Towards a new generation of mining Codes - a focus on Francophone Africa

The rapid growth of new investors, especially from the BRICS countries in the mining sector in Africa as well as increased investment in rich untapped resource regions, such as Guinea, DRC, Ivory Coast or Burkina Faso, have posed new challenges to the achievement of sustainable development in the mining industry.

The mining and quarrying sectors represent, more than ever, a large and growing share of exports and taxable revenue in many African countries and an enormous potential to fund the necessary development of infrastructure and social development projects for sustainable and diversified economic growth and the reduction of poverty.

The nationalist post-independent Mining Codes of the 1980s and 1990s were characterised by an internationally accepted status quo of the liberalisation of this sector. This liberalisation encouraged the restriction of the State in the resource sector, the privatisation of State entities, the end of restrictions on foreign ownership, lower tax rates and fees and the end of requirements with regards to hiring and local sourcing, all in the aim of attracting and retaining foreign investors. However, these liberalized regulatory frameworks have resulted in maximizing profits for private foreign companies and a small sub-section of local elites rather than as a means of providing widely shared benefits to affected communities. It has also often been synonymous with a dependency on these natural resources, sometimes as a curse, rather than using them as a trampoline allowing reinvesting in assets to diversify the national economy.

Moving away from this period of the “Washington Consensus”, Mining Codes in Francophone Africa, such as for the rest of Africa, are now at the heart of a political debate that is focused on the adoption of innovative strategies of inclusive good governance, and the implementation of good practices that will promote transparency and permit the mutual sharing of profits between the host countries, foreign investors and local communities.

The new wave of reforms of African Mining Codes

Domestic reforms

The current reform of Mining Codes is characterised by an abandonment of the past trend of liberalisation giving way to a larger marge of State participation, beneficiation and regulation. This participation may translate in a share of the capital of mining companies, the increase of taxes and deductions and therefore entailing the reduction of fiscal exemptions, of which there have been many.

All reforms that are been carried out remain in the aim of continuing to encourage traditional and new foreign investors, in a 21st century win-win rapport.

In Burkina Faso, which has become the 4th biggest gold producer within a decade, authorities seek to use the Mining Code reform, which should be passed in June, to introduce fairness in the distribution of mining income, by providing for tax amendments hoped to lead to increased fiscal resources.
The 2002 Mining Code of the DRC is also currently in discussion regarding amendment. Through the amendments, State participation is anticipated to go from 5% to 10% (some projects anticipated 35%) while royalties should rise from 2% to 4% for non-ferrous metals (such as cobalt and copper in particular) and 2.5% to 6% for strategic metals such as gold.

In Ivory Coast, a new Mining Code is to be presented to Parliament in March. It intends to limit the permit surface areas to 400km² from their previous surface area of 1000km². In the auriferous area, the principle of a levy on additional tax (“windfall profit tax”) should be introduced if the price of gold increases. The non-diluted state shareholding of 10% should be mandatory.

In 2011 a reformed Guinean Mining Code was adopted with provisions that could give the state up to 35% of mining projects and raises the customs duty on mineral exports from 5.6% to 8%.

The Senegalese president Macky Sall disclosed in an interview in January 2014 that the revised Mining Code would result in the (re)negotiation of some mining concessions. He also mentioned that certain exemptions will be reviewed and tax breaks shortened to end in 2017. The same process of the renegotiation of the mining contracts was launched in the DRC in 2007 during the “revisitation” process as well as in Guinea two years ago.

The current reforms have also pushed the limits, up till now most prevalent, regarding the question of beneficiation. More States are coercing companies to process locally.

The president of Gabon expressed mid-2013 that the country did not intend to continue exporting raw materials, although no legislation has yet been drafted to this effect.

Katanga, the main mining province of the Democratic Republic of Congo, has increased its tax on copper and cobalt concentrates from USD60 to USD100 per metric tonne as part of the national government's efforts to increase domestic beneficiation.

Mali’s Code is said to implement a blanket ban on exporting unrefined gold. The ban is anticipated to take effect in 2015 with the inauguration of a new State-owned refinery in Kankou Moussa.

**Supranational initiatives**

These domestic reforms have been accompanied by international processes of transparency and good governance such as the Extractive Industries Transparency Initiative (EITI) (mining industry) or the Kimberley Process (diamond industry). Cote d’Ivoire, Guinea or Mali are members of such initiatives.

Other initiatives such as that of the European Union together with regional initiatives such as that of the West African Economic and Monetary Union (UEMOA) on mining activities or the directive of the Economic

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Organisation of West African States (ECOWAS) in the harmonisation of guiding principles and policies in the mining sector contribute to this global process to reform, standardize and bring transparency to the mining sector.

**State Accountability**

The questions and concerns that subsequently arise are what is the real power of the State in the proposed profit sharing equation? Practically, how will the State be represented and how will the compliance of mining operators be controlled?

How will these investments be managed? Will the State create companies to manage the mining assets and revenues?

Whatever the case, States will be required to put systems in place to monitor and control the existing obligations of all parties and particularly the mining company’s duties, such as the payment of royalties, the commencement of works or the provision of regular reports concerning exploitation. In light of the inflation of the awarding of mining titles, this is unavoidable. Some States have begun reflecting in this regard however it remains embryonic and faces a lack of resources and political will. Some States, such as Senegal are coercing mining operators to allocate a portion of their income to the promotion of mining, or logistics support to the technical departments of the Ministry of Mines. This remains marginal and difficult to control.

Because of initiatives like EITI, today mining revenues are easier to trace. However, these initiatives are limited due to their non-binding nature. Therefore, it appears necessary that mining revenue including various taxes, royalties, dividends, once tightly controlled, be allocated to special funds, as is the case with Norway's oil revenues for example.

In conclusion, mining revenues for the States will obviously increase from this new generation of Mining Codes. However, the biggest at stake is how these revenues will be managed.

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