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Bachelor of Laws

African Mining Regime Reform: Is the Western Australian Experience of Resource Development Aligned with the Africa Mining Vision?

This thesis is presented for the Honours Degree of Bachelor of Laws Murdoch University in 2014.

I declare that this is my own account of research undertaken by me.

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ABSTRACT:

The question posed by this paper is whether the development of mineral resource policies in Western Australia is aligned with the goals of inclusive growth and sustainable development expressed in the Africa Mining Vision which was drafted in 2009. In exploring Africa’s transition from an object of investment to an agent of investment, the history of mining in Africa and the dominant narratives that have often explained and constrained Africa’s development have been explored. Africa’s early resource development experience was shaped by colonial intervention and by the impact of World Bank Group interventions. An analysis of some of these reforms has been made. Overall, while World Bank Group interventions did increase investment into Africa’s extractive industries, there were also significant negative impacts to African governments and African people. African countries now seek to be the stewards of their own development. One avenue for African development is through the promotion of their mineral industries. Western Australia has recently signed a Memorandum of Understanding with COMESA Member States to assist these states in promoting their mineral industries. The development ideology of Western Australia’s mineral industry is explored and compared to statements contained in the Africa Mining Vision. It is argued that the experience and ideology of resources development in Western Australia is not aligned with the goals of expressed in the Africa Mining Vision.
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AFRICAN MINING REGIME REFORM: IS THE WESTERN AUSTRALIAN EXPERIENCE OF RESOURCE DEVELOPMENT AlIGNED WITH THE AFRICA MINING VISION?

MICHELLE GAYNOR

I INTRODUCTION

Global interest in the development of African countries is not a new phenomenon. In 2002, a United Nations Conference on Trade and Development (‘UNCTAD’) publication stated that:

Africa has seen the most intense and recurrent application of structural adjustment programmes over the past two decades without making much progress in either poverty alleviation or development.¹

The UNCTAD publication further noted that the application of these adjustment programmes had often had the effect of wrestling control of development strategies away from African governments.² This paper explores how African governments, through African development bodies, are seeking to regain their ownership and participation in developing appropriate legislative regimes for Africa’s mining industries. As part of developing appropriate legislative regimes, African countries have been assessing the experiences and progress of other resource rich nations, such as Australia. In this context, Mr Barnett, the current Premier of Western Australia, in recent years has been actively working to foster relationships with African governments. As Western Australian (‘WA’) is often heralded as having a successful resource based economy, Mr Barnett has offered the State’s assistance to African governments seeking to reform mining legislation to promote their minerals industries.

² Ibid 6.
Recently, The Common Market for Eastern and Southern Africa (‘COMESA’) States\(^3\) accepted Mr Barnett’s offer of assistance. In January 2014, WA and the COMESA States signed a Memorandum of Understanding (‘MOU’).\(^4\) One of the purposes of the MOU is the promotion of strategies for investment in minerals and petroleum and the development of linkages in the COMESA States’ mineral industries.\(^5\) However, an examination of WA’s resource development ideologies, as they inform the content of the State’s mining laws, will show that the State’s ideologies are not aligned with the goals of inclusive growth and sustainable development expressed in the Africa Mining Vision (‘AMV’).\(^6\)

A Structure

In exploring whether WA’s development ideologies are aligned with Africa’s goals for the development of its mineral industries, this paper will be in three substantive parts.

The first part of the paper will explore Australia’s interest in Africa’s development. By way of background, some of the events leading to Mr Barnett’s keynote address at the 2014 ‘Investing in African Mining Indaba’ (‘Mining Indaba’) will be discussed. Further, prior to Mr Barnett’s address, he signed a MOU for WA with the COMESA States. Some of the goals of the MOU will be highlighted in this part of the paper. In addition, some of the steps taken since the MOU was signed will illustrate the further strengthening of the relationship between WA and the COMESA States.

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3 The COMESA member states include the Republic of Burundi, Union of the Comoros, Democratic Republic of Congo, Republic of Djibouti, Arab Republic of Egypt, the State of Eritrea, the Federal Democratic Republic of Ethiopia, Republic of Kenya, Libya, Republic of Madagascar, Republic of Malawi, Republic of Mauritius, Republic of Rwanda, Republic of Seychelles, Republic of The Sudan, the Kingdom of Swaziland, the Republic of Uganda, Republic of Zambia and the Republic of Zimbabwe.

4 Memorandum of Understanding between The Common Market for Eastern and Southern Africa (COMESA) and The Government of Western Australia on Cooperation in the Field of Mineral and Petroleum Resources, Agriculture, Vocational Training and Capacity Building (signed at Lusaka, Zambia on 31 January 2014) (‘COMESA MOU’). [7.1]

5 COMESA MOU, clause 3.

The second part of this paper will consider two of the dominant narratives for resource development in Africa, the resource curse and the Dutch disease. An explanation of the resource curse theory and Dutch disease will precede an examination of the history of mining in Africa. In considering the historical context of mining in Africa it is instructive to understand the impact of colonial mining on Africa’s mining industries. As African countries became independent, many of them suffered from indebtedness and poverty. During the 1980s, in response to this issue, the World Bank Group (‘WBG’) became particularly active in devising policies to assist African countries to improve their economic conditions. Three generations of WBG mining reform in Africa will be examined. This examination will illustrate that the WBG limited itself to poverty reduction measures that relied upon increasing foreign investment into African countries and minimising the role of the state. Consequently, it is apparent that the WBG sought to rely on the operation of the free markets to manage broader development issues in developing countries. In 2003 the Extractive Industries Review (‘EIR’) released its report on the effects of the WBG’s intervention into the extractive industries in developing countries. Some of the testimony given to the EIR by African civil society will be considered and some of the findings of the EIR will be discussed. While the WBG interventions were successful in increasing investment into African countries’ extractive industries, it is clear from the civil society testimony and EIR findings that there were also significant negative impacts to African societies from these interventions.

The third part of this paper will consider the central policy document for mining in Africa, the Africa Mining Vision. The AMV was drafted by a taskforce made up of representatives from the African Union (‘AU’), the United Nations Economic Commission for Africa (‘UNECA’), the African Mining Partnership (‘AMP’), the African Development Bank (‘AfDB’), UNCTAD and the United Nations Industrial Development Organisation (UNIDO). The AMV was adopted by the African Union Heads of State in February 2009. A central goal of the AMV is to build a single African market. This has also been expressed as

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‘breaking with the enclave model of natural resource extraction.’ In 2011, following the drafting of the AMV, the ‘Action Plan for Implementing the AMV’ was adopted. In September 2014, the Africa Minerals Development Centre (‘AMDC’) published ‘A Country Mining Vision Guidebook: Domesticating the Africa Mining Vision’ (‘CMV Guidebook’). The AMDC was created as joint initiative of the African Union Commission, the AFDB, and UNECA. The CMV Guidebook was produced following the workshop ‘Methodology for the Country Mining Vision (CMV)’ held in Ethiopia from 15 to 20 September 2014.

The purpose of the CMV Guidebook is to:

assist member States to domesticate the Africa Mining Vision (AMV) at the national level through a multi-stakeholder consultative process that will lead to broad-based development and structural transformation.

Analysis of these documents will show the emergence and strengthening of an African-driven policy for the development of mining industries in Africa. Following from this analysis, and in light of the recently signed MOU, WA’s development ideologies will be considered. As stated earlier, this analysis will establish that the State’s ideologies are not aligned with Africa’s goals for its mining industries to catalyse inclusive and sustainable development.

II INTEREST IN AFRICA’S MINERAL ENDOWMENT

Global interest in Africa has intensified in the new century. Undoubtedly this interest has been fuelled by Africa’s impressive growth; African economies are growing at twice the rate of growth seen in the 1990s. One contributor to

Africa’s growth has been increased foreign investment generally and, particularly, investment into extractive industries. Notwithstanding the fact that geological mapping of Africa has not yet uncovered the entirety of its mineral potential, in 2005 UNECA estimated that Africa had the world’s largest reserves of platinum group metals, phosphate, gold, chromium, manganese, vanadium, cobalt, diamonds and aluminium.\(^{14}\) According to the 2014 *World Investment Report*, in 2013 foreign direct investment into Africa increased by 4 per cent to a total of $57 billion.\(^{15}\) Assessments also indicate that for the period 2000 to 2008 natural resources attributed 24% to Africa’s GDP.\(^{16}\)

Notwithstanding this impressive growth, many African countries are still classified as fragile states and many African people suffer extreme poverty. The WBG defines extreme poverty as ‘average daily consumption of $1.25 or less and means living on the edge of subsistence.’\(^{17}\) The AfDB highlights the importance of inclusive growth policies to combat poverty in African countries. In September 2013, the AfDB released a working paper that contained a prediction that if African economic growth continued to follow current trends, 39% of the African population will be living in extreme poverty by 2015.\(^{18}\) One avenue by which African countries are seeking to improve the conditions of African people is by the exploitation of their significant mineral resource endowment.

In recent years, Australia and WA have become acutely interested in developments in Africa’s extractive industries. The Australian Government’s Department of Foreign Affairs and Trade (‘DFAT’) states that Australia has a national interest in the security, stability and prosperity of sub-Saharan Africa. DFAT recognises that mining ‘offers African countries an unparalleled opportunity to stimulate growth and reduce poverty’ if the industry can be well

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\(^{14}\) ‘Africa Review Report on Mining (Executive Summary)’ (Executive Summary, United Nations Economic Commission for Africa) 2.
managed.19 Also, by assisting and promoting Africa’s growth, Australian efforts foster gateways for Australian trade and investment, with a particular focus on mining.20 For WA, the importance of Africa’s extractive industries is that:

The involvement of WA mining companies in Africa is part of the future of Australian mining. The extent to which we can broaden out can only be good for the industry.21

In recent years, Mr Barnett has acted to strengthen the ties between African countries and WA at a governmental level. In 2011, WA hosted the Commonwealth Heads of Government (‘CHOGM’) meetings. Colin Barnett in ‘Prospect’ (Western Australia’s International Resources Development Magazine) stated that CHOGM provided WA with opportunities ‘to enhance and create investment and trade relationships’, noting that ‘Perth is a growing regional centre for the resources services industry … connected to global supply chains.’22 In light of the mining expertise resident in Perth, Mr Barnett used CHOGM to promote the state’s capabilities to African delegates and offered to share the lessons learned by the State in managing its resources industries.23 Perth also hosts the annual Africa Down Under Conference (‘ADU’). In a February 2013 media release, DFAT stated that the ADU ‘is one of the foremost international mining events focused on Africa.’24 Further, in March 2013, the Western Australian Liberal Party released ‘The Liberals’ Mines and Petroleum Policy.’25

While the policy highlighted the importance of the energy and resources industries to the Western Australian economy, and noted the sector’s reliance on

20 Ibid.
22 Department of Mines and Petroleum and Department of State Development, Prospect (Western Australia) September – November 2011.
23 Department of Mines and Petroleum and Department of State Development ‘WA Working with Africa’, Prospect (Western Australia) September – November 2011, 11.
attracting overseas investment, the policy also contained provisions to promote WA’s mining services sector into international markets, in particular in to Africa.\textsuperscript{26} In June 2013, the Government of Western Australia’s European Office hosted the concluding reception for the ‘Mining on Top Africa’ annual conference held in London.\textsuperscript{27} As many mining project financiers are based in London, this event represented an opportunity for WA to promote its capabilities in respect to African mining projects. These steps, amongst others, have contributed to the foundations for relationships between WA and many African governments.

A \textit{Western Australia and Africa – Working Together?}

The Mining Indaba is ‘an annual professional conference dedicated to the capitalisation and development of mining interests in Africa.’\textsuperscript{28} It is one of the world’s preeminent mining conferences and is held each year in Cape Town, South Africa. While it is unusual for a non-national level leader to speak at the Mining Indaba, in light of his recent work to build relationships with African governments and his experience in the mining industries in WA, Mr Barnett was a keynote speaker at the 2014 event. Not only is Mr Barnett the Premier of Western Australia, he is also the Minister for State Development and Science. Prior to becoming the Premier, he was also appointed the State’s Minister for Mines and Petroleum. His parliamentary biography states that he is ‘committed to attracting investment and assisting the development of major projects based around Western Australia’s natural advantages in mining, petroleum and agriculture.’\textsuperscript{29}

As noted by Mr Barnett during his keynote address at the Mining Indaba, 236 Australian companies operate in Africa and over 70\% of these companies are

\begin{footnotesize}
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\item \textsuperscript{26} Ibid 6.
\item \textsuperscript{27} \textit{WAGO Hosts African Mining Delegates} (3 July 2013) Government of Western Australia, European Office <http://www.wago.co.uk/index.php/news/trade/wa-hosts-african-mining-delegates-in-london.html>.
\item \textsuperscript{28} \textit{About Mining Indaba} (2014) Investing in African Mining Indaba <http://www.miningindaba.com/ehome/indaba/about/?&>.
\item \textsuperscript{29} Government of Western Australia, \textit{Biography – Hon Colin Barnett MEc MLA, Premier, Minister for State Development; Science} (13 February 2014) Premier of Western Australia & Cabinet Ministers <http://www.premier.wa.gov.au/Ministers/Colin-Barnett/Pages/Biography.aspx>.
\end{itemize}
\end{footnotesize}
Western Australian.\(^{30}\) He also pointed to the ‘strong parallels between African and Australian mining’\(^{31}\) noting both countries shared an ‘ancient history of mining dating back through thousands of years.’\(^{32}\) He also offered his insight in to the challenges facing governments seeking to develop and promote their mining industry. The difficulties that he pointed to include the remote location of mineral resources, sovereign risk, \(^{33}\) the creation of an appropriate legislative regime for the minerals industry, \(^{34}\) negotiating a fair price, \(^{35}\) and determining ownership.\(^{36}\) In addition, he also spoke of the difficulties he had experienced in managing the demands of the mining companies which, in his view, often fail to realise that, in addition to seeking community benefits, governments also have a direct commercial interest in projects.\(^{37}\) On a point of difference between the mineral resource industries in WA and Africa, Mr Barnett noted the favourable perception that Australia enjoys as the ‘lucky country’ and he also observed that mining in WA has benefitted from a ‘fortunate mix of discovery and global events.’\(^{38}\)

In concluding his address, Mr Barnett repeated the offer of assistance from WA to African governments as they seek to develop their mining industries.\(^{39}\) In making the offer of assistance, he pointed to the changing fortunes of the mining industries in WA and Africa. While mining in Africa is growing and many countries are on the brink of developing their own significant mining industries, the projections for the WA’s mining industry indicates that it has reached maturity.\(^{40}\) For example, the Western Australian Minerals Research Institute Research Plan notes that Australia’s share of global minerals expenditure fell from 20% in 1996 to 13% in 2009.\(^{41}\) It is also projected that exploration activity

\(^{31}\) Ibid. 3.
\(^{32}\) Ibid.
\(^{33}\) Ibid 9.
\(^{34}\) Ibid 10-11.
\(^{35}\) Ibid 11-12.
\(^{36}\) Ibid 11-12.
\(^{37}\) Ibid 9.
\(^{38}\) Ibid 4.
\(^{39}\) Ibid 13.
\(^{40}\) Ibid 5.
\(^{41}\) Australian Venture Consultants Pty Ltd, ‘Western Australian Minerals Research Institute: Research Priorities Plan’ (Chamber of Minerals and Energy Western Australia, June 2013) 14.
in WA will continue to decline\textsuperscript{42} and that any exploration activity that can occur will be in ‘more challenging exploration environments.’\textsuperscript{43}

B \textit{Memorandum of Understanding with the COMESA States}

The purpose of COMESA is to build an integrated economic market for the 19 member states ‘through the implementation of common policies and programmes aimed at achieving sustainable growth and development.’\textsuperscript{44} The purpose of the MOU is ‘to establish a working relationship between the parties based on equality, overall reciprocity and mutual benefit’\textsuperscript{45} in the ‘field of mineral and petroleum resources, agriculture, vocational training, and capacity building.’\textsuperscript{46}

The MOU has three broad objectives:

To establish a basis for development of vocational training and capacity building in mineral and petroleum resources, agriculture and agribusiness:

To promote investment in vocational training and capacity building in the fields of mining and petroleum exploration and development, and agriculture and agribusiness; and:

To encourage and foster investment generally as well as specifically in the area of transfer of mining and petroleum related technology in the 19 COMESA member states and Western Australia.\textsuperscript{47}

The third clause of the MOU details the scope of cooperation between the parties. A number of ‘areas of interest’\textsuperscript{48} are detailed in this clause; however, for the purposes of this paper, the following provision is most relevant:

\begin{itemize}
\item \textsuperscript{42} Ibid.
\item \textsuperscript{43} Ibid 13.
\item \textsuperscript{44} COMESA MOU 2.
\item \textsuperscript{45} Ibid clause 1.
\item \textsuperscript{46} Ibid 1.
\item \textsuperscript{47} Ibid clause 4.
\end{itemize}
Promotion of strategies for investment in minerals and petroleum and the development of linkages.\textsuperscript{49}

Since signing the MOU, a Joint Working Group (‘JWG’) has been established. An undated communique issued on the COMESA website notes that the JWG proposed that COMESA member states should participate in the upcoming ADU conference. It was anticipated that attendance at ADU would provide the COMESA Member States with an opportunity to ‘showcase their mineral potential.’\textsuperscript{50} Representatives from eight COMESA Member States (Kenya, Malawi, Ethiopia, Comoros, Zambia, Seychelles, Sudan and Madagascar) attended ADU in September 2014.\textsuperscript{51}

The commercial aim of the MOU is to provide economic opportunities to WA and to COMESA Member States through information exchange. On 3 September 2014, the Government of Western Australia released a media statement that quoted Mr Barnett and Mr Marmion, the current Western Australian Minister for Mines and Petroleum. Firstly, Mr Barnett stated:

Western Australia has a world class system of legislation and regulation governing its mineral and petroleum sectors, and we want to pass on our experience to assist African countries in building resources industries that are profitable, safe and beneficial to their citizens.\textsuperscript{52}

Mr Marmion stated:

\textsuperscript{48} Ibid clause 3.  
\textsuperscript{49} Ibid clause 3.  
\textsuperscript{52} Government of Western Australia, ‘Western Australia Forges Mining Ties with Africa’ (Media Statement, 3 September 2014) <http://www.mediastatements.wa.gov.au/Pages/StatementDetails.aspx?StatId=8595&listName=StatementsBarnett>.
The primary aim of the MOU is to tap into Western Australia’s expertise to help African nations to further develop their mining laws, tenement systems, and environmental and safety standards. 53

According to a report by Paydirt Media, Mr Barnett perceives that ‘African countries see Australia as a respected, trusted, mid-level power’ and he sees this as advantageous to Australia. 54 However, while he advocates that WA can help those African countries still in the early stages of developing their mining industries, such an offer necessarily calls into question whether WA’s experience of mineral resources development is aligned with Africa’s goals of inclusive and sustainable development of its mineral endowment.

C The Rhetoric of Mining

There are parallels between the rhetoric regarding the current interest in resource development in African countries and the WA boom in mineral investment of the 1950s and 1960s. During the 1950s and 1960s, mineral production in WA boomed and diversified from gold into other minerals (such as kyanite, antimony, asbestos and iron ore, nickel and alumina) to meet the world market demand for minerals suitable for reconstruction, industrialisation and rearmament during the post war period. 55 WA saw the promotion of its mining industries as a means to move beyond being the country’s ‘Cinderella State.’ 56 An Australian ‘Cinderella State’ is one that is entirely reliant on rural exports, possessing very little industry and experiencing a much slower rate of growth than the other states. 57 To combat this perception, mining was seen as a vehicle to move WA from the national and international periphery. 58 Similarly, Africa sees its mineral resources as the key to its development; the catalyst that will improve the economic condition of many

53 Ibid.
54 Piper, above n 21, 29.
56 Elizabeth J Harman, ‘Ideology and Mineral Development in Western Australia, 1960 – 1980’ in Elizabeth J Harman and Brian W Head (eds), State, Capital and Resources in the North and West of Australia (University of Western Australia Press, 1982) 167, 175.
58 Harman, above n 56, 175.
African countries, moving them from low income and fragile states to comfortable middle income states. According to the AMV, Africa ‘is the world’s top producer of numerous mineral commodities and has the world’s greatest resources of many more.’

In both WA and Africa, mineral resource development is seen as being capable of propelling economic and social development. In line with such views regarding the benefits of mineral resource endowment, certain development ideologies emerge. It is arguable that WA mineral policy was constructed, refined and disseminated by Sir Charles Court over the course of his political career. Sir Charles Court was appointed Deputy Leader of the Liberal Party in 1957. In 1959 he was appointed the Minister for Industrial Development, Railways and the North-West and he eventually became the Premier of WA in 1974. He has been honoured ‘as a great builder of our state.’ Undoubtedly, his legacy is based on his opposition towards a ‘timid policy of development.’ The third part of this paper will discuss in more detail the effect of Sir Charles Court’s development ideology on the development of WA’s mining industry and the laws that regulate it.

Africa, through the actions of certain of its governments and development bodies, has also spent many years devising mineral resource development strategies. While it is not possible to discuss every policy or strategy document drafted, some examples are listed herein. In 1997, at the Second Conference of African Ministers Responsible for the Development and Utilisation of Mineral and Energy Resources in Africa, the ‘Durban Declaration on the Sub-Regional and Regional Cooperation for the Development and Efficient Utilisation of Energy and Mineral Resources in Africa’ was adopted. In 2000, West African Economic and

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61 Western Australia, Parliamentary Debates, Legislative Assembly, 27 February 2008, 391b – 403a (Mr A J Carpenter).
62 Western Australia, Parliamentary Debates, Legislative Assembly, 27 February 2008, 391b – 403a (Mr T Buswell).
63 Western Australia, Parliamentary Debates, Assembly, 27 February 2008, 391b – 403a (Mr A J Carpenter).
Monetary Union states\(^{64}\) agreed to adopt a common mining policy and legislation, and to harmonise their fiscal codes. In February 2004 the AMP was launched. The AMP sought to coordinate the mining and mineral related initiatives that formed part of the New Partnership for Africa’s Development (‘NEPAD’), a strategic framework adopted in Africa in 2001.\(^{65}\) In 2007, the Big Table on ‘Managing Africa’s Natural Resources for Growth and Poverty Reduction’ was held in Ethiopia.\(^{66}\) The purpose of the Big Table was to consider how best to address the challenges of managing Africa’s natural resources for the purposes of broad based growth and poverty reduction. Finally, a central policy statement for Africa’s minerals industry, the Africa Mining Vision, was adopted in 2009. The value of the AMV is that the initiatives enunciated herein, and many others, have driven the formulation of this central policy statement.\(^{67}\)

III DOMINANT NARRATIVES

It is arguable that WA’s mineral industry policy development has been predominantly shaped by seeking to promote favourable conditions for investors. Having successfully courted investors, WA has then benefitted from the favourable perceptions of these investors. However, the perceptions held by foreign governments and investors of the attempts by African governments to frame their own mineral resource policies have often been constrained by certain narratives. The first two of these narratives, resource curse and Dutch disease, are discussed below.

A The Resource Curse

Mining is a significant global industry. Between 2002 and 2010 the nominal value of world mineral production nearly quadrupled.\(^{68}\) This resources boom was driven

\(^{64}\) Also known by its French acronym ‘UEMOA’, Member States include Benin, Burkina Faso, Cote d’Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.


\(^{66}\) United Nations Economic Commission of Africa and African Development Bank, Big Table Summary Report (1 February 2007) 1.


\(^{68}\) ‘The Role of Mining in national Economies: Mining’s Contribution to Sustainable Development’ (International Council on Mining and Metals, October 2012), 3.
by increasing demand in emerging economies, such as China\textsuperscript{69} and India.\textsuperscript{70} Globally, many economies have responded to this demand: in 1996, 29 countries relied on mineral exports (excluding fossil fuels which include coal and gas) and by 2010 that number had increased to 40 countries.\textsuperscript{71} A country is classified as mineral dependent if minerals make up more than 25\% of its tangible exports.\textsuperscript{72} According to the Oxford Policy Management report, by 2010 more than 80\% of mineral dependent states were low and middle income countries.\textsuperscript{73} Further the report also states that nearly half of the mineral dependent countries are located in Africa.\textsuperscript{74}

In the current dominant narrative of the resource curse, the problems associated with this dependency seem clear. However, as noted by Rosser,\textsuperscript{75} early ‘conventional wisdom’ held that the occurrence of natural resources was a positive event for developing countries and their existence could be harnessed by these countries to assist them in the transition to ‘industrial ‘take-off.’’\textsuperscript{76} Coincidentally, at the time that African countries were moving towards independence, views about the impact of natural resource endowment on economic growth in developing countries began to shift. By the late 1990s, this new view on the impact of natural resource endowment, in its simplest form, held that countries with an abundance of natural resources often experienced slower growth than those countries without natural resource abundance.\textsuperscript{77} In 1997, Jeffrey Sachs and Andrew Warner wrote that Africa’s ‘colonial legacy … may help to explain …Africa’s poor choices of economic policy.’\textsuperscript{78} However, arguably, Sachs and Warner then posited an explanation for Africa’s slow growth

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\textsuperscript{69} Ric Battellino, ‘Mining Booms and the Australian Economy’ (Address to the Sydney Institute, Sydney, 23 February 2010).
\textsuperscript{71} Ibid 6.
\textsuperscript{72} Dan Hagland, ‘Blessing or Curse? The Rise of Mineral Dependence Among Low and Middle Income Countries’ (Oxford Policy Management, December 2011) 2.
\textsuperscript{73} Ibid 3.
\textsuperscript{74} Ibid 9.
\textsuperscript{76} Ibid 7.
\end{flushright}
that decoupled it from Africa’s colonial legacy.\textsuperscript{79} It is debatable that suggesting that the causes of Africa’s economic growth can be disentangled from the impact of the colonisation gives credence to a theory of development that suggests that the market, as an external factor, can take the lead in addressing broader development issues. On this point, Sachs and Warner suggest that African countries would benefit from ‘an openness to international trade, government saving and market-supporting institutions.’\textsuperscript{80}

Richard Auty, in his book ‘Sustaining Development in Mineral Economies’ (published in 1993) provides an encapsulation of the resource curse theory. He also notes the emergence of evidence positing that the impact of the resource curse is amplified in low and middle income countries.\textsuperscript{81} Auty suggests one explanation for the occurrence of the resource curse is that ‘smaller resource-deficient’ economies are forced to focus on ‘competitive manufactured exports’ to overcome foreign exchange deficiencies. He posits that by the time larger resource based economies face the same foreign exchange deficiencies; the vested interests that benefit from resource rents make policy reform difficult.\textsuperscript{82}

Auty notes the ‘counterintuitive’ nature of the resource curse theory since mineral resource industries should be expected to provide the host country with additional foreign exchange, taxation and ‘an extra route to industrialisation.’\textsuperscript{83} Citing his own earlier research, he posits that there are two main factors that contribute to the resource curse effect. The first factor is the inflow of large amounts of foreign capital investment in to a capital intensive industry. The second factor is the use by mining proponents of foreign labour instead of local labour.\textsuperscript{84} The combined effect of these actions results in the creation of an enclave industry.\textsuperscript{85} The effect of a mining enclave is that most (if not all) of the financial benefits of mineral resource development flow out of the host country. For instance, the mineral

\textsuperscript{79} Ibid 336.
\textsuperscript{80} Ibid 360-361.
\textsuperscript{82} Ibid 2.
\textsuperscript{83} Ibid 3.
\textsuperscript{84} Ibid 3.
\textsuperscript{85} Ibid 3.
resource itself leaves the country, the profit leaves the country and the income paid to foreign workers does not penetrate the host country’s economy. Therefore the only way for a host country to gain a financial benefit from the investment is through the taxes levied against the project. 86

B Dutch Disease

Another aspect of being a mineral dependent country is that such reliance on one sector leaves the host country susceptible to the ‘Dutch disease.’ Dutch disease is ‘the coexistence within the traded goods sector of progressing or declining, or booming and lagging, sub-sectors.’ 87 The Oxford Dictionary of Economics states that Dutch disease occurs when:

The effect of an increase in one form of net exports [drives] up a country’s exchange rate, which handicaps the sale of other exports and impairs the ability of domestic products to compete with imports.

Max Corden and Peter Neary, co-authors of the seminal paper on Dutch disease, acknowledge the effect of the Dutch disease is not isolated to the extractive industries or to developing countries. 88 They state that the Dutch disease can occur in any country which has any combination of booming and lagging sectors. Notwithstanding these assertions, Auty effectively narrows the focus of the impact of the Dutch disease when he states that:

[d]eveloping countries find commodity windfalls difficult to deploy prudently. They tend to promote too rapid a rate of domestic absorption so that they amplify the boom effects. 89

In addition to the fiscal impact of the resource curse, it has also been argued that the resource curse is correlated to certain social and political effects. The former

86 Ibid 3.
88 Ibid.
89 Auty, above n 81, 17.
President of the United States, Bill Clinton, asked this question ‘Why is it that countries that are so rich in resources are so deficient in democratic resource?’

Rhuks Ako and Nilopar Uddin address this question by suggesting four subcategories of ‘democratic resource.’ They suggest that a commitment to democratic values, respect for the rule of law, government accountability and transparency and, finally, the management of natural resource revenues are critical. They also assert that the ‘mismanagement of resource revenues by African leadership … is the fundamental cause of the resource curse [in Africa].’ This statement illustrates a further narrative that has constrained Africa’s development.

IV THE HISTORY OF MINING IN AFRICA

A discussion of the dominant narrative of the resource curse in Africa cannot be disconnected from a discussion of the effects of colonial rule. Further, discussing the effects of colonial rule cannot be disconnected from discussing the effects of the global economy. In the developmental battle between the ‘first-comers’ and ‘late-comers’, it has been argued that the late-comers provide the raw materials that have supported the ‘rich, industrialised and powerful’ first-comers. For the ‘late-comers’, such as African countries, the effect of colonial rule, the business models of mining companies and the impact of free trade has resulted in the confinement of their mineral industries to the production of primary goods for multinational companies in the global market.

Prior to colonial rule, Africa had a locally integrated mining industry. African societies prospected, mined, smelted and forged iron for local trade. Each stage of the production process required certain skills and these were supplied by the local
community.\textsuperscript{95} For instance, mining in the Copper belt region of northern Zambia and Southern DRC (‘Democratic Republic of Congo’) is not a recent phenomenon, nor particularly attributable to the technological advances of colonialism as ‘there have hardly been any copper producing areas in the twentieth century that were not worked before.’\textsuperscript{96} African countries were also significant exporters of gold.\textsuperscript{97} Overall, rock salt deposits were the main commodity mined and traded in Africa before colonial intervention.\textsuperscript{98} However, the true scale of pre-colonial mining in Africa is difficult to determine as colonial prospecting and mining industries often destroyed the physical evidence of earlier mining activities.\textsuperscript{99}

Between 1870 and 1929, local African mining was replaced by a ‘colonially-induced pattern’ of mining production.\textsuperscript{100} While some academics may accept the benign assertion that African technological mining advances were ‘somehow truncated’ by colonial intervention,\textsuperscript{101} in effect this restructuring of African economies ‘largely destroyed the self-sufficiency of pre-capitalist agricultural economies.’\textsuperscript{102} The colonial states used Africa as one large mining pit and the African people as forced labour. In addition to the subversion of local mining, the foreign owned mining enclaves brought in workers from their own countries, thus displacing African labour to the low-skilled, low waged and dangerous tasks.\textsuperscript{103} Aggressive labour recruitment policies, for instance, the application of ‘exclusive recruiting zones’ and the use of labour recruiters, who ‘press-ganged able-bodied men; leading them with ropes tied around their necks’ to work in the mines,\textsuperscript{104}

\textsuperscript{97} Ibid 11.
\textsuperscript{98} Ibid 11.
\textsuperscript{102} Lanning, above n 93, 68.
\textsuperscript{104} Lanning, above n 93, 81.
resulted in up to half of the male population being removed from their local districts to work away in the mines.\textsuperscript{105} In the absence of the men, women, children, the sick and the old were forced to maintain the rural economy.\textsuperscript{106}

The subjugation of African countries’ people and mineral resources to colonial interests continued during the Second World War when the African mineral industries rapidly expanded ‘to meet the demands of the Allied war machine.’\textsuperscript{107} At the end of the Second World War, Africa’s resources were diverted to colonial interests again. For instance, it was more economically prudent for France and Britain to develop mineral resources in their African territories that were within the sterling and franc monetary zone rather than purchase minerals on the open market.\textsuperscript{108} It has been stated the effect of this policy was that African countries were ‘forced to make low-interest loans to rebuild European industry while the continent languished in poverty.’\textsuperscript{109} By this point in time, the enclave nature of mining in Africa was firmly embedded.

A \textit{Independence}

In 1960 the United Nations passed the ‘Declaration on the Granting of Independence to Colonial Countries and Peoples (1960).’\textsuperscript{110} The Declaration was put forward by the Union of Soviet Socialist Republics in September 1960 and it sought ‘the final and complete liquidation of the colonial system’ which it called ‘the most shameful phenomenon in the life of mankind.’\textsuperscript{111} The United Kingdom, in response to the comments of the Russian Ambassador, argued that the transition to independence by African countries was ‘an inspiring example of

\begin{itemize}
\item \textsuperscript{105} Ibid 81.
\item \textsuperscript{106} Ibid 82.
\item \textsuperscript{107} Ibid 86.
\item \textsuperscript{108} Ibid 86.
\item \textsuperscript{109} Ibid 86.
\item \textsuperscript{110} Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514(XV), UN GAOR, 15\textsuperscript{th} sess, 947\textsuperscript{th} plen mtg, UN Doc A/4684 (14 December 1960).
\item \textsuperscript{111} UN GAOR, 15\textsuperscript{th} sess, 925\textsuperscript{th} plen mtg, UN Doc A/PV 925 (28 November 1960), 981 [3].
\end{itemize}
harmony between all communities in the Territory.”\textsuperscript{112} Then, Mario Cardoso, the Congolese Ambassador to the United Nations spoke,\textsuperscript{113}

[60]…The colonialists of the West and East alike, too long accustomed to thinking of Africa as the perfect country for colonisation, now seem bent on ‘decolonising’ it. In obedience to the wave of new ideas, they intend to ‘decolonise’ at any cost, as if to ease their consciences. But Africa remains vigilant and refuses to be taken in by the pedlars of good intentions.

[61] … They act as though they were dealing not only with economic and social under-development, but also with congenital intellectual under-development.\textsuperscript{114}

African countries gained independence over a significant period of time. The earliest countries to become independent nations were Liberia (1847) and Egypt (1922). The majority of African countries became independent between 1951 and 1977.\textsuperscript{115} As African countries became independent nations, the colonial governments that had previously governed the African ‘territories’ acted to protect their interests. To defend their supply of mineral resources, these governments undertook a significant amount of prospecting and started many new mining projects.\textsuperscript{116} This meant that, at the time of independence, African governments were faced with mining industries that displayed many of the features of the resource curse. For instance, the mines were foreign owned and the earnings were repatriated. In addition, mining operations had weak linkages with the rest of the local economy; and mining was a substantial or the biggest source of revenue to African governments as minerals dominated export trade.\textsuperscript{117}
Upon independence, African governments sought to ‘enhanc[e] their share of returns from the nation’s mineral resources’ \(^{118}\) and sought ‘fundamental change … in the colonial economic structure.’ \(^{119}\) One method by which African governments sought to effect these changes was by nationalising the mineral industries. To this end, African governments established ownership through vesting minerals in the state, establishing state mining enterprises and taking up ‘substantial shares in existing mining companies.’ \(^{120}\) African governments also sought to promote the building of processing plants in Africa. It is reported that these steps had limited success. While mining companies would cede majority ownership to African governments, they would often maintain effective control of the project ‘through management, advisory and sales contracts, and by reinforcing the rights of minority shareholders.’ \(^{121}\) In addition, attempts to diversify the mining industries into value added industries were generally unsuccessful. For instance, the Ghanaian government was unsuccessful in its attempts to have an aluminium smelter constructed as part of the Volta Dam Project. \(^{122}\) The level of control that foreign interests had over Africa’s mineral industries was well understood:

> the mining industry’s position was very secure, since any post-independence government, lacking expertise and capital, would depend on expatriate firms to maintain operations and continue generating wealth. \(^{123}\)

### B Indebtedness

By the early 1980s many African countries were severely indebted. \(^{124}\) At least two narratives explain this debt crisis. Percy S Mistry, in a publication for the...
Forum on Debt and Development (‘FONDAD’), an independent policy research centre associated with The Hague, sets out two narratives. The first, arguably dominant, narrative suggests that Africa’s debt crisis is as the result of poor governance, rapacious and corrupt leaders, protracted civil war in too many countries…, no democratic checks or balances on government borrowing and spending, excessive population growth, and the stubborn pursuit of economic policies which contributed to the relentless impoverishment of a rich continent for over two decades.125

The second explanation offered by Mistry does not entirely discount the first narrative above. In this second narrative, Mistry suggests that a number of reasons have contributed to African indebtedness and he highlights twelve factors. The first factor is over-lending by private and official lenders during the commodity boom. The second factor is the ‘lax monetary and fiscal policies’ that, coupled with negative real interest rates during the 1970s, created an economic climate that supported Africa in external borrowing for development and consumption.126

The third factor is posited to be the provision to African countries, particularly oil exporting countries, with easy credit as a means of protecting industrialised countries from the oil shocks of 1973 and 1979. The impact of the global monetary shock of 1979 to 1981 which resulted in developing countries being plunged into a 70 month long recession is specified as the fourth contributing factor. Fifthly, African overreliance on external savings in the period of 1979 to 1983 in the belief, supported by some international financial institutions, that the commodity price collapse of that time would be short-lived. The sixth factor is the drought of 1981 to 1984, which impaired Africa’s agricultural industry. The seventh factor is the ‘high, positive real interest rates’ of the 1980s which exacerbated Africa’s debt position. The eighth factor is the depreciation of the US dollar during the 1980s which had the effect of increasing the dollar value of African debt. The ninth factor is repeated debt rescheduling. The tenth factor is

126 Ibid 10.
the effect of bad advice from international finance institutions regarding how to negotiate African debt relief. The eleventh factor is allowing the debt of African countries to accrue to ‘egregious arrears’ and the final factor is the effect of protectionism in the world markets making it difficult for Africa to compete and impinging potential trade revenues.\footnote{Ibid 10-11.}

To manage the debt crisis, global financial institutions advised African countries to open their markets.\footnote{Kamran Kousari, ‘Africa’s Development and External Constraints’ in Jan Joost Teunissen and Age Akkerman (eds), \textit{Africa in the World Economy: The National, Regional and International Challenges} (Forum on Debt and Development, The Hague, 2005) 169, 176.} However, as noted by Kamran Kousari (a special coordinator for Africa at UNCTAD),\footnote{Kamran Kousari (2006) FONDAD, Forum on Debt and Development <http://www.fondad.org/network/contributor/71>.} the ‘promises held out by the neoclassical case for free trade … has not transpired’\footnote{Kousari, above n 128, 176.} in African countries. Kousari posits that trade openness has most often been successful in those countries that were already internationally competitive. It is his view that to suggest that African countries embrace trade openness in order to become competitive confuses correlation with causality.\footnote{Ibid.} Touching on a repeated narrative regarding Africa’s development, Kousari notes that the failure of trade liberalisation in African countries is often attributed to ‘bad institutions or governance failure.’\footnote{Ibid.} However he asserts that successful development, and the institutions and mechanisms that surround it, are often realised through ‘painful historic processes.’\footnote{Ibid.} It is his view that the factors that should properly be categorised as the causes of economic development are often improperly constructed by advanced economies as the prerequisites of economic development.\footnote{Ibid.} Again, correlation and causality are confused.

In response to the persistent narrative that African governments are solely responsible for the debt crisis, Mistry writes:

\footnote{Ibid.}
[t]he creditor community … must acknowledge the tremendous harm that their own ex- and neo-colonial machinations have done to crippling the capacity of independent Africa to sustain itself.

It is too easy for the creditor community … to walk away from the damage that it has contributed so much to doing on the grounds that it cannot be held responsible for the egregious domestic excesses of African leaderships and governments.  

Notwithstanding the many factors that contributed to African indebtedness, the WBG advised African countries to attract investment from foreign mining companies. The basis for and impact of the WBG advice is discussed below.

V WORLD BANK RESPONSES


The ISG Report states that during the 1980s WBG intervention into Africa increased as African countries became enmeshed in debt. The WBG’s focus on Africa intensified as the debt problems of African countries became exacerbated by declining mineral revenues. This decline was due to the glut of mineral production in the mid-1980s causing base metal prices to drop. The ISG Report states that the WBG held the view that the problem of Africa’s poor performance

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138 Ibid 15.
139 Ibid 15.
in the mineral industry was attributable to two factors. Firstly, the WBG noted the rapid decline of Africa’s mineral industries and evidenced this assertion by reference to Africa’s declining mineral output. Secondly, the WBG asserted that a lack of exploration activity impacted on the production of new geological data. In turn, the lack of new geological data had the impact of dissuading further exploration investment.\textsuperscript{140} The ISG Report asserts that it was the overall view of the WBG that ‘Africa had simply not adapted well to the needs of the industry in the new international context.’\textsuperscript{141} Accordingly, the WBG sought to determine how African countries could adapt to meet the needs of the mining industry, and so it issued a survey to 80 mining companies.

\textbf{A \quad Strategy for African Mining}

In 1992, the World Bank published a technical paper titled ‘Strategy for African Mining’ (WBG Strategy Document). The ISG Report notes that the WBG Strategy Document was the ‘first systematic presentation of reforms that [the WBG] considered necessary to tackle Africa’s poor performance in minerals.’\textsuperscript{142} At less than 100 pages in length, the WBG Strategy Document seems a desultory offering. However, notwithstanding the briefness of the document, it reported the reasons for the demise of Africa’s mining performance.\textsuperscript{143} In light of the waves of WBG assisted liberalising mining reform discussed below, the fact the WBG Strategy Document advocated that African governments should make maximising tax revenues a primary objective in preference to exerting control over resources or the creation of employment\textsuperscript{144} is quite interesting. It is arguable that the WBG interventions (discussed below) had the overall effect of minimising the potential tax base from minerals industries in African countries.

The first chapter of the WBG Strategy Document discussed the current situation (as at 1992) of Africa’s mining industries. In effect, this chapter pitted private

\textsuperscript{140} Ibid 15.
\textsuperscript{141} Ibid 15.
\textsuperscript{142} Ibid 16.
\textsuperscript{144} Ibid x.
mining enterprises against state owned mining enterprises. In its assessment, the WBG asserted that African countries had only two options for minerals development. On the one hand, African countries could pursue a policy of state controlled mining activity. However, it was the WBG’s view that such a policy would be hampered by the public sector’s inability to ‘mobilize … the large amounts of managerial, technical and financial resources necessary for commercial-scale mining development.’ 145 Alternatively, African countries could encourage private investment. The WBG asserted that ‘[t]he record is clear – mineral growth in Africa [had] been predominantly achieved by the private sector.’ 146 The WBG Strategy Document also advocated for a split in responsibility for mineral industries development: governments should regulate and promote the industry and private companies should ‘take the lead in operating, managing and owning mineral enterprises.’ 147

The second chapter of the WBG Strategy Document asserted that the geological potential of a country or region is ‘the fundamental factor’ leading to exploration and investment. 148 The WBG emphasised that exploration was critical to the existence of any other stage of minerals development and, further, that only private mining companies had stayed abreast of the technological advances required for exploration. 149 Given these factors, the WBG stated that it was critical for African countries to attract investors to undertake exploration activities.

The third chapter of the WBG Strategy Document is titled ‘Attracting the Investor.’ 150 In this chapter, the WBG argued that foreign investment was critical if Africa was to ‘close the exploration gap.’ 151 In order to formulate a policy for African countries to attract investors, the WBG issued an enterprise survey to 80 international mining companies to assess investor perceptions of mining in

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146 Ibid 9.
147 Ibid 9.
148 Ibid 11.
149 Ibid 11.
150 Ibid 16.
151 Ibid 16.
Africa. Of the 80 surveys issued, 46 replies were received. The data from 40 of these replies was analysed. The results of the survey obviously not only informed the content of the WBG Strategy Document but arguably also informed the subsequent WBG led mining reforms in Africa. It is of concern that a strategy for mining in Africa, a continent constituted of 54 recognised sovereign states, nine territories and two de facto independent states, with varied jurisdictions (for instance, common law, civil law, Islamic Law and customary law) and multiple languages (English, French, Portugese and Kiswahili) was formulated from so few responses.

The survey respondents included 19 North American companies, seven Australian companies, 12 European companies, one South African company and one Japanese company. Notwithstanding the exceptionally limited data set, certain themes emerged from the survey. Firstly, the survey noted that the primary factor for mineral investment was mineral potential and infrastructure. According to the WBG Strategy Document, companies were prepared to be the first company exploring in a region if ‘there are good [mineral] prospects.’ In addition, the WBG Strategy Document stated that foreign investors preferred to operate in countries where there was an established mining code setting out mining rights and providing security of tenure. Other important factors to entice foreign investment included contractual stability, ‘guaranteed fiscal regime[s]’, profit repatriation and access to foreign exchange. Mandatory local majority control or participation were categorised as significant disincentives to investment (‘respondents are generally not prepared to work in countries with mandatory local majority participation’), although local participation and mandatory training of nationals were considered to be positive factors. Overall, foreign companies’ ranked corruption and political risk as more concerning to them than

152 Ibid 16.
153 Ibid 16.
156 Ibid 17.
157 Ibid 17.
158 Ibid 16.
159 Ibid 16.
160 Ibid 16.
macro-economic issues.\footnote{161} The WBG Strategy Document made it clear that the reason foreign companies were not concerned by macroeconomic risks was that ‘mining projects are export-oriented and more readily isolated from the national economy.’\footnote{162} Finally, the survey also indicated that foreign investors reported requiring a higher return in a shorter time frame for investments in Africa.\footnote{163} From the limited data collected by the survey, it was deduced that political risk was the factor that ultimately caused companies to hesitate to invest in developing countries.\footnote{164} In particular, the surveyed companies were concerned that changes to ‘the rules of the game’ affecting mining rights, taxation arrangements and access to foreign exchange could adversely impact on their investments.\footnote{165} Ultimately, the WBG Strategy Document advocated that African countries should seek to reduce the risks of mining investment for foreign investors.\footnote{166}

B \textit{Generations of African mining reform}

The WBG continued the mining sector reforms that it had commenced in 1988.\footnote{167} In 2004, Groupe de recherche sur les activités minières en Afrique (‘GRAMA’) released a discussion paper titled ‘Regulating Mining in Africa: for whose benefit?’ GRAMA is a part of the Centre Études Internationales et Mondialisation of the Faculty of Political Science and Law at the Université du Québec à Montréal (‘UQAM’). The discussion paper was edited by Bonnie Campbell, a Professor in the Department of Political Science. She has expertise in economics and politics; development assistance in mining and quarrying; and African governance, in particular in capacity building and reconceptualization of the state.\footnote{168} The discussion paper is instructive as it discusses the three waves of WBG assisted mining code reforms in Africa. The discussion paper concluded

\begin{footnotesize}
\footnotetext{161}{Ibid 16.}
\footnotetext{162}{Ibid 17.}
\footnotetext{163}{Ibid 16.}
\footnotetext{164}{Ibid 16.}
\footnotetext{165}{Ibid 18.}
\footnotetext{166}{Ibid 19.}
\footnotetext{167}{Mining: Sector Results Profile (14 April 2013) The World Bank \textless http://www.worldbank.org/en/results/2013/04/14/mining-results-profile\textgreater .}
\footnotetext{168}{Liste des Professeurs par Départements et écoles – Bonnie Campbell (Université du Québec à Montréal \textless http://professeurs.uqam.ca/component/savrepertoireprofesseurs/ficheProfesseur?mId=3JsPHyiN2M0\textgreater .}}
that the WBG was ‘at times caught between contradictory and sometimes incompatible logics’ by seeking to reduce poverty and promote sustainable development while concurrently seeking foreign private investment.\(^{169}\) These contradictory and incompatible logics are discussed below.

1 \textit{The First Generation of WBG Assisted Mining Reform}

The introduction of the discussion paper states that since 1995 at least 35 African mining codes had been revised with the assistance of the WBG.\(^{170}\) The first generation of mining sector reforms for African countries was based upon structural adjustment programmes. These programmes had the goal of removing state involvement in Africa’s mining sector.\(^{171}\) The Ghanaian experience is illustrative of the WBG’s first generation of mining reform. Thomas Akabzaa, in his contribution titled ‘Mining Legislation and Net Returns from Mining in Ghana’\(^{172}\) stated that in the period of 1983 to 1998, Ghana attracted over $6 billion in private investment capital into its mining sector.\(^{173}\) This increased foreign investment occurred in a regulatory environment supported by the WBG that advocated for the ‘complete government withdrawal from participation in minerals projects, lowering royalties, permanency of mineral rights, and a review of the role of the state in the mining sector.’\(^{174}\)

As part of the WBG supported mining reforms, Ghanaian corporate income tax rates were reduced from 50-55\% in 1975 to 35\% in 1994. Thresholds for capital investment recoupments were significantly increased from 20\% in the first year of production in 1975 to 75\% by 1986. In addition, the royalty rate was reduced from 6\% in 1975 to 3\% in 1987.\(^{175}\) Further, associated taxes, such as the mineral


\(^{170}\) Ibid 24.


\(^{173}\) Campbell, above n 169, 25.

\(^{174}\) Ibid 26.

\(^{175}\) Ibid 26.
duty, the import duty and the foreign exchange tax were all abolished.\textsuperscript{176} Akabzaa reported that mining operations in Ghana were often open pit mine operations with short lifespans.\textsuperscript{177} Consequently, the WBG mining reforms had the effect of providing companies with a tax holiday for such projects, as the reserves were often depleted and the mines closed before operators paid any corporate income tax.\textsuperscript{178} Akabzaa further asserted that the financial linkages of mining into Ghana were further eroded by the high amount of export earnings retained in foreign accounts. Using the measure of retained value (the share of the total value of production retained within the host country), the Bank of Ghana estimated that 71.2\% of the value of mineral exports was held in offshore accounts.\textsuperscript{179} However, he also stated that this did not mean that the real retained value to Ghana was 28.8\%. Akabzaa argued that this figure was ‘inflated’ as it did not take into account the import costs for products and consumables required by the mineral industries.\textsuperscript{180} Overall, despite impressive financial returns to the mining companies, poorly constructed taxation regimes and the inability to control the amount of earnings retained in offshore accounts, mining contributed only 2\% to Ghana’s GDP.\textsuperscript{181} It is arguable that Ghana’s tax base was eroded by WBG assisted reform (which is the antithesis of the assertion in the WBG Strategy Document that African countries should prioritise maximising tax revenues).

2 \textit{The Second Generation of WBG Assisted Mining Reform}

Bonnie Campbell, in her contribution to the discussion paper ‘Guinea: Deregulation and Its Consequences for Environmental Protection’\textsuperscript{182} considered the second generation of WBG mining reforms and its impact on the development of Guinea’s environmental policy.\textsuperscript{183} It is apparent that the second generation of reform illustrates the WBG’s strengthening adherence to the ideology that private

\begin{itemize}
\item \textsuperscript{176} Ibid 27.
\item \textsuperscript{177} Ibid 29.
\item \textsuperscript{178} Ibid 29.
\item \textsuperscript{179} Ibid 27-28.
\item \textsuperscript{180} Ibid 28.
\item \textsuperscript{181} Ibid 12.
\item \textsuperscript{183} Ibid 30.
\end{itemize}
enterprise, acting in response to the competitive open market, can respond to broader development considerations.\(^{184}\) In particular, the paper states:

The increasing move towards economic liberalisation accompanied by measures of deregulation and privatisation after the early 1990s appears to have been accompanied by an increasingly segmented approach in which environmental issues were treated in abstraction from overall development patterns.\(^{185}\)

In the context of market liberalisation reforms, within a 12 month period, the WBG produced two environmental policy documents (Plan National d’Action pour l’Environnement (PNAE)) for Guinea. The 1993 PNAE explicitly linked environmental policy, sustainable development and poverty reduction.\(^{186}\) The 1993 PNAE noted that

The renewable and non-renewable resources of all the country represent essential aspects of the environment. Their development and rational management are the guarantee of the sustainable economic and social development of the nation as a whole.\(^{187}\)

However, by the time of the publication of the second PNAE in 1994, it was apparent that the WBG had reconsidered its position on the impact of mining on the Guinea’s environment. The discussion paper noted that the 1994 PNAE now attributes the environmental destruction in Guinea to population growth, rather than the impacts of mining.\(^{188}\) Campbell stated that this assertion was in direct opposition to the 1993 PNAE which had argued that it was difficult to show a direct link between population growth and environmental degradation.\(^{189}\) Overall, it was apparent that by the time it published the 1994 PNAE, the WBG had

\(^{184}\) Ibid 36.
\(^{185}\) Ibid 35.
\(^{186}\) Ibid 31.
\(^{187}\) Ibid 32.
\(^{188}\) Ibid 33.
\(^{189}\) Ibid 33.
subjugated the management of the environment in preference to policies that drove economic growth.\textsuperscript{190}

Campbell continued by noting that the WBG, having concluded that Guinea’s environmental problems were attributable to poverty and lack of economic growth,\textsuperscript{191} supported further economic liberalisation ‘which provide[d] a real possibility for exchange and access to factors of production and market products, as well as lasting disenclavement.’\textsuperscript{192} The WBG saw the role of the Guinean government as ‘minimalist and managerialist’ in constructing policies that would promote entrepreneurship into its mining industry while relegating environmental issues to a secondary issue, separated from policies for economic growth.\textsuperscript{193} On this point, it was concluded that the lack of consideration of the environmental impact of the mining sector, and the relegation of the role of the Guinean government to be simply one of creating policies to foster investment, left the management of environmental issues to private enterprise.\textsuperscript{194}

It is arguable that the second generation of mining reform contributed to the creation of more favourable investment conditions for mining investors. It is apparent that the role of the state in managing environmental concerns has been minimised. Instead the WBG appears to have advocated a policy based upon the ability of self-regulating markets ‘acting in response to the pressures of the free market’ to ensure ‘realistic sustainable environmental outcomes.’\textsuperscript{195}

\textsuperscript{190} Ibid 35.
\textsuperscript{191} Ibid 34.
\textsuperscript{192} Ibid 34.
\textsuperscript{193} Ibid 34.
\textsuperscript{194} Ibid 36.
\textsuperscript{195} Ibid 36.
Pascale Hatcher, in his submission titled ‘Mali: Rewriting the Mining Code or Redefining the Role of the State?’ examined Mali’s 1999 Mining Code as an illustrative example of the third wave of WBG mining reforms. Hatcher asserts:

The introduction of a new code and the resulting changes in the government’s role raise certain issues regarding the current and future capacity of the government to pursue development objectives and, more basically, to guarantee its citizens’ fundamental rights.

In 1999, Mali reformed its mining code with WBG assistance. The goal of this reform was to make Mali ‘one of the major poles of African gold trade.’ It was stated by Mali’s National Director of Geology and Mining, clearly in line with WBG policy regarding the respective roles of government and the private sector, that:

The primary purpose of the mining policy adopted by the government in November 1998 is to substantially increase the contribution of mineral products to GDP. The strategy for implementation of this policy was to assign the private sector the role and mission of assuming the business risks …; the State will focus on the fundamental functions of establishing basic infrastructures, creating an environment conducive to investment, promoting the industry, etc.

According to Hatcher, under the 1999 Malian reforms, mining companies received a number of enticements to engage in exploration. For instance, Mali offered an ‘escalating annual fee per surface area’; this fee arrangement enabled

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197 Ibid 39.
198 Ibid 45.
199 Ibid 43.
200 Ibid 43.
201 Ibid 44.
Mali to attract foreign investment on the basis that the mining companies would not be impacted ‘by charges considered too high by [it] in [the project’s] early stages.’\textsuperscript{202} Further, certified companies would ‘pay only some royalties … [and were] also exempt from paying turnover taxes … which might unduly burden the cost of exploration operations.’\textsuperscript{203} Then, once a project reached production, certified companies received significant tax exemptions during the first three accounting periods of production or mining.\textsuperscript{204} For instance, mining companies operating in Mali received exemptions from income tax on professional earnings, income tax on property income, registration and stamp duties, value added tax and service delivery tax, income tax on investment income, contribution on patents and tax on insurance policies.\textsuperscript{205}

Hatcher asserted that the gold industry in Mali was one of the main sources of government revenue. It was anticipated that Mali’s reliance on gold mining revenues would continue for at least another 10 years.\textsuperscript{206} In light of the centrality of the gold industry to Mali’s revenues, it is strongly arguable that by following WBG advice, the effect of these tax holidays and exemptions during the exploration and production phases, was to significantly erode Mali’s revenue base to such an extent that ‘the government [was] no longer able to assume its role with respect to supplying services.’\textsuperscript{207} In addition, compounding this problem, it was asserted that the Malian government had often sought to reduce its budget deficit by cutting already inadequate services, rather than by increasing its tax revenue. By avoiding tax revenue increases, it was expected that foreign investors would continue to be attracted to Mali’s gold industry.\textsuperscript{208}

The situation in Mali encapsulates the paradox of reliance on foreign investment. The WBG reforms may have contributed to Mali’s gold industry surviving the gold crisis that crippled the industry in other countries\textsuperscript{209} but the country also

\textsuperscript{202} Ibid 46.\textsuperscript{203} Ibid 47.\textsuperscript{204} Ibid 47.\textsuperscript{205} Ibid 47.\textsuperscript{206} Ibid 45.\textsuperscript{207} Ibid 48.\textsuperscript{208} Ibid 46.\textsuperscript{209} Ibid 51.
remained one of the ten poorest countries on the planet. Further, despite increased foreign investment into the country’s mining industry, Mali’s government remained ‘starved for revenues’ and as a consequence was severely limited in its ability to provide services.

Notwithstanding the ‘contradictory and sometimes incompatible logics’ of WBG policies, the WBG self-reports that its reforms ‘have often had spectacular results with respect to investment and good results with respect to institution building.’ However, by the end of the 20th Century, WBG intervention into Africa and other developing countries was starting to be seriously questioned.

(a) Anti-globalisation movement

The end of the 20th Century saw a wave anti-globalisation protests. In September 2000, during this time of increased civil society agitation, the WBG met in Prague. This meeting was also beset by protests. Activists from developing countries, including Nicaraguan activist Andrea Morales and Clemente Wilson, of the Kuna Tribe of Panama’s San Blas Islands, protested against the exploitation and oppression of indigenous people by the processes of globalisation. Importantly, during the Prague meetings, the WBG President, James Wolfensohn, was ‘challenged’ by Ricardo Navarro, Chairman of Friends of the Earth, on the impacts of the extractive industries projects that had received financing from the World Bank. Ricardo Navarro presented a petition calling on the WBG to cease funding oil, mining and gas projects. In response to this petition, James

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210 Ibid 51.
211 Ibid 52.
212 Ibid 51.
215 Ibid.
217 ‘Marketing the Earth: The World Bank and Sustainable Development’ (Friends of the Earth, August 2002) 17.
Wolfensohn committed the WBG to an independent review of its investments into the extractive sectors.\textsuperscript{218}

VI \hspace{1em} \textbf{EXTRACTIVE INDUSTRIES REVIEW (EIR)}

The goal of the Extractive Industries Review (‘EIR’) was to determine whether WBG involvement in the extractive industries was consistent with its goal of poverty reduction.\textsuperscript{219} As the analysis and findings of the EIR are contained within six volumes of documents, it is not possible within this paper to traverse the minutiae of the EIR process. In conducting the EIR, Mr Emil Salam and the advisory group put together to assist in the EIR,\textsuperscript{220} conducted five regional workshops. The focus of consideration in this paper is the regional workshop held in Mozambique in January 2003. The purpose of including this discussion is to assist in understanding some of the ground level impacts of WBG reforms in African countries.

A \hspace{1em} \textit{Regional Consultation Workshop for Africa – Civil Society Testimonials}

The purpose of the civil society testimonials was to provide a forum for ‘civil society to share their experiences of extractive industry projects … in a frank and open environment.’\textsuperscript{221} The testimony given by civil society covered projects funded by the WBG. The testimony relating to three of these interventions is briefly discussed herein: the Olkaria Geothermal Project in Kenya (‘Olkaria Project’), the Bulyanhulu gold mine in Tanzania and the Niger Delta Contractor Revolving Credit Facility.

In relation to the Olkaria Project, environmental problems were documented by the Centre for Minority Development in Kenya (‘CIMD’) and the CIMD presented this testimony to the EIR.\textsuperscript{222} CIMD had recorded environmental

\begin{itemize}
\item \textsuperscript{218} Ibid 17.
\item \textsuperscript{219} Bello and Guttal, above n 216, 78.
\item \textsuperscript{222} Ibid 2.
\end{itemize}
impacts from the Olkaria Project, such as toxic emissions and effluent being released into the environment surrounding the project.\textsuperscript{223} According to CIMD, the local community had reported suffering from chronic skin diseases. The community also reported the mysterious death of livestock, caused by contaminants from the Olkaria Project seeping into feeding grounds.\textsuperscript{224} CIMD also testified that the proponents of the Olkaria Project had promised to employ local people, but had only employed two local people in a workforce totalling 428 people.\textsuperscript{225} In addition, the Maasai community had suffered the ongoing expropriation of land in relation to the Olkaria Project.\textsuperscript{226} On this point, CIMD testified that the Maasai were never consulted about the expropriation and, further, the expropriation of their land had forced the Maasai to abandon traditional livelihoods.\textsuperscript{227}

The Lawyer’s Environmental Action Team (‘LEAT’) provided testimony in relation to the impacts of the Bulyanhulu gold mine.\textsuperscript{228} LEAT testified that artisanal miners were forcibly removed from the area of the gold mine by the security forces of the Government of Tanzania ‘in cooperation with the Canadian mining company, Barrick Gold.’\textsuperscript{229} This forcible removal had resulted in ‘impoverishment, marginalization and violation of rural communities.’\textsuperscript{230} LEAT testified that the Bulyanhulu region had been set aside for artisanal mining but that these rights had been undermined by the enactment of the new \textit{Mining Act}\textsuperscript{231} which had been promulgated with the assistance of the WBG.\textsuperscript{232} LEAT further testified that in June 1995, Barrick Gold sought court orders seeking to have artisanal miners evicted from the land. The High Court of Tanzania did not grant this order and referred Barrick Gold’s application to a hearing before a special constitutional court.\textsuperscript{233} However, in July 1996 and before the hearing, the

\begin{itemize}
\item \textsuperscript{223} Ibid 3.
\item \textsuperscript{224} Ibid 3.
\item \textsuperscript{225} Ibid 3.
\item \textsuperscript{226} Ibid 3.
\item \textsuperscript{227} Ibid 3.
\item \textsuperscript{228} Ibid 3.
\item \textsuperscript{229} Ibid 4.
\item \textsuperscript{230} Ibid 4.
\item \textsuperscript{231} \textit{Mining Act, 1998} (Tanzania)
\item \textsuperscript{233} Ibid 5.
\end{itemize}
Tanzanian Minister for Minerals made an order evicting the local miners. In August 1996, an injunction was granted against the eviction; however, LEAT testified that the miners were immediately evicted. LEAT testified that Tanzanian artisanal miners were killed during the forcible eviction when their mine shafts were filled in by bulldozers.234 Zephania Luzama, a citizen of Tanzania and owner of eight mine shafts, witnessed the events and testified that two of his adopted sons were killed when they were buried alive in the mineshafts.235 Melania Baesi also gave evidence that her two sons, one aged 20 years and the other 16 years of age, were buried alive in the mineshafts.236 Maalim Kadau testified that it was originally estimated that 52 people were buried in the mineshafts, but that this number had been increased as more people had come forward reporting missing relatives.237

Testimony was also provided regarding the WBG’s involvement in the Niger Delta region.238 The Environmental Rights Action (‘ERA’) group, the Nigerian chapter of Friends of the Earth,239 testified to contentions allegedly made by the WBG in 1995 that neither oil spills nor gas flaring were major environmental problems for Nigeria. Further, the ERA’s testimony was that the WBG had stated that the oil spills would evaporate quickly in Nigeria’s tropical environment and the emissions from gas flaring were not toxic to health.240 On 1 June 2001, the ERA lodged a complaint with the Compliance Advisor Ombudsman (‘CAO’), the independent ombudsman established in 1999, regarding the Niger Delta Contractor Revolving Credit Facility made between the International Finance Corporation (IFC), Royal Dutch Shell (Shell) and a local bank. The purpose of the revolving credit facility was to enable the parties to it to provide ‘competitively priced term funding to small and medium sized local contractors … who

234 Ibid 5.
235 Ibid 7.
236 Ibid 7.
237 Ibid 7.
238 Ibid 10.
delivered services to Shell.\textsuperscript{241} One of the grounds of the ERA’s complaint was that the IFC (as an arm of the WBG) in partnering with Shell did not appear to have addressed ‘the legacy of Shell’s involvement in Nigeria’\textsuperscript{242} such as the claims against Shell of human rights abuses and its disregard for ‘minimal environmental standards.’\textsuperscript{243}

During the African workshops, African civil society groups called on the WBG to impose a moratorium on oil, gas and mining investments until the social and environmental issues associated with WBG interventions could be properly addressed.\textsuperscript{244}

B \textit{The Findings of the Report}

In December 2003 ‘The Final Report of the Extractive Industries Review’ (‘Final Report’) was released. Again, it is beyond the scope of this paper to discuss the minutiae of the Final Report and instead some relevant points have been highlighted herein. The Final Report found that while WBG programmes had reformed mining regimes and these reforms had resulted in increased investment, these reforms may have exacerbated the already existing ‘knowledge, power, financial, and technical resource gaps’ that exist between mining companies, civil society, the governments of developing countries and local communities.\textsuperscript{245} In fact, the Final Report found that increased investment into extractive industries had often further marginalised the poor.\textsuperscript{246}

The Final Report stated there were ‘three main enabling conditions’ to align the extractive industries with the WBG’s goals of poverty reduction and sustainable

\textsuperscript{243} Ibid 11.
\textsuperscript{244} Ibid 71.
\textsuperscript{246} Ibid.
development. These enabling conditions were: pro poor governance, more effective social and environmental policies and respect for human rights. The Final Report made a number of recommendations for the improvement of WBG policies that would enable the WBG to promote investments into the extractive industries that were more closely aligned with these enabling conditions.

For instance, in meeting the enabling condition of pro poor governance, the Final Report advocated that the WBG should develop programmes tailored to the needs of the recipient country. Of concern, the Final Report found that the WBG had given insufficient attention to the development needs of poorly performing, resource abundant countries. While the WBG’s previous ‘structural reform programmes’ had increased extractive industries investment, such revenue was often not transferred to the affected communities. The Final Report noted that one of the reasons this occurred was that extractive industries development was often promoted ahead of addressing governance and market issues that could be harmful to the poor. In particular, the Final Report found that the governments of resource rich countries were reportedly interested in receiving WBG assistance to build diversified economies that relied on large and small companies and employment generation through creating value adding industries. However, the Final Report noted that the necessary research and development assistance to promote such goals had not been forthcoming from the WBG.

Another aspect of pro poor governance was the integration of small scale and artisanal mining into the formal sector. On this point, the Final Report noted the significant imbalance between the WBG’s support for large mining companies when compared to small scale projects and artisanal miners. In the period 1990-2002, the IFC had provided around $100.8 million in funding each year to multinational mining companies. On the other hand, the Final Report estimated

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247 Ibid vii.
248 Ibid.
249 Ibid.
250 Ibid 16.
251 Ibid 14.
252 Ibid.
253 Ibid 16.
255 Ibid.
that, in 2002, WBG support for small scale and artisanal mining totalled just $610,100. Further illustrating the need to integrate small scale and artisanal mining into the formal sector, the Final Report noted the number of people employed by each industry. In 2003 the global mining industry employed approximately 10 to 11 million people while artisanal and small scale mining employed an estimated 11 to 13 million people.256

The second enabling condition was the creation of ‘more effective social and environmental policies.’257 The Final Report stated that this involved strengthening the environmental and social components of WBG interventions.258 The Final Report noted the accidental release of two tonnes of sodium cyanide into the Barksoon River in Kyrgyzstan in 1998 and a spill of 300 pounds of mercury close to the Yanacocha mine in Peru in 2000. The WBG, through its associated bodies, was involved in financing these mines.259 The Final Report also found that the WBG had endorsed projects in biologically sensitive and protected areas. Climate change was another issue for consideration and the Final Report noted industry’s view that the WBG had a role to play in the promotion of a ‘low-carbon economic growth strategy’ in developing countries. The Final Report recommended that the WBG should encourage developing countries to invest in the infrastructure required for ‘modern energy supplies’ rather than ‘watching them invest and install infrastructure for fossil fuels.’260

The social cost of mining was also examined within the second enabling condition. Two main issues were considered: worker health and safety261 and involuntary resettlement.262 Focussing on the issue of involuntary resettlement, the Final Report noted that the WBG’s policies allowed forced resettlement.263 The WBG policy is that it ‘seeks to avoid involuntary resettlement, but there are

256 Ibid 24.
257 Ibid vii.
258 Ibid ix.
260 Ibid 34.
261 Ibid 35.
262 Ibid 36.
263 Ibid.
times when this is unavoidable.\footnoteref{264} However, the Final Report noted that companies had reported to the EIR that their view was that the WBG utilised involuntary resettlement too readily.\footnoterefrange{265} The Final Report recommended the WBG should engage with local communities to seek ‘free prior and informed consent’ regarding resettlement. Such consent processes would mean that the WBG could only engage in voluntary resettlements.\footnoterefrange{266}

The third enabling condition was respect for human rights.\footnoterefrange{267} The Final Report stated that the WBG has obligations under international law to promote, respect and protect all human rights.\footnoterefrange{268} Of concern, the Final Report recommended that the WBG must ‘internalise and respect’ the principle that ‘while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgment of internationally recognised human rights.’\footnoterefrange{269} On the issue of labour rights, the Final Report noted the perceptions of the labour unions in developing countries that the WBG is ‘anti-worker.’\footnoterefrange{270} In particular, the Final Report referred to the WBG publication ‘Doing Business in 2004’ that included recommendations for developing countries to ‘reduce the scope of employment legislation … reduce minimum wages, and … replace collective negotiation by contracts.’\footnoterefrange{271} Returning to the issue of resettlement, the Final Report raised concerns about the impact of the extractive industries on indigenous populations; noting that the displacement of indigenous people from their traditional lands had potentially deleterious effects on their health and wellbeing.\footnoterefrange{272} Finally, the Final Report discussed women’s’ rights.\footnoterefrange{273} Here it was noted that women ‘are the most discriminated against, the most vulnerable, and


\footnoterefname{266} Ibid 55.

\footnoterefname{267} Ibid vii.

\footnoterefname{268} Ibid xi.

\footnoterefname{269} Ibid 38.

\footnoterefname{270} Ibid 40.

\footnoterefname{271} Ibid 40.

\footnoterefname{272} Ibid 41.

\footnoterefname{273} Ibid.
the least empowered members of many societies." The Final Report concluded that the WBG paid little attention to women’s issues and seemed to assume that women would ‘automatically benefit’ from extractive industries projects.

1 Conclusions

The EIR conducted an in-depth analysis of the impact of WBG extractive industries policies in developing countries. The Final Report found a significant number of issues that impacted upon the efficacy of WBG interventions to promote poverty reduction and sustainable growth. The testimony given by civil society at the African regional workshop gives an indication of the level of discontent regarding the impact of WBG interventions. The analysis above also details aspects of the African experience as an object of investment and development ideologies. For instance, it has been suggested that Africa’s contribution to determining the content of socially responsible investment policies in Africa has often been ignored or misunderstood. From the history outlined above, it is arguable that Africa’s contributions towards formulating policies to develop its extractive industries has also been ignored or misunderstood.

The second part of this paper will consider Africa as an actor, or agent, seeking to devise its own development ideology for its mining industries. The analysis will then extend to a consideration of WA’s development ideologies. Noting that one of the purposes of the MOU signed by WA and the COMESA States is the promotion of strategies for investment into Africa’s mining industry and the development of linkages, such an examination will determine whether WA’s

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274 Ibid 41.
275 Ibid 42.
276 Ibid 42.
278 Ibid 247.
experience of mining development is aligned with the ‘transformative agenda’ for African development expressed in the AMV.

VII BREAKING THE ENCLAVE

The next part of this paper will discuss the central policy document for African mining development, the Africa Mining Vision. While this document is not the earliest expression of mining policy created by African countries, the relevance of the AMV is that it is a central statement of mining policy in Africa based upon the drafters’ review and consideration of the many regional, subregional and international policy programmes and documents that preceded it.

A What is the enclave?

The enclave model of natural resource extraction is conceptually linked to the resource curse and Dutch disease theory. As noted by Robin Bloch and George Owusu, ‘[A]n enclave economy is associated with a lack of productive, physical backward and forward linkages.’ The Oxford Dictionary of Human Geography defines an enclave economy as ‘[a] foreign-owned export-based industrial zone … strongly linked with global flows but only weakly integrated with local areas.’ UNECA notes that an enclave industry results from ‘concentrations of investment and unbalanced economic development.’ It should be noted that mining enclaves operate in both developed and developing countries. To put the claims of mining as an enclave industry into context, it has been contended that mining, along with other primary production industries, can be more easily

marked with the label of an ‘enclave’\textsuperscript{285} because the combined effect of the export of the raw outputs of mining and the lack of integration of the industry into the local economy is so easily recognised.\textsuperscript{286} However, as stated by the Africa Progress Panel (‘APP’), in its 2013 annual report, titled ‘Equity in Extractives – Stewarding Africa’s Natural Resources for All’ (‘APP Report’), enclave mining industries are ‘not a route to inclusive growth and shared prosperity.’\textsuperscript{287}

B Why does Africa want to break the enclave?

The APP Report states that ‘[B]reaking with the enclave model of natural resources extraction is [a] priority.’\textsuperscript{288} The APP refers to the AMV’s call upon African governments to ‘shift focus from simple mineral extraction to much broader developmental imperatives in which mineral policy integrates with development policy.’\textsuperscript{289} It is arguable that this represents an ideological break from the three generations of mining reforms overseen by the WBG in Africa. The creation of development linkages and the improvement of the operation of fiscal regimes are two of the methods by which the enclave nature of mining can be combatted. There are many pressing reasons for African countries to seek to break the enclave; two reasons are discussed herein.

1 Fragility


\begin{itemize}
\item[286] Ibid.
\item[288] Ibid.
\item[289] Ibid 11.
\end{itemize}
The AfDB estimates that 250 million African people are affected by fragility.\(^{292}\) The AfDB defines fragility as “a condition of elevated risk of institutional breakdown, societal collapse, or violent conflict.”\(^{293}\)

According to the AfDB, uneven economic growth is a contributing factor to fragility. On this point, the AfDB notes that while Africa has experienced fast growth, such growth has been narrowly concentrated in a few sectors and geographical areas.\(^{294}\) This type of growth results in exclusion, poverty, unemployment, high migration, rapid urbanisation, climate change and poor management of natural resources, and these are pressures that contribute to the fragility of African countries.\(^{295}\) In response to these pressures, the AfDB seeks to manage “the underlying drivers of fragility and building resilient states and societies through effective institutions, capacity building and partnerships.”\(^{296}\) In particular, addressing fragility means engaging with economic, social, political and environmental issues through “inclusive and equitable growth patterns that can meet societal expectations.”\(^{297}\) The AfDB also recognises that the drivers for inclusive and equitable growth are being intensified by “greater citizen’s demands for economic empowerment, political inclusion and justice.”\(^{298}\) Amongst a number of factors, the AfDB identifies two issues that are critical to driving socially acceptable inclusive and economic growth. The first issue is access to employment\(^{299}\) and the second issue is the unequal distribution (whether actual or perceived) of the benefits of the extractives industries.\(^{300}\)

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\(^{293}\) Ibid 1.


\(^{296}\) Ibid 1.

\(^{297}\) Ibid 3.

\(^{298}\) Ibid 4.

\(^{299}\) Ibid 11.

\(^{300}\) Ibid 12.
Access to employment

The AfDB makes investment in human capital a central goal of its strategy, as developing Africa’s human capital is recognised as being critically important in combatting poverty and social exclusion. According to the AfDB, Africa has the world’s highest unemployment rate, after Europe. Further, African economies do not currently create enough jobs to occupy the number of youth entering the job market each year. The problem of African underemployment has the potential to significantly worsen given Africa’s rapidly growing population. As at mid-2014 the population of Africa was estimated to be 1.1 billion people and this number is expected to increase to 2.3 billion people by 2050. It is also projected that by 2020, 250 million Africans will be aged between 15 and 24 years of age and by 2040 Africa will have the largest workforce in the world. The risk of unemployment and underemployment is that it can endanger social cohesion and inhibit inclusive development.

Feeding into the issue of access to employment is the issue of educational accessibility and quality. Africa has the world’s lowest rate of school enrolment. Of the small number of African children and youth who are able to attend school, most cannot meet basic literacy and numeracy achievements. At the other end of the educational spectrum, the AfDB notes that, for the period 1999 to 2009, while the number of university graduates in sub-Saharan Africa tripled to 4.9 million, so too did the number of educated unemployed youth. In the

303 Ibid.
309 Ibid iv.
310 Ibid.
311 Ibid 6.
AfDB’s view, this occurs as a result of a disconnection between the skills learned at university and the skills that are required by the labour market.\textsuperscript{312} The lack of educational opportunities and suitable educational training will severely undermine Africa’s capability to sustain economic growth, to increase competitiveness or to diversify its economy into higher value added areas of production.\textsuperscript{313} The AfDB sees these events as having the potential to ‘deprive a whole generation of opportunities to develop their potential, escape poverty and support the continent’s trajectory toward inclusive growth and economic transformation.’\textsuperscript{314}

\section{Unequal distribution of the benefits of the extractives industries}

The rectification of the unequal distribution of the benefits of the extractive industries is the conceptual basis for many African policy documents. Through the creation of an African driven policy framework, African countries seek to promote the extractive industries on the basis that increased investment into the industries, under the right policy and legislative controls, will have the effect of catalysing inclusive and sustainable growth in African countries.\textsuperscript{315} This view is promulgated in the following policy documents.

\subsection{Africa Mining Vision}

The opening statement of the AMV sets out the Africa Mining Vision:

\begin{quote}
Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.\textsuperscript{316}
\end{quote}

\begin{footnotes}
\item 312 Ibid.
\item 313 Ibid iv.
\item 314 Ibid.
\item 316 Ibid v.
\end{footnotes}
The AMV seeks to benefit all levels of local, regional and national African society through the promotion of seven of broad factors. The first factor is the creation of a single African market. According to the AMV, the creation of certain conditions will contribute to this. Firstly, it will be necessary to foster economic linkages. Other linkages specified in the AMV include downstream linkages (mineral beneficiation and manufacturing); upstream linkages (capital goods, consumables and services industries) and sidestream linkages (infrastructure, skills and technology). In addition, the creation of a single market will be aided by the creation of ‘mutually beneficial partnerships’ between African governments, the private sector, civil society and local communities. Finally, the AMV advocates for a ‘comprehensive knowledge of [African countries’] mineral endowment.’

The AMV lists a further six factors that are critical to creating the mining vision. The first of these factors is the creation of a sustainable and well-governed mining sector that effectively collects and uses resource rents. Secondly is the creation of a diversified African economy in which the mining sector is the ‘key component.’ The third factor sees the mining industry helping to establish African infrastructure by promoting local and regional linkages. The fourth factor is the diversification of the mineral industry into ‘high value metals’ and ‘low value industrial metals.’ The fifth factor is integrating small scale and artisanal mining into the vision to create employment and support social and economic development. The final factor is the creation of a mining sector that is competitive on the local, continental and international markets.

That mining can be a catalyst to increased growth and industrialisation is not a new idea. In particular, the AMV refers to the failure of previous African mining policies noting that these had relied on overly ambitious projects that were

317 Ibid.
318 Ibid.
319 Ibid.
320 Ibid.
321 Ibid.
322 Ibid.
323 Ibid.
324 Ibid.
325 Ibid.
too reliant on foreign inputs.\textsuperscript{326} In constructing the AMV, the drafters examined the experience of resource development in Nordic countries.\textsuperscript{327} The AMV states that Nordic experiences of resource development emphasised the need:

To have a shared strategic vision, deliberate and proactive government-led collective action, timely interventions and coordination of public, private and community interests at all levels.\textsuperscript{328}

The AMV recognises the ‘Asian boom’\textsuperscript{329} as a fresh opportunity for Africa to penetrate the market with its mineral resource products. However, for African countries to benefit from this boom appropriate strategies are required to guide development.\textsuperscript{330} Such strategies should seek to maximise the catalysing effect of mineral resources and promote broad based growth through the creation of linkages into the economy.\textsuperscript{331}

**D Action Plan for Implementing the AMV**

In December 2011, the drafters of the AMV created the ‘Action Plan for Implementing the AMV’ (‘Action Plan’). The Action Plan was adopted at the Second AU Conference of Ministers Responsible for Mineral Resources Development held at Addis Ababa. The Action Plan repeats the seven factors originally outlined in the AMV and frames them into the following statement:

The AMV seeks to use Africa’s natural resources sector to transform the continent’s social and economic development path in order to address its poverty and limited development. It seeks to set Africa on an
industrialisation path, based on its natural capital, to enable the continent to take its place in the global economy.\textsuperscript{332}

The Action Plan then further defines the scope of the goals of the AMV into nine programme clusters.\textsuperscript{333} These clusters are: mining revenues and mineral rents management; geological and mining information systems; building human and institutional capacities; artisanal and small scale mining; mineral sector governance; research and development; environmental and social issues; linkages and diversification; and mobilising mining and infrastructure development.

\textit{E A Country Mining Vision Guidebook: Domesticating the Africa Mining Vision}

The AMV is a high level document policy framework; it is the formulation of ‘an ambitious change-making process.’\textsuperscript{334} Very recently the AMDC, a body created as a joint initiative by the AU Commission, the AfDB and UNECA,\textsuperscript{335} conducted a ‘Book Sprint’ with a group of mainly African contributors. Over six days in September 2014, these contributors met to produce ‘A Country Mining Vision Guidebook: Domesticating the Africa Mining Vision’ (‘CMV Guidebook’). The purpose of the CMV Guidebook is to help African countries to domesticate the goals of the AMV.

The value of the CMV Guidebook is that its authors considered the AMV and the Action Plan during the September 2014 meetings.\textsuperscript{336} The result of these meetings was the further organisation of these earlier high level policy documents into seven areas for country level development and implementation. The seven areas

\begin{flushright}
\footnotesize
\textsuperscript{333} Ibid 10.
\end{flushright}
are: fiscal regimes and revenue management; geological and mineral information systems; building human and institutional capacity; artisanal and small scale mining; mineral sector governance; linkages, investment and diversification, and, finally, environment and social issues.\(^{337}\)

As noted earlier, the two areas for discussion in this paper are fiscal regimes and the development of linkages. These two issues are centrally important to Africa’s goal of breaking with the enclave nature of mining. For instance, effective taxation collection can, amongst other goals, assist funding the development of Africa’s human capital strategies. In addition, the creation of development linkages is also critical as this will provide employment opportunities for a rapidly growing African population. Overall, increased taxation revenues and the creation of employment are two factors that can assist African countries manage the issue of fragility.

1  \textit{Fiscal linkages}

According to the AMV, a ‘principal resource endowment opportunit[y]’ is the collection of resource rents.\(^{338}\) Resource rents are critical as they can be used to ‘improve the basic physical and knowledge infrastructure of the nation through investment in physical infrastructure and social and human infrastructure.’\(^{339}\) The AMV reports that one of the constraints on the collection of resource rents by African governments is weak governance and institutions.\(^{340}\) The effect of countries with weak governance and institutions is that they tend to fail to establish appropriate resource tax regimes to ensure an equitable return to the country for the extraction of their mineral resources.\(^{341}\) The AMV reports that African countries previously sought to capture resource rents through state mining enterprises.\(^{342}\) However, many African countries now perceive that attracting

\(^{338}\) Ibid.
\(^{339}\) Ibid.
\(^{340}\) Ibid.
\(^{341}\) Ibid 14.
\(^{342}\) Ibid 22.
investment is not the problem and that the maximisation of the benefits of investment can be achieved through regulative, policy and fiscal regimes.  

In order to create appropriate taxation regimes, the Action Plan states that ‘[a] key challenge in the design of fiscal frameworks for the mining sector is the often conflicting objectives of mining companies and governments.’ The Action Plan notes that mining companies seek maximisation of the net present value of their investment whereas governments seek to maximise the return from the investment to fund social and economic infrastructure. According to the Action Plan, mining projects in Africa have been characterised by ‘assurances that there would be no additions to the total tax package agreed to initially.’ These tax packages were often constructed through ‘overly generous tax holidays and poorly designed royalties and additional profit taxes.’ The effect of these arrangements is that when mineral prices boomed, African governments did not receive increased revenues.

The CMV Guidebook states that as mineral resources are finite and will be depleted by extraction, the only way that extractive industries can be sustainable is through the creation of fiscal and economic linkages. The CMV Guidebook further considers the question of appropriate revenue capture. In its ‘Problem Statement’ on this issue, the CMV Guidebook states that ‘the objectives of government (as resource owner on behalf of citizens) needs to be balanced against those of investors (as providers of risk capital and technology of extraction).’ The CMV Guidebook suggests a number of questions that the governments of

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343 Ibid 23.
345 Ibid.
346 Ibid.
347 Ibid.
348 Ibid 151.
350 Ibid 53.
African countries with mineral industries should ask themselves when seeking to create an appropriate fiscal regime. Such questions include:

Does the fiscal regime deliver value for the country over the long term? 

Does the fiscal regime ensure that government receives a rising share of the revenues with rising profitability of mining activities?

Does the fiscal regime inspire confidence that the country is collecting what is due or owed and what is fair?

2   The Development of Linkages

The AMV states that the development of domestic linkages is central to breaking the enclave nature of resource development in Africa. Like resources rents, upstream and downstream linkages have been identified in the AMV as ‘principal resource endowment opportunities.’ According to the AMV, African countries have been unsuccessful in creating downstream value addition due to a lack of critical inputs, such as energy, high entry barriers for the creation of beneficiation processes and the ‘global corporate beneficiation strategies of TNCs, who often prefer to send crude resources to a central beneficiation facility in another country.’ In addition, the AMV states that there has been a governance failure to impose and enforce minimum levels of beneficiation upon those mining companies operating in African countries. The AMV attributes the failure of African countries to create upstream value addition to three factors. The first factor is the ‘centralised purchasing strategies of most resource extraction TNCs.’ The second factor is the inability of a limited domestic business sector to compete

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351 Ibid 57-58.
352 Ibid 57.
353 Ibid 57.
354 Ibid 57-58.
357 Ibid 14.
358 Ibid.
for upstream value addition business opportunities. The final factor is the lack of human resources and technical capacity. 359

The CMV Guidebook discusses ‘Linkages, Investments and Diversification.’ 360 The CMV restates the AMV goal for linkages and diversification thusly:

To create a mining sector that catalyses and contributes to broad-based growth through upstream, downstream, sidestream and infrastructure linkages. 361

The CMV Guidebook explains the various types of direct linkages. Upstream (or backward) linkages are the first linkages to appear at the commencement of a mining project. Such linkages are the ‘direct or indirect inter-firm relationships connecting an industry with its suppliers or supply chain.’ 362 The ISG Report provides examples of upstream linkages; for instance, suppliers who identify deposits; suppliers of labour, equipment and utilities; suppliers of machinery, equipment and vehicles, and mining services. 363 Downstream (or forward) linkages ‘reflect the interconnectedness of a specific sector to other sectors in the economy that consume its output.’ 364 Examples of downstream linkages include mineral processing, smelting and refining, semi-fabrication and product manufacture. 365 The CMV Guidebook notes the value of the mineral (by weight) increases at each stage of the downstream processes. Different minerals will have different mineral value chains. 366 For instance, the value of a diamond at extraction can be increased by a factor of 5000 through the beneficiation

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359 Ibid.
361 Ibid 149.
362 Ibid 153.
364 Ibid 149.
366 Ibid.
process. Finally, the CMV Guidebook discusses the creation of industries alongside the mining industry (sidestream linkages), for instance, stock markets, financial services, utilities, logistics, communications, technology development and innovation.368

The CMV Guidebook asserts that these linkages between the minerals industries and the African economy are weak. Exemplifying these weak links, the CMV Guidebook notes that African minerals are generally exported in their raw form and that mining related inputs are commonly imported.369 The CMV Guidebook emphasises the importance of creating linkages to enable African countries to transition from a primary commodity exporter to ‘a high-technology, knowledge-intensive economy.’370

According to the CMV Guidebook, the factors that constrain Africa’s ability to build these linkages are varied. Firstly, it states that most African countries lack appropriate policies and strategies to foster industrialisation, value addition and beneficiation.371 Then, when policies do exist, they are not strengthened by legislative enforcement. In addition targets, timelines and indicators for value addition and beneficiation are unclear and there is ineffective (or no) monitoring of progress against targets.372 Again, as in the discussion for fiscal regimes, the CMV Guidebook poses a number of questions for African governments to consider in domesticating the AMV. One such question is:

What are the national policies and strategies and enforcement mechanisms for the promotion of industrialisation, beneficiation and value addition?373

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368 Ibid 154.
369 Ibid.
370 Ibid.
371 Ibid 155.
372 Ibid.
373 Ibid 159.
(a) Conclusions

In addition to the dominant narratives of the resource curse and Dutch disease, an additional narrative has constrained earlier attempts by African governments to create and implement development strategies. As stated by the Congolese Ambassador to the United Nations in 1960, the actions of African countries have historically been framed within the context social, economic and ‘congenital intellectual underdevelopment.’ In light of Mr Barnett’s attempts to position WA as a helpful adviser to African governments seeking to promote their mineral industries, all such preconceptions must be avoided. The documents discussed in this chapter represent the ongoing formulation of a coherent and cohesive policy framework for the development of Africa’s mineral industries. Further, and importantly, they also represent a break away from the more limited WBG interventions. Being aware of these policy documents and familiar with their content is undoubtedly beneficial for companies seeking to do business in African countries’ extractive industries.

VIII Western Australian Development Ideology

In light of Mr Barnett’s offer to ‘moral and political support’ to African countries seeking to develop their mining industries and the COMESA MOU signed in January 2014, an examination of the history of mineral resource development in WA may be instructive. In examining the development ideology underpinning the mining industry in WA, two main texts will be considered. In 1981, the University of Western Australia Press published ‘State, Capital and Resources in the North and West of Australia’ (‘1981 text’). The 1981 text is a collection of academic and ministerial papers collected and published in response to the absence of informed debate surrounding resource development in Western Australia. In 2014, Springer Publishing published ‘Resource Curse or Cure?: On the Sustainability of Development in Western Australia’ (‘2014 text’). The 2014 text is a collection of academic articles published to stimulate ‘much-needed

\[374\] Piper, above n 21, 29.
\[375\] Elizabeth J Harman and Brian W Head, ‘Preface’ in Elizabeth Harman and Brian Head (eds), State, Capital and Resources in the North and West of Australia (University of Western Australia Press, 1982).
public debate’ regarding the ‘expectation that minerals and fossil fuels are infinitely available and their development universally beneficial.’376 What will become apparent through the analysis of these two texts is that the problems of WA’s resource development strategies, as anticipated in 1981, have arguably not been addressed.

WA’s mining industry is often heralded as a great success and the idea that the State’s legislative and investment regime should be emulated by other countries seeking to promote their own mineral resources industries is not new. In the early 1980s, the Honourable Peter Vernon Jones, Minister for Resources Development; Mines, Fuel and Energy; Industrial Development and Commerce377 advocated that WA’s mining policies would be a ‘model for developing, resource-rich countries.’378 However it has also been argued that WA is a ‘resource cursed’ economy; with academics pointing to ‘islands of disadvantage … in resource rich locations.’379 To assert that WA suffers with the resource curse conflicts, almost heretically, with the dominant narrative of resource development that has developed in the state.

A The Dominant Narrative for Mining in Western Australia

The dominant narrative for Western Australia’s mining industry is explored in the opening chapter of the 2014 text.380 The first chapter, written by the editors of the book, discusses the widely publicised economic success of WA’s mining industry, which has been particularly exalted in the aftermath of the global

376 Carmen Lawrence, ‘Foreward’ in Martin Brueckner et al (eds), Resource Curse or Cure?: On the Sustainability of Development in Western Australia (Springer, 2014), v.
378 Peter Vernon Jones, ‘Resource Development Policies in Western Australia’ in Elizabeth Harman and Brian Head (eds), State, Capital and Resources in the North and West of Australia (University of Western Australia Press, 1982) 103, 105.
380 Martin Brueckner et al, ‘Confronting the “Resource Curse or Cure” Binary’ in Martin Brueckner et al (eds), Resource Curse or Cure?: On the Sustainability of Development in Western Australia (Springer, 2014), 3, 10.
financial crisis.\textsuperscript{381} The editors refer to the 2013 ‘State of the States Report’ which ranked WA as Australia’s best performing economy.\textsuperscript{382} In 2010-2011, the resources sector generated $4.9 billion in royalty payments, driven by iron ore operations and petroleum.\textsuperscript{383} In addition, commodity exports contributed ‘around 29% to overall production in WA and represented 95% of all merchandise exports.’\textsuperscript{384} This represented a significant increase in commodity exports for the period since 2004, such increase being driven by strong Chinese demand.\textsuperscript{385} However, even as commodity prices have dropped and the economy has slowed, it has been projected that the State’s mining industry will increase its contribution to WA’s economy.\textsuperscript{386}

The resources boom has also had an impact on employment patterns. It is reported that workers have transitioned out of other employment into the State’s mining industry; approximately ‘10% … of the State’s 1.2 million-strong workforce’ is employed by the resources industry.\textsuperscript{387} In addition mine workers have received significant earnings increases making ‘five of the State’s mining towns … among the nation’s richest top ten postcodes.’\textsuperscript{388} Males working in mining have particularly benefitted from earnings growth.\textsuperscript{389} In addition, it is reported that as mining intensity has increased in WA, mining businesses have shifted offices to new quarters in the state’s capital of Perth.\textsuperscript{390}

However, there have also been other impacts for the State as a result of the resources boom. For instance, while WA has the highest average incomes, it also has the most uneven income spread (using the Gini coefficient) of any Australian state.\textsuperscript{391} In addition, the cost of living is estimated to have increased by $132 per

\begin{itemize}
\item \textsuperscript{381} Ibid.
\item \textsuperscript{382} Ibid.
\item \textsuperscript{384} Ibid 11.
\item \textsuperscript{385} Ibid.
\item \textsuperscript{386} Ibid.
\item \textsuperscript{387} Ibid.
\item \textsuperscript{388} Ibid 12.
\item \textsuperscript{389} Ibid.
\item \textsuperscript{390} Ibid.
\item \textsuperscript{391} Ibid.
\end{itemize}
week during 2006 and 2008. As a result of increased migration into the state, the housing market became more expensive: rental prices increased by 11.9% to $470 per week in the twelve month period to April 2013. This is a significant concern given that in 2013 the minimum weekly wage in WA was only $628. By April 2013, Perth’s median house price had reached a record price of $510,000. The impact on housing prices in the state’s remote regions has been even greater, as median house prices in mining towns have reached $790,000 and median rental costs have increased to $1,500 per week. The increased cost of housing has a significant impact on low income earners who must access social service assistance to meet basic living costs.

1 Shaping the Dominant Narrative through Institutional Capture

Elizabeth Harman’s article in the 1981 text contended that the staged theory of development underpinned the ideology of development in WA. Harman stated that this theory of development has three stages. The initial stage is the extraction and exportation of raw materials. The second stage, value addition or beneficiation, will (inevitably, according to Sir Charles Court) occur because the costs of transportation of raw materials will ‘force buyers to purchase a more refined commodity so that they may avoid shipping waste.’ The third stage would see Western Australia make the transition from a quarry to a financier in the world economy.

It has been argued that shifts in the State’s economy outlined in the previous section have been assisted by the institutional capture of the State’s apparatus by

392 Ibid, citing Western Australian Council of Social Service, ‘The Boom is Busted for 400,000 of us’ (Western Australian Council of Social Service, 2009).
393 Ibid, citing Real Estate Institute of Western Australia, ‘Regional Rental Data’ (Real Estate Institute of Western Australia, 2013).
394 Ibid, citing ABC News, ‘Perth’s Median House Prices Reach Record High’ (ABC, 2 April 2013).
396 Ibid, citing Western Australian Council of Social Service, ‘The Boom is Busted for 400,000 of us’ (Western Australian Council of Social Service, 2009).
397 Harman, above n 56, 184.
398 Ibid 185.
399 Ibid 186.
400 Ibid.
large mining companies.\textsuperscript{401} In WA, one feature of this institutional capture is the development of a narrative of resources developing whereby the impact of the State in developing its own mineral industry has been minimised. This is critical in the extractives industries because the mineral resource itself is absolutely bound to its location in a way that many other products are not.\textsuperscript{402}

Harman’s 1981 article discussed the threat of institutional capture. In particular, Harman’s article discussed the ideology of mineral development in WA during the period 1960 to 1980.\textsuperscript{403} Harman asserted that the State’s policy originally designated mineral development as a ‘job creator’\textsuperscript{404} and that it was thought that the collection of resource rents (through royalties) would dampen job creation. As a result of this policy, Harman argued that Western Australia was ‘auctioning off resources at bargain prices’\textsuperscript{405} in the hope of inviting investment and creating jobs. Over time, efficient development became the State’s primary goal. Intriguingly, Sir Charles Court boasted of asking companies ‘not how many men can you employ but how few?’\textsuperscript{406} Accordingly, the contribution of labour to wealth creation was minimised. As part of this process, labour was labelled as disruptive\textsuperscript{407} as the result of seeking unreasonable wage demands.\textsuperscript{408} Having disenfranchised the local workforce, the State then courted multinational corporations on the basis that only multinationals had the financial, technological and trade skills to undertake large scale projects\textsuperscript{409} to drive the State’s growth. Ultimately, a duel economy is created whereby local companies were effectively marginalised by ‘the effects of unequal competition for labour, capital, or state support’\textsuperscript{410} and by the restriction of their ability to participate in large projects.

\textsuperscript{401} Al Rainnie, Scott Fitzgerald and Bradon Ellem, ‘Global Production Networks and Resources in Western Australia’ in Martin Brueckner et al (eds), \textit{Resource Curse or Cure?: On the Sustainability of Development in Western Australia} (Springer, 2014) 93, 97.
\textsuperscript{402} Ibid 96.
\textsuperscript{403} Harman, above n 56, 167.
\textsuperscript{404} Ibid.
\textsuperscript{407} Ibid 173.
\textsuperscript{409} Ibid 171.
\textsuperscript{410} Ibid 173.
other than on the contractual terms granted to them by multinational companies.411 This duel economy is evidenced by the separate publications issued by The Department of Industrial Development: ‘Enterprise’ covered agriculture, small scale manufacturing and ‘local ingenuity’ and ‘Prospect’ discussed the mining, energy and export trade.412

WA, unlike other resource rich countries, eschewed state equity413 preferring a free market ideology.414 Similarly to the ideology espoused by the WBG, the government saw its role as ‘limited to creating a climate conducive to investment.’415 In fact, the State sought to encourage ‘the entrepreneur – the man with spirit and vision – to get on with the job.’416 Accordingly, profits were distributed on the basis of risk.417 Any argument that a part of the profit should be returned to the public on the basis of ownership of the resource was dismissed as unjust.418 On this issue, Sir Charles Court stated:

The super tax is totally unacceptable when those who have taken the enormous risk of making discoveries are drained out later when they strike it rich.419

When faced with questions or criticism over the State’s development ideologies, Sir Charles Court’s response was to dismiss this criticism on the basis that the community did not understand how ‘development filters through the economy.’420 Harman suggested that the story of WA mining became a philosophy to explain the State’s development that reconceptualised the realities of the State’s progress. For instance, the lack of direct employment associated with foreign development

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411 Ibid.
412 Ibid.
413 Ibid 174.
414 Ibid 173.
415 Ibid 174.
417 Ibid 174.
418 Ibid 175.
419 Ibid, citing Sir Charles Court, ‘Fight for the Future.’
420 Ibid 177.
of the State’s mineral resources\(^{421}\) could be overcome be professing the benefits of the creation of ‘indirect jobs via linkages and multiplier effects.’\(^{422}\)

Over time, efficient development became an ideology to explain and contain the development of WA’s society.\(^{423}\) Harman asserted that in facilitating the centrality of this ideology, the *Mining Act 1904* and the *Mining Act 1978* has ‘primacy over all other statutes.’\(^{424}\) On this point, Michael Hunt writes that Western Australia’s *Mining Act 1904* was premised on the idea that ‘land should be utilised for the purpose for which it is most valuable [and] that no person should hold any mineral rights without being required to development them.’\(^{425}\) As part of a philosophy of land use that prioritises mining, private land rights were able to be challenged by mining developers;\(^{426}\) environmentalism was labelled as ‘superstition’\(^{427}\) and ‘socially irresponsible’\(^{428}\) and land claims by indigenous Australians were labelled ‘apartheid.’\(^{429}\)

2. *Loss of control of the investment decision*

Given the State’s adherence to the staged theory of development and the reliance upon multinationals to provide the financial, technological and trade skills to undertake large scale projects, it is important to consider how these factors impacted development in WA. E J Crough and E L Wheelwright, in their contribution to the 1981 text, noted that ‘[T]he transnational corporation has internationalised the means of production, and hence centralised economic power

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\(^{421}\) Ibid 176.
\(^{422}\) Ibid 176.
\(^{423}\) Ibid 177-179, 180, 184.
\(^{424}\) Ibid 180.
\(^{427}\) Ibid 183, citing Sir Charles Court, ‘Mining in Society’ (Speech delivered at the Official Dinner of a ‘Mining in Society’ Seminar, Perth, 6 September 1979).
\(^{428}\) Ibid, citing Sir Charles Court, ‘Mining in Society’ (Speech delivered at the Official Dinner of a ‘Mining in Society’ Seminar, Perth, 6 September 1979).
on a world scale.\textsuperscript{430} The authors stated that the result of this centralised economic power was the weakening of the State’s ability to control its own economic destiny.\textsuperscript{431} On this point, it was asserted that ‘the more a country is penetrated by transnationals, the more deeply is its economy and society affected.’\textsuperscript{432} By the late 1970s Australia was the second most penetrated OECD country. Crough and Wheelwright posit that countries that are deeply penetrated by transnational corporations experience ‘growth and development … which suits the requirements of the corporations.’\textsuperscript{433} According to Crough and Wheelwright, during the 1960s, the Australian mineral industries developed in such a way that they became more aligned with the global economy than with the Australian economy.\textsuperscript{434} Four factors indicated this global alignment. The first factor was the high level of foreign ownership and control.\textsuperscript{435} The second factor was the large inflows and outflows of foreign capital.\textsuperscript{436} The third factor was the ‘overwhelmingly export-orientated’ nature of the mineral resource industry (for example, in 1979-1980 minerals exports accounted for 70% of total mineral production).\textsuperscript{437} The fourth factor was a heavy reliance on imported equipment, which ‘limit[ed] the possibilities of the development of both upstream and downstream industries.’\textsuperscript{438}

According to Crough and Wheelwright, the factors set out in the preceding chapter can result in the State suffering a loss of control over investment decisions.\textsuperscript{439} They state that this loss of control will result in the host country’s economy and society becoming shaped by the investment decisions of the transnational companies. The business decisions of these transnational companies effect the ‘location of production, the types of products produced, the sort of

\textsuperscript{430} E J Crough and E L Wheelwright, ‘Australia the Client State’ in Elizabeth Harman and Brian Head (eds), \textit{State, Capital and Resources in the North and West of Australia} (University of Western Australia Press, 1982) 75, 75.
\textsuperscript{431} Ibid.
\textsuperscript{432} Ibid.
\textsuperscript{433} Ibid 76.
\textsuperscript{434} Ibid 77.
\textsuperscript{435} Ibid.
\textsuperscript{436} Ibid.
\textsuperscript{437} Ibid 78.
\textsuperscript{438} Ibid.
\textsuperscript{439} Ibid 79.
technology used, and the types and amount of labour necessary.” Regarding the issue of the creation of linkages, Crough and Wheelwright noted that although mineral extraction is determined by the location of the mineral resource, transnationals still exerted control over the location of processing facilities.

3 Resource Development Policies in Western Australia – A 1981 Ministerial Statement

The Honourable Peter Vernon Jones adds a Ministerial statement to the 1981 text titled ‘Resource Development Policies in Western Australia.’ His Ministerial statement commenced with the assertion that: “[T]he State government of Western Australia has as its overall objective, an increase in the standard of living and economic security of the community.” In line with the view espoused by Sir Charles Court, Jones also adds, ‘[A] substantial part of our development can be attributed to the beneficial influence of international companies.”

According to Mr Jones, the role of the state government was to promote ‘the further development and production of raw minerals.’ In line with this statement, value adding and beneficiation would occur ‘in partnership with overseas consumers’ and ‘where such processing would be of benefit to Western Australia and the consuming country.’ On the question of broader state development, Mr Jones clarified that while a diversified economy was a desirable goal, the State would need to continue to rely on the mineral resources industries until diversification could be achieved. Accordingly, the State should act to retain ‘the confidence of investors’ as it would not be possible for WA to continue to grow without their trust. Maintaining the trust of investors and the credibility of the State was based on not changing the ‘rules of the game’ by

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440 Ibid.
441 Ibid 81.
442 Jones, above n 378, 103.
443 Ibid.
444 Ibid 105.
445 Ibid 103.
446 Ibid.
447 Ibid.
448 Ibid 104.
449 Ibid 105.
‘capricious’ government decisions.\textsuperscript{450} Further elaboration on this point was not provided by the Ministerial Statement.

Mr Jones continued his statement by asserting that the development of the State’s mining industry ‘is not a one-sided affair. There are benefits for both the state and the private developer.’\textsuperscript{451} To this end, the State sought the ‘maximum economic flow-on from development projects.’\textsuperscript{452} According to Mr Jones, the maximum economic benefit from mineral resource development was not simply the payment of money to the State by project proponents but the use of ‘local manufacturing capacity to its greatest possible extent.’\textsuperscript{453} Therefore, local manufacturers would have a ‘genuine opportunity’ to participate in the competitive bidding process and to be appointed, if the bid was competitive.\textsuperscript{454} In the vein of earlier statements by Sir Charles Court, Mr Jones noted that beneficiation added value to the raw material and increased employment opportunities and business opportunities\textsuperscript{455} because it ‘widen[ed] the range of marketing options available.’\textsuperscript{456} However, Mr Jones reiterated that any benefit to the State from beneficiation must be weighed up against the benefits to the importing country of the value added material.\textsuperscript{457}

4 \textit{The position in 2014 – the continued loss of control over investment decisions and the dream of value addition}

Al Rainnie, Scott Fitzgerald and Bradon Ellem, in their combined contribution to the 2014 text, assert that the ideology and factors underlying resource development in WA has changed little in the intervening years since the 1981 text.\textsuperscript{458} Building on Crough and Wheelwright’s discussion of the State’s loss of control over investment decisions, the degree of ‘institutional capture’ apparent in Western Australia is further developed.\textsuperscript{459} The authors firstly state that the mining
boom of the 1960s ‘tied the state into global and financial networks’ and, further that, by the end of the 1990s, the State ‘had lost any real control’ in its dealings with the world’s largest mining corporations or with the influx of smaller companies into WA.461

(a) Loss of control of the investment decision and value addition

An illustration of the loss of control over the investment decision as originally expressed by Crough and Wheelwright is represented by ‘the dream of value adding.’462 Mr Barnett in a speech titled ‘Energy Resources Down Under: Right Place, Right Time’ and given in April 2010 to the James A. Baker III Institute for Public Policy at Rice University, Texas, stated that beneficiation is the most ‘debated obligation’ in the older State Agreements made between the WA and project proponents.463 Mr Barnett explained that State Agreements for mining projects (which are agreements between the State and project proponents that are ratified by Parliament) are designed:

   to facilitate project development but do not extend to equity participation.
   While the government does have a say, the industry remains a truly private enterprise industry.464

Notwithstanding the inclusion of obligations of value addition in State Agreements, Mr Barnett noted that ‘further processing obligations … have not worked.’465 An illustration of the State’s inability to enforce the value added obligations contained in its State Agreements is demonstrated in the Second Reading Speech for the Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Bill 2008.466 The originating State Agreement, ratified by the Iron

460 Ibid 98.
463 Ibid.
464 Ibid.
465 Ibid 15.
466 Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Bill 2008.
Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002,\textsuperscript{467} contained a ‘surprising’ level of beneficiation that was now being sought to be reduced\textsuperscript{468} by the ratification of a variation agreement made on 14 November 2008 between the parties. During the Second Reading Speech, Mark McGowan, the current leader for the Labor Party (and the party in government at the time the original State Agreement was made) made the point that the global economic situation had changed since the original State Agreement was made.\textsuperscript{469} While Japan had previously been a major trading partner of the State; its place had been superseded by China. The implication being that the State’s mineral extraction and value adding capabilities should be adjusted to infiltrate this new market. Firstly, it may be argued that, in the context of very little investment into the State during the late 1990s,\textsuperscript{470} the State has entered into and ratified a State Agreement that contained unrealistic promises of value addition. Secondly, that in making mineral resource development central to the State’s development, WA’s ability to enforce the obligations contained in State Agreements is weakened by having to respond, first and foremost, to global market considerations rather than by an assessment of what is most beneficial for the State.

\textit{(b) The end of the resources boom}

The final chapter of the 2014 text, co-written by the editors of the book, contends that WA has ‘little to show’ for the recent resources boom.\textsuperscript{471} They refer to Paul Cleary’s warning, issued in 2011, that the government must ensure that mining leaves more ‘than just a big hole – both physically and economically.’\textsuperscript{472} WA, despite being at the ‘epicentre of the country’s resource boom’ now faces a budget deficit due to a reduction in the collection of royalties.\textsuperscript{473} In addition, as a result of failing to control government spending, the State has lost its Standard &

\begin{footnotesize}
\begin{enumerate}
\item \textit{Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002. (\textsuperscript{467})}
\item Western Australia, \textit{Parliamentary Debates}, Legislative Assembly, 4 December 2008, 966b – 975a, 8 (Mr J J Bowler).
\item Ibid 3(Mr M McGowan).
\item Ibid 8 (Mr J J Bowler).
\item Martin Brueckner et al, ‘Curse or Cure? Revisiting State, Capital and Resources’ in Martin Brueckner et al (eds), \textit{Resource Curse or Cure?: On the Sustainability of Development in Western Australia} (Springer, 2014) 273, 275.
\item Ibid 274, citing Paul Cleary, \textit{The Mining Boom and Australia’s Future} (Black Inc, 2011).
\item Ibid 274.
\end{enumerate}
\end{footnotesize}
Poor’s AAA Credit Rating. The Western Australian government has responded to these budget pressures and downgraded credit rating by introducing budgetary measures such as increasing land taxes, restricting access to the stamp duty concession provided to first home buyers, abolishing the $36 private motor vehicle registration fee concession and increasing the cost of parking.

In the 2012-2013 State Budget, the WA Government announced a Mineral Royalty Rate Analysis. The purpose of the analysis is to determine the ‘ongoing efficiency and appropriateness’ of the State’s royalty policy. The last review of the State’s royalty policy was conducted in 1981. The State sought submissions which have been compiled into a summary. Submissions sought to emphasise the destabilising impact of a change to royalty rates on the State by asserting that ‘increasing the royalty rate would increase uncertainty and discourage future investment.’ In addition, submissions were made that ‘now is not the right time’ to change the State’s royalty regime because of the ‘tough economic circumstances’ for the mining industry. In particular, the Chamber of Minerals and Energy of WA pointed to the ‘decreased grades and increased stripping ratios … and more complex geotechnical conditions’ that WA mining projects currently operate in. It is arguable that the State has missed earlier opportunities to maximise mining revenues when mining conditions were more favourable to mining companies.


Ibid.


Ibid 6.

Ibid.

Ibid.
Sovereign Risk and Resource Nationalism

In light of the State’s Mineral Royalty Rate Analysis, submissions suggested that a change to the State’s royalty rates would increase perceptions of sovereign risk. Sovereign risk is defined in similar terms as resource nationalism. It is the risk ‘that arises as a result of actions by a foreign government, which may affect the management of a foreign business’. Resource nationalism is characterised as ‘acts by host states to expropriate or change the terms on which resources are extracted, and monetised, in order to obtain greater benefits for the host state.’

As noted above, WA’s development ideology is firmly ensconced in the concept of providing an environment conducive to encouraging foreign investment. It is arguable that, for this reason, the State has become limited in its available fiscal policy responses when confronted with budget pressures. In addition, the fact that WA’s mining industry has reached maturity arguably means that the State’s ability to take a strong position in its dealings with mining companies is lessened. However, the accuracy of this statement will be tested by the WA government’s decisions on royalty rates following the Mineral Royalty Rate Analysis. It is likely that, notwithstanding that the last review of the royalty policy for the State occurred over 30 years ago, a critical factor for the State to manage will be to avoid being accused by the mining industry of capriciously changing the rules of the game.

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IX ANALYSIS

A The Promotion of Strategies for Investments in Minerals and Petroleum and the Development of Linkages (COMESA MOU)

One of the areas of cooperation established in the MOU includes the promotion of strategies for investment in minerals and petroleum and the development of linkages for COMESA Member States.486 WA and African countries have traversed very different paths of mineral and state development. However, it is arguable that both paths have been subverted by the requirements of global business demands. While WA has been a more willing participant in this process, African countries have instead been subjected to ‘the most intense and recurrent’ WBG interventions of the late 20th Century.487 As African countries have transitioned from being an object of investment to an agent seeking investment, one central theme has emerged in its policy documents. The central goal of African mining policy is the utilization of the mining industries to catalyse broad-based sustainable growth and socio-economic development.488 There are many reasons for African countries to pursue this transformative agenda, however this paper focused on the need for African countries to address the effects of fragility: ‘a condition of elevated risk of institutional breakdown, societal collapse, or violent conflict.’489

It is arguable that following WA’s development strategies would be of limited utility to African countries. As noted by the drafters of the AMV when considering the Nordic experience of mineral development, African countries face ‘a very different historical and socio-economic environment.’490 Equally such a statement applies to the WA experience of resource development. While the CMV Guidebook specifically points to the limitations of the exploitation of

486 COMESA MOU clause 3.
Africa’s non-renewable resources, it is arguable that the ideologies that have underpinned WA’s extractive industries have been premised on the belief that minerals and fossil fuels are infinitely available.

B  Development Ideologies

According to the AMV, African countries are conscious of the risks associated with over reliance on extractive industries. Consequently, while seeking to promote mining in Africa, the AMV also advocates that African governments should seek to create mining regimes that manage revenue volatility. In addition, the AMV advocates that African countries should seek to reduce their dependence on mineral resources and diversify their economies. Finally, African countries should seek to develop internal markets for mineral products that will hedge against the volatility of external markets.

The experience of resources development in WA is not easily aligned with these goals. Returning to the staged theory of development explained in Harman’s article in the 1981 text, it is apparent that WA’s development has been shaped and constrained by the needs of large foreign investors. Given the ‘dream of value addition’ as expressed by Mr Barnett, it is arguable that the State has been constrained from proceeding from the initial stage of development (the extraction and exportation of raw materials).

In addition, the impact of institutional capture on WA’s development narrative is exemplified by the speech made by Mr Barnett in April 2010 to the James A. Baker III Institute for Public Policy at Rice University, Texas. During this speech, Mr Barnett states ‘Western Australia might claim to be the world’s leading

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491 Ibid 10.
492 Ibid 10.
493 Harman, above n 57, 184.
mining economy" but he is at pains to point out that this status could not have been achieved without overseas investment.

It is arguable that WA’s resource development ideologies, given that they appear to have changed little in the last 30 years, will be unresponsive to Africa’s goals of inclusive and sustainable growth and the creation of diversified economies. Further, an argument may be made that seeking to embed WA’s mining philosophies into African countries does not represent a transition from the initial stage of development of mineral extraction and exportation. In addition, in assisting African governments to promote and regulate their mining industries, the WA government may find that its advice is viewed by African governments as a method by which to commit African countries to a constrained development environment.

C Fiscal Regimes

Another example of the dissonance between WA and African countries is the issue of fiscal regimes. It is apparent from the CMV Guidebook that the preferred method of revenue collection is one that ensures that the governments receive a rising share of the revenues as mining profitability increases. This result could be achieved through a rent based tax or by a profit based royalty. Historically, WA has been particularly adverse to a profit tax; noting Sir Charles Court’s assertion that such a tax would ‘drain’ the profits of the risk taking entrepreneurs. In more recent times, when the Minerals Resource Rent Tax 2012 (now repealed) the State’s ire was reignited. It has been reported that Mr Barnett labelled the tax as ‘flawed’ and would result in ‘perverse outcomes.

495 Ibid 8.
WA collects revenues through the application of royalties and this charge is a purchase price ‘to compensate the community for the loss of its assets’ and is therefore not responsive to mining profitability. However, this form of royalty collection is not the most economically efficient or equitable system. An alternative is a profit based royalty. This type of royalty is based on the net income or profit of a project. This type of profit is more economically efficient and equitable, although the risk is that royalties may not be collected for a number of years while capital costs are recovered by project proponents. A profit-based royalty is not applied in WA, likely because any State revenue collection legislation must not leave WA vulnerable to the Commonwealth’s taxation powers, given that Commonwealth taxation legislation overrides any inconsistent State legislation.

D Linkages

Another goal for inclusive and sustainable development in African countries is the creation of linkages. The CMV Guidebook states:

The only countries which have industrialised from their use of mineral resources are those that have utilised these seminal linkages.

Again, on this issue, it is arguable that the WA experience of beneficiation may be of little instructive value to African countries. As noted by Mr Barnett, the dream of value adding has not transpired in WA. This is due to a number of factors. Firstly, it is arguable that the State has allowed its role in the development of the State to be shaped by the needs of foreign investors in its attempts to

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500 Guj, above n 497, 15.
501 Ibid 11.
502 Ibid 15.
503 Ibid 15.
504 Constitution, s51(ii)
505 Constitution, s109
provide an attractive investment climate. As noted in the 1981 text, when it became apparent that little direct employment would flow from investment into the WA’s mining industry, the response was to emphasise the benefit of indirect employment opportunities that would flow from industries associated with mining. However, given the State’s loss of investment control due to the penetration into the State of transnational corporations, the State has not been able to fully realise these potential employment benefits. Secondly, it can also be stated that WA governments have been unable to enforce beneficiation obligations contained in State Agreements as a result of having to respond to the changing needs of international markets.

X CONCLUSION

It has been stated that ‘[e]very serious clash between amenity and development involves the law.’\(^{507}\) Noting that the primary aim of the MOU is to ‘tap into WA’s expertise to help African nations to further develop their mining laws’\(^{508}\), an assessment of the ideologies and policies that have underpinned the development of WA’s mining laws and Africa’s policy statements for its mineral industries has been undertaken. To understand the content of the Africa Mining Vision, it is necessary to examine the earlier interventions into Africa. Through these experiences, African governments have come to view the proper exploitation of their mineral industries within certain ideological frameworks. Overall, African countries seek to utilise their mineral resources to catalyse inclusive and sustainable growth.

African governments have sought to move away from external interventions and, instead, to become the authors of their own extractive industries policies and legislation. As part of this process, African governments and bodies (such as COMESA) have been examining the experience of resource development in other


resource rich countries. However, for the reasons examined above, it is contended that the ideologies and experiences of WA’s mineral industry are not aligned with the goals contained in the AMV. The dissonance between the experience of resource development between WA and African countries is not insurmountable to fostering beneficial relationships at a governmental and business level. However, to foster these relationships it is important that the WA government and companies, who do business in Africa, become familiar with what African countries want from the development of their mineral resource industries. To this end, African development bodies have produced a number of policy documents that very express the goals for mineral industries development in African countries.
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