CURRENT TRENDS IN MINING LAW AND REGULATION IN WEST AFRICA

MINEAFRICA 4TH ANNUAL FOCUS ON WEST AFRICA SEMINAR – LONDON, ENGLAND

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In addition to native languages...

- Francophone countries
- Anglophone countries
- Arabic / French speaking countries
- Portuguese speaking countries

ECOWAS
WAEMU
Two legal systems in West Africa in addition to Islamic law and/or customary law …

- Systems based on civil law principles
- Systems based on common law principles
- OHADA countries
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4. Major trends of these reforms reflected in mining codes
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1. WEST AFRICA: MINING OPPORTUNITIES AND MINING REFORMS

1.1 Overview of the mining potential in West Africa
1.2 Main issues for mining companies
1.3 Recent reforms in West African mining legal frameworks
1.1 OVERVIEW OF THE MINING POTENTIAL IN WEST AFRICA

Distribution of Africa’s natural resources and infrastructure

- **Niger**, the world’s fourth largest uranium producer
- **Ghana**, the second largest gold producer in Africa after South Africa
- **Mali**, fourth largest gold producer in Africa


Sources: *Trade Map, NKC Research*

**Countries**

- South Africa
- Ghana
- Botswana
- Burkina Faso
- Tanzania
- Egypt
- Namibia
- Ivory Coast
- Angola
- Lesotho

**Values**

- South Africa: 20.75
- Ghana: 6.00
- Botswana: 5.00
- Burkina Faso: 4.00
- Tanzania: 3.00
- Egypt: 2.00
- Namibia: 1.50
- Ivory Coast: 1.00
- Angola: 0.50
- Lesotho: 0.10
The top 10 issues mining companies will have to face in the coming year:

1. The cost of contraction - mining productivity hits new lows
2. Matching supply to demand - market imbalances wreak commodity price havoc
3. The remaking of mining - exploring the innovation imperative
4. Finding funding: debt up, deals down, and juniors fight for survival
5. The project pipeline stutters: record impairments call capital allocation practices into question
6. Power to the people: local community demands ramp up
7. Resource nationalism spreads: government relations marked by rising hostility
8. Crackdown on corruption: a zero tolerance regulatory environment complicates compliance
9. Changing the safety equation: from zero harm to zero fatalities
10. A dearth of skills: the talent gap slinks into executive suites

Source: Deloitte Report, Tracking the trends 2014
Conditions for increasing mining investments in Africa

1. Infrastructure
2. Stable legal systems
3. Predictable tax regime
4. Profit repatriation guarantees
5. Access to foreign exchange
6. Judicial framework
7. Accountable bureaucracy
1.2 MAIN ISSUES FOR MINING COMPANIES (3)

Business risks for mining companies in Africa

1. Productivity improvement
2. Capital dilemmas (capital allocation, access to capital)
3. Social licence to operate
4. Resource nationalism
5. Capital projects
6. Price and currency volatility
7. Infrastructure access
8. Sharing the benefits
9. Balancing talent needs
10. Access to water and energy

1.2 MAIN ISSUES FOR MINING COMPANIES (4)

Risks for commodities in Africa

1. Cyber attacks and information security
2. Threat of substitutes
3. Pipeline shrinkage
4. Fraud and corruption
5. Competing demands for land use
6. Climate change concerns
7. New technologies

### 1.3 Recent Reforms in West African Mining Legal Frameworks

<table>
<thead>
<tr>
<th>Country</th>
<th>Mining codes having recently undergone/about to undergo changes</th>
<th>Reviewing of mining titles/contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burkina Faso</td>
<td><strong>October 2013</strong>: new Mining Code adopted by the Council of Ministers (to be voted by the end of 2014)</td>
<td>N/A</td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td><strong>March 2014</strong>: new Mining Code passed by Parliament</td>
<td>N/A</td>
</tr>
<tr>
<td>Guinea</td>
<td><strong>April 2013</strong>: amendment to 2011 Mining Code</td>
<td>Contracts under review since April 2012</td>
</tr>
<tr>
<td>Liberia</td>
<td><strong>End of year 2014</strong>: 2000 Minerals &amp; Mining Act to be replaced by new Mining Code</td>
<td>N/A</td>
</tr>
<tr>
<td>Mali</td>
<td><strong>January 2013</strong>: amendment to 2012 Mining Code</td>
<td>Complete inventory of mining contracts announced in September 2013</td>
</tr>
<tr>
<td>Mauritania</td>
<td><strong>February 2012</strong>: amendment to 2008 Mining Code</td>
<td>N/A</td>
</tr>
<tr>
<td>Niger</td>
<td><strong>2006</strong>: Mining Law</td>
<td>Contracts under review since September 2013</td>
</tr>
<tr>
<td>Nigeria</td>
<td><strong>2010</strong>: amendment to 2007 Minerals and Mining Act</td>
<td>N/A</td>
</tr>
<tr>
<td>Senegal</td>
<td><strong>Nov. 2003</strong>: Mining Code passed by Parliament</td>
<td>Review commission set up in 2012</td>
</tr>
<tr>
<td>Togo</td>
<td><strong>October 2003</strong>: amendment to 1996 Mining Code</td>
<td>N/A</td>
</tr>
</tbody>
</table>
2. MAIN DRIVERS OF MINING REFORMS

2.1 Liberalisation of mining activities through different generations of mining codes
2.2 Result of this liberalisation
2.3 Awareness of a need for stronger mining governance strategies
2.1 LIBERALISATION OF MINING ACTIVITIES THROUGH DIFFERENT GENERATIONS OF MINING CODES (1)

Combination of factors leading to this liberalisation:

• Post-independence period: development of resource nationalism for many African governments
  – State mining companies (nationalisation)
  – Stricter regulations relating to taxation, domestic input sourcing, local employment
• Drastic decline of Africa’s share of worldwide mineral production:
  – Low mineral prices
  – State mining companies with small financial resources
  – Lack of investments in high political-risks areas
• Indebtedness of many States

⇒ Need to develop the mining industry by attracting private investors and minimising State ownership
2.1 LIBERALISATION OF MINING ACTIVITIES THROUGH DIFFERENT GENERATIONS OF MINING CODES (2)

• **First Generation**
  – State withdrawal from productive activities to attract foreign investments
  – Role of regulator and promoter
  – Generous tax incentives to foreign investors
  – Development objectives, environment protection are of secondary concerns
  – *E.g.* Ghana: Mineral and Mining law, 1986

• **Second generation (early to mid 1990’s)**
  – Continuing trend of liberalisation and privatisation
  – Recognition of the need for certain social and environmental regulations as the responsibility of operating companies
  – *E.g.* Guinea: Mining Code, 1995

• **Third generation (late 1990’s)**
  – Continuing trend of liberalisation
  – Example of Mali: 1999 new mining code
### 2.2 RESULTS OF THIS LIBERALISATION

<table>
<thead>
<tr>
<th>For mining companies</th>
<th>For host countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Tax regimes more competitive</td>
<td>• Incentive competition leading to a “Winner’s curse”</td>
</tr>
<tr>
<td>• Stability of tax regime</td>
<td>• Lack of diversification of national economy: no intersectoral linkages</td>
</tr>
<tr>
<td>• Liberalisation of exchange controls and exchange rate policies</td>
<td>• Difficulty to monitor accurately the production and capital expenditures of the States</td>
</tr>
<tr>
<td>• Generous incentives</td>
<td>• Limited benefits for local employment</td>
</tr>
<tr>
<td>⇒ Significant increases of foreign direct investment</td>
<td>• Lack of transparency</td>
</tr>
<tr>
<td></td>
<td>• Lack of capacity of the State to manage resources to meet development goals</td>
</tr>
</tbody>
</table>
### 2.3 AWARENESS OF A NEED FOR STRONGER MINING GOVERNANCE STRATEGIES

<table>
<thead>
<tr>
<th>Result of the liberalisation</th>
<th>Economic and political context before 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Asymmetric relations of power and influence between States and mining companies</td>
<td>• High mineral prices</td>
</tr>
<tr>
<td>• More benefits to mining companies</td>
<td>• Mining boom due to increased competition</td>
</tr>
<tr>
<td></td>
<td>• Increased bargaining power for host governments</td>
</tr>
</tbody>
</table>

BROAD AWARENESS OF THE NEED FOR STRONGER NATURAL RESOURCE GOVERNANCE STRATEGIES
3. NEW WAVE OF NATURAL RESOURCE GOVERNANCE INITIATIVES

3.1 A continent-wide mining reform
3.2 Sub-regional efforts towards the harmonisation of national mining legislation
3.3 Other initiatives
3.1 A CONTINENT-WIDE MINING REFORM (1)

- The need for changes in the governance of natural resources translated on a continental level with:
  - The Africa Mining Vision
  - Numerous non-West African countries having recently reformed their mining legal framework
3.1 A CONTINENT WIDE-MINING REFORM (2)

• **Africa Mining Vision**, African Union, February 2009
  “Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”
  – Contribution to the broad-based growth and development
  – Respect and promotion of human rights
  – Local and regional economic linkages
  – Diversification

• **Numerous examples of other African countries having recently reformed their mining legal framework**
  – DRC (reform currently in process)
  – Burundi July 2013
  – Gabon June 2013
  – Rwanda January 2013
  – Kenya October 2012
3.2 SUB-REGIONAL EFFORTS TOWARDS THE HARMONISATION OF NATIONAL MINING LEGISLATION

1. Economic Community of West African States (ECOWAS)

2. West African Economic and Monetary Union (WAEMU)
3.2.1 ECONOMIC COMMUNITY OF WEST AFRICAN STATES “ECOWAS” (1)

ECOWAS

• A regional economic integration community gathering 15 countries

• A set of 3 regional legal frameworks to be adopted (a directive, a common code and a regional mining policy)

• Currently:
  – ECOWAS Additional Act A/SA16./02/12 of 17 April 2012 related to the adoption of a mining resource development policy of the ECOWAS
ECOWAS Directive

- Only binding upon Member States (not upon individuals and incorporated entities)
- To be complied with by 1 July 2014
- Objectives:
  - Harmonising guiding principles and policies in the mining sector
  - Creating a mining environment favourable to sustainable macroeconomic development
  - Ensuring a better transparency in the mining policy
  - Harmonising the mining policy and the legal framework of the Member States
  - Making sure that the harmonisation takes into account the singular situation of each Member State
3.2.1 ECONOMIC COMMUNITY OF WEST AFRICAN STATES “ECOWAS” (3)

ECOWAS Directive

- Topics of the Directive:
  - **Minerals as State resources**: State resources and mining activity
  - **Protection of the environment**: granting of mining titles, program for the protection of the environment
  - **Protection of national interest**: stability agreement reflecting the national interest of the Member State, definition of tax system applicable to minerals
  - **Access to information**: duty to maintain records that are considered as public and shared with the public, foster subscription to the EITI
  - **Human rights obligations and mining activities**: obligation to respect and promote recognized human rights, protection of the local community rights
  - **Dispute resolution**: settlement procedures, complaints procedure
  - **Institutional and implementation arrangements**: implementation of the Directive
3.2.1 ECONOMIC COMMUNITY OF WEST AFRICAN STATES “ECOWAS” (4)

ECOWAS Additional Act

- Only binding upon Member States (not upon individuals and incorporated entities)
- Objectives:
  - Promoting the development of the mining activity
  - Improving better mining information by regulating crafts mining activities and by ensuring the social responsibility of the mining companies
3.2.2 WEST AFRICAN ECONOMIC AND MONETARY UNION “WAEMU” (1)

WAEMU

- Organisation promoting integration among 8 countries sharing a common currency, the CFA franc
- All members are also members of the ECOWAS

- Objectives of the WAEMU:
  - Strengthening of the economical activities
  - Converging the national economic policies
  - Ensuring the realisation of a common market
  - Ensuring the setting up of common sectoral policies
3.2.2 WEST AFRICAN ECONOMIC AND MONETARY UNION “WAEMU” (2)

WAEMU

- Additional Act No. 01/2000 of 14 December 2000 relating to the adoption of the Common Mineral Policy of the WAEMU
  - Ensuring an environment favourable to mining investments
  - Diversifying the mining production
  - Protecting the environment and ensuring coexistence of industrial mines and craft mining
- Regulation No. 18/2003/CM/UEMOA of 22 December 2003 relating to the Adoption of the WAEMU Community Mining Code:
  - directly applicable to individuals and incorporated entities
  - has primacy over national law
  - addresses essentially the same major issues as the ECOWAS directive:
    - Grant of mining titles
    - Program for protection of environment
    - Defines tax system applicable to minerals
    - Governs recruitment and procurement rules
3.3 OTHER INITIATIVES (1)

Since the beginning of 2000s, numerous initiatives to develop accountability and transparency in the governance of natural resources

- Disclosure obligations required by national laws governing the main investors
  - *E.g.* in Sierra Leone, obligation to disclose information related to revenues and payments by mineral right holders
- A majority of non-compulsory/voluntary initiatives
3.3 OTHER INITIATIVES (2)

- Disclosure obligations required by national laws governing the main investors
  - US Dodd-Franck Act, 2010
  - UK Bribery Act, 2010
  - EU Accounting Directive, 2013 (to be amended late 2014 regarding non-financial reporting)

- A majority of non compulsory/ voluntary initiatives originating from:
  - The United Nations:
    - Kimberley Process, 2000 (Côte d’Ivoire, Ghana, Guinea, Liberia, Mali, Sierra Leone, Togo)
    - Guiding Principles on Business and Human Rights, John Ruggie, 2011
  - Governments: Extractive Industry Transparency Initiative (EITI), 2002 (all the West Africa countries are EITI compliant countries except Benin, Gambia and Guinea Bissau)
  - NGOs: e.g. The National Resource Charter
  - Financial Institutions:
    - International Finance Corporation Performance Standards, 2012
    - Equator Principles III, 2013
  - The mining industry: International Council on Mining and Metals (ICMM), 2011
4. MAIN TRENDS OF MINING CODES REFORMS

4.1 Strengthening of State involvement in mining activities
4.2 Fair sharing of mining revenue
4.3 Local content
4.4 Management of environmental impact
4.5 Governance, transparency and corporate social responsibility ("CSR")
4.1 STRENGTHENING OF STATE INVOLVEMENT IN MINING ACTIVITIES (1)

- Increasing stakes in mining project either directly or indirectly through state-owned companies (i.e. Soguipami in Guinea)
- Limitation on stabilisation: flexible tax regime sensitive to price movements
- Limitation on the duration of mining contracts
### 4.1 STRENGTHENING OF STATE INVOLVEMENT IN MINING ACTIVITIES (2I)

<table>
<thead>
<tr>
<th>Country</th>
<th>Participation of the State</th>
</tr>
</thead>
</table>
| Burkina Faso   | • 10% for industrial and small-scale mining permit  
(Fomer code: 10% free participation for industrial mining permit and additional participation to be negotiated)                                                                                       |
| Côte d’Ivoire  | • 10% free participation  
• Additional participation to be negotiated but limited to 15% unless the State contributes to the exploration phase from the outset  
• These limitations only apply to direct State participation  
(Fomer code: 10% free participation and additional participation to be negotiated)                                                                 |
| Guinea         | • Maximum 15% free participation  
• Free participation not limited to precious substances  
• % of free participation depends on the mineral  
• Total participation limited to 35%  
(Fomer code: 15% free participation and free participation limited to precious substance)                                                                                   |
| Liberia        | • Special share may be issued for no consideration at the request of the minister  
(no maximum – to be bargained)                                                                                                                                                                           |
### 4.1 STRENGTHENING OF STATE INVOLVEMENT IN MINING ACTIVITIES (2II)

<table>
<thead>
<tr>
<th>Country</th>
<th>Participation of the State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mali</td>
<td>• 10% free participation <strong>and</strong> additional 10% participation</td>
</tr>
<tr>
<td>Mauritania</td>
<td>• 10% free participation <strong>and</strong> additional 10% participation</td>
</tr>
<tr>
<td>Niger</td>
<td>• 10% free participation <strong>and</strong> additional participation</td>
</tr>
<tr>
<td></td>
<td>• Total participation limited to 40%</td>
</tr>
<tr>
<td>Nigeria</td>
<td>• 10% free participation <strong>and</strong> additional 10% participation</td>
</tr>
<tr>
<td>Senegal</td>
<td>• 10% free participation <strong>and</strong> additional participation to be negotiated</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>• The Government shall have the option to acquire on such terms as shall be agreed upon between the holder of a large scale mining license and the Government, shareholding interest in any large-scale mining operations</td>
</tr>
<tr>
<td>Togo</td>
<td>• 10% free participation in exploitation companies except in non-industrial activities and in construction materials</td>
</tr>
<tr>
<td></td>
<td>• Additional participation up to 20%</td>
</tr>
</tbody>
</table>
### 4.1 STRENGTHENING OF STATE INVOLVEMENT IN MINING ACTIVITIES (3)

<table>
<thead>
<tr>
<th>Country</th>
<th>Duration of mining license</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burkina Faso</td>
<td>• 20 years with renewal periods of 5 years</td>
</tr>
<tr>
<td></td>
<td><strong>(Former Code: 25 years with renewal periods of 5 years)</strong></td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>• 12 years with renewal period of 10 years</td>
</tr>
<tr>
<td></td>
<td><strong>(No reference to mining contract in former Code)</strong></td>
</tr>
<tr>
<td>Guinea</td>
<td><strong>Mining concession</strong> (same as former Code)</td>
</tr>
<tr>
<td></td>
<td>• Duration: 25 years</td>
</tr>
<tr>
<td></td>
<td>• Renewal: 10 years</td>
</tr>
<tr>
<td></td>
<td><strong>Operating permit</strong> (industrial and semi industrial)</td>
</tr>
<tr>
<td></td>
<td>• Duration: 15 years</td>
</tr>
<tr>
<td></td>
<td><strong>(Former Code: 10 years for industrial permit and 5 years for semi-industrial permit)</strong></td>
</tr>
<tr>
<td></td>
<td>• Renewal: 5 years</td>
</tr>
<tr>
<td></td>
<td><strong>(same as in the former Code)</strong></td>
</tr>
<tr>
<td>Nigeria</td>
<td><strong>Mining lease</strong></td>
</tr>
<tr>
<td></td>
<td>• Duration: 25 years</td>
</tr>
<tr>
<td></td>
<td>• Renewal: 20 years</td>
</tr>
<tr>
<td></td>
<td><strong>Exploration licence</strong></td>
</tr>
<tr>
<td></td>
<td>• Duration: 3 years</td>
</tr>
<tr>
<td></td>
<td>• Renewal: 2 years</td>
</tr>
<tr>
<td></td>
<td><strong>Maximum period of 7 years</strong></td>
</tr>
</tbody>
</table>
### 4.1 STRENGTHENING OF STATE INVOLVEMENT IN MINING ACTIVITIES (4)

<table>
<thead>
<tr>
<th>Country</th>
<th>Stabilisation</th>
</tr>
</thead>
</table>
| **Burkina Faso** | - Maximum of 20 years  
                   (Former Code: unlimited) |
| **Côte d’Ivoire** | - Tax and custom stabilisation introduced by new code  
                   (No stabilisation under former Code) |
| **Guinea**     | **Maximum of 15 years**  
                   (Former Code: 10 years for operating permits and 25 years for concessions)  
                   - Limited list of specific taxes  
                   - Covers tax rates  
                   **No application to tax base except for:**  
                   - extraction tax  
                   - production tax  
                   - mineral substance export tax  
                   - precious stones export tax |
### 4.2 FAIR SHARING OF MINING REVENUE (1)

<table>
<thead>
<tr>
<th>Country</th>
<th>Additional tax burden</th>
<th>Tax exoneration and incentives</th>
</tr>
</thead>
</table>
| **Burkina Faso**| - Tax on industrial and commercial profits and revenues at **normal rates** in lieu of preferential rate  
                    - New capital gains tax at 20% on the assignment of mining rights | Removal of some tax exemptions: patent contribution, employer and apprentice tax, etc.            |
| **Côte d’Ivoire** | No additional tax on windfall profits                                                | Multiple tax exemptions including registration duties exemption on contribution to company’s incorporation and **capital increase** (research and operating permits) |
### 4.2 FAIR SHARING OF MINING REVENUE (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Additional tax burden</th>
<th>Tax exoneration and incentives</th>
</tr>
</thead>
</table>
| Guinea  | • Taxes on extraction/production of minerals deductible from taxable profits  
          • Withholding tax on non-wage income at **normal rate** and non deductible from tax on profits  
          • Export taxes at a preferential rate in case minerals processed locally  
          • Capital gains taxation in case of indirect change of control | • Removal of some tax exemptions: patent contribution, registration duties, etc.  
• New tax exemption for imports during research and construction periods  
• Reduction of tax on income derived from investments  
• Reduction of corporate tax rate |
### 4.2 FAIR SHARING OF MINING REVENUE (3)

<table>
<thead>
<tr>
<th>Country</th>
<th>Additional tax burden</th>
<th>Tax exoneration and incentives</th>
</tr>
</thead>
</table>
| Nigeria | • Companies are taxed at a company rate of 30%  
         • An Education Tax (2%) and a Value Added Tax (VAT) (5%) may also be payable.  
         • Minimum tax provision  
         • Additionally, companies are liable to pay royalties, annual service fees and annual surface rent | • Tax holiday for an initial period of 3 years from commencement of operations and renewable for additional 2 years  
• Profits earned by a mining company after the initial tax holiday period may be exempted from income tax  
• Exports are exempt from VAT  
• A company may also be entitled to claim an additional rural investment allowance on its infrastructure cost, depending on the location of the company and the type of infrastructure provided  
• A tax deductible reserve for environmental protection, mine rehabilitation, reclamation and mine closure costs shall be established by companies engaged in the exploitation of mineral resources |
### 4.2 FAIR SHARING OF MINING REVENUE (4) – Mining royalties

<table>
<thead>
<tr>
<th>Country</th>
<th>Surface royalties</th>
<th>Ad valorem royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burkina Faso</td>
<td><strong>Exploration permit</strong>&lt;br&gt;• 1st year: FCFA 2,500/km²/year&lt;br&gt;• 2nd year: FCFA 3,000/km²/year&lt;br&gt;• 3rd year: FCFA 4,500/km²/year&lt;br&gt;• 4th year et seq.: FCFA 7,500/km²/year</td>
<td>- Payable each semester&lt;br&gt;- Based on FOB value of the extracted products&lt;br&gt;• Diamonds, precious stones: 7%&lt;br&gt;• Base metals, other minerals substances: 4%&lt;br&gt;• Industrial gold, precious metals: 3%</td>
</tr>
<tr>
<td>Côte d’Ivoire (Order dated 1996)</td>
<td><strong>Exploration permit</strong>&lt;br&gt;• Granting: FCFA 1,000/km²/year&lt;br&gt;• 1st renewal: FCFA 2,000/km²/year&lt;br&gt;• 2nd renewal: FCFA 5,000/km²/year&lt;br&gt;• Exceptional renewal: FCFA 10,000/km²/year&lt;br&gt;• Exceptional renewal: FCFA 10,000/km²/year</td>
<td>- Payable each semester&lt;br&gt;- Based on: turnover - transportation and refining costs&lt;br&gt;• Diamonds, stones, precious metals: 3%&lt;br&gt;• Base metals: 2.5%</td>
</tr>
<tr>
<td></td>
<td><strong>Exploitation permit</strong>&lt;br&gt;• Granting: FCFA 50,000/km²/year&lt;br&gt;• Renewal: FCFA 50,000/km²/year</td>
<td></td>
</tr>
</tbody>
</table>
4.2 FAIR SHARING OF MINING REVENUE (5) – Mining royalties

<table>
<thead>
<tr>
<th>Country</th>
<th>Surface royalties</th>
<th>Ad valorem royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guinea</td>
<td>N/A</td>
<td>The <em>ad valorem</em> royalties varies from: 5% to 10%</td>
</tr>
<tr>
<td>Nigeria</td>
<td>N/A</td>
<td>The <em>ad valorem</em> royalties varies from: 3% to 5%</td>
</tr>
</tbody>
</table>
4.3 LOCAL CONTENT (1)

• **Goals?**
  – Ensuring effective knowledge transfer
  – Creating linkages: upstream, downstream and side-stream: proper participation of local industry and improving infrastructure and diversification

• **Tools?**
  – Local procurement
  – Local workers
  – Training of local staff
  – Employment quotas

• **An opportunity** for mining companies: pro-active companies in this area are likely to benefit from a real advantage over their competitors
### 4.3 LOCAL CONTENT (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Provisions of local content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burkina Faso</td>
<td>Detailed obligations about preference to be given to:</td>
</tr>
<tr>
<td></td>
<td>• Local businesses for any type of goods and services</td>
</tr>
<tr>
<td></td>
<td>• Local employees for the recruitment of senior executives positions</td>
</tr>
<tr>
<td></td>
<td>• Employment of local residents for work that does not require special skills</td>
</tr>
<tr>
<td></td>
<td>Training plan for executive positions for the progressive replacement of expatriate staff</td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>Authorisation to operate a mining company may require Ivorian nationals to have a participation in the company (conditions to be detailed in a decree)</td>
</tr>
<tr>
<td></td>
<td>Providing compliance with quality, price and quantity requirements, preference to be given to:</td>
</tr>
<tr>
<td></td>
<td>• Local businesses when subcontracting mining operations</td>
</tr>
<tr>
<td></td>
<td>• Local businesses for construction, supply and services contracts</td>
</tr>
<tr>
<td></td>
<td>Local preference when recruiting employees</td>
</tr>
<tr>
<td></td>
<td>Obligation to implement/at least partially fund the training of:</td>
</tr>
<tr>
<td></td>
<td>• local businesses selected as contractors to increase their capacity as providers</td>
</tr>
<tr>
<td></td>
<td>• local staff</td>
</tr>
<tr>
<td></td>
<td>• administration and geologists</td>
</tr>
</tbody>
</table>
### 4.3 LOCAL CONTENT (3)

<table>
<thead>
<tr>
<th>Country</th>
<th>Provisions of local content</th>
</tr>
</thead>
</table>
| **Guinea** | **Local employment quotas**  
• Priority to Guineans while recruiting all categories of staff and management  
• Increasing quotas contingent on category of staff/stage of the project  
• Financial penalty  
• Mandatory annual reporting  

**Training**  
• Training and development plan enabling the transfer of technology/skills to Guinean business and staff  
• Companies potentially required to fund additional staff training abroad  
• Career and progression plan for all employees  

**Local procurement requirements**  
• Preference to be given to local suppliers and service providers  
• Increasing quotas contingent on the stage of the project  
• Mandatory annual reporting  

**Local beneficiation: taxes on export of certain unprocessed mineral substances** |

| **Nigeria** | The holder of a mineral title shall:  
• emphasize the benefits in terms of job creation, education and skill acquisition for the Youths to minimize their restiveness  
• participate as much as is realizable in the social-cultural activities of the community as a means of fostering cordial relationship with the people |
## 4.4 MANAGEMENT OF ENVIRONMENTAL IMPACT

<table>
<thead>
<tr>
<th>Country</th>
<th>New provisions on environmental protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burkina Faso</td>
<td>Creation of several funds</td>
</tr>
<tr>
<td></td>
<td>• Fund for rehabilitation and safety of artisanal mining sites and combatting the harmful effects and use of chemicals</td>
</tr>
<tr>
<td></td>
<td>• Fund for the protection and rehabilitation of the environment</td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>Maintained requirement to establish a fund and pay for the rehabilitation of the environment after mining operations</td>
</tr>
<tr>
<td>Guinea</td>
<td>• Environmental and social impact study required to obtain a mining title</td>
</tr>
<tr>
<td></td>
<td>• Liability for damage caused by mining activities</td>
</tr>
<tr>
<td></td>
<td>• Requirement to establish and fund a trust for the rehabilitation of the mining site once operations have ended</td>
</tr>
<tr>
<td>Nigeria</td>
<td>• Prohibition of mineral exploration in certain areas</td>
</tr>
<tr>
<td></td>
<td>• Restoration of mines land</td>
</tr>
<tr>
<td></td>
<td>• Community Development Agreements</td>
</tr>
<tr>
<td></td>
<td>• Environmental obligations to include preparation and submission of environmental impact assessment statements</td>
</tr>
<tr>
<td></td>
<td>• Participation in the environmental protection and rehabilitation program</td>
</tr>
<tr>
<td></td>
<td>• Minister shall establish an Environmental Protection and Rehabilitation Fund for the purpose of guaranteeing the environmental obligations of Holders of Mineral titles</td>
</tr>
</tbody>
</table>
4.5 TRANSPARENCY AND CSR (1)

- Role of Soft Law in conduct of mining activities: from Soft Law to law to public interest
- Integration of concepts of CSR, human rights and transparency in national mining legislation

⇒ Enforceability of these concepts
### 4.5 TRANSPARENCY AND CSR (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Corporate Social Responsibility</th>
<th>Transparency</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Burkina Faso</strong></td>
<td>Introduction of the CSR concept and provisions on the obligations to comply with and protect human rights and rights of local communities affected by mining activities</td>
<td>The State confirms its membership to the EITI and the Kimberley Process</td>
</tr>
<tr>
<td><strong>Côte d’Ivoire</strong></td>
<td>Introduction of the CSR concept and provisions on the obligations to comply with and protect human rights and rights of local communities affected by mining activities</td>
<td>Compulsory compliance of the permit holders with requirements of the EITI, the Kimberley Process and the Equator Principles</td>
</tr>
</tbody>
</table>
| **Guinea**    | Contribution to local community development through specific taxation, development agreement and local development fund | Title holders required to publish titles and contracts, as well as to sign and comply with code of conduct, in particular:  
• EITI and Kimberley Process  
• Guinean anti-bribery provisions |
| **Nigeria**   | Introduction of the CSR concept and provisions on the obligations to comply with and protect human rights and rights of local communities affected by mining activities | Title holders must comply with the EITI No Kimberley Process membership      |
5. STRATEGIES OF COMPANIES IN RESPONSE TO MINING REFORMS

5.1 Protection: stabilisation clause, a useful but sensitive tool
5.2 Anticipation: compliance with CRS and local content
5.3 “To think of”
## 5.1 PROTECTION: STABILISATION CLAUSE, A USEFUL BUT SENSITIVE TOOL

<table>
<thead>
<tr>
<th>Current investors</th>
<th>New investors</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Relying on the stabilisation clause concerning tax and custom regime</td>
<td>Careful drafting of the stabilisation clause:</td>
</tr>
<tr>
<td>• Being firm on the enforcement of the stabilisation clause and refusing the provisions included in the new mining code but</td>
<td>• Limited scope: only tax and custom regime and <strong>never</strong> human rights or environment provisions</td>
</tr>
<tr>
<td>• Be ready to make compromises and avoid jeopardising the contract on a long term basis</td>
<td>• Renegotiation mechanism as a complement to the stabilisation clause</td>
</tr>
</tbody>
</table>
5.2 ANTICIPATION: COMPLIANCE WITH CSR AND LOCAL CONTENT

<table>
<thead>
<tr>
<th>Current investors</th>
<th>New investors</th>
</tr>
</thead>
<tbody>
<tr>
<td>• How to best comply with new mining codes requirements concerning human rights, environment, local content, CSR?</td>
<td>• Showing real cooperation and understanding of such provisions</td>
</tr>
<tr>
<td>• How to deal with existing agreements?</td>
<td>• Being pro-active for the implementation of such provisions: even in countries where the mining legislation has not changed, companies should include these provisions in mining contracts</td>
</tr>
</tbody>
</table>

Real competitive advantages and good relations with government and communities
5.3 TO THINK OF

- Bankability of projects
- Well-balanced contracts
- Adapting mind-set/attitudes
- Accepting the role of "new legislations"
- Anticipating "new sanctions"
- (Re)considering the scope of stability
- Avoiding "escalation" (crisis management)
- Grievance mechanism
- Cooperation with stakeholders (NGOs)
- Specific cultural/environmental/institutional context
- Being "creative" (e.g. SWAPs)
- Doing more training
- Improving communication ("legitimacy")
- Specific requirements of emerging countries
- Lack of infrastructure
- Expectations of local communities
- A reliable arbitration provision (as a tool)
CONCLUSION: THE 7 Ps FOR CREATING A PEACEFUL ENVIRONMENT

- Perseverance
- Perfectionism
- Partnership
- Pragmatism
- People
- Profits
- Planet