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The Zambezi Protocol

Result of a Dialogue on Natural Resource Policy in Africa

Strengthening Africa's economic performance

THE BRENTHURST FOUNDATION

The Zambezi Protocol

Result of a Dialogue on Natural Resource Policy in Africa

An event hosted by the Brenthurst Foundation, and held on the banks of the Zambezi River, Zambia, 22–24 April 2016

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'Mining and oil is not a sunset industry in Africa. To the contrary, the sector holds great future promise, where Africa enjoys a considerable comparative advantage vested both in its store of mineral wealth and its human capital. This advantage can be realised only with the right sets of policies which aim to encourage long-term, generational investment: legislative certainty, the provision of reliable services including water and power, a stable and attractive tax regime, a predictable and transparent legal system, policy cohesion, a reliance on administrative regulation rather than political discretion, and honest and competent officials. Overall, a new narrative of the value of the industry to Africa is necessary however, one defined not by conspiracy and mistrust but instead by shared dialogue, dependency and endeavour, and underpinned by a clear belief that government needs investors and vice versa. The Zambezi Protocol offers a path for government, business and other partners to chart a fresh, positive future for mining in Africa.'

Olusegun Obasanjo, former president of Nigeria

Background and Aim

Africa's mining sector is in crisis. At its root is a lack of trust between mining companies, governments and, indeed, the very nations they lead. A failure to tackle this crisis will result in serious, adverse implications for both economic growth and employment prospects at the moment when the continent's needs are rapidly increasing.

African economies are heavily dependent on the extractives sector, which comprised 28 per cent of the continent's combined gross domestic product in 2012, 77 per cent of total exports and 42 per cent of all government revenues.[1] Studies by the International Council on Mining and Metals (ICMM) show that for every $1[2] generated by mining, at least an additional $3 is generated elsewhere in the local economy, and that for every direct mining employee, as many as 15 more jobs are created elsewhere in that economy.[3]

> Governance and policy attractiveness will become increasingly important differentiators in the performance of African countries

Yet, during the commodity boom, there was considerable optimism that African economies were changing and that they were no longer dependent on raw material exports.[4] The commodity price downturn has illustrated the continent's continued dependency on this sector and its vulnerability to variations in external demand, especially from China which has grown its share of worldwide metals consumption sevenfold to over 40 per cent from 1990. But China's annual growth in metals consumption has slowed from over ten per cent during the 13 years to 2008 to 3.2 per cent from 2010 to 2014. Now, the International Monetary Fund (IMF) has warned of a further 14 per cent drop in metal prices in 2016.[5] Prices (for aluminium, copper, lead, nickel, tin and zinc) are now at levels last seen a decade ago.

The total value of global mineral production grew sixfold from 1992 to 2012. During this boom lower income countries came to depend more heavily on mineral exports, especially in sub-Saharan Africa, as the table below illustrates.[6]

Thus the end of this commodity super-cycle has led to a downturn in economic growth across sub-Saharan Africa, especially among those countries reliant on commodities for export and government revenue. The World Bank has predicted just 3.3 per cent economic growth in Africa in 2016 after the continent expanded by only 3 per cent in 2015, well below the 6.8 per cent average between 2003 and 2008. The World Bank has attributed the weaker performance largely to the plunge in commodity prices.[7]

In this new, highly competitive, austere environment, governance and policy attractiveness will become increasingly important differentiators in the performance of African countries. Just as important will be the state of health of the critical regulatory

Table 1: Reliance on Mineral Exports

Countries ranked by level of mineral export dependency		GDP/capita (PPP at current prices, 2009, US$)	Mineral exports as a percentage of total exports			Change in mineral export dependency 1996–2010 (%)
			1996	2005	2010	
1	Botswana	$13 384	58.7%	86.5%	83.7%	25
2	Zambia	$1 430	79.4%	64.0%	83.6%	4
3	Democratic Republic of the Congo	$319	72.4%	70.2%	78.3%	6
4	Mongolia	$3 522	60.3%	70.1%	77.6%	17
5	Suriname	–	68.0%	64.3%	75.4%	7
6	French Polynesia	–	69.2%	55.3%	67.1%	–2
7	Chile	$14 311	47.7%	56.5%	65.9%	18
8	Guinea	$1 048	77.1%	84.0%	65.2%	–12
9	Peru	$8 629	48.3%	57.9%	62.7%	14
10	Mauritania	$1 929	36.1%	49.3%	60.4%	24
11	Northern Mariana Islands	–	3.3%	4.5%	58.9%	56
12	Mozambique	$855	6.1%	66.9%	57.0%	51
13	Mali	$1 186	8.5%	37.2%	54.8%	46
14	Sierra Leone	$808	30.6%	58.2%	54.3%	24
15	Papua New Guinea	$2 281	24.5%	39.2%	54.0%	30
16	Namibia	$6 410	36.2%	41.2%	53.4%	17
17	Nauru	–	73.1%	25.2%	50.8%	–22
18	Armenia	$5 279	23.9%	39.8%	50.6%	27
19	Jamaica	$7 633	49.7%	68.5%	49.6%	0
20	Cuba	–	15.1%	39.2%	47.7%	33

and administrative processes needed to ensure decent and diversified growth. These factors too will be vital determinants for attracting investment and growth in mining projects. Indeed, as the World Bank has noted, after geological factors, governments are the single largest determinant of where mining investments flow globally.[8]

Despite the boom years, the relationship between the industry and government in Africa has been characterised by abiding levels of mistrust on both sides, fuelled by misperception. Legend persists that mines have massive wealth and, at an extreme, deliberately steal ore or withhold tax through under-declaration or 'transfer pricing'. Meanwhile the mining companies complain that the long-term nature of their business, through good and bad times, and the levels of risk they have to take are not understood by those who set the rules. Such tensions are compounded by increasing capital intensity and mining mechanisation, the effect of which is felt particularly in those countries where mining is the mainstay of the economy.

In the face of these challenges the industry has been disunited, for reasons of commercial competitiveness, geo-political and racial history, and its general *disorganisation*. The various Chambers of Mines have been as strong – or as weak – as their constitutive elements, and as useful as government has permitted. As a result of this lack of communication, an 'imagination gap' has existed between the realities faced by mining operations and the perceptions of government.

Perceptions as to the value and role of mining are amplified in environments where there are few other opportunities. The narrative on mining is about huge profits made at the expense of the population

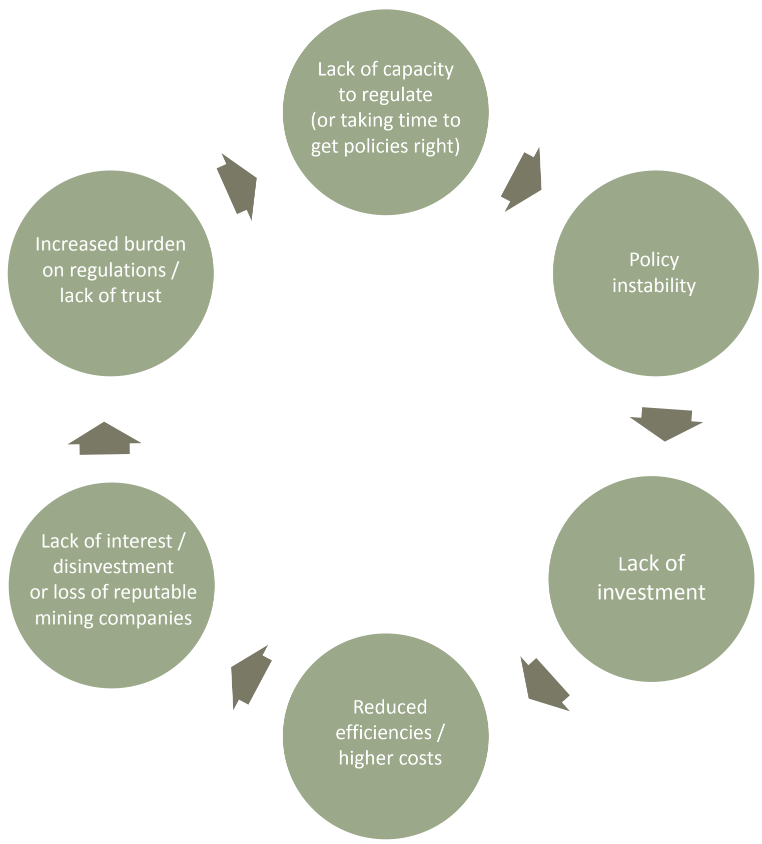
– a 'win-lose' scenario. Paradoxically, the communities around mines are heavily dependent, frequently cradle to grave, on the mining companies, to whom the state often abrogates its responsibility. Yet often the very companies bringing this development have to deal with considerable interference, corruption and rent-seeking, reflecting the difficulty of managing a fixed, immovable asset where there is little else going on in the economy.

Rather than engage the industry as a long-term developmental partner, playing to popular public pressures and desperate for revenue, some governments, following a short-term approach, have sought to target the sector with high tax regimes and other redistributive mechanisms, including calls for beneficiation and value addition. Yet the overall health of the sector is intrinsically in the interests of government, not just for reasons of long-term revenue, jobs and the prospects of industrialisation, but because many governments hold a direct stake in mining operations.[9]

While the success of mining demands a partnership of common interest and Africa's young and burgeoning population demand jobs and growth, policy instability has planted the seeds for a vicious cycle.

As shown in the figure below, policy uncertainty leads to investor uncertainty and limits the pool of capital available. Undercapitalising the mining sector inevitably results, in turn, in higher-cost mines and, within the general global competition for funds, a shift of interest away from mining in riskier countries. Thus decisions on many major mining investments are consequently put on hold. As large mining companies continuously rebalance portfolios and seek out the most cost-competitive mines, policy uncertainty continues to fuel the cycle from reputable to less reputable and ultimately small-scale mining companies, and eventual 'de-evolution' of the mining sector. As smaller mining companies tend to have less developed governance systems, this in turn increases the burden of regulatory oversight in an environment in which many governments

Figure 2: Policy Uncertainty and Capital Availability



already possess only limited capacity. Lower capacity and the increased need to regulate can result in further distrust and renewed dissatisfaction of government and society, creating political pressure for even more change.

There is thus a need for a fresh start in these relationships given clear common interest. The vicious cycle needs to be broken, trust needs to be re-established, a shared narrative developed, and a fair deal agreed. To start this process, which will not be easy, new avenues for dialogue need to be found, and common interests identified.

> The Zambezi Protocol aims to improve trust between parties as a means to ensure longer-term investment horizons and improved competitiveness

Hence the formulation of a Zambezi Protocol under the chairmanship of former president Olusegun Obasanjo, which aims to improve trust between parties as a means to ensure longer-term investment horizons and improved competitiveness for Africa's mining sector and thus jobs and revenue for mining nations. In bringing together on this occasion, as a first step to achieving a wider consensus, mainly representatives from mining companies,[10] the Dialogue focused on establishing key investor requirements.

This is not the first initiative to seek a mining compact.

The extractive sector has changed markedly during the 21st century. A combination of the spread of democracy, improved human rights legislation, digital communications, environmental and safety concerns and the role of non-governmental organisations has greatly increased scrutiny of mining and oil companies and of their relationships with governments.

The result has been various initiatives to improve transparency and forge social contracts between government, business and civil society.

The Extractive Industries Transparency Initiative (EITI), to take one example, launched in 2002, provides a global transparency standard for resource-rich economies focused on advancing accountability in the management of extractive industries. EITI compliance requires the timely publication of full information on company payments and government revenues related to extractive industries, including state participation in the sector. Inspired by the 'Publish what you Pay' campaign, the Initiative has its origins in a campaign, of the late 1990s, about whether the benefits of oil, gas and mining were being realised and their relationship with poverty, conflict and corruption. To date, thanks in part to the support of the African Development Bank, the World Bank and other donors, the EITI has 41 members of which 26 are African states. The Natural Resource Charter was created subsequently in 2010 as a set of principles for governments and societies on how to best harness the opportunities created by extractive resources through identifying best practices. The Charter's framework and body of experts now form an integral part of the Natural Resource Governance Institute. Another example is the ICMM, founded in 2001 to improve sustainable development, which brings together 23 companies and 34 mining associations.

> There has been various initiatives to improve transparency and forge social contracts between government, business and civil society

These initiatives go beyond just governance. The Kimberley Process was established in 2003 as a means to stem the flow of diamonds from conflict areas through a certification process.

And there are other so-called 'fourth generation' codes of conduct which variously aim to improve governance, reduce linkages with conflict, and improve corporate social responsibility. They range from the Dodd-Frank Wall Street Reform and Consumer Protection Act to the FTSE4Good Index, the African Mining Vision launched in 2011 by the African Union, and the Monrovia Principles for

Corporate Social Responsibility of February 2010.[11] More specifically, in South Africa, there have been attempts to co-ordinate business–government action through, for example, Operation Phakisa, which this Protocol aims to complement.

Most of these initiatives occurred, however, during the upswing in commodity prices, which papered over wider problems of mistrust between companies and governments and concealed the negative effects of policy instability. Amidst the commodity downturn, some business–government relationships in key producing states are now defined by the issuance of laws and resort to litigation over more collegial communication; and a discourse of poverty, inequality and unemployment instead of a more positive dialogue about wealth, growth and competitiveness, which this Protocol seeks to remedy.

The cost of poor policy, instability, brinkmanship and lack of mutual confidence is illustrated below.

Between Success and Lost Opportunity

Africa is especially well endowed in minerals, accounting for 20 per cent of known global gold reserves, 23 per cent of titanium, 28 per cent of vanadium, a quarter of all manganese, more than half of cobalt, more than 60 per cent of gem diamond reserves, 80 per cent of phosphates, 90 per cent of chromite, and 95 per cent of platinum.

Taking advantage of this endowment has, however, proven more problematic than its identification.

A 2010 Citibank survey, for instance, put South Africa as the world's richest mining country in terms of non-oil reserves, worth an estimated $2.5 trillion at then current prices, more than Russia and Australia, with around $1.6 trillion apiece. Yet, whereas by the late-1980s South Africa's share of global mining was 40 per cent, with some 880 000 jobs in the sector, by 2014, it had declined to 4.5 per cent and under 500 000 jobs, even though the sector still accounted for 8 per cent of GDP and more than half of South Africa's merchandise exports. Employment peaked in the mid-1980s at 880 000, with gold alone accounting for 540 000 jobs. By 2011, South Africa's global share of *greenfield* mining projects was just 5 per cent; Australia's was 38 per cent. Such a drop in investment is consistent with trends in other parts of Africa, and undermines growth.

It does not have to be this way; South Africa's decline and Australia's growth is a result of policy choices. At the time of the Citibank report, experts estimated that with the right regulatory environment, South Africa could at least double coal, platinum, iron and manganese outputs within five years, adding 100 000 each to direct and indirect jobs. Put differently, South Africa still has more gold underground than has been mined, even though its output has fallen from first place in 2006 (when it mined 300 tonnes compared to its peak of 1 000 tonnes in 1970) to, 10 years later, seventh (with 200 tonnes) behind China, Australia, Russia, the United States, Canada, and Peru. The last shaft sinking that initiated a major gold-mine in South Africa, Mponeng, was in 1981.[12]

Experts estimated that with the right regulatory environment, South Africa could at least double coal, platinum, iron and manganese outputs within five years

According to industry specialists, the reason for the lack of investment in the South African mining sector relates to a combination of a lack of policy stability, persistent fears about nationalisation and labour militancy. The publication by government of the 2016 *Mining Charter* draft in spite of industry representations, is cited as a current example; the manner of the publication of the *Codes of Good Practice for the Mining Industry* in April 2009 and, subsequent amendment, is cited as a more historical one. From the perspective of industry, the government has often ignored the results of consultation with industry in its deliberations and has delivered legislation and regulation that suits the government's political agenda rather than the nation's long-term developmental interests. And there has been a great deal of policy fluctuation: In the six months to 30 June 2015, for example, Peru and Ghana each enacted 10 changes in mining laws and regulations, Australia 25, and South Africa 247.

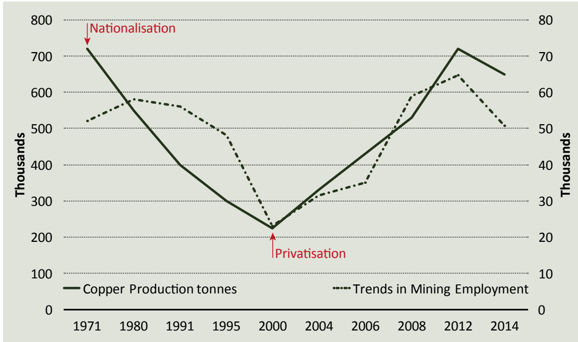
Zambia is another case in point of where industry is at loggerheads with government on policy, despite the poor track record of nationalisation of the industry.

Zambia's copper production in 1973 was 720 000 tonnes, or 15 per cent of the global total, employing 48 000 people. Following nationalisation that year, production went into a long decline, dipping to 257 000 tonnes by 2000, the year of privatisation, when 21 000 where employed. As a result, real GDP per capita fell from $1 455 in 1976 to $1 037 by 1987, or –3.6 per cent per year, and to $892 by 2000, when the state incurred a cost of $1 million per day to run its mines.[13] Nationalisation of the mines is calculated to have cost Zambia $45 billion in production losses, more than the total in aid received over the period.[14] If Zambia had maintained its 1970 share of global copper production it would now be producing 2.7 million tonnes.

> Zambia is another case in point of where industry is at loggerheads with government on policy

Following fresh investment post-privatisation, by 2014 production had risen to over 700 000 tonnes, with some 65 000 workers employed on the mines, but given progress elsewhere this tonnage amounted to less than 4 per cent of the global total. Today the mine at Kansanshi, a post-privatisation investment, is Zambia's biggest copper producer at around 250 000 tonnes annually, from which over $3 billion has been paid in taxes and nearly the same amount again invested. By 2016 more than 8 000 workers were employed, with wage and electricity payments inserting a further $50 million into the Zambian economy monthly. Its contribution to Zambia is huge: there have been a number of years when Kansanshi, alone, has been responsible for as much as 90 per cent of the corporate income tax paid in Zambia.

Figure 2: Trends in Zambian Copper Production and Mine Employment



Yet mining remains a beleaguered industry in Zambia. The giant $2.1 billion Kalumbila Mine in Zambia's northwest, which is beset with challenges of power provision and land title rights, was the country's last major new mining investment. New investments and mine life extensions are being deterred by government changes to the mining tax regime and abrogation of development agreements that assured investors of a 15-year stability period on fiscal policy. Since 2008, 797 statutory instruments (essentially, ministerial directives to amend, update or enforce existing primary legislation) affecting the mining industry, both directly and indirectly, have been issued by the Zambian government, of which the majority (501) have been passed since 2011.

In 2011 the Zambian government implemented a 6 per cent turnover tax and 30 per cent corporate tax for the mines. In January 2015 it switched to a flat 8 per cent turnover tax on underground mines and 20 per cent Mining Royalty Tax[15] (MRT) for open pit operations. As the IMF concluded in June 2015,[16] 'at 50 per cent, the AETR [Average Effective Tax Rate] for Zambia was second-highest among major copper producing countries.' This came on the back of an earlier change to VAT arrangements, resulting in government prevarication on repaying around $1 billion to mining companies.

The new tax regime was overturned within eight months in favour of a 9 per cent royalty tax for open pit operations and 30 per cent corporate tax plus a variable tax of 15 per cent above a specified profit threshold. Under this iteration, the utilisation of tax losses was limited to 50 per cent of taxable profits for each year, with a limitation of carryforward of tax losses to 10 years, effectively increasing the cost of financing capital-intensive projects and a strong disincentive to investment.[17]

After much heated debate, in 2016, the government proposed a 30 per cent corporate tax and sliding royalty scale of 4–6 per cent.[18] Yet the consensus globally is for a 30 per cent corporate tax and a 3 per cent royalty.[19] Australia is at 30:2.5–5 per cent; Brazil 25:2 per cent; China 25:0.5–4 per cent; Ghana 25:5 per cent; Indonesia 25:4 per cent; and South Africa at 28:0.5–7 per cent.

As the Minister of Finance noted to parliament in April 2016, such policy changeability damages Zambia's investor credibility which 'is anchored on two themes: predictability and consistency. If somersaults are going to be our recipe, such will reduce investor confidence in our country.'[20]

The failure to adopt better or more consistent mining policy is not because there is a lack of publicity around best (and bad) practice, or that these practices are all outside Africa. For example, the Chilean experience is widely known, not least since southern African miners have operated successfully there.

> Policy changeability damages Zambia's investor credibility

Chile's economic growth since the 1980s has been nothing short of remarkable, particularly during the 1990s when it averaged an annual rate of over 7 per cent. In 1972 it was recorded to have the 'second worst economy in Latin America', inflation had reached 500 per cent, there were frequent strikes and 'nationalisation, price controls and high tariffs were the order of the day', and the state controlled more than two-thirds of economic output. Yet from a low of $4 000 per capita in 1975 in the wake of political instability, real income per person more than tripled over the next 30 years.

Table 2: Zambia/Chile Economic Growth Comparison

	Zambia	Chile
Territory (km²)	752 614	755 839
Population (2016 US$ millions)	16.4	17.6
GDP (2011 US$ billions)	27	258
Copper production (1970, tonnes)	684 000	686 000
Copper production (2012, tonnes)	675 000	5 370 000
Poverty (% of population below poverty line)	61	15
Extreme poverty (%)	42.3	2.8
Life expectancy at birth	49	79
Infant mortality (per 1 000 live births)	53	8
Child malnutrition (% of children under 5)	15	1

This transformation has been built on two pillars.[21]

The first was the institution of free market economic reforms in the mid-1980s by a team of bright young economists. The second pillar of economic transformation relied on a massive increase in domestic copper production. Copper, of which Chile supplies nearly a third of the world's annual consumption, accounts for some two-thirds of the country's export revenue.

The transformation of this sector, however, over a quarter century has been spectacular. In 1990, the private sector accounted for less than one-quarter of Chilean copper mining output. By the end of the 2000s, the state mining company CODELCO was producing more than twice as much copper as it had done 20 years before; yet the private sector was producing two-thirds of the annual national output of six million tonnes. In 1970 Chile produced the same amount of copper as Zambia; four decades later it produced eight times more.

Foreign investment was facilitated by a low and stable tax regime and non-discriminatory treatment of foreign and local companies. Chilean tax laws agreed between the state and investors, mostly under Decree Law 600 (DL600) of 1974, provided for a 'contract' between the investor and the state of Chile, the establishment of free trade zones, the introduction of policies guaranteeing the remittance of profits and capital, free choice as to the percentage of foreign ownership and non-discrimination with local investors, and tariff liberalisation.

By 2011, foreign capital totalling almost $82 billion had been invested in the mining industry, more than half of all foreign capital since 1974.[22] Byzantine labour policies were unwound through a series of measures aimed at: decentralising collective bargaining, improving transparency in union voting and allow greater choice in union membership. Reform of the pension system in 1980 also allowed workers to opt out of the government-run pension system and instead put the formerly mandatory payroll tax (10 per cent of wages) in a privately managed Personal Retirement Account. In all this, critically, Chile kept corruption down. It has consistently ranked in the top 20 better performing countries in Transparency International's Corruption Perception Index, ahead of many developed countries.

With the right policies in place, the state (and thus Chile's population) was able to attract private sector players to develop what they could not afford to do. All were winners.

> With the right policies in place, the Chilean state was able to attract private sector players to develop what they could not afford to do

There are more recent policy examples from Latin America. The history of formal mining in Panama has until recently been limited to two relatively small gold mines which had short lifespans, and left behind hundreds of unpaid workers and unfunded environmental liabilities. Now Minera Panamá is in the throes of building *Cobre Panama* which, when complete in 2018, will be one of the 20 largest copper mines in the world, employing 5 000 workers, and contributing 4 per cent of GDP and 75 per cent of national exports. Aside from the proven resource, Panama's policy stability was a key attraction. The mineral concession falls under 'Law 9', renewable twice every 20 years, requiring the consent of both the company and the government to effect any changes, thereby offering legal protection for the $5.5 billion investment. Additionally, from an investor standpoint, there is pragmatism on tax and employment law and in relationships with the unions, a general absence of populist ire against the extractive sector, and a 'liberal and pragmatic approach to expatriate work permits and employment'. There are less positive practices from Panama of exhausting permitting procedures or lost time in bureaucracy, but overall the policy environment has a pro-development theme and the country a store of skilled, educated potential employees, built on generations of success and experience as a freight and logistics sector and, more recently, as a free trade zone, services centre and tourism destination. While few countries share Panama's natural attractiveness for logistics, this is all the more reason for those less well-endowed to make the regulation of the trade and transport sector as user-friendly as possible.

> While few countries share Panama's natural attractiveness for logistics, this is all the more reason for those less well-endowed to make the regulation of the trade and transport sector as user-friendly as possible

Closer to home, Mauritania is the second-largest iron ore producer in Africa, with minerals comprising more than 60 per cent of exports. The Guelb-Moghrein copper-gold mine, opened in 2006, has served to diversify production. The deposit was initially developed in the early 1970s by the Anglo American Corporation but was closed in 1977 due to technical challenges and high fuel prices. Despite a harsh climate, difficult security conditions and extreme geography, being 250kms northeast of the capital Nouakchott, the mine has benefitted from tax stability and clean government.[23]

Botswana offers another positive African example.

It is easy to ignore the southern African nation's situation at independence in 1966. Possessing just 10km of tarmac road, Botswana was then one of the least-developed and poorest nations in the world, with a per capita income little over $70. The majority of the population was dependent on subsistence agriculture. There were then fewer than 50 university graduates and 30 000 people in salaried employment and little over the same number of migrant workers, mostly employed in South Africa's mines. Their remittances equalled one-fifth of Botswana's total exports. Literacy was scandalously low, and there was scant access to health, sanitation, water, telephones, electricity, public transportation and other services.

Botswana depended then on British foreign aid not only to develop, but to survive.

By the turn of the 21st century, Botswana's per capita GDP was more than South Africa's, at over $14 000 in purchasing power terms. Botswana learnt quickly how to gain maximum value from its natural resources, in this case diamonds, establishing a productive relationship with De Beers.

Diamonds, partnership and governance have been at the core of the Botswanan success story.

Diamonds were first discovered in appreciable quantities in Botswana in 1967.[24] The De Beers Botswana Mining Company, later rebranded as Debswana, a 50:50 government–De Beers venture, was launched in 1969. The Orapa mine and the Jwaneng pipe, the richest diamond mine in the world, followed. Botswana produces 35 million carats a year, more than a quarter of global diamond production. Little wonder that former President Festus Mogae described, in March 1997, the relationship thus: 'The partnership between De Beers and Botswana has been likened to a marriage. I sometimes wonder whether a better analogy might not be that of Siamese twins.'

This experience is sometimes discounted on two grounds: that Botswana has a unique natural resource in its quantity of diamonds in a carefully regulated industry. Second, that it had the opportunity to make a fresh start only beginning mining after independence, thus without a colonial legacy. Yet many in Africa have squandered a similar resource asset, hence the legend 'blood diamonds', not least in neighbouring Zimbabwe, but also in Angola, Sierra Leone and the Congo.

Critical Tensions

The above issues can be summed up in terms of *critical tensions* between government and business:

Politics versus Administration: The African narrative on mining tends to be fuelled by sentiment, emotion, and a lack of information. These issues manifest themselves in the role of personal discretion in determining outcomes, rather than administrative processes, which invariably increases uncertainty and invites corruption. Instead of negotiation as a means to moderate and arbitrate regulation and policy, this results in a tendency towards litigation.

Emotion versus Pragmatism: In an environment where resource endowments are viewed as national treasure rather than commercial assets, and where there is a lack of trust, it is difficult to create long-term, sustainable sector development strategies.

Short-Term Political Cycles versus Longer-Term Mining Investment Demands: Political cycles are, by their nature, short-term, aligned to electoral calendars whereas the lifecycle for mines will run across several tenures of government. There is a tendency for new governments to change the terms of engagement and regulatory playing field when assuming power. This is usually politically expedient, and fails to take into account what has been effective or worked in the past. Regular changes in ministers and other top officials affect policy continuity and consistency in implementation, destabilises the investment environment and worsens perceptions of sovereign risk.

Beneficiation versus Efficiency: Government drives for beneficiation are typically undertaken in an effort to create jobs and drive economic diversification from finite natural resources. But such an approach may not always be an effective way to spend precious resources and may result in further resource dependency and reduced overall employment. Most large-scale mining is capital intensive, not labour intensive. Policies that force a company to move downstream might, for example, make them less profitable and thus reduce government revenue from taxes that could have otherwise been used to target job creation in other sectors. Beneficiation is also highly energy intensive and may also deny energy to sectors with higher job creation and diversification potential. Finally, stimulating economic activity downstream where that activity depends on the production of the finite resource locally is not sustainable economic diversification – it is only temporary, and it reinforces resource dependency. At the other end of the value chain there is the question of how mining companies can be encouraged to purchase the maximum amount of supplies locally and thus be a catalyst for local supplier development in domestic economies without undermining their global competiveness.

Comparative versus Competitive Advantage: The core proposition for companies is a decent resource base. This comparative advantage may however be insufficient to attract investment given the finite nature and risk adversity of capital, as South Africa shows. Competitive advantage in the mining sector is linked to policy, and eradicating risks and uncertainty.

Mines as Surrogate Governments: Mining companies are expected in some cases to provide local communities with basic services from potable water to electricity, schools and health-care, security and housing; thus replacing government and private provision. What the mining sector and what the government is in turn expected to offer is often another source of tension and requires clearer demarcation. Instead there is scope for partnership.

Chambers versus Champions: There has been an absence of an effective communication channel and movement for mining companies. Chambers have been seen, in cases, to be representative of 'established' mining interests, and the mining companies themselves have often pursued fragmentary, unilateral tactics in engaging with government. They have also lacked effective champions in their attempts to promote constructive dialogue, complicating the cultivation of domestic constituencies.

Solving the current crisis in the African mining sector requires moving from the current series of tactical actions to a more cohesive, inclusive and strategic approach. The intent must be to exit the current backward-looking, destructive, downward spiral in which the industry is currently locked and shift to a positive, constructive cycle which offers a 'win-win' deal for all.

Developing a New Strategy – Ends, Ways and Means

For this to occur all parties need to recognise the inevitable outcomes of the current cycle – the gradual deflation and downsizing of the industry – and the losers: current and future workers, governments, populations, and the mining companies. Such a strategy will need to build on a number of existing initiatives, but must do so with much greater cohesion, commitment and urgency.

The difficult issues that have underwritten the current crisis will need to be addressed in an honest and open fashion: How should the historical legacy be dealt with? How much profit is reasonable? What is a mining company's responsibility to its employees and communities?

Equally importantly, agreement will have to be reached on what a successful mining industry looks like. There must be recognition that mining is an inherently risky and long-term endeavour. For success and the mutual benefit that results, risk needs to be reduced, by all parties, as a far as possible. But this needs to comprise more than an enlightened business case. Mining also needs to understand the problems that government has to address and in so doing make a strategic contribution to wider issues (enterprise development, water, land, education and so on) in an atmosphere of collaboration not confrontation.

Thus the overall aim (the 'ends') of such a strategy should be to make the mining industry a generational endeavour to the mutual benefit of all parties.

The 'way' must be: First, to get mining companies to act together in a more cohesive manner in their engagements with government. Then, second, trust must be rebuilt between all parties, enough to allow meaningful dialogue to occur. Such rebuilding will need to be underpinned with better, more easily digestible information and a genuine attempt to explain the industry to all parties using the full range of available media. Once this has been achieved, third, there needs to be a frank, open discussion of all the key issues that have contributed to the current crisis. Finally agreement will need to be reached on a way forward to the mutual benefit of all. Whilst this sounds straightforward, the current situation points to its difficulties and to the time and commitment required to find an agreeable solution.

The 'means' of such a strategy needs to consist of four components: industry cohesion; information; legislation, regulations and standards; and dialogue, details of which are expanded upon below.

Cohesion: It is essential for there to be improved cohesion of the mining industry on a country basis; for the current fragmented approach plays down the true extent of the crisis, and whilst allowing individual companies to make some tactical gains, will ultimately not stop the current unwinding of the industry. While there will always be competition between companies, and the risks of cartelisation should be guarded against, such cohesion will require some subordination of individual agendas to a common good. Chambers of Mines exist, but in practice they are of variable effectiveness and need considerable reinforcement and support so that they can properly negotiate on behalf of the industry. It is unrealistic to expect large mining companies to not want to deal on an individual basis with government, though such engagements need to be made in the spirit of industry unity. Failure to act together in accordance with agreed positions has proven highly detrimental to the industry and, ultimately, to governments and their people.

It is essential for there to be improved cohesion of the mining industry on a country basis

Information: A critical area for the rebuilding of trust in the tripartite relationship between governments, civil society and the mining industry is the availability of accurate, verified information that can be assembled in the form a common picture and used as a basis for policy debate and formulation. The Extractive Industries Transparency Initiative attempted to address this problem, but it still falls well short of meeting the requirement. Governments are often supplied with a mass of information by individual companies, but lack the capacity to assimilate and analyse it in a timely manner. Given that accurate information is so fundamental to the rebuilding of trust it is in the industry's interest to drive improvement in this area. For such information to be trusted it may need to be verified by a reliable third party. Improved commitment by all parties to the EITI offers such an opportunity.

Governments are often supplied with a mass of information by individual companies, but lack the capacity to assimilate and analyse it in a timely manner

Legislation, Regulations and Standards: A prevailing trend in business has been the imposition of increasingly demanding legislation and regulation, particularly in respect to: employment, beneficiation, disclosure, health and safety, and environmental issues, but also in respect of wider international standards for business practice. In many countries this issue has also been used as a route to exert control on the industry and many changes in legislation and regulation have been imposed with little consultation. But the setting of and adherence to sound, agreed industry standards are an essential part of the trust equation. Whilst the ICMM represents an attempt by the industry to be more proactive in setting standards, much more could be done in this area, such as through the African Mining Vision. At the same time there is a need to guard against excessive regulation which will impact upon competitiveness, not just for mining companies, but for the country as a whole.

Dialogue and Narrative: Whilst there is broad consensus on the lack of common industry country narratives, a lack of unity has prevented their development. Such a narrative needs to make a case for the maintenance and development of the mining industry for each audience (government, the nation, lobbying organisations). It needs to address: the status of the industry in society and issues of historical legacy, the need for policy stability, the balance of revenue generation with the need for beneficiation, the need for the minimum essential but fair constraints and the need for a fair settlement for all parties. The narrative then needs to be properly communicated using the full range of media, to all sections of society, the aim being to move the debate, through a national dialogue, from one of extraction and exploitation to one of shared enterprise and endeavour through demonstrable and credible actions. Given the depth of emotion this will not be an easy or a quick action to achieve, but failure to address this aspect will ultimately lead to further decline in the industry. With confidence between the industry and governments at a low ebb, there may be considerable advantages to both sides in using a 'trusted champion' to help reset the relationship. Such a champion will need a creditable background in the industry and the authority to intercede. Even so, for such an initiative to stand a chance of success there needs to be recognition that a problem exists and that there is mutual benefit in its solution.

Endnotes

1 At http://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-natural-resources-center-anrc/.

2 This refers to US$ unless otherwise indicated.

3 This is based on a survey of seven Ghanaian mining companies. With thanks to ICMM's Tom Butler for this point. See also https://www.icmm.com/document/8264.

4 See 'What's driving African growth', April 2010, at http://www.mckinsey.com/insights/economic_studies/whats_driving_africas_growth.

5 See http://www.mining.com/imf-predicts-another-14-drop-in-metal-prices-this-year/.

6 See 'The role of mining in national economies', ICMM, October 2012 at http://www.icmm.com/document/4440.

7 See http://m.miningweekly.com/article/commodity-shock-knocks-africas-growth-prospects-world-bank-2016-04-11.

8 With thanks to Martin Lokanc for this information.

9 Such as with Zambian Consolidated Copper Mines (ZCCM).

10 Attendance at the April Zambezi meeting included: Ayanda Khumalo, Brian Currin, Dianna Games, Dickie Davis, Greg Mills, Guy Scott, Hartley Dikgale, Hulme Scholes, James Lorimer, John Gladston, Lyal White, Mark Pearson, Martin Lokanc, Nathan Chishimba, Neal Froneman, Nel Marais, Olusegun Obasanjo, Patrick Esnouf, Pius Kasolo, Rick Menell, Richard Morgan, Senga Chitoshi, Sheila Khama, Situmbeko Musokotwane, Suzanne McCourt, Tom Tweedy, and Tope Shonubi.

11 For an overview of these various initiatives, see Hany Besada and Philip Martin, 'Mining codes in Africa: emergence of a 'fourth' generation?', *Cambridge Review of International Affairs*, 28, 2, 2015, pp. 263–282.

12 With thanks to Neal Froneman for this point.

13 See Fraser, A., and Lungu, J., *For Whom the Windfalls? Winners and losers in the privatisation of the Zambia's Copper Mines*, at http://www.revenuewatch.org/documents/windfalls_20070307.pdf. See also Ndangwa Noyoo, *Nationalisation: A Case Study of Zambia*, Rhodes University Summer School, 13 September 2011.

14 At http://www.miningweekly.com/article/mine-nationalisation-lost-zambia-45bn-eunomix-study-finds-2013-03-22.

15 At London Metal Prices, meaning an effective 25 per cent for those Zambian operations which did not sell at LME prices.

16 No. 15/153, June 2015 at https://www.imf.org/external/pubs/ft/scr/2015/cr15153.pdf.

17 The comparative table was sourced in part from the World Bank's 'South–South Knowledge Exchange between Zambia and Chile 20–24 January 2014' and other Bank statistics at http://data.worldbank.org.

18 Again, the royalty is calculated at average monthly LME prices as opposed to a profit-based margin.

19 See 'A Guide to Understanding Mineral Royalty Tax, The Chamber of Mines of Zambia', February 2016.

20 Cited in *The Post*, 29 April 2016.

21 Ricardo Ffrench-Davis, *Reforming the Reforms in Latin America*. London: Macmillan, 2000.

22 See http://www.foreigninvestment.cl/index.php?option=com_content&view=article&id=123.

23 See http://www.worldbank.org/en/country/mauritania/overview.

24 See David Duval, Timothy Green and Ross Louthean, *The Mining Revolution: New Frontiers in Diamonds*. Rosendale: London, 1996.