

Escaping the Winner's Curse - The Africa Mining Vision (AMV) and some challenges of the international trade and investment regime

Yao Graham¹

1. Introduction

Since the late 1980s the mining sector has been a primary destination of foreign direct investment (FDI) inflows. The sector's success in attracting foreign investment has often led to it being held up as a poster child for the positives of economic liberalization, the contribution of FDI to development the benefits of globalization. Domestic liberalization in Africa under Structural Adjustment Programmes (SAPs) was anchored in the involvement of African countries in multilateral and bilateral liberalization projects such as the World Trade Organisation (WTO), the USA's Africa Growth and Opportunities Act (AGOA), successive aid and trade arrangements with the EU, or Bilateral Investment Treaties (BITs). Come the change in the international fortunes of minerals from 2002 onwards some African countries began to reap marked growth from the macroeconomic reforms and mining sector liberalization and privatizations of the 1980s and 1990s. The expansion of mining has been a critical factor in the past decade of growth being the Africa's best for more than 30 years. The wider context for these developments are the structural shifts which have been taking place in the global economy centred on the rise of China as a major consumer of raw materials for domestic use and production for export. (Kaplinsky and Farooki, 2009).

The commodity boom has however exposed the limited developmental possibilities of the mining regimes across Africa, especially the ways in which fiscal regimes are biased in favour of foreign firms but more generally the freedoms that foreign capital enjoys. Not only the boom re-invigorated Africa's traditional place in the international division of labour but it has intensified the resource intensity of growth and also deepened the structural dependence of mineral exporting African countries on raw material commodity exports. The dangers that come with this, such instability of export earnings due to price volatility were sharply highlighted by slump in the early period of the global financial and economic crisis. Ending raw material export dependence and effecting the structural transformation of the continent's economies with industrialisation playing a key role has been a central element of Africa's post-colonial development discourse (OAU, 1979).

An African consensus for the reform of the mining regimes so as to improve their developmental contribution has been growing since the peak of the mining boom. These African developments are very much part of the global trend which has sparked corporate fears about the dangers "resource nationalism" poses to predictability in the mining sector and profitability of investments¹ "

*

Coordinator , Third World Network-Africa (ygraham@twnafrica.org)

¹ Ernst & Young's report "Business Risks facing Mining and Metal 2012-2013" for a second successive year identified "Resource Nationalism" as the main risk facing the industry. It's list of resource nationalist threats include "imposition/increasing of royalties or mining taxes", "mandated beneficiation/export levies and "retaining state or national ownership of resources [http://www.ey.com/Publication/vwLUAssets/Business-risk-facing-mining-and-metals-2012-2013/\\$FILE/Business-risk-facing-mining-and-metals-2012-2013.pdf](http://www.ey.com/Publication/vwLUAssets/Business-risk-facing-mining-and-metals-2012-2013/$FILE/Business-risk-facing-mining-and-metals-2012-2013.pdf); See also Peter Leon "The growth of resource nationalism in Africa" <http://www.mineafrica.com/documents/B5%20-%20Webber%20Wentzel.pdf>

(Ernst&Young, 2012; Land, 2009). To date African governments have been focused on improving the state's share of mining revenue through law reform and renegotiation of contracts. In the wider debate about mining and Africa's development improved fiscal returns are seen as low hanging fruits within a more ambitious and longer term agenda of diversification and structural transformation (UNECA, 2011; OECD and AfDB, 2013, UNECA; 2013, Africa Progress Panel, 2013). The African Union's Africa Mining Vision (AMV) is the policy document which sets out the grand agenda most comprehensively. Adopted by African heads of state in 2009, and buttressed with an Action Plan in 2011, the AMV envisages mining becoming "a key component of a diversified, vibrant and globally competitive industrializing African economy". It also responds to many of the criticisms from different sections of, including CSOs, workers and community groups about poor governance, human rights and environmental violations in the mining sector. The ambitions of the AMV are mirrored in regional plans and some of its key elements are reflected in a number of national policies. A key requirement for the realisation of these ambitions is national and regional policy space. The orientation of reforms in the international trade and investment regime over the past three decades has however reduced national/regional policy space and expanded the range of policy issues affected by global rules.

This paper analyses the challenges that aspects of the international trade and investment regime and existing contractual relations with foreign mining companies pose for the mineral based transformation agenda set out in the AMV and similar regional and national plans. It starts with summary discussion of the creation of the current mining regime in Africa, the development of the sector over the past two decades, including some relevant global trends, as a basis for understanding the impulses behind the African reform agenda. It then sets out the key objectives of the reform agenda and the changes they imply in the current regime. The paper then analyses a number of elements of the international trade and investment regime and what they mean for the reform ambitions. These include multilateral agreements under the WTO and regional agreements such as the EPAs and bilateral agreements such as BITs. It also looks at some of the steps being taken by African countries to create policy space for the realisation of the mining and structural transformation agenda and draws on lessons from outside Africa.

2. From Crisis to Winner's Curse

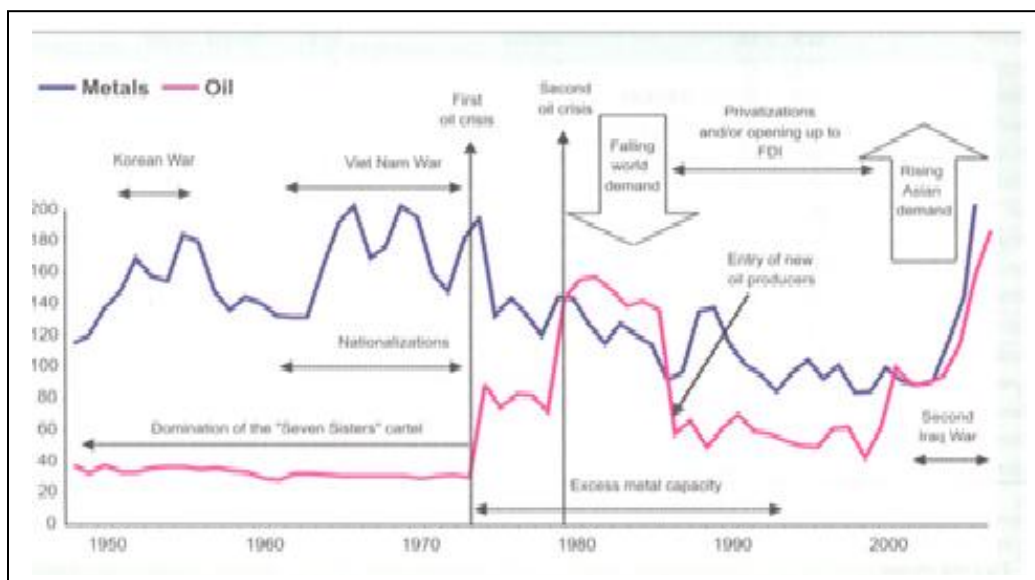
"The recovery of the mining sector in Africa will require a shift in government objectives towards a primary objective of maximizing tax revenues from mining over the long term, rather than pursuing other economic or political objectives such as control of resources or enhancement of employment. This objective will be best achieved by a new policy emphasis whereby governments focus on industry regulation and promotion and private companies take the lead in operating, managing and owning mineral enterprises..in the new policy environment governments should obtain a fair share of the economic rent of the sector through fiscal arrangements that are stable, competitive and fair, rather than through ownership and operation." Strategy for African Mining – World Bank, 1992

[F]rom the corporate perspective the outcomes of the.... reforms in the mining sector in Africa have been positive, as reflected in the significant increases of FDI in the sector. From the host country

perspective... governments would need to consider whether the increasing incentives provided to foreign investors have been offset by the desired outcomes...[S]ome observers have described the incentive competition as a “winner’s curse” for host countries, whereby investment competition among host countries can trigger a “a race to the bottom” not only in the more static sense of forgone fiscal earnings but also in terms of giving up policy options necessary to organize a more dynamic long term growth path –UNCTAD EDiR 2005 (Rethinking the Role of FDI).

The decline in mineral prices was a major part of the dramatic collapse of Africa’s terms of trade from the mid 1970s till near the end of the 20th century bar a brief upward blip in the late 1980s. The slump in export earnings was an important factor in the African economic crisis and the consequent implementation of SAPs (UNCTAD 2004, World Bank, 2000). In mineral exporting countries output and exports declined as the predominantly state owned mines, caught between low prices and the revenue expectations of governments, were unable to keep up their maintenance and reinvestment levels. Even amidst this crisis mining contributed an average of 47% of export earnings, 30% of fiscal receipts and 10% of GDP in nineteen Africa countries in 1989 (World Bank, 1992). Thus in a significant number of African countries the revival of the mining sector was a central objective of the IMF/world Bank driven economic reforms of the 1980s and 1990s.

Real Price index of crude oil and metallic minerals, 1948-2006
(base year 2000=100)



Source: UNCTAD - World Investment Report, 2007

More than 110 countries, including over 30 African countries have liberalized their mining regimes and laws so as to attract foreign investment (Besada and Martin, 2013). The key features of the mining liberalization agenda included – privatization of state owned mining companies accompanied by the laying off of tens of thousands of workers; the withdrawal of the state as a direct actor in production; passage of new mining laws with liberal fiscal terms – numerous tax exemptions, low tax rates, freedom to retain revenues outside the host country and repatriate profits and dividends, freedom to import wide range of inputs duty free; fiscal stability clauses; no pressure or targets for domestic content, hiring and training of local staff; generous terms in mining leases; creation of one

stop institutions to support investment attraction and service investors. (Campbell, 2004) From the late 1980s African countries competed for mining FDI and support for new foreign-owned mining ventures took precedence over other types of land use and environmental concerns with scant attention to the accompanying social disruptions.

The reforms have been successful in so far as the mining sector became the main destination for FDI in most of Africa's mineral exporting countries and production and exports grew. The annual FDI inflow in 2004 amounted to \$15bn (UNCTAD, 2005; UNECA, 2011). By the beginning of the 21st century mining foreign-owned TNCs, enjoying extensive privileges provided for in laws or individual contracts, had displaced SOEs as the dominant actors. In Ghana, the pioneer reforming country which passed into mining liberalization law in 1986, the (gold) mining sector became established as the main destination for FDI, attracting more than \$6bn between 1983 and 2002. From 1990 to 2002 gold output quadrupled as a result of the revival old and opening of new mines (Akabzaa, et.al, 2007) and the commodity became the country's main export. In 2012 gold exports worth \$5.6bn represented more than 41% of total export value. As a result of liberalization a number of countries such as Mali and Tanzania became new major destinations for FDI and notable exporters of gold. After a troubled privatization process Zambia, one of Africa's main mining countries experienced new investment and a revival of copper production. From a historic production trough of 250,000 tons in 2000 output climbed to almost 700,000 tons in 2009.

SELECTED DATA ON AFRICA'S MINERAL PRODUCTION 2000-2010 (FROM AEO, 2013)

	2000			2010			Real output growth 2000-10 in %	Difference in countries
	Africa's share of global production in %	Value of Africa's production (2010 USD million)	Number of countries 2000	Africa's share of global production in %	Value of Africa's production (2010 USD million)	Number of countries 2000		
PGMs	55	10 588	2	74	14 191	4	34	2
Cobalt	43	490	6	62	1 775	8	262	2
Diamonds	45	4 265	16	54	4 967	17	16	1
Chromite	51	1 578	4	42	2 442	4	55	0
Manganese	32	493	4	30	3 131	8	535	4
Phosphates	28	4 607	10	26	5 662	10	23	0
Gold	24	25 568	36	19	19 947	39	-22	3
Uranium	17	111	3	19	1 013	4	813	1
Copper	3	2 871	11	8	7 806	12	172	1
Nickel	5	1 225	5	5	1 535	5	25	0
Iron ore	5	4 637	10	4	6 404	9	38	-1
Minera total	14	59 592	44	12	73 286	44	23	0

Source: Africa Economic Outlook, 2013

Perceptions and criticism of Africa's current mining boom as a "winner's curse" has centred on the following issues: a) negative impacts on community livelihoods, rights and the environment and conflicts; b) poor governance (covering a range of issues from community participation in project

design to government management and accountability for revenues; c) overgenerous fiscal regime, inadequacy of revenues and illicit outflows; d) poor job creation impact of large scale firms and working conditions; e) foreign domination of the sector and weak local ownership; f) weak integration of sector into wider national and regional economies; g) volatility of prices and incomes; h) intensification of commodity export dependence. The issues of negative impacts and poor governance have been a long term focus of mining affected communities and campaigning CSOs. Revenue transparency and anti-corruption have been the primary focus of the home countries of the Western TNCs in Africa and their allied international organisations such as the World Bank and IMF. The voluntary Extractive Industries Transparency Initiative (EITI) has been the major instrument of keeping these issues in much higher view than the quantum of revenue that the companies pay. In recent times new measures, provoked by the global financial crisis, such as the Dodd-Frank Act in the USA, aimed at improving transparency of financial transactions have added new layers.

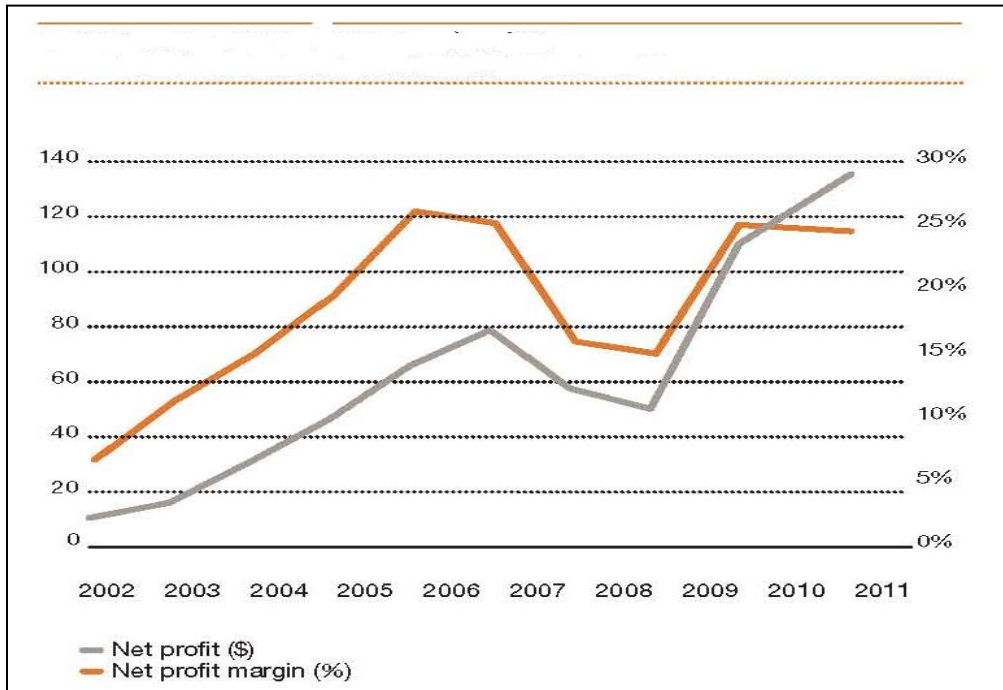
3. Profits and Revenue

A “fair share of the economic rent of the sector” was the justification offered by the World Bank and other promoters of the radical liberalization of Africa’s mining sector which reversed the push for national control and re-established the dominance of foreign capital. Failure of the model to deliver on its central promise was bound to challenge its very legitimacy. It is arguable that the considerable industry which has developed around revenue transparency is principally driven by a concern to protect this “revenue as optimal return” model by ensuring that mining TNCs are fulfilling their legal obligations in respect of taxes whilst creating a ‘*cordon sanitaire*’ around mining revenues in a context where it is assumed that local elites have a corrupt predisposition. This point is not undermined by the fact that citizens of mining countries are all too aware of the role of corruption in some of the most outrageous mining contracts and want probity in officials and institutions, transparency of processes and access to information and welcome processes which advance these. Despite the high visibility and influence of the revenue transparency bloc, questioning of the disproportionate fiscal advantage enjoyed by foreign investors has always been part of the critique of the liberal mining model. Critics of SAPs attacked the giveaway terms on which mining SOEs were privatized (Lungu). The mining firms and their allies responded to the questioning of the privileges of mining FDI with arguments about the especial risks attendant on investing in Africa in a context of sluggish prices and various uncertainties. This defence was however substantially undermined by the onset of the boom and the upward spiral of mineral prices, forcing even the World Bank, the IMF and other promoters of the model to accept that things had to change. Until the upsurge in prices many African governments saw these critics as a threat to the strategic project of attracting FDI. The inequities in benefit sharing that have been exposed by the price upsurge have served to radicalize growing sections of African elites and increasing numbers of governments ready to demand change, with varying degrees of radicalism.

The tripling of mineral prices between 2000 and 2011 generated unprecedented levels of profits for mining companies. Between 2002 and 2006 average net profits of the biggest mining firms increased by more than 1,400%, going up by 64% between 2005 and 2006 alone. Between 2003 and 2011 profits grew by an average 20% a year. The sector rebounded quickly from the global financial crisis.

In 2010, the financial results for the top 40 mining firms were spectacular with revenue increasing by 32% and breaking \$400 billion for the first time and the 156% jump in net profits, to \$110 bn. reflected the post crisis rebound, Price Waterhouse Coopers, 2007; 2011; 2012).

2002-2011: Net Profit and Profit Margin of Top 40 Mining Firms



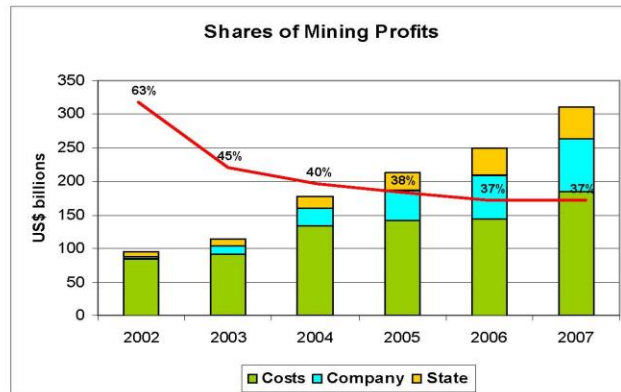
Source: PWC-Mine 2012

These profits put in sharp relief the inequitable terms on which African governments had granted mining concessions (UNECA, 2011). Take the case of Zambia. Between 2004 and mid 2008 the price of copper more than quadrupled, from around \$1,800 to over \$8,000, resulting in an exponential increase in the value of Zambia's copper exports compared to export volumes. The profits of the foreign firms exploiting Zambia's copper soared: the profits of the Konkola Copper Mines went from \$52.7m to \$206.3m while First Quantum's rose from \$4.6m in 2003 to \$152.8m. By contrast Zambia earned only \$10m from royalties in 2005/2006, thanks to some of the lowest royalty rates in the world. (Lungu, ROAPE, 2008). Between 1997 and 2005, Tanzania exported gold worth more than US\$2.54 billion which yielded \$28m a year in royalties and taxes to the government. (Tundu and Curtis).

The graph below, by a World Bank official, using public data shows how host country share of mining profits dropped as overall profits increased.

How were profits shared during the boom?

- Sorting out reality from perception is a significant challenge because of limited transparency and delays in revenue reporting
- For a global perspective we have drawn on PWC's annual survey of the top 40 international mining companies
- This is a narrow sample and results have to be treated with great caution



PWC Top40 survey of mining company results*

State Share = PWC reported income taxes paid + 5% of gross revenue as a proxy for royalty and duties paid

Excludes dividend withholding taxes and dividend receipts from state equity

* PWC report "Mine": As good as its gets?", 2008

Source: Taxing the Mineral Industry in Turbulent Times, 2009²

An UNCTAD study (2008) found that while mineral exporting developing countries had income gains from positive changes in terms of trade between 2004 and 2006, as a result of the upward movement of prices, these gains were considerably eroded by various forms of capital outflows by TNCs. "This has been the case particularly for oil- and mineral-exporting countries in Africa and Latin America where foreign companies account for a large proportion of their export-oriented production, especially in mining, and where the taxation system is favourable to private firms in the extractive industries. (UNCTAD,2008)" The data is summarised in the graph below:

Impact of changes in terms of trade and net income payments on national disposable income in selected developing country groups, average for 2004 (Percentage of gross domestic product)

	Effects from changes in terms of trade	Effects from changes in net income payments	Net impact
Oil exporters	7.3	-0.2	7.0
Exporters of minerals and mining products	5.7	-4.6	1.2
Other commodity exporters	-0.2	-0.1	-0.3

Source: UNCTAD- The Changing face of Commodities, 2008

Since 2006 quite a few of African countries have amended their laws or initiated the renegotiation of contracts with mining firms or indicated an intention to take one or both steps. These countries

² http://siteresources.worldbank.org/INTOGMC/Resources/336099-1236292308783/b_land_Taxing_the_Minerals_Industry_in_Turbulent_Times_Final.pdf

include Ghana, Congo DR, Zambia, Liberia, Zimbabwe and Guinea, Cote d'Ivoire, Malawi, Sierra Leone, Burkina Faso, Kenya, Tanzania and Madagascar. The most important changes effected include increases in royalty rates and levels of company tax. In a number of cases the effects of changes have been limited by stability clauses in contracts. For example the benefit of Ghana's increase of royalty rates from 3% to 5% for all mining firms has been limited by the fact that two of the biggest gold producers have stability provisions freezing the tax rates in their contracts. In some cases such as Zambia's attempt to impose a windfall tax TNCs resistance and political pressure forced a retreat before an electoral change of government put fiscal reforms back on the agenda (SARW, 2009, TWN-Africa, 2009). There are indications of similar resistance in Malawi, Tanzania, and Ghana by companies invoking the sanctity of contract. An important factor in the resistance of companies is the presence of sweeping stability clauses in mining contracts in most Africa countries. According to 2008 Report stabilization clauses that provide the broadest investor protection are to be found in the extractive sectors of Africa and Central Asia (UN, 2008). Governments are understandably nervous about a break down in their relations with investors because of fears of poisoning the investment climate and about the consequences of investors resorting to investment dispute arbitration.

The African awakening about improving fiscal returns has so far not paid enough attention to four international trade and finance issues which have a bearing on the subject. The growing use of resource for infrastructure contracts by merging economies especially China, illicit outflows; financialisation of commodities and its impact on price volatility and the organisation of the international trade in commodities. The problems issues, excepting the first, create for African and other commodity exporting countries require various measures of international policy intervention for which there varying levels of interest. Illicit flows and financialisation of commodities are receiving some attention as part of the limited responses to transnational corporate behavior because of the issues raised by the causes of the global financial and economic crisis but these are of only limited value to mineral exporting African countries. The world wide interest in illicit flows and the use of tax havens by TNCs has found resonance in Africa (APPR, 2013; AfDB, UNECA). The continent which experiences considerable illicit outflows through trade and finance is however yet to mark out its own distinctive interest in the global discussions even though African Finance ministers set up a High-Level Panel on Illicit Financial Flows from Africa in 2011 under the chairmanship of Thabo Mbeki.

4. Beyond Mining Revenue: The AMV and Structural Transformation

The Africa Mining Vision acknowledges the importance and value of mineral taxes for development and improving the fiscal benefits of mining are very much part of the reforms set out in its Action Plan. The AMV however represents a paradigm shift away from the resource rent centred strategy which has governed African mining for two decades. It sets out a multifaceted framework for mineral-based industrialization and structural transformation of Africa's mineral dependent economies and for their better integration into regional economies as part of building a diversified industrializing African economy. The AMV seeks to promote upstream, downstream as well as sidestream linkages. Also it recognises the importance of promoting indigenous ownership of enterprises with an implied leaning towards private enterprise.

Africa Mining Vision

- A knowledge-driven African mining sector that catalyses & contributes to the broad-based growth & development of, and is fully integrated into, a single African market through:
 - Down-stream linkages into mineral beneficiation and manufacturing;
 - Up-stream linkages into mining capital goods, consumables & services industries;
 - Side-stream linkages into infrastructure (power, logistics; communications, water) and skills & technology development (HRD and R&D);
 - Mutually beneficial partnerships between the state, the private sector, civil society, local communities and other stakeholders; and
 - A comprehensive knowledge of its mineral endowment.
- A sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities;
- A mining sector that has become a key component of a diversified, vibrant and globally competitive industrializing African economy;
- A mining sector that has helped establish a competitive African infrastructure platform, through the maximization of its propulsive local & regional economic linkages;
- A mining sector that optimises and husbands Africa's finite mineral resource endowments and that is diversified, incorporating both high value metals and lower value industrial minerals at both commercial and small-scale levels;
- A mining sector that harnesses the potential of artisanal and small-scale mining to stimulate local/national entrepreneurship, improve livelihoods and advance integrated rural social and economic development; and
- A mining sector that is a major player in vibrant and competitive national, continental and international capital and commodity markets.

Source: *Minerals and Africa's Development* (UNECA,2011)

The development strategy of the AMV runs substantially counter to the Washington Consensus inspired development strategies currently dominant in Africa. Its logic restores a leading role for the state in a range of areas beyond the currently dominant facilitating function, including planning and revival of industrial policy. It also requires a vigorous programme of local enterprise development and therefore a substantial tempering of the primacy of FDI which currently dominates policy. Based on the AMV's acknowledgment that mineral based industrialization would require "proactive and deliberate actions from key stakeholders particularly governments" the AMV Action Plan of 2011 identifies a number of policies that should be implemented at national and regional levels to advance the AMV's linkages and diversification, i.e. industrialization agenda.

AMV Action Plan: Activities under Programme Cluster 8 – Linkages and Diversification

At national level

- Identify and promote development of minerals to enhance economic linkages
- Develop value addition policies and strategies (based on supply-chain analyses) including local content and beneficiation
- Investigate the judicious use of export taxes to encourage beneficiation
- Identify and promote viable beneficiation projects
- Review and align international agreements to create space for mineral resource based industrialization and development;
- Create a database on tariff and non-tariff barriers to mineral-based value added products and expand their access to regional and global markets
- Promote holistic and multi-sectoral approaches to mineral development policy
- Develop institutional arrangements that combine the minerals, industry, trade and STI complexes.

At sub regional and regional levels

- Review best practice in state equity participation and develop guidelines and toolkits for RECs and member states
- Cooperate in the formulation and implementation of trade and investment policies that facilitate linkages development
- Ensure that WTO, EPAs, FTAs, BITs and other bilateral, regional and/or international agreements do not constrain policy space for mineral resource based industrialisation and value addition.
- Develop regional strategies to eliminate tariff and non-tariff barriers to mineral-based value added products and expand their access to regional and global markets.
- Develop a framework for mineral value addition in Africa for RECs and member states
- Develop best practice guidelines for holistic and sector-wide and multi-sectoral approaches to mineral development policy for RECs and member states
- Develop best practice on new institutional arrangements combining the minerals, industry, trade and STI complexes for RECs & member state
- Review best practice in linkages promotion and develop guidelines and toolkits for RECs & member states

“Without appropriate policy responses, a significant improvement in the terms of trade of CDDCs [commodity dependent developing countries] may entrench their existing commodity dependence” (UNCTAD, 2013). Indeed the past decade of increased exports of low value added mineral exports did intensify the commodity dependence of Africa mining countries (UNECA, 2013). The structural effects of responding to increased demands for raw materials converged with the effects of trade liberalization to impede or reduce diversification. Already by “the end of the 1990s the production structure of the sub-Saharan African region had become reminiscent of the colonial period, consisting overwhelmingly of agriculture and mining” (UNCTAD, TDR, 2010). A recent study of eight African countries underlined the importance of deliberate state policy as a driving factor in the development of commodity based linkages (Morris, Kaplinsky, Kaplan, 2012). “Policy is a critical factor in the development of linkages”. The imperative of building linkages and diversifying Africa’s mineral economies in addition to maximizing fiscal returns is finding expression in regional and national policies such as the draft ECOWAS Mineral Development Policy (EMDP), the Regional Frameworks for Development of Extractive Industries, Mineral Value Addition being developed by the East African Community and South Africa’s Beneficiation Strategy of 2011³. Significantly the World Bank has

³ The draft EMDP has an Article (2.3) on Local content Policy of Mineral Operations which seeks to: a) Promote the participation of national private sector and public-private partnerships in the Mineral Sector; b) Facilitate access to funding for local participation in mineral projects in the Community.

Promote the pooling of local investment funds for access by local mineral operators; c) Promote the development of national expertise and the participation of Community experts in the development of the mineral sector; d) Promote the adoption of procurement policies by mineral operators that give preference to goods and services produced in Member

joined the tide and indicated selective support for the promotion of backward linkages⁴. The perspective of the World Bank highlights a number of important issues which would need to be clarified in the detailing of policies for implementing the AMV and its Action Plan. One key point is the meaning of local (domestic) content/supplier especially in the context of building upstream linkages. What is clear is that there are various definitions and emphasis with very different effects and outcomes. These spread from simply having nationals act as importers of inputs at one end, to having domestically owned and managed firms, employing locals supply inputs which are locally made with materials from the domestic/regional economy (World Bank 2012). The logic of the AMV points to a comprehensive conception of domestic/local content. A number of debates and policy initiatives reflect varying responses to this challenge. A number of countries, including Guinea, have increased state shareholding in mining firms without any challenge to the power of the foreign investors, Namibia has set up a national mining firm, Zimbabwe is implementing a policy of indigenization – majority ownership for nationals, and the debate about nationalisation continues in South African government despite the government’s decision not to nationalise any mines.

The policies identified by the AMV as needed to break out of commodity dependence and realign Africa’s place in the international division of labour face a number of major obstacles and challenges. These include vested interests in the current model – domestic elites, foreign enterprises and economies whose operations and profitability assume Africa’s continued role as a source of raw material inputs. This shared standpoint is at the centre of the contest over Africa between old actors from the OECD and the new players from the emerging powers even as the older powers resort more to the stick and the new offer carrots in the battle for influence. These existing relationships have over the past two decades become located in and underpinned by trade and investment relationships, rules and institutions within the global economy which liberalization frameworks African regimes have signed up to as part of seeking to profit from globalization. The experiences of past industrialisers show that policy space within the international trade and investment regime was important for the implementation of the measures that enabled industrialization (ul Haque, 2007; Chang, 2005). The pre-liberalisation era afforded more opportunities for among others infant industry protection, the use of subsidies, acquisition and adaptation of technology, use of performance requirements and affirmative action in support of local enterprises. The current international trade and investment regime centred around the Agreements of the WTO, and international trade and investment agreements such as BITs and Free Trade Agreements, including the EU-ACP EPAs, have however substantially reduced the space for the national and regional deployment of the development

States that meet, efficiency and safety standards in the Mineral Sector; e) Give preference to Community citizens who meet the skills requirements and professional standards in recruitment and promote continuous improvement for further advancement and professional opportunities. It also has provisions for the promotion of value addition “for all mineral products”, the diversification of mineral exploitation and the structures necessary for value addition and the facilitation of with other sectors of the economy at the local, national and regional levels.

⁴ The World Bank like most donors has declared its support for the AMV and indicated which elements it will support. It has published a useful report on the prospects for local procurement by the mining industry in West Africa. The report and the proposals it contains in the Bank’s own words represent “ a shift in policy approach firms” and has been informed by the emerging concerns of African governments. See World Bank (2012) ***Increasing Local Procurement by the Mining Industry in West Africa***, Report no. 66585-AFR.

strategies used by now industrialized countries. All but a handful of African countries are members of the WTO. 41 African countries are eligible under the USA's AGOA with its stick of wide ranging economic and political conditionalities preferential and the carrot of preferential access to the US market. The EU has set January 2014 as the deadline for the completion of the Economic Partnership Agreement negotiations with those African regions where the talks have stalled. African governments have signed numerous BITs supposedly to improve their investment climates and saw accepting constraints on their policy spaces as a price worth paying. In recent weeks Canada signed new FIPAs with Benin and Tanzania and a growing number of emerging powers are seeking BITs and double taxation treaties with African countries⁵.

The following discussion focuses on two categories of challenges posed to the policy space needed for the AMV by the international trade and investment regime. These are a) Tariffs and Industrialization; b) FDI regulation, performance requirements and policy space.

4.1 Tariffs and Industrialization

Tariffs have been extensively used in support of industrialization. The removal or substantial lowering of import tariffs was a key pillar of SAPs and many African countries have persisted with these levels even though they have bound only a portion of their tariffs under the WTO (and generally at much higher levels than the rates they are applying). One of the key incentives/concessions provided by most African mining codes for foreign mining firms is the duty free importation of an extensive list of inputs. This concession has been backed up with mining firms being allowed to retain all or a substantial part of their export earnings outside the host country. Zambia recently decided to abolish the retention claiming that it was facilitating illicit flows. A policy of allowing duty free importation of mining inputs provides little incentive for firms to buy locally and places potential local producers and suppliers of such inputs at a disadvantage. This blunts the development of backward linkages and local procurement. Ghana's experience perfectly illustrates some of the perverse effects of duty free importation by mining firms. Because firms that supply things to the mines do not enjoy the waiver but pay duties the mines can import supplies at a lower cost and therefore have no incentive to buy locally (Morris, Kaplinsky and Kaplan, 20112).

The conclusion of the WTO's stalled Doha round negotiations on market access in non-agricultural products (NAMA) could considerably close the relative freedom with policy space that developing countries have in respect of tariffs. Proposals from developed countries seek to bind and reduce industrial tariffs and harmonize them across products. Even as Least Developed Countries (which includes many mineral producing African countries) will still retain some leeway they will have to increase the proportion of their tariffs that they bind. The main danger from such a development is that broad ranging irreversible low tariffs would lock the affected countries in their current place in global production and exchange, basically blighting their prospects for industrialization with the accompanying technological progress and job creation (Akyuz, 2009). There is a much more present

⁵ Offshore Centres race to seal Africa investment tax deals FT, 19 August 2013
<http://www.ft.com/intl/cms/s/0/64368e44-08c8-11e3-ad07-00144feabdc0.html?siteedition=intl>

danger from the Economic Partnership Agreements (EPAs) with the EU, the negotiations of which are at various stages for different blocs of African countries⁶. Even as Europe and the USA are losing market share in Africa to China and other emerging powers Europe remains the most important source of goods into Africa. This is mainly machinery, chemicals and manufactured goods. The EPAs provide for the elimination of tariffs on up to 80% of imports from the EU. Though the EPAs have lists of sensitive products which will retain import tariffs and make some provisions for infant industry protection these are inadequate for creating policy space for industrialisation. One reason for the inadequacy is that the lists are static, based on where the economies are at currently, as opposed to being dynamic, linked to long term visions of industrial evolution and economic development including mineral based industrialisation. Critically, from an African integration perspective, the various national and regional EPA negotiating blocs did not coordinate the composition of their sensitive products list. Not only does this make the creation of “trans-boundary value chains more difficult but also means the value addition of mineral products will not be optimized”. (UNECA, 2012).

The use of export taxes to support local processing is not prohibited by WTO rules⁷ and they can be an important part of measures to support the creation of value addition industries in developing countries. This is an important reason why developing countries have opposed attempts to have WTO rules on the use of export tariffs. For example in the Dar es Salaam Declaration issued in 2009 LDCs Trade Ministers defended export taxes as “legitimate tools for development” which should not be limited under WTO rules. Another dimension of the support that export taxes offer for local processes is the fact that they can compensate for the disadvantages that tariff escalation in potential markets poses for processed goods⁸. For example whilst African bauxite can enter the European Union duty free unwrought aluminium faces a 6% import duty. The creation of an integrated aluminium industry is a long standing ambition of Guinea which has the world’ biggest bauxite reserves and also has the potential for hydro-electricity, the price of energy being key to competitive production of aluminium. Export taxes are currently being applied in more than 10 per cent of world trade in natural resources including the minerals trade WTO, 2010. In June 2006 the African Group at the WTO tabled a proposal for WTO modalities on commodities in which they sought among other things a reaffirmation of the legality of export taxes and for modalities be established to ensure satisfactory reductions in tariff escalation where it discourages the development of processing industries in developing countries. The Group based its proposal on the mandate in the WTO's Hong Kong Ministerial Declaration which in paragraph 55 states that it is necessary to address the "particular trade-related concerns of developing and least-developed countries related to commodities in the course of the agriculture and NAMA negotiations".

⁶ Currently Madagascar, Mauritius, Seychelles and Zimbabwe and Cote d’Ivoire have EPAs in force. Cameroon, Botswana, Lesotho, Mozambique and Swaziland have signed “stepping stone” or interim EPAs, although the agreements were not yet in effect. Seven others—Ghana; Burundi, Kenya, Rwanda, Uganda; Tanzania and Namibia have initialled EPAs but have not signed them.

⁷ According to Article XI.I of GATT states that “No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.”

Developing country efforts at processing of minerals and other commodities challenge the existing global division of labour and commodity value chains. “The greater control exercised by processors, traders, and retailers has effectively curtailed the policy space of CDDCs and limited their ability to influence global value chains” (UNCTAD, Commodities and Development Report, 2012). Unsurprisingly the major OECD industrial powers (EU, USA and Japan) are hostile to the use of export taxes want it prohibited under by the WTO. They argue that they distort trade and pose a threat to the competitiveness of their firms by driving up the price of their imported inputs while lowering those of their competitors. The elimination of export taxes through trade agreements and other means is one of the objectives of the EU’s Raw Materials Initiative (Curtis, 2010; UNECA 2011). The various EPAs that African countries have signed with the EU contain provisions aimed at prohibiting or severely restricting the use of export taxes (Stevens, et. al 2008, Appendix 3). Disagreement about export taxes is one of at least major five issues holding up the conclusion of the EPA negotiations (UNECA, 2013).

4.2 Investment Rules and the AMV

The heavy flow of FDI into Africa’s extractive sectors is a story of success in attracting free moving foreign capital within the existing international division of labour and the dominant notions of comparative advantage and the foreign capital is expected to play a major role in the realisation of the AMV. In seeking to correct the negative effects of the lopsided flow of foreign investment into Africa’s extractive sectors such as the stunting of manufacturing and locally owned businesses the Africa Mining Vision has set its face against very powerful forces and tides. Freedom for capital from state restraints and direction is a pillar of the neo-liberal order and has driven international investment rule making over the past three decades. Whilst attempts to establish to use the WTO to liberalise the free movement of capital has been only partially successful, in the shape of the Agreement on Trade Related investment Measures (TRIMs) and the General Agreement on Trade in Services (GATS), the growing network of Free Trade Agreements (FTAs), Bilateral Investment Treaties (BITs) and the conditionalities of the IMF and World Bank are advancing the freedom of movement objective across an increasingly overlapping patchwork of geographical areas. African countries were not alone in drifting into the web of the WTO. According to Chakravarthi Raghavan *“Concluded under the guise of international ‘trade’ negotiations for an agreement to ‘liberalise’ trade across frontiers, the WTO entered the developing world - like a thief in the night..Since then, under the banner, rather the slogan, of “globalization”, the WTO is slowly becoming an ‘occupying’ or ‘imperial’ power, expanding the rights of foreign corporations and reducing that of nationals -- all under the guise of ‘multilateralism’⁹. Many African countries did not have a comprehensive and coherent strategy within which they situated decisions to sign BITs and other international instruments liberalizing international trade and investment flows beyond a broad sense that these were acceptable tradeoffs or facilitators of FDI inflows or in the case of AGOA market access. There are hardly any cases, except perhaps for South Africa, where African countries were demandeurs; in many cases donor pressure or influence played a crucial role. African countries are continuing to signing BITs with both old investment sources and new actors such as China, India and Malaysia.*

⁹Quoted in Someshwar Singh Uruguay Round- A historical perspective <http://www.twinside.org.sg/title/hist-cn.htm>

Restrictions on the imposition of performance requirements on foreign firms is the most important common feature of GATS, TRIMs and BITs that affects the policy space required for the realisation of the AMV. The key principles in this regard are market access and national treatment of foreign firms. Directing investment choices by investors, especially foreign ones, with a mix of incentives and regulations is a long standing aspect of development policy. Historically performance requirements have been used to advance policies of increasing local content (material and human resources) use by foreign firms, promoting export production and job creation.

Under GATS countries choose which services to liberalise subject to the principles of market access and national treatment. It offers countries the option of allowing foreign service providers entry into their markets under conditions that they pre-determine. From the perspective of regulating foreign investment the key delivery mode is Mode 3, "commercial presence" which covers FDI by service suppliers. Market Access is indirectly defined by the setting out of a list of measures which will be deemed to violate the market access principle¹⁰. Market access and national treatment in this context have implications for policy space because they affect how much scope governments have for affirmative action to promote local enterprise and to direct foreign investment into particular sectors or activities. Most African countries have been cautious about making commitments under GATS, despite requests from developed countries, because they recognise that their prospects for the export of services are weak and also because they have not properly evaluated their own domestic services markets. Firms from developed economies dominate the global services economy so their governments are exerting all manner of pressure to narrow the scope for discretion by governments in respect of the commitments they make under GATS¹¹. The United States has made requests to Ghana in respect of services which are important for the mining sector. In its 2002 request it demanded the removal of all limitations on market access and permit national treatment in the provision of energy services. Under GATS energy services cover (i) exploration and development services, (ii) services incidental to energy distribution, (iii) energy marketing services and (iv) other services important to energy services. The group of services covered by this request are the types of upstream activities which are dominated by foreign companies in most African mining countries They are also the types of activities that could be the target of policies which aim to develop local content defined in a comprehensive sense(Morris, Kaplinsky and Kaplan, 2012; World Bank, 2012)).

TRIMs do not directly regulate foreign investment but prohibits performance requirements on foreign firms that violate the GATT proscription of quantitative restrictions or are inconsistent with the principle of national treatment. This means policies and laws favouring domestic products could conflict with TRIMs. It effectively outlaws many performance requirements long seen as key features of industrial policy. According to UNCTAD (2007,1) *"many countries have used these performance requirements as a tool to maximize the benefits from foreign direct investment (FDI). For instance, local content requirements, which force foreign investors to purchase a proportion of their production inputs from domestic sources, are generally designed to create local jobs and training, promote the transfer of technology and ameliorate trade imbalances"*. Developing countries have remained

¹⁰ Measures that violate market access are (a) limitations on the number of service suppliers, (b) limitations on the total value of service transactions or assets, (c) limitations on the total number of service operations or quantity of service output, (d) limitations on the total number of natural persons, (e) restrictions or requirements regarding type of legal entity allowed to, and (f) limitations on the participation of foreign capital.

¹¹ Dangerous changes in GATS rules, http://www.polarisinstitute.org/files/GATS%20Sign-on%20Letter,%20June%202008.1%20doc_0.pdf

strongly opposed to TRIMs with few being enthusiastic about removing the policy instruments it proscribes. TRIMs has a direct bearing on the implementation of the emerging consensus on increasing local content in African mining. Within the logic of TRIMs any attempt to promote local inputs would have to pass the test of the open market. However considering the global procurement strategies of large TNCs and the marketing approaches of their established suppliers, the “market” for supplying from locally produced sources becomes very challenging indeed. Mining firms and national chambers of mines in some African countries have launched domestic procurement programmes as part of their mining community CSR engagement but the scope and duration of these are very much the companies’ choice.

The interim EPAs with the EU provide for possible future negotiations on investment, services, public procurement, and intellectual property protection (Stevens, et al, 2008). The terms and effects of the comprehensive EPA with the CARICOM presage what the EU will be demanding in any such negotiation with African regions. The terms of the CARICOM EPA severely limits the regulation of EU capital by CARICOM countries (UNECA,2012).One writer concluded that the effect of the CARICOM EPA is that the countries have relinquished “core policy space” (Van Harten, 2008).

The growing numbers of BITs signed by African countries represent another channel for limits on the performance requirements that can be placed on foreign investors. Like many others, African countries have entered into BITs as part of their strategy for attracting foreign investment. A recent estimate placed the number of BITs close to 3,000 and there is agreement that the numbers have grown significantly over the past two decades. The value of BITs in this regard is matter of debate and dispute (Hallward-Driemeier, 200; Yackee, 2008). Most African BITs are with EU countries, a few with the US and Canada and at the last count 28 African countries had BITs with China. For the USA, AGOA conditionalities serve as an additional lever of opening for access of American investors into the countries that take up the market access offer under the law. US and Canadian BITs seek pre-establishment privileges for their investors to enjoy most favoured nation (MFN) and national treatment even before they set up, thereby escaping the imposition of any performance requirements as a condition of entry¹². European investors are more susceptible to requirements because EU BITs tend to provide for MFN and national treatment after entry (Molineuvo, 2006; Malik, 2006).

There is growing disquiet about the effects of the provisions of BITs on matters such as performance requirements, national treatment and MFN on national policy space and also the ways in which their investor-state dispute resolution mechanisms (ISDRMs) have placed states at the mercy of companies partly on account of the practices and orientation of arbitration panels (TNI, 2012). Australia has decided to drop ISDR mechanisms from its BITs. In April 2013, faced with suits from foreign investors with claims totalling billions of dollars and awards against them by arbitrators seven Latin American countries came together to coordinate their political and legal responses. They also decided to setup an observatory to analyse the arbitration system and make proposal form alternative mechanisms¹³. Following challenges under BITs to its black Economic Empowerment (BEE) programme, South Africa initiated a review of its BIT policy in 2007, a process which was completed in 2010¹⁴. The conclusions of the review include -there being no proven link between South Africa signing BITs and FDI inflows;

¹² See US-Rwanda BIT in Minerals and Africa’s Development (UNECA,2012 and Canada-Tanzania FIPA-
<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/tanzania-text-tanzanie.aspx>

¹³ Latin American Groups Set up New Group to Address Investment Treaties, South Bulletin, 5 July 2013

¹⁴ Xavier Carim, Update on the Review of Bilateral Investment Treaties in South Africa,
http://www.thedti.gov.za/parliament/bit%27s_in_sa.pdf

some BIT terms violated the country's Constitution; the existing BITs contained imprecise language and the BITs constrain government's ability to regulate in the public interest. Following from this the South Africa government has taken a number of initiatives – it is rescinding existing BITs cancelling them as they fall due for renewal, while aiming for any future BITs to be aligned with national Constitution and legislation, revising its domestic investment laws to strengthen investor protection and cater for the kinds of concerns normally provided for in BITs. South Africa has also been a leading influence in the drafting of model BIT for the SADC region.

A key finding of South Africa's review of was that FDI requires regulation that “balance effective protection of investments with measures to ensure that FDI supports national development, establishes beneficial linkages to the national economy, augments domestic resources, fosters enterprise development, and enhances the technology, skill and knowledge base of the economy” (Carim, 2013). The flipside of this finding is the need for a development policy framework which brings coherence and coordination to all these concerns and provides the context for efforts to attract FDI. Morris, Kaplinsky and Kaplan (2012) offer a disappointing picture with respect to the operative vision and practice for linkages development in key African mining countries such as Tanzania, Ghana and Zambia. It describes the vision on linkages in these countries as “largely vacuous”. In the case of Zambia privatization and liberalization “had created a policy environment that had led to the development of extensive linkages being swept away, removing incentives for the broadening and deepening of backward linkages”. It can be said that these situations underline the value of the AMV but at the same time highlight the tough road that actual implementation could face, including how to respond to the challenges posed by the international trade and investment regime. It is clear and strong coherence and coordination across government departments and regionally among African governments is a necessity. Past practice does not offer an uplifting guide to the future.

References

African Union (2009) *Africa Mining Vision*

http://africaminingvision.org/amv_resources/AMV/Africa%20Mining%20Vision%20english.pdf

African Union (2011) Action Plan for Implementing the AMV, December 2011

http://africaminingvision.org/amv_resources/AMV/Action%20Plan%20Final%20Version%20Jan%202012.pdf

Africa Progress Panel (2013) *Equity in Extractives: Stewarding Africa's Natural Resources for All*

Akabzaa, T.M., Seyire, J.S., Afriyie, K. (2007) *The Glittering Façade: Effects of Mining Activities on Obuasi and Its Surrounding Communities*, Third World Network-Africa, Accra, Ghana.

Akyüz, Yilmaz (2005) *The WTO Negotiations On Industrial Tariffs: What Is At Stake For Developing Countries?*

http://www.choike.org/documentos/namalnd_fin.pdf.

Akyüz, Yilmaz (2009) *Multilateral Disciplines and the question of Policy Space*

Third World Network Trade and Development Series No. 38

<http://www.twinside.org.sg/title2/t&d/tnd38.pdf>.

Besada, H and Martin, P. (2013) *Mining codes in Africa: emergence of a "Fourth" Generation?*

Research Report, North-South Institute, Ottawa, Canada

Campbell, B. (2004) *Regulating Mining in Africa: for whose Benefit?* Nordiska Africainstitutet, Uppsala

Chang, Ha-Joon (2005), *Policy Space in Historical Perspective – with special reference to Trade and Industrial Policies*

http://www.networkideas.org/featart/sep2005/Policy_Space.pdf.

Curtis, M & Lissu, T. (2008) *A Golden Opportunity? How Tanzania is failing to Benefit from Mining*

Curtis, M. (2010) *How EU Trade Policy on Raw Materials is undermining Development*

Ernst & Young (2012) "Business Risks facing Mining and Metal 2012-2013"

[http://www.ey.com/Publication/vwLUAssets/Business-risk-facing-mining-and-metals-2012-2013/\\$FILE/Business-risk-facing-mining-and-metals-2012-2013.pdf](http://www.ey.com/Publication/vwLUAssets/Business-risk-facing-mining-and-metals-2012-2013/$FILE/Business-risk-facing-mining-and-metals-2012-2013.pdf)

ul Haque, Irfan (2007) *Rethinking Industrial Policy*, UNCTAD Discussion Papers No. 183

Hallward-Driemeier, Mary (2003) "Do Bilateral Investment Treaties Attract FDI? Only a bit...and they could bite", World Bank Policy Research Working Paper Series

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=636541

Kaplinsky, R. and Farooki, M. (2010) *What are the implications for Global Value Chains when the Market Shifts from north to South*. Policy Research Working Paper 5205, World Bank

Kaplinsky, R. and Farooki, M. (2009) Africa's Cooperation with New and Emerging Development Partners: Options for Africa's Development

Land, B. (2009) Capturing a fair share of fiscal benefits in the extractive industry; Transnational Corporations, Vol. 18, No. 1 (April 2009) http://unctad.org/en/docs/diaeia20097a7_en.pdf

Lungu, John (2008) 'Copper Mining Agreements in Zambia: Renegotiation or Law Reform?' *Review of African Political Economy*, 35:3, 403-415

Lungu, J. (2009) The Politics of Reforming Zambia's Mining Regime. *Southern Africa Resource Watch Resource Insight No. 8*

Lungu, J. and Sumbye K. n.d. Strategies for Maximizing Mineral Revenue: The Zambian Experience

Malik, Mahnaz (2006) Report on Bilateral Investment Treaties between European Union Member States and Pacific Countries; Legal Consultant to IISD, April 2006
http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/B251C3FD-03DF-470C-B4A9-310CC771A380_ReportonBilateralInvestmentTreatiesbetweenEuropeanUnionMemberStatesandPacificCountries.pdf.

Morris, M., Kaplinsky, R., & Kaplan, D, (2012) *One Thing Leads to Another: Promoting Industrialisation by Making the Most of the Commodity Boom in Sub-Saharan Africa*
<http://www.prism.uct.ac.za/Downloads/MMCP%20Book.pdf>

Mwitwa, C & Kabemba, C (2007) Copper Boom in Zambia: Boom for Whom *Southern Africa Resource Watch Resource Insight No. 3*

Price Waterhouse Coopers :Mine (2006-2012)

Republic of South Africa (2011) A Beneficiation Strategy for the Minerals Industry of South Africa, June 2011 <http://www.info.gov.za/view/DownloadFileAction?id=147564>

SADC Model Bilateral Investment Treaty Template with Commentary <http://www.iisd.org/itn/wp-content/uploads/2012/10/SADC-Model-BIT-Template-Final.pdf>

South Bulletin 21 November 2012, Issue 69

http://www.southcentre.org/index.php?option=com_content&view=article&id=1889%3Asouth-bulletin-south-centre-issue-69-22-november-2012-the-emerging-crisis-of-investment-treaties&catid=79%3Asouth-bulletin-reflections-and-foresights&Itemid=106&lang=en

South Bulletin 5 July 2013 Issue 74

http://www.southcentre.org/index.php?option=com_content&view=article&id=1999%3Asouth-bulletin-south-centre-issue-73-18-june-2013-sustainable-development-goals-views-from-the-south&catid=79%3Asouth-bulletin-reflections-and-foresights&Itemid=106&lang=en

Stevens, Christopher; Meyn, Mareike; et al. (2008) The New EPAs: Comparative Analysis Of Their Content And The Challenges For 2008, (ODI, ECPDM)

Transnational Institute (2012) Profiting from Injustice

<http://www.tni.org/sites/www.tni.org/files/download/profitfrominjustice.pdf>

TWN-Africa, OSISA, TJN-Africa, ActionAid and Christian Aid (2009) *Breaking the Curse: How Transparent Taxation and Fair Taxes Can Turn Africa's mineral Wealth into Development*

UNECA (2011) Minerals and Africa's Development, UNECA, Addis Ababa, Ethiopia

UNECA. (2013) Economic Report on Africa, *Making the Most of Africa's Commodities: Industrializing for Growth, Jobs and Economic Transformation*

UNCTAD (2007) World Investment Report: *Transnational Corporations, Extractive Industries and Development*

UNCTAD, 2003, World Bank Can Africa claim the 21st Century

UNCTAD (2003) Economic Development in Africa: Trade Performance and Commodity Dependence

UNCTAD (2005) Economic Development in Africa: Rethinking the Role of foreign Direct Investment

UNCTAD (2007) Elimination of TRIMS: The Experience of Selected developing countries

UNCTAD (2010) Trade and Development Report

UNCTAD (2013) Commodities and Development Report: Perennial Problems, new Challenges and evolving Perspectives

Van Harten, Gus (2008) Investment Provisions in Economic Partnership Agreements

http://www.bilaterals.org/IMG/pdf/EPAs_and_investment.Van_Harten.pdf.

UN (2008) Stabilization clauses and Human Rights

UNDP (2003) Making Global Trade Work for People, Earthscan Publications

UNDP (2009) Policy space and investment Rules under GATS: Select Asian experiences, UNDP Regional Centre for Asia Pacific, Colombo Office

http://www2.undprcc.lk/resource_centre/pub_pdfs/P1109.pdf.

World Bank (1992) Strategy for African Mining, 1992

World Bank (2000) Can Africa claim the 21st Century?

World Trade Organisation (2010) World Trade Report, Trade in Natural Resources

Yackee, J.W. (2008) Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law: Do BITs Promote Foreign Direct Investment? *Law & Society Review*, Vol. 42, No. 4, 805-832