Review of African Political Economy
Publication details, including instructions for authors and subscription information:
http://www.informaworld.com/smpp/title~content=t713443496

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Online Publication Date: 01 March 2005
To cite this Article: Dansereau, Suzanne , (2005) 'Win-win or new imperialism? Public-private partnerships in Africa mining', Review of African Political Economy, 32:103, 47 - 62
To link to this article: DOI: 10.1080/03056240500121024
URL: http://dx.doi.org/10.1080/03056240500121024

Review of African Political Economy No.103:47-62

Win-win or New Imperialism? Public-private Partnerships in Africa Mining

Suzanne Dansereau

One of the most significant elements of globalisation is the way in which the reshaping of the public-private divide is transforming the relationship between state and economy. In industrialised economies, there is a growing commodification and privatisation of public services, undertaken through the establishment of public private partnerships. State policy is becoming increasingly 'market-driven', managing national politics in such a way as to adapt to the pressures of transnational market forces (Leys, 2001). In developing economies, structural adjustment has removed the state as the principal agent of development, while private agencies are playing an increasingly public role as they engage in public service delivery. These include non-profit organisations (churches and NGOs) and for-profit caregiving and educational institutions (van Rooy & Robinson, 1998). In the political arena, the discourse over donor-defined democratisation has also meant a larger political role for a differentiated set of private agents, in the name of civil society participation, prompting Schmitz & Hutchful (1992) to call this a recipe for 'free markets and free votes'.

In mining and the extractive sector, the World Bank is calling for the establishment of public-private partnerships between mining companies and the state, arguing that

> *cooperation between business, civil society and government can only produce a win-win situation for all as it provides long-term benefits to the business sector while meeting the social objectives of civil society and the state by helping create stable social and financial environments* (World Bank, 2002a).

Stability will be derived through the establishment of a new regulatory framework in which the state will work in closer collaboration with the mining industry to address growing criticism over the industry's increased globalisation, and to enhance community participation as a means to address environmental and community issues in the search for sustainable development and poverty alleviation.

The following paper analyses these changes to state mining policy to determine if the voluntary partnership approach will bring about the anticipated 'win-win' situation. Can everyone truly win in the sense of bringing about industry returns, national and local development? Or does this new approach merely reduce state capacity, giving mining companies a freer reign to extract with little concern for the consequences – effectively becoming a new form of imperialism? To answer these questions, we examine changes to state mining policy advocated within the World Bank's good

ISSN 0305-6244 Print/1740-1720 Online/05/010047-16
DOI: 10.1080/03056240500121024

governance agenda, articulated around the objectives of sustainable development and poverty alleviation. It will be followed by an assessment of the evolution of state-industry relationship in Zimbabwe and South Africa as each embarked on a form of liberalisation aimed at attracting greater foreign investment. In Zimbabwe, it was undertaken as part of a structural adjustment programme. In South Africa, voluntary liberalisation was undertaken along with a strategy of black empowerment.

Governance & the Mining Sector

Mining in Africa has rarely had a glorious history. Several mining and other extractive companies have been criticised, both during and since colonialism, for their use of mercenaries, warlords and corruption to gain access to lucrative oil and mineral deposits, resulting in a well-documented history of intrigue and abuse in Africa and in other developing countries (Drohan, 2003; Moody, 1991 & 1992; Gjording, 1991; Hochschild, 1998; van Onselen, 1980; Cronje & Gillian, 1976). More recently, a growing illicit trade in natural resources, particularly diamonds, has been cited as contributing to conflicts in Sierra Leone and the Democratic Republic of the Congo (DRC) while making peace-building more difficult. Some NGOs and community groups even doubt that mining *can* contribute to sustainable development, referring to what is sometimes called a 'resource curse':

> *developing countries with large mining sectors are found to have less resilient and diversified economies and are generally economically worse off than countries without large mining sectors* (Ross, 2001 in Weitzner, 2002:9).

In response, several agencies have recently made efforts to clean up the industry's reputation, by establishing a voluntary regulatory framework for mining activity that include codes of conduct, certification regimes and other measures aimed at enhancing corporate social responsibility. These are in addition to the already existing body of rights and duties to which corporations are informally bound, including a series of UN conventions and agreements, as well as the anti-corruption and anti-bribery measures and non-binding Principles of Corporate Governance of the OECD (International Peace Academy, 2002). One such effort is the Kimberley Process Certification Scheme, in effect since 2003, aimed at ending the illicit trade in diamonds through a process of certification of rough diamonds by the country of origin. The scheme recognises it does not completely eliminate the use of diamonds by rebel groups, and the certification process may be legitimising diamonds originating from the rebel groups themselves (Partnership Africa Canada, 2004).

Meanwhile, the World Bank's role in mining has also come under increasing scrutiny, facing growing criticism for its support of the profitable oil, gas and mining sectors. Much of the criticism is directed at the non-sustainability of projects in poor countries, and their negative environmental and social impacts (SEEN, 2001). The World Bank's response has been to apply its good governance agenda to the mining sector. Aimed at improving the capacity to govern, the World Bank governance policies emphasise the reform of public institutions to make the state more adept at managing its economic levers, as well as addressing problems of a lack of transparency and democracy, in the light of earlier failures of structural adjustment programmes (World Bank, 2002).

The World Bank's adaptation of its governance agenda is aimed at reformulating state mining policy which is focused largely on the reduction of state intervention. This includes state-directed, large-scale, non-fuel mineral projects and state enterprises with developmental rather than economic objectives. It also recommended increasing resources to ministry support activities such as the geological survey, the mining inspectorate and environmental protection all of which had suffered from declining resources. The idea was to be better able to adapt to changing market conditions and take advantage of the 'renewed interest by international mining companies in African mining'. Government is to focus instead on the 'primary objective' of maximising tax revenues and obtaining a 'fair share of the economic rent' from mining rather than pursuing other economic or political objectives such as ownership of resources or enhancement of employment (World Bank, 1992).

Mining's contribution to development would be achieved instead through sustainable development and poverty reduction. Through privatisations and the reform of regulatory and institutional functions, such as environmental protection, the state would be able to attract foreign investment, thereby enhancing growth, state revenues and employment, all of which contribute to poverty alleviation. Greater institutional capacity could also contribute to regularizing informal mining, further contributing to poverty alleviation (Onorato, Fox & Strongman, 1997). Thus, the emphasis is on the support of the extraction and export of raw material, rather than the development of an industry that could contribute to a national development strategy or even create greater domestic value-added through local beneficiation and manufacturing.

Industry sustainability will be achieved through greater consultation and the establishment of public-private partnerships from which both state and industry would benefit (World Bank, 2002a). The Bank's director of mining, James Bond, indicated that sustainability will accrue when there is community participation, done via a partnership that includes local community groups along with the central state (J. Bond in McMahon & Remy, 2001). The approach is similar to the United Nations Development Programme (UNDP) efforts to encourage the 'triple bottom line' for business in development in which they have reconciled environmental and social contributions with financial profitability, and combined an operating licence from government with a 'social licence' from the community (UNDP, 2004). This requires greater participation and the empowerment of community groups who will play a larger role at the local level. Because of their participation in the stakeholder process, they will demand greater local benefits from mining activities, thereby contributing to poverty alleviation and greater transparency of both state and industry.

These principles were reiterated in the run up to the World Summit for Sustainable Development held in South Africa in 2000 as part of the Minerals and Sustainable Development Project (MMSD), a project to reform state mineral policy in southern Africa. The project was part of the consultation with governments and industry in the World Mines Ministries Forum, established by the World Bank as part of the World Business Council for Sustainable Development (WBCSD) (MMSD Southern Africa, 2002:1).

In light of the public criticism for its support of the extractive sector and the new partnership approach, the World Bank engaged in a comprehensive stakeholder assessment of its support to mining. It was undertaken with representation from governments, non-governmental and indigenous people's organisations, industry and labour. A level of consensus was achieved around the Bank's support of only those projects that included poverty alleviation and sustainable development of people in directly affected areas (World Bank, 2004). Yet the 300 organisations grouped into the Halifax Initiative had demanded an end to World Bank support for the sector, concluding that the Bank was still failing to protect communities affected by extractive projects, in contravention of international human rights (Halifax Initiative, 2004).

The next section examines the application of this new approach to mining's contribution to development, put in place through a voluntary approach in which the state is expected to create conditions needed to enhance production and foreign direct investment. Industry is expected to pay a fair mining rent. The two, along with other stakeholders are expected to collaborate in sustainable development and poverty alleviation with a key role played by community groups in mining affected areas.

In Practice

Throughout the 1990s, global trends in private mining investment both increased in scale and favoured greater mobility as mining companies sought to mine only the most profitable deposits. Mining investment saw an increase in both exploration and extraction, largely due to increased world demand for metals, almost doubling between 1993 and 1996, from US$2,500 million to US$4,600 million (Selassie, 1999). The investment pattern also changed with greater exploration spending going to developing countries, in contrast to the pattern of the 1970s and 80s when 60 per cent and 80 per cent of investment respectively went to the so-called 'safe' mining countries of Australia, United States, Canada and South Africa (Maponga & Maxwell, 2001). Spending rose in Latin America from US$200 million in 1991 to US$1,770 million in 1997 (Kennedy, 1998), increasing its share of global exploration spending from 12 per cent in 1993 to 27 per cent in 1996. Africa's share also rose from 5 per cent to 12 per cent, while Australia, Canada, and the US all fell (Selassie, 1999). Total foreign direct investment (FDI) into Africa also increased during the 1990s, continuing nonetheless to represent only about 1.2 per cent of global FDI (Maponga & Maxwell, 2001). By 1996, 60 per cent of the FDI into Africa was in the mineral extraction sector (Kennedy, 1998).

Increase in interest in African mining from the 1990s onward is explained by many as largely due to the liberalisation of mining regulations and privatisation of mining parastatals (McMahon & Remy, 2001; Maponga & Maxwell, 2001). In the words of the World Bank,

> *the fundamental problems in most countries (of Africa) have been the lack of an attractive enabling environment for private sector mining investment.*

The World Bank has been instrumental in assisting mining sector reform so that it can attract new investment. High corporate tax rates, revenue-based rather than profit based taxes, restrictions on foreign ownership, dividend remittances and profit repatriation caused part of the disincentive during the 1980s (World Bank, 2002b). Changes in the 1990s were ushered in by a combination of structural adjustment programmes, aimed initially at reducing state fiscal deficit, and shifts in donor programming, including the provision of both loans and equity financing by the International Finance Corporation, as well as greater access to international equity capital market. This combination of carrot and stick resulted in incentives for both companies and African governments to reformulate the state mining policy. By the end of 1995, thirty-five African governments had radically revised their mining codes, redefining the rights and obligations of investors, enhancing the incentive framework, and deregulating and privatising the sector. These included reduced taxation levels, liberalised import-tax exemptions for equipment and immigration laws for expatriate personnel while revamping geological data in an attempt to enhance foreign direct investment in mining (Abugre & Akabzaa, 1998). Implemented with the help of the World Bank, these new 'codes operate as a set of standardised legal and fiscal frameworks intended to create a favourable investment environment' but according to Campbell this is done at the expense of the state's capacity to respond to the challenges of development (Campbell, 2004).

Ghana, often considered a model of World Bank reform, modified its mineral policy but has recently lamented the outcomes. Policies are aimed at attracting foreign direct investment in mining through tax incentives, the review of mining laws and adherence to governance principles. Key to this new model is the enhanced role to be played by the community in partnership with industry to bring benefits to communities affected by mining activity. According to the Minister of Mines, some companies were keen to support communities as a way of earning a 'social licence'. Yet the state acts between industry and communities, distributing 10 per cent of royalty revenues collected from mining companies to communities via district assemblies and traditional rulers. The Minister admits that while the objective is to assist local communities to determine and implement their own development projects, the developmental impact of these funds has not been as expected (Bannerman, 2004).

Chad's experience with its new oil sector is another example of the development challenges associated with these policies. Oil was discovered in 1973, but conflict prevented extraction until a peace accord in 1996, six years after the current government took control by force. Rebels remained active nonetheless in the region until suppressed by government in 1998. World Bank involvement has now made possible the largest private investment project on the African continent, exploited by Exxon-Mobil. Eighty per cent of revenues are earmarked for development, yet few development benefits have accrued. The government was awarded a $25 million bonus from the oil deal which it spent on arms and military hardware. One-time cash settlements were paid to farmers along the oil pipeline but little long term employment has been created. A steady flow of revenue needed for local development has not yet occurred but a regional development plan is being crafted – overseen by the state and civil society representatives. Yet members of the national monitoring board and local authorities are appointed by central government, and civil society organisations have only sprung up since 1999 and lack technical capacity and experience. They thus have no clout and have been inadequate to enable transparency nor any way of finding out how much money the government is receiving in oil revenues (Brottem, 2004).

In conflict zones, the transfer of state functions to private companies and deregulation of mining activity has gone much further. Mining companies are gaining access to vast mining concessions, returning to colonial practices. Meanwhile, in Sierra Leone the collection of diamond mining receipts and the enforcement of security was divested to a paramilitary force, Sunshine Broulle of Texas. In the Democratic Republic of Congo, a UN report stated that at least US$5 billion worth of state mining assets had been transferred to foreign companies including companies from Zimbabwe and Uganda (UN, 2001).

While Sierra Leone and the DRC are perhaps extreme examples of state withdrawal, heavily influenced by the presence of civil conflict, their lessons are nonetheless relevant, as are the poor development outcomes resulting from Ghana and Chad's adoption of the World Bank's mining policy reform. Weakness of the current model of state mining policy is underlined by the Africa Initiative on Mining, Environment and Society (AIMES), a network of environmental and community groups. It argues that increased foreign direct investment in Africa's extractive sector has not contributed to poverty reduction, environmental protection or respect for human rights in recipient countries. In fact, it has made all these conditions worse, including contributing to further social conflicts resulting from the denial of extractive sector wealth, destruction of sources of livelihood, dislocation and displacement. Current policy is contradictory to the interests and concerns of local communities and the development priorities of African national economies as the state's capacity to protect citizen's interests is diminishing. Instead the state is now protecting the increasingly powerful transnational corporations. The group is demanding the World Bank cease financing extractive industries until adequate and transparent mechanisms are established and damages to national economies, the communities and environment are addressed (AIMES, 2004).

Zimbabwe

In Zimbabwe, by the end of the 1980s, it was obvious that early independence strategies combining economic growth and increased social equity had not reached their objectives. Nor had mining policies based on the integration of the industry into a state-directed national development strategy been able to transform ownership in an industry dominated by world mining giants such as Anglo American and Rio Tinto. The government established institutions to intervene in the sector such as the Minerals Marketing Corporation and Mining Development Corporation. Yet in the face of falling international mineral prices, the industry – threatening closures – had been able to obtain state subsidies in the form of a gold support price and extensive loans (Dansereau, 2000).

Sluggish economic performance during the 1980s, coupled with the early intervention of the World Bank and the IMF, increased debt levels and pushed the government to adopt a structural adjustment programme in 1990. The new programme marked the end of the state as the principle agent of development, leaving the generation of economic growth in the hands of the private sector. Government now provided greater incentives to industry, including liberalisation of the financial sector, trade liberalisation, export promotion, economic deregulation, and investment promotion, with 100 per cent foreign ownership promoted in several sectors, including mining. Government retained minerals marketing but reduced the mining development corporation to the running of a few mines, largely to prevent their closure. In response to requests by the industry for access to additional foreign currency (Chamber of Mines of Zimbabwe, 1990), government responded with a special import retention scheme allowing exporters to retain 5 per cent of earnings.

Structural adjustment included government cost cutting. It affected the Ministry of Mines and was keenly felt by the Mining Inspectorate, charged with implementing the Ministry's regulatory responsibilities for mine health and safety. The result has been an increase in work-related deaths and accidents. Soon after the adoption of structural adjustment, the chief government mining engineer lamented the lack of resources resulting in the loss of skilled personnel due to low pay as well as cuts in travel and transport facilities. It became increasingly difficult to carry out routine mine inspections, resulting in an increase in accidental deaths from 39 in 1990 to 55 in 1991 (GoZ, Mines, 1991). In 1995, he reported that preventative routine inspections no longer occurred except only after a serious accident or death (GoZ, Mines, 1997). Death statistics reflect these changes. Average death rates per year in mining demonstrate the improvements made to safety during the first independence decade falling from an average of 0.93 deaths per thousand workers per year between 1970-79, to 0.67 between 1980-89. They increased once again between 1990-1997 to 0.81, reflecting cutbacks to the inspectorate since 1990 (GoZ, Mines, 1991 & 1992). Similarly, both the Chief Government Mining Engineer and the Secretary for Mines reported the ministry's difficulty in regulating ongoing illegal mining activities among small-scale producers and gold panners because of its significantly reduced budget.

Industry responded positively however, in contrast to their quasi-boycott of Zimbabwe during the 1980s, by increasing investment. Gross capital formation increased from $166 million in 1990 to $666 million in 1996 (constant 1990 prices) (GoZ, CSO, 2000a). Exploration prospecting applications increased from 43 in 1990 to 289 in 1998. The unit value index increased from a base of 100 in 1990 to 682.3 in 1998, with the volume of production increasing by 20 per cent between 1990 and 1998 (GoZ, CSO, 1999). The number of workers remained low between 1990 and 1993 but rose thereafter, peaking at 61,200 in 1998 (GoZ, CSO, 2000A). Industry growth peaked between 1996 and 1998, declining thereafter in response to growing economic problems precipitated by the 1997 massive currency crisis resulting in high inflation rates, rising wage demands and local costs. The number of workers fell to 42,000 and several marginal gold producers closed, resulting in a fall in gold output in 2000, further declining in 2002, reversing a trend which had seen gold output increasing steadily since 1980 (Chamber of Mines of Zimbabwe, 2002).

In spite of these problems, the Ministry of Mines attempted to remain in compliance with governance approaches in mining policy, announcing a new approach to the industry in 1998, aimed at creating an 'enabling environment' to assist the industry increase mineral production by 5 per cent a year (GoZ, Mines, Environment and Tourism, 1998). Developmental objectives would be achieved through incentives such as tax credits to encourage secondary manufacturing and the sustainable development of mining communities. A 1999 Ministry of Mines pamphlet, 'The Client's Charter' outlines this new approach, committing itself to improving services, including the rapid provision of statistics in a 'timely fashion' (GoZ, Mines, Environment and Tourism, 1999). Yet even this reduced role is challenged by reductions in the ministry budget, pushing it to commercialise services in order to earn the funds needed to fulfil its regulatory responsibilities, and eventually to privatise.

Growing political conflict and economic crisis after the government's February 2000 loss of the national constitutional referendum resulted in increased production problems for all sectors, including the mines. Government abandoned attempts to remain in compliance with governance criteria by legitimating land seizures, turning it into a fast track land reform programme, and imposing limits to the freedom of the press, of assembly and much more. The IMF suspended its lending and many donors withdrew, leaving only emergency assistance and programming around HIV/AIDS. This further contributed to foreign currency shortages and the emergence of a parallel currency market, sending the rate into a tailspin and producing even higher inflation. There has been a significant decline in GDP since the onset of the crisis and basic commodities became increasingly expensive and scarce, including fuel and electricity.

Mining companies, while complaining of increasing production costs, were granted further foreign currency concessions in August 2000, allowing gold producers the right to retain 20 per cent of foreign earnings. In spite of this, companies claim that payments are slow and erratic and shortages of inputs impede production, causing temporary shutdowns. Increasing costs and supply problems led to a production downturn yet these are offset by companies' access to foreign currency and the growing differential between the value of local and foreign currencies. Nonetheless, fourteen mines are believed to have closed, with the retrenchment of a further 10,000 jobs. Mining's contribution to GDP has fallen from 1.46 per cent in 1997 to 0.6 per cent in 2002; yet mining companies continue to invest. South Africa's Impala Platinum Holdings announced an investment of US$30 million in a new platinum mine in response to high platinum prices. Platinum has now outstripped gold as the country's principle mineral export earner (Mukeredzi, 2003). Rio Tinto announced an exploration investment of US$25 million and the opening of a new diamond mine in 2004. Wankie Colliery, in spite of difficulties in production and transport, has announced the development of three main underground mines in order to benefit from an undersupplied export market.

A spokesman for Mzi Khumalo's Metallon Resources, a South African black empowerment company, explains his continued investment in Zimbabwean mining is based on his profitable gold mining activity which he is seeking to increase. Corporate tax rates for gold mines have dropped from 25 per cent to 15 per cent in the past year, and a 3 per cent royalty for gold producers has been eliminated, wages are lower than in South Africa and now three quarters of all revenue is returned as hard currency, an increase over previous periods. What is more, a recent cabinet revamp – including a new minister of mines – and a suite of business-friendly policies, places Zimbabwe head and shoulders above a host of its neighbours as an investment destination' (Bailey, 2004). UNCTAD recently reported a decline in foreign direct investment into Zimbabwe, with the exception of the still lucrative mining sector with several major projects underway (Chiriga, 2004).

In July 2003, the Minister of Mines announced the intention of embarking on a process of indigenisation of the industry, similar to the South African model of black empowerment. Yet the initial legislation requiring the 49 per cent sale of mining company shares to black Zimbabweans has been withdrawn by the Ministry of Mines. The Zimbabwe Chamber of Mines is pushing for a less ambitious process, undertaken over a longer period of time, aiming for the eventual purchase of 25 per cent share of ownership over 10 years. The Chamber considers this advisable as it is closer to the South African timetable and would not to scare away foreign investors who are rediscovering Zimbabwe as an important mine site given its rich deposits in platinum, gold, diamonds and other minerals, currently undergoing price rises (Robinson, 2004).

Clearly mining companies, the most important of which are foreign based, remain in Zimbabwe so long as they make a profit altering investment levels in response to the political and legislative environment. The Zimbabwean example demonstrates that while investments increased as government intervention decreased, they are also able to continue mining even if Zimbabwe does not comply with the World Bank's governance criteria. What is important is that for mining companies, investment decisions are based on three crucial elements: the nature of deposits, financial mobility and the capacity to produce at a profit. By constrast, the agendas of good governance and sustainable development have little impact.

South Africa

South Africa's mining industry is of strategic importance. It is home to the world's largest reserves of several minerals including platinum and gold, is the leading supplier in several others (Cawood et al. 2001 and has a workforce of approximately 400,000. Because of its size, it has contributed to the development of a diverse secondary industrial sector, some of which is due to limits imposed on capital mobility during the sanctions years. Its crucial role in the country's wealth creation has meant the depletion of high grade or shallow reserves, especially in gold, now threatening employment and export levels, and requiring a new strategy to maintain the level of wealth generation (Walker & Jourdan, 2003). The most obvious is in the area of mineral beneficiation which has been the source of new growth rather than simple extraction whose contribution to GDP has stagnated for the past 20 years (Jourdan, 1997).

Policy reform in South Africa has been shaped by neo-liberal strategies prevalent in the 1990s. The overall policy direction undertaken after 1994 changed from a socio-democratic approach – articulated in the Reconstruction and Development Programme (RDP) – to a neo-liberal economic adjustment programme – the Growth, Employment and Redistribution (GEAR) – in 1996 (Carmody, 2002). The new programme was said to be internally driven because of the country's low debt level yet Patrick Bond claims the country 'could not withstand the pressures of neoliberal economics' after signing an IMF loan in December 1993, and facing a heavier debt load in October 1993, once it agreed to repay the inherited apartheid-era foreign debt of $25 billion. He characterises the nature of the current regime as a power sharing deal between a faction of black nationalist politicians and business cronies that facilitated an elite transition based on an alliance of state and capital (P. Bond, 2004).

The emphasis was on increasing value-added production, enhancing exports, trade liberalisation and attracting foreign investment. Between 1997 and 2004, the state engaged in the privatisation of state-owned assets of R34 billion (*The Economist*, 24 June 2004). In response to labour's opposition to privatisation, the government then provided assurances that state enterprises such as Eskom, Transnet and Denel would remain state-owned with the private sector invited to finance and operate parts of the infrastructure through public-private partnerships, concessions and joint ventures that would include black empowerment enterprises (BEE) (*Mail & Guardian*, 18 June 2004). Industrial policy includes an 'Integrated Manufacturing Strategy' aimed at supporting industries engaged in the beneficiation of the country's natural resources, especially those in which it has a comparative advantage, including the processing of mineral resources and energy (Walker & Jourdan, 2003). In its 1998 White Paper outlining its legislative agenda for mining policy reform, the government stipulated that mineral development would be achieved by creating a good investment climate, through 'private enterprise and the free market mechanism' (RSA, Dept. of Minerals & Energy, 2000A:3).

The 1998 White Paper was the product of government's policy review, begun in 1995. In keeping with governance principles, it engaged in a consultative process, drawing in all major stakeholders. Four hundred people attended public workshops, followed by bilateral meetings involving different levels of government, investment analysts, foreign-owned mining companies and environmental interest groups. Public hearings were held to review the policy's first draft and several hundred written submissions were received (RSA, Dept. of Mineral & Energy, 1998). The content of proposals was in line with the governance framework as they included broadening participation by modifying the ownership of mineral rights. Greater participation and development would be enhanced by the inclusion of 'formerly disadvantaged' groups. It also proposed increasing service provision to the industry, regional cooperation, strengthening health and safety regulations, improving environmental management and industrial relations, the modification of the migrant labour system and the encouragement of regional cooperation. In 1996, the government passed the powerful Mine Health and Safety Act that increased the mining inspectorate's powers, scope and technical capacity and its capacity to do research and training (RSA, Dept. Minerals & Energy, 2003). This was followed in 1998 by the adoption of the National Small-scale Mining Development Framework to encourage broader participation by assisting artisanal and junior companies while requiring they respect guidelines in the areas of environmental protection, workers' health and safety, and the involvement of local communities (RSA, Dept. Minerals & Energy, 1998).

In October 2002, the government gazetted the most significant elements of its policy change, the Mineral and Petroleum Resources Development Act, and its attached Broad Based Socio-economic Empowerment Charter for the Mining Industry (RSA, Gazette 2002). The Act was imbedded in the language of environmental protection, participation and socio-economic development including the involvement, with government assistance, of communities who were to establish their own mining companies, rather than depend on royalties. Its most significant element was to assert state sovereignty over minerals as part of the national patrimony. It would do this by transferring control of mineral properties to the state from landowners, mostly large mining companies, in order to promote broader access to mineral resources thus contributing to economic growth, mineral and petroleum development, and increased employment. Not surprisingly, the Chamber of Mines, the powerful mining industry lobby bringing together 90 per cent of the country's mine owners, opposed the move, charging the government with uncompensated expropriation. The government responded that this legislation merely brought South African mineral rights in line with other mining countries such as Canada and Australia.

The Empowerment Charter was the most contentious issue to emerge around the new legislation. It sought to overcome past prohibitions to black entrepreneurship in the mining industry by facilitating ownership by previously disadvantaged groups. Most problematic to the industry was the call for 51 per cent mining industry ownership to be transferred into the hands of the historically disadvantaged South Africans, over a 10 ten year period. This was made in a leaked version of government's initial proposal, prompting the Chamber to object strenuously. The result was a dramatic drop in share values of South African mining companies on the Johannesburg stock exchange. Government then significantly reduced the requirement to 15 per cent ownership in 5 years, with a 26 per cent ownership transfer in 10 years (Davison, 2003). Less problematic were other measures aimed at the Africanisation of management-level jobs, and improved training and skills development with the creation of 5,000 new learnerships, the provision of scholarships, and investment in social development projects (RSA, Gov. Gazette, 2002 and Communique, Department of Minerals & Energy, 15 July 2003). Measures have also been introduced to create public-private partnerships in beneficiation through a parastatal, Mintek, and the creation of a 100 million Rand fund for jewellery makers.

The limits to consultative practices between state and industry became evident around the proposed Mineral and Petroleum Royalty Bill that included proposals for royalty payments and taxation rates. The government argued that royalties were needed as mining companies were extracting and taking away 'our collective patrimony'. Proposed rates fell within internationally competitive margins according to government and were set out in the 2004 Budget at 8 per cent on diamonds, 4 per cent on platinum and 3 per cent on gold, calculated as a percentage of sales (*Business Report*, 19 February 2004). However the Chamber of Mines is arguing for the imposition of royalties on net profits rather than on sales (Chamber of Mines of South Africa, 2003), claiming that government proposals will lead to investor jitters and affect empowerment transactions, employment and output levels (*Business Report*, 19 February 2004). Government agreed to delay the Bill for 5 years, citing taxation technicalities and promoised instead to 'develop a more holistic tax regime based on international best practice' to come into effect in 2009 (treasury officials quoted in *Business Report*, 9 June 2004). In addition, the 3 per cent royalty on gold would likely be cut because of losses in the gold sector (*Business Report*, 27 March 2004). In spite of these technicalities, company pressure clearly impacted on government decisions to delay and review the Bill.

Public-private partnerships are also being proposed in the area of mineral beneficiation. Mintek, a parastatal engaged in research and development, is mandated to engage in joint ventures, especially with black empowerment companies around the creation of local value-added projects (Mintek, 2004). A major public-private initiative is the development of a budding local jewellery industry to be undertaken with the aid of a gold loan facility worth R100 million, into which government, the Jewellery Council of South Africa and jewellery makers would contribute. A similar project is planned for platinum.

Overall, industry did not react to these new policies by reducing activity. Production levels remained fairly consistent with a trend that began before 1994 with a gradual decline in output , mostly due to closures in the gold sector (Davison, 2003). Indeed, as in Zimbabwe, mining companies have been able to benefit from financial liberalisation, at least initially, when the Reserve Bank allowed the exchange rate to float downwards against foreign currencies, resulting in the rand's drop in value (Cawood et al. 2001). However, industry also reacted to liberalisation - including the lifting of exchange control restrictions – by transferring their headquarters and stock market listings to London at the end of the 1990s. This coincided with corporate restructuring in which the older mining houses that dominated the South African industry are replaced by smaller, more focused, commodity specific mining companies. Mining houses have unbundled their holdings, shed their non-core and industrial interests, and globalised their reach through international mergers or acquisitions of foreign companies (Cawood et al. 2001). Companies such as Anglo-American, De Beers and BHP Billiton transferred their primary listings and corporate head offices out of South Africa. South African assets were being purchased at the same time by foreign resource companies, resulting in a globalised ownership structure of South African mining assets and a drop in local ownership from 22 per cent in 1975 to 5 per cent by 1999 (Cawood et al. 2001). This contributed to a surplus outflow in investment capital of R5 billion between 1994 and 2001 (COSATU, 2002). Carmody (2002) argues that mining houses were interested in globalising, first by using investment in Africa as a springboard to broader investment, and then by moving to London. This allowed them to unlock 'shareholder value' as it led to an increase in share value price in relation to assets, maintain assets in hard currency, gain access to cheaper capital while becoming more mobile. Anglo-American increased its profit by 24 per cent, the year they moved to London, 1999-2000.

Industry's initial opposition to participation by BEE companies was significantly lessened once government extended the timelines and reduced the targets, thus allowing time for restructuring to anticipate ownership regulation. Industry was also relieved that for the most part empowerment and transformation became defined as participation by new entrants via equity purchase, and not by 'asset grabbing' (*Business Report*, 27 June 2002). The empowerment process is also limited by the funds available to BEE companies. The Industrial Development Corporation, a parastatal, announced the availability of only R28 billion for empowerment transactions in all sectors and the recent suspension of the National Empowerment Fund may further delay the process. BEE companies are further limited by the higher cost of capital in South Africa as government increases interest rates to keep portfolio capital in the country (Carmody, 2002), though these have fallen recently. Nonetheless BEE companies are advancing steadily, doubling in 2003, compared to figures for 2002 prior to the passing of the Mining Charter, although they still represent only 3 per cent of the Johannesburg Stock Exchange market capitalisation (*Mail and Guardian* online, 2 April 2004).

This slow progress has led to criticism about the limits of transformation occurring as a result of empowerment policy, with labour groups lamenting that black empowerment is unduly narrow. They contrast this approach to the Freedom Charter which stated 'all people shall share in the country's wealth'. Their concern is that efforts are geared to supporting the emergence of a black capitalist class, sometimes called a black patriotic bourgeoisie, combined with Africanisation of skilled and management level employment, but with the omission of industry reorganisation away from its excessive reliance on low skill levels. Some companies are even opting instead for a cheap labour route by increasing contract and casual labour (SALB, 2002). Thus while certain empowerment deals involve company staff, thus broadening the beneficiaries, these are infrequent, while deals involving community and mass based organisations – a key component of sustainable development and poverty alleviation objectives articulated by both the World Bank and the state's mining reforms – are rare indeed and beset by complex legal process.

Complaints are directed at the nature of BEE transactions as they usually involve the same people, many whom are close to government. Significant personalities are Saki Macazoma and Cyril Ramaphosa, both members of the ANC's National Executive Committee, and Tokyo Sexwale, former premier of Gauteng Province. All three, along with others including Patric Motsepe, are sometimes referred to as the 'BEE Gentlemen'. There are also concerns about the nature of transactions, as some small and medium sized companies are brought on board for the tendering process and dumped soon after the tenders are awarded, thus creating a discrepancy between the announcement and actual implementation of empowerment deals. Also many transactions are done through debt financing, such that some of the big names in BEE carry more debt than most African countries (*Business Report*, 17 July 2004). The fear is that the concentration of empowerment transactions into the hands of a few prominent people allows established companies involved in partnership with the new BEE companies to achieve a 'comfort level', but with little significant transformation.

It is evident that the South African state has more options at its disposal than either Chad or Zimbabwe, as evidenced by its new mining law, the greater capital at its disposal, and its relative success in regulation evidenced by a drop in work-related fatalities between 1994 and 2001 (RSA, 2003). It has been nonetheless compelled to make significant concessions to the mining industry, backing down on Charter targets and especially on royalty requirements. One critical future issue is the extent to which the state will withstand pressure to devalue the rand in the face of profit losses by mining companies threatening large scale retrenchments, especially in the large, labour intensive gold mining sector that has already undergone significant decline. Another concern is the continued capacity to implement and maintain regulatory levels given the need to reduce government budgets.Yet in spite of the range of policy options available to the South African state and a mining policy articulated around good governance, sustainable development and community participation, the industry has been able to resist the state when its interests are threatened. It has benefited from overall economic liberalisation, transferring assets externally as it pursues globalisation strategies, but resisted redistributive social and industrial policy. Like in Zimbabwe, the immediate and narrow bottom line is what counts and companies have been able to utilise liberalisation policy to protect profitability, while resisting voluntary measures requiring community participation, sustainable development and poverty reduction.

Conclusion

So who wins? Clearly industry is a big winner. With the aid of the World Bank's efforts to reform state/industry relations in the context of good governance, we saw the benefits derived from the move away from a state-led national strategy aimed at assuring mining's contribution to industrial and manufacturing development. Instead the industry now benefits from enhanced state incentives to export and liberalised investment regulations. It has mainly benefited from the greater support to easing industry access to deposits, financial mobility and the capacity to produce at a profit. Especially useful is the transformation of many regulations into voluntary measures, and empowerment and participation interpreted mostly as elite participation through Black Economic Empowerment and public-private partnerships. In this way, local business people are drawn in as junior partners, forming the basis of a new economic class, but with little independence or desire to benefit national development. The mining industry's continued operations in many countries experiencing political instability and even conflict, belies the importance of good governance to their decision to invest, in contrast to the decline in investment we saw in Zimbabwe resulting from increased government regulation during the 1980s.

On the other hand, we saw few benefits derived by the state. There were few direct benefits to state revenues, nor many indirect development outcomes in the form of enhanced employment. The capacity to regulate in Zimbabwe has been severely curtailed by cuts to government budgets, especially in health and safety. There are fears that the South African government might not be able to maintain spending levels for its own services, especially in the inspectorate. Neither country has been able to significantly regulate its informal mining activity, thus reducing employment outcomes and poverty alleviation. In both Zimbabwe and South Africa, companies resisted greater taxes and royalty payments to the national state.

Nor are there great benefits derived by affected communities. We did not see any significant participation and regulation provided by community groups through enhanced transparency of companies or governments. Nor did we see the establishment of partnerships with mining companies as a way of enhancing sustainable development and poverty alleviation. This is particularly disconcerting when we note that community empowerment and participation was meant to compensate for reduced state regulations.

Is this a new renewed imperialism? To the extent that mining companies can move around with less restraint than previously, making it easier to 'high-grade' (work only the high grade deposits and move on), industrial policies are definitely more imperialist and less developmental. The conflict zones are the most illustrative of these trends, as mining companies are now returning to the age-old practice of exploiting vast unregulated mineral concessions with little state intervention. However, there are degrees of regulation. While state withdrawal is accentuated in conflict zones, some countries like Ghana and Zimbabwe have been able to impose some limits, and South Africa has fared somewhat better. Yet these are weakened by the requirements to replace state regulation by voluntary measures as well as engage in consultation and partnership with private sector companies required by the World Bank. These measures, situated within the language of governance, sustainable development and poverty alleviation provide an intellectual veneer to company operations without fundamentally affecting the way they do business.

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