

International Study Group to Review Africa's Mining Regimes

Background

The mineral wealth of a considerable number of countries of Africa 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 countries of Africa 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 Big Table recommended the establishment of a study group to review Africa's mining regimes.

Objectives

The overall objectives of this activity are to review the extent to which Africa's current mining regimes promote sustainable development of the mining sector 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 codes. Specifically, the objectives are to:

- develop as comprehensive as possible and up to date a compilation and database of the principal elements of the regimes governing mineral operations in Africa;
- provide an authoritative 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;
- identify evident weaknesses in the African regimes and propose remedies;
- 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 a toolkit to assist policymakers and government negotiators involved in formulating, implementing, or monitoring a regulatory regime or in negotiating agreements for mineral operations; and
- develop reporting requirements directly linked to scorecards for monitoring performance, and measuring progress and impacts.

Implementation strategy

An international study group 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 will be organized in 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. Members attending the inception meeting will assure the overall quality control of the review exercise.

The review will be conducted through desk studies and bibliographic review, 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, state of governance in the sector, availability of detailed geological information, the status of the authorities involved in giving licenses, the geological surveys, etc. The preliminary results of the review of Africa's mining regimes will be subjected to peer reviews 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 following issues will be covered:

- the state of governance of the mineral resources sector;
- 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, when environmental permits or licences are required; 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;
- managing and allocating mining revenue;
- mechanisms for enhancing local benefits;
- tools for evaluating local retained earnings from mining;
- mechanisms for enhancing the integration of mineral operations into the broader national or regional economy;
- mechanisms for enhancing local and national employment;
- 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 profile of selected African mining countries, will take into account the following:

- state of governance;
- risk profile;
- state of institutions;
- empowerment issues;
- minerals produced;
- mineral potential;
- which minerals are most significant in policy discussions;
- which minerals offer most possibilities for domestic participation;
- domestic financial sector: its role in financing mineral operations and its potential;
- domestic private sector: its role and potential in participating in mineral operations;
- policy on state equity participation;
- who is funding or participating in mineral operations;
- significance of the mining sector in the national economy;
- policy space for deciding as to how the mining sector is to be developed (what minerals, role of artisanal and small-scale mining, etc); and

- in what regional integration or co-operation plans is the country participating which may have an impact on the mining sector.

Partners

This activity will be implemented in collaboration with the Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP) of the University of Dundee, the Groupe de recherche sur les activités minières en Afrique (GRAMA) of the Université du Québec à Montréal (UQAM), the Witswatersrand University, the Commonwealth Secretariat, the Raw Materials Group, and other partners who will be sought to provide resource persons and materials to develop case studies, guidelines, and the toolkits.

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.