploration and extraction, (ii) mineral processing and value addition, (iii) marketing, and (iv) reclamation and mine closure. Crosscutting issues such as environmental sustainability of mining operations and community interaction will also be assessed.

An organising map for the range of issues set out above is attached as Annex I.

IV. Activities /Outputs

From the perspective of sustainable development:

- produce a comprehensive and up-to-date compilation and database of the principal elements of the regimes governing mineral operations in Africa;
- provide an overview of the key elements of these regimes;
- summarise any trends that they reveal;
- make a comparison with developments in other mineral-producing regions of the world and identify best practices;
- identify evident weaknesses as well as best practices in the African regimes;

- produce case studies and profiles of selected African countries;
- identify constraints from the international environment;
- indicate major issues in controversy or of concern, known facts and positions on these issues, and either make recommendations to resolve them or suggest what further work needs to be done to advance informed resolution;
- develop reporting requirements directly linked to scorecards for monitoring performance, and measuring progress and impacts;
- produce a report synthesizing key findings of the study and recommendations for action;
- draft a declaration on key policy positions to be considered for adoption by African governments;
- develop toolkits, guidelines and templates to assist policymakers and government negotiators involved in formulating, implementing, or monitoring a regulatory regime or in negotiating agreements for mineral operations;
- undertake training courses and seminars to build capacity on the new mining regimes; and
- disseminate the outcomes of the review exercise.

V. Implementation strategy

The ISG, comprising of leading academics and practitioners of natural resources law, economics, and management, will conduct the review of Africa's mining regimes.

An inception meeting was organized on 4-6 October 2007 to (i) agree on the project governance, methodology, theoretical or conceptual framework of the study (what should be the subject of study and research) and work streams, (ii) clarify what sustainable development and societal-oriented development means for the purpose of the study with a view to firming-up the criteria for study and comparison, (iii) identify roles and assign responsibilities to the members of the group, and (iv) decide on the deliverables, expected outcomes, and timelines. The ISG will assure the overall quality control of the review exercise.

The review will be conducted through desk studies and bibliographic review, discussion fora, and assessment of perceptions of key stakeholders on legal/regulatory, economic/fiscal, environmental/social, and institutional/governance issues affecting the sector, case studies, selected country profiling including risk profile, governance in the sector, availability of detailed geological information, the status of institutions involved in issuing licenses, the geological surveys, etc. The review will build on work done by ECA to help SADC design a framework for harmonisation of mineral policy, laws, regulations, standards, and practices in the sub-region, as well as UEMOA's common mining

policy and work to harmonize mining codes. Other continental, sub-regional, and national initiatives will also be taken into consideration.

A group of 5 research fellows from leading academic institutions in the field of natural resources policy and law are already on board to compile data, build a data base, and conduct preliminary comparative analysis of mining regimes of selected African countries. This will be followed by research on specific topics based on the list of issues agreed during the ISG Inception Meeting to be commissioned to research centres and individuals in Africa and beyond. A tentative list of such African research institutions and individuals is provided as Annex II to this proposal.

The preliminary results of the review of Africa's mining regimes will be subjected to peer review and validation exercises at national and sub-regional levels involving different stakeholders, including members of parliament (e.g. the e-parliament forum), NGOs, the private sector, industry associations, labour, international organizations, and academia. The final report of the review exercise will be presented at a continental conference on Africa's mining regimes. Training courses will be conducted to disseminate knowledge and build capacity on the new mining regimes.

The matrix for the work of the ISG is provided under Annex III.

VI. Guiding principles

The review exercise will be guided by the following principles:

- Sensitivity to Africa's aspirations and expectations;
- Independent, fact-driven, and balanced evaluation;
- Appreciation of concrete circumstances and features of particular countries;
- Acknowledgement of the global and competitive nature of the mining industry; and
- Need to engage in meaningful consultations with a wide range of stakeholders.

VII. Key milestones

- "Commissioning" of studies: Start in mid October 2007
- Briefing continental (e.g. the Africa Mining Partnership) and sub-regional organizations on the work of the ISG: First quarter 2008
- Next Meeting of the ISG: 14-16 April 2008 in Addis Ababa, Ethiopia

- Sub-regional road shows and validation workshops: 3rd Quarter of 2008
- Conference on the Review of Africa's Mining Regimes: May 2009
- Conclusion of the review exercise: 30 June 2009

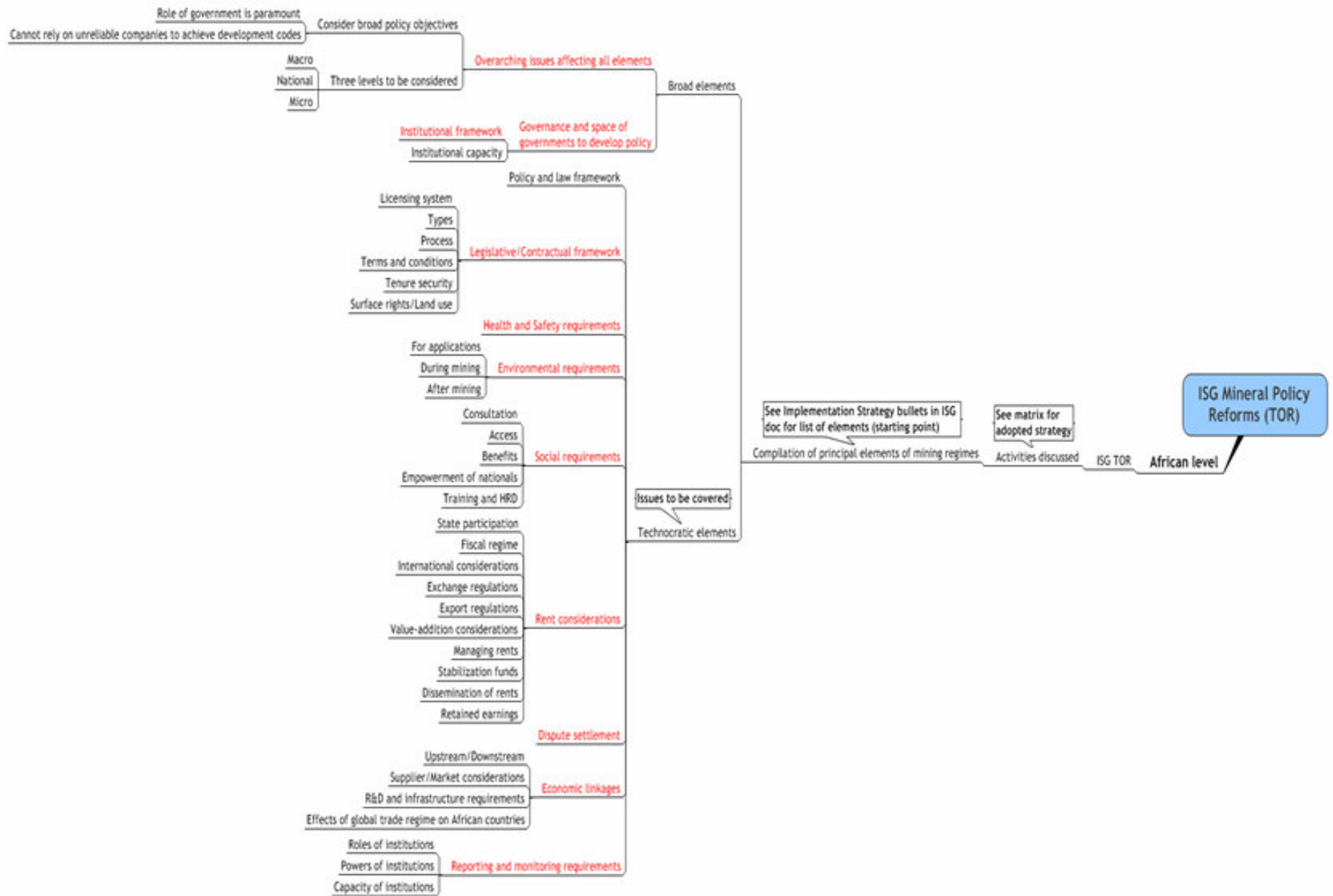
VIII. Partners

This activity will be implemented in collaboration with the African Union Commission, the African Mining Partnership, Regional Economic Communities, research centres and individuals in Africa (Annex II), the Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP) of the University of Dundee, Scotland, the Groupe de recherche sur les activités minières en Afrique (GRAMA) of the Université du Québec à Montréal (UQAM), Canada, Natural Resources Canada, the Witwatersrand University, Johannesburg, South Africa, MINTEK, Randburg, South Africa, the Commonwealth Secretariat, London, UK, the Raw Materials Group, Stockholm, Sweden, CESMAT, Ecole des Mines de Paris, France, UNCTAD, and other partners who will be sought to provide resource persons and materials to develop case studies, guidelines, and toolkits.

IX. Expected accomplishments

It is expected that this activity will generate a body of knowledge and practices on Africa's mineral regimes that will contribute to the drafting of a future generation of mining codes that promote broader-based growth and development of the mining sector on the continent. In addition, through the institutional building component of the project, the capacity of African policy makers and institutions on mineral policy formulation, design of mining regimes, and contract negotiations will be enhanced. Also, the work of the ISG will contribute templates and policy options for the work of the African Union Commission and regional economic communities on the standardisation and harmonisation of Africa's codes and practices.

Annex I - ISG ToR: Mind Map



Annex II- Collaborating Research Institutions

Country	Name of the Research Institution	Address
<p>Benin</p>	<p>Cellule d'Analyse des Politiques de Développement de l'Assemblée Nationale (CAPAN)</p> <p>Contact Person: Prof. Mouftaou Laleye Director CAPAN (National Assembly Policy Analysis Unit) 01 BP 3190 Port Novo, Benin</p>	<p>Tel: (229) 20 22 68 24/ (229) 20 22 68 28 (229) 95 24 11 (Cell-Prof) (229) 21 32 01 62 (Res.) Fax: (229) 20 22 69 29 (229) 33 75 99 (Prof.) E-mail : capanbenin@bj.org omlaleye@hotmail.com, omlaleye@yahoo.fr</p>
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AGR II – New countries

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Congo	Unité de Recherche en Analyse sociétale (URAS) Contact Person : Mr. Mokima Joseph Gabriel Coordinateur général 89 Avenue de France Poto-Poto B. P. 421 Brazaville, Congo	Tel : (242) 525 6140/ (242) 531 65 09 Fax: (242) 81 01 22 E-mail: rbatilakissita@yahoo.fr , uras06@yahoo.fr
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Annex III- Matrix for the work of the ISG review of Africa's Mining Regimes

<u>Objective</u>	<u>Actions</u>	<u>Potential sponsors, Partners, Stakeholders</u>	<u>Roles and Responsibilities</u>	<u>Indicator of achievement</u>	<u>Time frame (Quarters)</u>	<u>Budget (US\$)</u>	<u>Time Frame (Quarters)</u>
Governance of the review process							
<u>To govern the review process</u>	Convene the ISG		ECA	TOR and supporting matrix			
	"Commission" studies		Coordinator: ECA/Fui	Contracts covering actions where necessary			
	Ensure quality control of the review exercise		ISG				
	Facilitate the review exercise		Facilitator: Fui				
	Draft a declaration on key policy positions to be considered for adoption by African governments		ISG				
	Produce a report synthesizing key findings of the study and recommendations for action		ECA/Fui				
	Evaluate the outcome		AUC				

Annex III- Matrix for the work of the ISG review of Africa's Mining Regimes

<u>Objective</u>	<u>Actions</u>	<u>Potential sponsors, Partners, Stakeholders</u>	<u>Roles and Responsibilities</u>	<u>Indicator of achievement</u>	<u>Time frame (Quarters)</u>	<u>Budget (US\$)</u>	<u>Time Frame (Quarters)</u>
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Implementation and Management of the review process							
<u>To secure national and sub-regional policy space to develop regimes</u>	Collect and collate data		ECA, Dundee, Wits, GRAMA, RMG, Com Sec, Kalemani				
	Identify and review past/current initiatives e.g. MMSD, EIR, Resource Endowment Project		RMG				
	Analyse country information (Primary and Secondary)	Unis, UNCTAD,	GRAMA, Kalemani				
	Design website and database (consider maintenance)		ECA, RMG, MRF & AMN (UNCTAD), SADC, Dundee				
	Perform comparative analysis of mineral regimes (Could include summary tables)	WB,	RECs (SADC, UEMOA), ECA, Com Sec, RMG				

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To secure national and sub-regional policy space to develop regimes (continued)	Undertake case studies		ECA, Dundee, Kalemani				
	Identify best practices		ECA, Dundee, Kalemani				
	Recommend Health and Safety Codes, Standards, Requirements, etc.	CSMI, MIASA/African Chamber					
	Recommend Environmental Codes, Standards, Requirements, etc.	CSMI, Dundee, ECA					
	Recommend Social Codes, Standards, Requirements, etc.	NGOs,					

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To secure national and sub-regional policy space to develop regimes (continued)	Recommend Land Use Codes, Standards, Requirements, etc.						
	Identify constraints and opportunities from the international environment		RMG, CESMAT				
	Develop a framework for mineral development		ISG	African Toolkits for policy-makers			
<u>To develop institutional capacity to be able to customize</u>	Recommend a strategy to achieve institutional capacity in the minerals sector		ECA, UNCTAD, Com Sec, Dundee, RMG	APLG on NRM, AMN, etc.			

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<u>Objective</u>	<u>Actions</u>	<u>Potential sponsors, Partners, Stakeholders</u>	<u>Roles and Responsibilities</u>	<u>Indicator of achievement</u>	<u>Time frame (Quarters)</u>	<u>Budget (US\$)</u>	<u>Time Frame (Quarters)</u>
<u>mining regimes</u>	Identify best practice indices using success countries	ISG (PG students/National writers), ECA					
<u>To develop multilateral and regional governance and regulation</u>	Develop strategies for regional harmonization	Com Sec	RECs (SADC, UEMOA), ECA, Com Sec				
	Recommend Rent Requirements (e.g. Analyse and recommend approaches to retained earnings)		Dundee, Wits GRAMA,				
	Recommend Dispute Settlement Codes, Standards, Requirements, etc.		Kalemani, Fui, Com Sec??				
	Recommend Reporting and Monitoring Requirements	ECA/resident reps, RECs, Dundee, Wits, Com Sec, Mintek, CSMI					

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	Recommend Strategies for Economic Linkages		Mintek, RMG, CISD, IDS, ECA				
<u>To ensure that the minerals' socio-economic linkages are optimised</u>	Develop mechanisms for enhancing the integration of mineral operations into the broader economy		Mintek, RMG, CISD, IDS, ECA				
	Develop mechanisms to facilitate greater mineral beneficiation before export		Mintek, RMG, CISD, IDS, ECA				
	Develop mechanisms to integrate mining and mineral processing into local supply chains		Mintek, RMG, CISD, IDS, ECA				
	Develop mechanisms for enhancing local and national employment		Mintek, RMG, CISD, IDS, ECA				
	Develop mechanisms for enhancing local participation		Mintek, RMG, CISD, IDS, ECA				