AN ALTERNATIVE INVESTMENT FRAMEWORK FOR AFRICA'S EXTRACTIVE SECTOR: A PERSPECTIVE FROM CIVIL SOCIETY

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ABSTRACT

The significant wealth of extractive resources in Africa is inconsistent with the pervasive images of income poverty and the pace of economic development in most countries on the continent. Over the last two decades, African governments have pursued extractive sector frameworks that have inherent biases based on fundamental features of colonial policies of ecological degradation, economic deprivation and dependency. These tend to consolidate the peripheral status of the continent and reinforce structures of poverty and social inequality and marginalisation. This development is not limited to the geo-politics within the continent or individual nation-states, but rather deeply connected to the terms and conditions of the global system of trade and investment. These terms and conditions are dominated by transnational corporate interests, which are intrinsically opposed to domestic policy autonomy, and therefore any effort at putting forward policy alternatives. This state of paralysis of the African State in policy choices has been the fulcrum of civil society resistance and demands for policy alternatives.

This paper explores the experiences of the Africa Initiative on Mining Environment and Society (AIMES) towards alternative approaches to investment policies in the mining sector. The paper argues that while the current global economic crises present much tougher challenges for delivering on the alternative agenda, the apparent failure of state mining policies to achieve economic transformation and recent mining reforms agenda provide opportunities for an alternative agenda. African civil society working with allies and partners in the global south and north provide strategic levers for sustained campaigns and pressure for the delivery of an alternative agenda to current state mining policies.

The paper is divided into five parts. Part one provides a brief historical context of extractive industries in Africa to provide the basis for understanding the need for alternatives. Part two describes the context of push back and calls for review and change of policy by African governments. Part three demonstrates substantively the AIMES alternative framework and how/what it contributes to the debate on social justice and mining. Part four analyzes the possible friction of the alternative agenda to existing laws and commitments particularly relevant to Canada including bilateral investment treaties. The paper concludes with a proposal for North-South collaboration in support of the alternative agenda.

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I HISTORICAL CONTEXT OF EXTRACTIVE INDUSTRIES IN AFRICA AND IMPACT ON THE ENVIRONMENT AND COMMUNITIES

This part of the paper underlines the strategic importance of mining in Africa. It briefly examines the historical evolution of the sector in relation to the key players and the impact of mineral resource extraction on the environment and local communities.

Importance

Extractive resources such as metals, minerals, oil, gas, forests, non-forest products, and fisheries play a key role in the social development and economic transformation of Africa. Mineral resources are particularly central in the developmental and transformative process within local communities and nation states in Africa and the rest of the world. The centrality of mining in the political economic relations in Africa and between Africa and the world is not accidental. Africa is endowed with, and a major supplier of, a variety of minerals to the world. In an article entitled "African Mining: A Light at the End of the Tunnel" Ericsson (1991), underlines the importance of mineral resources to the countries of Africa when he argues that: "Mineral exports contribute between 25 and 90 percent of annual export earnings of 13 countries: Botswana, Ghana, Guinea, Liberia, Senegal, Mauritania, Namibia, Niger, Central African Republic, Sierra Leone, Zaire, Zambia, and Zimbabwe.

The position of the continent in the geography of mining has historically been quite strong, both in terms of potential mineral reserves and in terms of its relative contribution to global production and trade. According to Metals Economics Group (2008), Africa receives 16 per cent of the total worldwide mineral exploration budget of USD9.99 billion for 1821 companies for the period 2003 to 2007. The rest were distributed as follows: Pacific South East Asia 4%; United States of America 8%; Australia 12%; Canada 19%; Latin America 24%; and the rest of the world 17%. Table 1 gives a global ranking of Africa's mineral production and reserves for seven selected minerals.

Table 1:
Africa's Ranking in Selected Minerals (2005)

Mineral	Africa % of World Production	Rank	Africa % of World Reserves	Rank
Platinum	54	1	60	1
Gold	21	1	42	1
Chrome	40	1	44	1
Manganese	28	2	82	1
Vanadium	51	1	95	1
Cobalt	60	1	55	1
Diamonds	78	1	88	1

Source: African Development Bank, 2007

In addition to the huge potential for large-scale industrial mineral reserves, there are numerous world class deposits with proven reserves for small-scale mining. The International Labour Organisation-ILO (1999), estimates that within Sub-Saharan Africa, Small Scale Mining produces gold and gemstones worth about US$1 billion. Estimates show that small scale mining accounts for 70% of all mineral export earnings in Tanzania in 1992; about 80% of Zambia's emeralds production; and 15% of gold exports in Zimbabwe in 1999. The activities of small-scale mining provide considerable employment to rural communities across Africa. This is an area with huge economic potentials in terms of addressing rural unemployment and income poverty. Minerals such as kaolin, diamonds and gold easily lend themselves to small-scale mining. This method of extracting minerals is wide-spread in Africa because it has been historically consistent with community livelihood and coping strategies, and makes use of marginal reserves that would otherwise be classified as uneconomical.

Sketch of Historical Perspective

This section discusses the context and practices of mining in Africa and argues that the continent's painful history has significant implications for how investment alternatives should be understood and implemented. On the one hand, big business and their home governments have been implicated in mineral resource expropriation and environmental degradation. On the other hand, local political elites, in collaboration with international financial institutions, created the appropriate space for accelerated mineral resource capture while diminishing state capacity to regulate and protect the environment and community interests. The section describes the historical progression of the ascent of corporate power and the diminution of citizens' policy space.

The strategic importance of the mineral wealth of Africa has been a major factor for linking the continent to the global political economy. Africa's mining tradition has gone through different stages of historical development from pre-independence through post-independence era up to early 1990s, and the period of Structural Adjustment Programme (SAP) from early 1990s to date. Throughout these periods, mineral resources have been a major factor for the scramble for Africa and its integration into the global political economy. Rodney (1972:167) points out that "from the very beginning of the scramble for Africa, huge fortunes were made" from mining and so investments were mainly concentrated in "mining and finance where the profits were greatest."

In the early part of pre-independent period, the mining sector was dominated by indigenous small-scale miners whose activities were regulated by the customs and traditions of specific populations or pre-colonial empires. Unless deliberately discouraged, small-scale indigenous miners carried out their operations wherever suitable minerals existed, and did so using traditional techniques and panning technologies consistent with customs, agriculture and other coping strategies. They used their proceeds for customary purposes, as a store of value and decoration.

The structure of the industry was given a twist when private indigenous producers established commercial ties with the Arab and Moor traders of North Africa and the Middle East through the Trans-Saharan Trade Routes. This trade route, which took place around the 9th and 10th centuries, involved constant trade in various goods including minerals, in particular gold from mainly West Africa. It is reported that the Moors of northern Morocco and the Arabs were traders in gold from West Africa across the Sahara on caravans to ancient cities such as Cairo, Tunis, Algiers and Damascus. Ayensu (1997) reports that when the King of the Mali Empire Mansa Musa, who ruled between 1307 and 1332, made a pilgrimage to Mecca, he took along with him 500 slaves and so much gold that after he left the Middle East, gold prices in Cairo took three years to recover and get back to their old levels.

Much of these minerals-- carried across the Sahara from West Africa into North Africa and several Arab countries in the Middle East-- also found their way into Europe through trade relations. Agbasinyale (2004) reports that the Portuguese learnt about gold and other wealth in West Africa from the Moors when they captured the North African coastal town of Ceuta in 1415. This knowledge inspired Portuguese voyages on a journey to West Africa in search of gold and other wealth. The Portuguese were soon followed by a host of Dutch, Danish, French, Spanish, English and Belgians entrepreneurs.

An expansion of European imperialism out into Africa led to a collapse of the Trans-Saharan Trade and a change in the key players involved in the mining sector of Africa. These early commercial ties resulted in the establishment of colonies in the continent. European companies and governments with immediate and long-term economic interest in the extractive resources of Africa grabbed whatever they thought spelled profit and value for their economies. They subsequently ran up their flags in different parts of the continent to establish their political dominance in order to guarantee uninterrupted commercial influence over Africa and its resources. During this period, the development of the mineral sector was governed by terms and conditions that were determined by European economic and political interests.

According to Tsikata (1997), British mining interests were a significant source of influence on the Colonial Office in London and its representatives in the territory, and shaped the formulation and implementation of mineral policy in the colony. The First World War, for instance, stimulated demand for strategic minerals such as copper, bauxite, and iron. This resulted in increased investment in infrastructure in the colonies to promote access to more extractive resources. Based mainly on indigenous labour, numerous mineral deposits were discovered and rediscovered during the latter part of the nineteenth century throughout Africa. Indeed, Anglo-American Mining Corporation was both a commercial company and a quasi-colonial administrator in charge of parts of northern and southern Rhodesia (present Zimbabwe, Zambia and parts of Malawi and Tanzania). While Anglo-American was freely expropriating domestic labour, it was also in charge of collecting land poll tax from the indigenous people.

The character of the mining sector and the industry changed from the dawn of independence up to the early 1980s and mid 1990s. The new African States declared permanent sovereignty over mineral resources and progressively increased their ownership and control of the industry. This declaration was in line with world-wide trends set by newly independent developing countries. Walde (1983), points that the period between 1965 up to 1980 was characterised by the declaration of permanent sovereignty over natural resources by developing countries, primarily through large-scale nationalisation of mineral extractive facilities, the renegotiation of existing arrangements, and the creation of state enterprises and numerous commodity producer associations.

During the immediate post-independence years, one of the priorities set by young African states that emerged from the anti-colonial struggle, was the construction of strong, united and economically viable nations. This goal was to be pursued through nationalisation of strategic sectors of the economies that had the potential for transforming anti-colonial nationalist fervour into a force for the integration and development of societies , which had been fractured into multiple ethnic and cultural groupings by the colonial divide-and-rule system. In view of its strategic value, the mining sector was particular critical in pursue of this goal. The sector has the potential for providing jobs, government revenue, and foreign exchange earnings, among others. However, the declaration of permanent sovereignty over mineral resources by newly independent African States did not necessarily translate into optimising the benefits of mining for Africa and its people. After an initial partial success, the post-colonial experiment quickly revealed fault-lines in the strategy of State construction and economic transformation.

While newly independent African countries found themselves in the euphoria of political liberalisation, most of them unfortunately did not go beyond the affirmation of independence and nationalisation to reflect on the more critical question of what are the economic and political terms and conditions under which the African state can operate free from external pressure? Secondly, how should the effort of state construction link and integrate domestic models of production? They all continued to retain and operate an export-led economic strategy based on primary commodities including minerals.

The increased dependence on exports of primary commodities including minerals results in increased exposure to commodity price volatility. Price volatility has often been worsened by the development of substitutes and the consequential fall in demand for some minerals. The mining sector on the continent has therefore been characterised by extremely enclave production, and limited domestic processing and value-addition, which are some of the requirements for catalysing and sustaining growth and development. The situation was compounded by the inefficient management of state-owned mineral corporations. To this extent, the autonomy of the African State with respect to mining has been limited only to ownership, while transnational corporations and markets outside Africa continue to be the main beneficiaries. By the 1970s, long-term debt had become a predominant source of financing African economies.

By the early 1980s as a consequence of the debt crisis, long-term debt as a source of financing African economies became relatively less important. Developing countries, which had been often hostile towards foreign direct investment (FDI) at independence, and sought to control transnational corporations through nationalisation and other regulations, were seen falling over themselves to attract as much FDI as they could in order to avoid further accumulation of foreign debt. By the 1990s, FDI has emerged as a predominant source of external finance for developing countries. Africa recorded a quantum leap in FDI from a mere US $11billion or so in 1970 to more than US $80 billion in 1980, to over US $100 billion in 1990.

The shift in developing countries' stance toward FDI was influenced by the process of economic and political globalisation. The process of globalisation has entailed extensive liberalisation of key sectors of the economies of developing countries to facilitate the movement of transnational capital. It has also entailed a diminution of the role of the state as catalyst for economic transformation and development. By the mid 1990s, most African governments had, under the aegis of the International Monetary Fund (IMF) and the World Bank Group (WBG) including Bilateral Agencies, liberalised their economies. The mining sector was a key part of the reforms. Significant policy and institutional reforms were introduced in the sector favouring investor confidence and protection such as the privatisation of state mining assets, complete divesture of state-owned mines to private corporations, and the legislation of incentive schemes for foreign private investors.

Impact on Communities and the Environment

Mining has well-known adverse impacts on communities and the environment. Despite the fact that particular mines may occupy a relatively small portion of land surface, they have significant and often irreversible adverse impacts on the environment throughout the life-cycle; from exploration, development, production, processing, and decommissioning. Some of the major impacts are acid mine drainage, dewatering effect, removal of vegetation causing soil erosion, pollution of water, energy consumption throughout the life of the mine, public health and safety, climate change by reducing carbon sink material, loss of cultural or archaeological heritage sites, loss of biodiversity, and effects on populations at up-and down-streams.

Local communities suffer varied and complex adverse impacts of mining. Some have suffered militaristic attacks. Many have lost their property and land in return for a pittance as compensation. Thousands of communities have been displaced and angled out of their livelihood sources by large-scale mining companies. To a great majority of communities, the lived history of corporate mining is as an instrument of destruction, exploitation, and alienation from history, culture and livelihoods. In most cases, attempts to address the concerns of communities and the environment appear nebulous, ad-hoc and limited to technical fixes. Environmental and community issues have often been on the margins of policy since a corporate culture of mining emerged in Africa.

The current era of liberalisation represents a high point in the continuity of community concerns and environmental liability arising from the corporate culture of mining. The logic of liberalisation has put many African states and governments in a situation that constraints their ability to effectively regulate and optimise the benefits of their mineral resources. Within the framework of the logic of free trade and investment, most African governments prioritise transnational corporate interests over and above citizens' concerns and the environment. This explains why mining companies line-up with the machinery of the state on a routine basis, subjecting local communities and the environment to exploitation through land acquisition and low compensation.

In many cases, state machinery has been deployed to supervise the demolition of houses and homes, the displacement of whole villages from their farms and lands, the destruction of water resources, and payment of pittance as compensation. For example, in Ghana, between 1990 and 1998, the development of large-scale gold mining in Tarkwa led to the displacement of 14 communities with an estimated total population of more than 30,000 men and women (Akabzaa, 2000). The development of Sadiola Mine in Mali has resulted in the resettlement of eight villages. A Canadian company is part-owner of this mine. In December 2007, a community group known as Affected Property Owners Association (APOA) organized a peaceful protest in Tankoro, Kono District, Sierra Leone against Koidu Holdings and the Government of Sierra Leone for demolition of houses without compensation. The Network Movement for Justice and Development alleges that the following year repression against protesters in Freetown resulted in the death of two people and serious injuries to eight others (NMJD press release, November 2008).

Every large-scale mine in an African community reflects the strong presence of both the State and mining companies, who see the investment as a valuable project that must proceed without dissent. Indeed, one of the disorganizing influences of large-scale mining investment on rural communities and the environment is the appearance of state power coupled with its drastic redesign of the livelihoods of local people and their relationships to natural resources, which are central to their identity and culture.

Mining companies, for their part, rationalise their practice, by introducing and or redefining concepts to display a sense of compassion to the public and local communities. For example, while resettlement, excavation of heritage sites, and land acquisition constitute obvious acts of alienation, *corporate citizenship* has become a daily phrase in companies' public relations. In addition, even when some companies demonstrate gross intransigence in their practice towards communities and the environment, they turn round to institutionalise corporate social responsibility. Corporate Social Responsibility (CSR) projects have been therefore a key strategic corporate response to community issues across Africa.

CSR initiatives come in different forms and shapes including scholarships, buildings for schools and clinics, reshaping of access roads, construction of fish-ponds and markets, and tree planting. However, many communities describe these projects as marginal replacements to what they have lost, and view the projects as grand corporate design intended to demystify the real character of the industry. The projects are also seen as inconsistent with the social and economic organisation of the people.

The precarious situation of local communities, the repressive response of the State and mining companies to legitimate concerns, the images of damaged environments, human rights violations, and poor balance sheets have led to a questioning of the legacy of mining and the use of mineral resource wealth. This questioning is manifested in a variety of struggles for the protection of the environment, for land, community livelihood, human rights, a voice in public policy, improved distribution and management of mineral resource revenue, as well as access, ownership and control of mineral resources.

These struggles have historically taken many forms across Africa and constitute a particular approach to resolving community grievances and enhancing quality of life. The struggles range from belligerent acts as in the Niger Delta region of Nigeria through protest, self-mobilising, coalition and alliance building, enlisting the support of experts, and intervening in policy and political processes. Recent developments in the mining sector at the global, regional and country levels have expanded the constituency of the struggle beyond communities and non-governmental organisations to include governments, policymakers and international institutions. This twist of events has re-introduced and re-profiled the debate for reforms of Africa's mining sector.

In Ghana, civil society organisations and communities have come together under a coalition known as the National Coalition on Mining (NCOM) as a particular response to affect policy making on mining. A similar grouping exists in Sierra Leone, and there is the Pan-African version: the Africa Initiative on Mining, Environment and Society (AIMES). There are also examples of sustained community resistance to specific projects as in South Africa, Congo Republic, Kenya, Tanzania, and Malawi. Communities in South Africa have launched long-standing cases for compensation against asbestos companies. The Endorois minority ethnic group in Kenya , after having exhausted domestic remedy, has been battling the government of Kenya at the Africa Commission over an arbitrary takeover of their land for a national park and for mining. A group of civil society in Malawi have, since 2004, been resisting proposed uranium exploration activities in the country for lack of information on potential radio-active impacts. Unfortunately, most of these struggles do not receive sustained attention of the western media.

II THE REFORM AGENDA

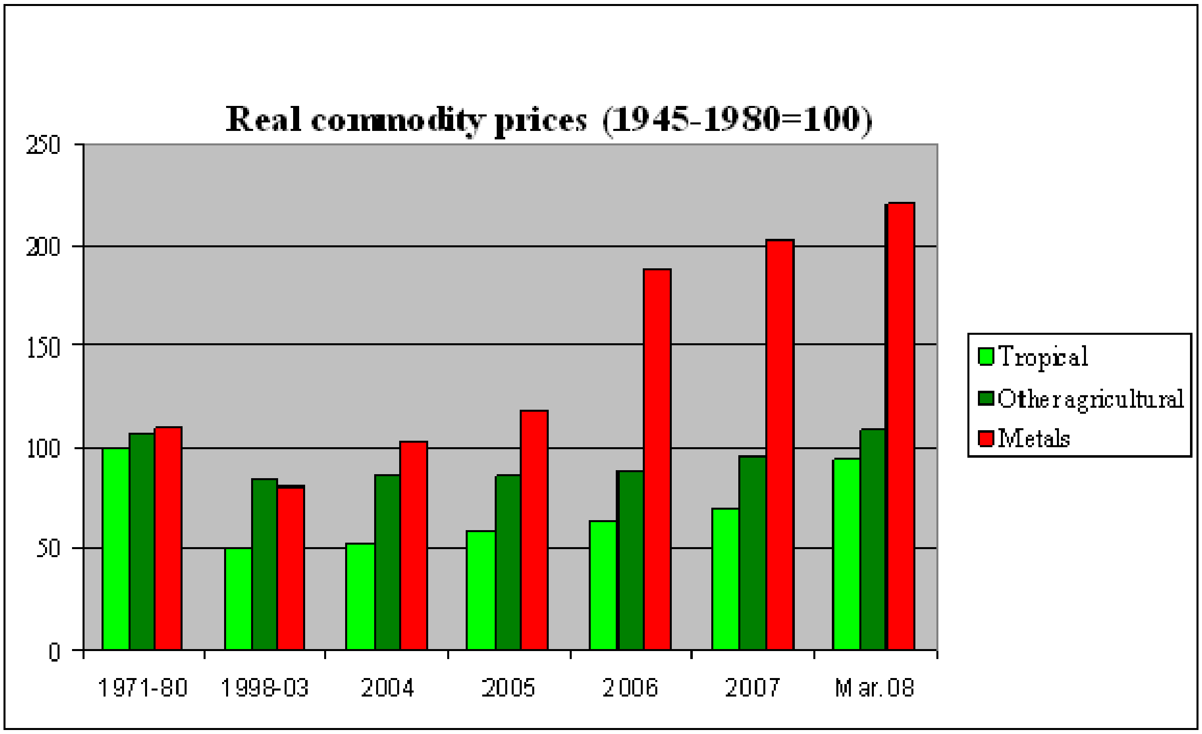
In a debate about the future development of policy alternatives for Africa's mining sector, it is important to locate the discussion in the context of processes taking place at international and country specific levels. In spite of the dominance of the neo-liberal agenda, there are important processes taking place which seek to challenge this agenda including processes at the Africa Union (AU) and United Nations Economic Commission for Africa (UNECA. These processes affect the possibilities for alternatives and illustrate some of the important pull and push factors for continuity and reforms.

One of these important processes is the impasse in the Doha Round of trade liberalisation of the World Trade Organisation (WTO). Launched in Doha, Qatar, in 2001, the Doha Round was an expansive agenda of liberalisation covering some 16 areas in the international trade regime. However, popular resistance, in alliance with the extreme misgivings of governments of developing countries, helped collapse both the Seattle and Cancun Ministerial Meetings in 1999 and 2003. With these collapses, the Doha agenda was reduced to only four items, three of which are key: Services, Industrial Products and Agriculture. Since then, negotiations over these items have constantly produced one dead-lock after another, leading to a complete stagnation of negotiations, with some calling for an indefinite suspension. The shrink in scope and repeated collapses of the Doha Round has a bearing on policy alternatives in terms of the possibilities for policy space that exist particularly for countries in the south.

The rise and emergence of new economic powers in the South such as China and India is also relevant to discussions on policy alternatives. New economic friendships and relations are being re-configured as China and India expand their economic interests into Africa's mining sector. There are also important political and policy reforms underway in mineral and petroleum countries like Venezuela, Bolivia and Peru, which have a bearing on future alternatives. Both the emergence of the new powers, and the challenges they put to neo-liberalism and the established powers provide important lessons and possibilities for reforms and alternatives.

In Africa, there are similar processes with direct consequences for policy alternatives for Africa's mining sector and investment relations. Ten or fifteen years ago, it was almost like treason to call for reforms of African liberalised mining codes. There appeared to be no force to limit the scope, let alone to stop the unbridled liberalisation of the mining sector in Africa. Now, long years of resistance and the commodity price boom of 2008, (in particular minerals), have begun to push even the traditional champions of neo-liberalism towards recognizing that the model is not what it was taken to be. The World Bank Group has acknowledged on several occasions and platforms, in particular through the Structural Adjustment Programme Review Initiative (SAPRI) 2002, and the Extractive Industry Review (EIR) 2003 that Africa has not benefited from its huge mineral wealth. Since these two reports, among others, the Bank has been re-aligning and seeking refuge under voluntary initiatives such as the Extractive Industry Transparency Initiative (EITI), reforms of its environmental and social safeguards, and demand for tighter guidelines from its customers on how benefits trickle down to local communities.

In 2008, the price of Africa's strategic commodities: metals, minerals, oil and natural gas experienced a historic rise. African Agenda (2008) reports that the price per tonne of copper rose from US$1,560 in 2002 to US$6,620 by the third quarter of 2006, and to US$8,000 by the middle of 2008. Gold went up from an average of US$455 per ounce in 2005 to US$920 in February 2008. In July 2008, a barrel of oil was sold at US$149 representing about 15 times rise over 1999 price. Figure 1 shows the evolution of real commodity prices, including metals up to March 2008.



Source: http://www.rgemonitor.com/latam-monitor/252557/this_is_a_boom_of_mineral_not_agricultural_prices.

The graph shows very high metal prices (in red). They are double the post-war average in 2007 and more than double that average in March 2008. There are only a few years where real metal prices were as high – indeed only one, 1916, in the midst of the First World War.

Unfortunately, the windfall expected by African governments eluded them due to inadequate fiscal regimes. While the mining industry described the mineral price boom as 'good times rolling', African governments did not see a correlative increase in their mineral revenue. Disappointed with the failure to capture the windfall despite years of dedicated liberalisation, and emboldened by the price boom, a number of African governments called for review of various contracts and or specific fiscal provisions in their mining and minerals agreements and codes. In particular, governments of the Democratic Republic of Congo, South Africa, Tanzania and Zambia have amended their mining tax legislation or contracts in order to increase their revenue from mining rents.

In the specific case of Zambia, the move to renegotiate mining contracts started long before the 2008 boom and was expected to conclude in 2007. The move to renegotiate was necessitated by a six year surge of copper and other base metal price on the world market. An interview with a Member of Parliament of Zambia indicated that the renegotiation was stalled and could not be concluded in 2007 due to unwillingness on the part of the mining companies. The copper price boom in 2008 inspired a re-launch of the negotiation. The renegotiation was preceded by policy reforms. By April 2008, the Zambian Parliament passed the Mines and Minerals Development Act No. 7, 2008, which repealed the Mines and Minerals Act of 1995. The new Act

No. 7, 2008, imposed slightly higher taxes than the Mines and Minerals Act of 1995. For instance, it raised royalty for metals including copper from 0.6% to 3% of gross value; gemstones or precious metals from 3% to 5% of gross value; and minerals other than base metals and precious metals introduced at 2% of gross value. In addition, corporate tax was increased from 25% to 30%. The Law also introduced Annual Operating Permits and provided a requirement for all mining licenses to lapse in April, 2009. These legal provisions compelled the mining companies to come back to the table for re-negotiation of investment agreements with the Zambian government.

The lived experience of over 20 years of liberalisation and the national processes of reforms inspired the United Nations Economic Commission for Africa (UNECA) to launch a mining policy reform agenda for Africa. In the 1980s, the UNECA tried to generate policy alternatives for Africa. The institution was later captured in the mono-culture policy syndrome coming out of Washington. Under the leadership of a former World Bank employee the ECA became a real centre of policy sterilization, maintaining a neo-liberal paradigm for Africa. Today the Commission not only recognises the need for policy reform for Africa but is also leading the process for mining policy reform for Africa.

In February 2007, the UNECA, in collaboration with the Africa Development Bank (AfDB) organised a meeting dubbed "*the Big Table"* in Addis Ababa, Ethiopia. The meeting brought together Ministers and senior officials from eleven African countries and high-level representatives from the Africa Union (AU), Organization for Economic Cooperation and Development (OECD) countries, the International Monetary Fund (IMF), and the World Bank. The main purpose of this meeting according to the Big Table Report was "to advance discussions on the challenges of effectively managing Africa's natural resources for growth and poverty reduction on the continent". "It also discussed an agenda for future action."

According to the Summary report (2007), the meeting provided a platform for "*a frank and honest exchange of ideas on five main themes pertaining to natural resources: Governance; Ownership, Participation and Intergenerational Equity; Bargaining Power, Value and the Role of Emerging Global Actors; Environmental Stewardship; and Capacity, Partnerships and Regional Integration".* The meeting concluded that despite Africa's unique position with regards to mineral resource potential coupled with its dedication over many years to liberalization, the continent did not gain the best possible benefits from the exploitation of these natural resources. In view of this, the meeting called for urgent action to evaluate the African experience in natural resource development and make recommendations for ways to ensure that natural resources contribute to the economic and social development of African societies in a sustainable and equitable manner.

A draft paper of the UNECA stipulates that the specific objectives of the review are to:

- ❑ Develop as comprehensive and up to date a compilation of the principal elements of the regimes governing mineral operations in Africa;
- ❑ Provide an authoritative overview of the key elements of these regimes;
- ❑ Summarise any trends that they reveal;

- Make a comparison with developments in other mineral-producing regions of the world;
- Identify evident weaknesses in the African regimes and propose remedies;
- Indicate major issues in controversy or of concern, known facts and positions on these issues and either make recommendations to resolve them or suggest what further work needs to be done to advance informed resolution; and
- Develop a toolkit to assist policymakers and government negotiators involved in formulating or implementing a regulatory regime or in negotiating agreements for mineral operations.

To deliver on this objective the UNECA on the recommendations of the Big Table established an International Study Group (ISG) with a diverse group of experienced professionals and practitioners of Africa's natural resources. The ISG was given the task of organizing content under the specific objectives, and forging an agenda for the reform process. Work of the ISG led to the formulation of a draft **Africa Mining Vision 2050** by the ECA for the adoption and implementation of African Governments.

Essentially, Africa Mining Vision 2050 calls for two fundamental reforms. The first relates to improvement in current practices through upward adjustment of fiscal regimes, environmental standards, better coordination and management of mineral wealth. It also relates to issues of backward and forward linkages, greater retention of revenue generated from mining, value addition, technology transfer, and increase in local content. The second relates to diversification to lesser known minerals and metals most of which are consistent with the traditional mode of production in African societies. In October 2008, the Africa Union (AU) in collaboration with the UNECA convened the first ever ministerial meeting on mining to discuss and adopt the Africa Mining Vision 2050. The Ministers eventually adopted the vision 2050 as the property of the AU pending ratification by the Heads of States and Governments of Africa.[1]

African Civil Society Perspectives on the Reform Agenda, in particular, the UNECA Process

Before offering a brief description of African civil society perspectives on the UNECA process, it is first necessary to specify the history of collective struggles by African civil society in the context of the Africa Initiative on Mining, Environment and Society (AIMES). Founded in 1999 at a conference organised by Third World Network-Africa, AIMES has been a network of African organisations and individuals in association with their global partners in the north and south engaged in extractive sector advocacy. It offers a framework for collaboration to promote and strengthen collective actions that advance community interest, environmental sustainability and development in relation to the extractive sector, in particular mining.

[1] The political question that arose however was whether there was the need for a new secretariat to be created under the AU to take care of the Vision 2050 or to use the Africa Mining Partnership as the secretariat. This question was not resolved at the meeting and was therefore deferred to the next AMP meeting in February 2009.

In the last ten years of its existence, members of AIMES have been engaged primarily in resistance. Resistance to community exploitation and livelihood destruction, ecological degradation, violation of human rights, economic deprivation, and other forms of economic and social injustices perpetuated in the extractive sector. The resistance agenda has put into sharp relief on the regional, continental and international stage, the broader and fundamental issues of how unmitigated extraction of Africa's rich resources has not been to the benefit of local communities and the continent, but to multinational mining corporations.

Today, there is an extension of the resistance agenda to include more conscious alternatives for Africa's mining sector. Participating members offer specific policy briefs and discussions that point to alternative directions. For instance, calls for the re-introduction of specific taxes such as capital gain tax and windfall taxes as well as the abolition of confidentiality for environmental audit reports are examples of some of the specific alternatives. Also, calls for human rights standards as criteria for project approval, and also national and regional strategies for the development of the mining sector are examples of systemic alternatives.

Two main issues motivated the expansion beyond resistance to alternatives. The first is a convergence of opinion about the marginal contribution of mining to the development of African societies. By the close of 2006, there was recognition by all actors including the main architects of the neo-liberal project that Africa and its people benefited marginally , if at all, from their rich mineral wealth. Indeed, many African countries have been harmed significantly. However, a convergence of opinion regarding the lack of developmental benefits to Africa does not necessarily mean an agreement about how to address the anomaly of the development model. To this end, it was important to develop alternatives alongside the resistance agenda. The second is the global, regional and country specific processes of reforms, in particular the re-emergence of China into Africa's extractive sector, and the commodity price boom and its accompanied calls for contract reviews.

The AU-UNECA process took off at a time the debate about policy alternatives was alive among African civil society particularly members of AIMES. To this end members of AIMES viewed the AU-UNECA process as a regional site and a particular political moment to deliver on their agenda for resistance and reforms: an agenda that offers alternatives to the current development model, the current fiscal regime and the wide scope given to companies that ensures that Africa benefits the least from its mineral resources.

To facilitate delivery on this agenda at the process, AIMES first established contacts with the UNECA, which is the secretariat of the process, and some members of the ISG. These contacts enabled the secretariat of AIMES to understand the content and direction of the agenda. With this knowledge, the secretariat of AIMES took a number of steps. The first was to constantly disseminate papers and documentation on the process to members as a way of up-dating and improving their knowledge on the issues. Then a space was created at the AIMES annual meeting in June 2008 to discuss the process in order to formulate common positions and strategies. Subsequently ten members of AIMES participated in the Ministerial held in October 2008.

Intervention by AIMES at the Ministerial was at three main levels. At the first level, at a meeting of experts, AIMES presented a technical paper: '*The status of mineral development in Africa: key issues'*. This presentation outlined fundamental issues that should be addressed in reforming the mining sector on the continent. Some of the issues are unity against inequity, building democratic-citizens' engagement for change; revitalize the role of the legislature, and the role of citizens and CSOs in mining policy making from state through regional, to continental processes. The presentation generated a lot of interest and debate. The second level consisted of small group meetings. During this session members of AIMES again intervened by clarifying the impact of the industry on local communities and the role of CSOs/NGOs. They questioned the shrunken role of the state in most African countries, and pointed out that corporate social responsibility should not be substitute for the role of the developmental state. The third level was the Ministerial session. Members of AIMES worked through policy officials for the adoption at the Ministerial of two of its positions, (on FDI and FTAs), and worked to see these incorporated into the final communiqué adopted by the ministers.

A follow-up meeting to the ministerial was organised by TWN-Africa in November 2008. This was meant to further explore alternatives to State mining policy and practice, while offering space for disseminating the outcome of the ministerial. This leads to the question: What is the alternative framework put forward by AIMES and in what way does it contribute to the debate on social justice in Africa's mining?

III AN ALTERNATIVE FRAMEWORK AND HOW / WHAT IT CONTRIBUTES TO THE DEBATE ON SOCIAL JUSTICE AND MINING

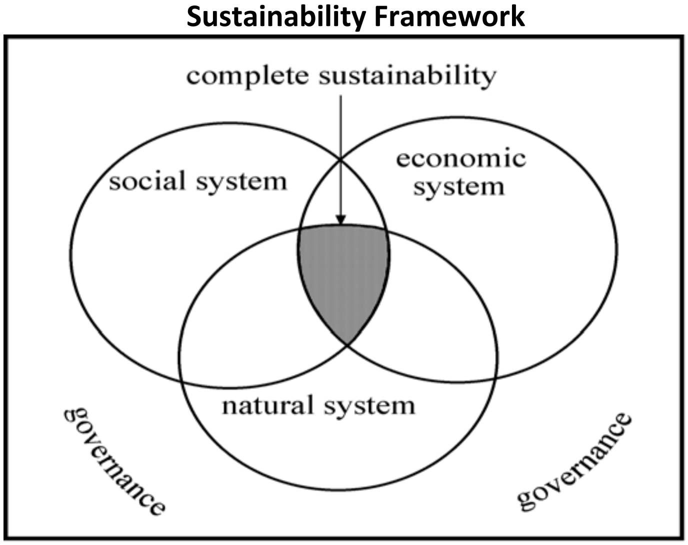
Promoting and ensuring social justice in mining requires recognition of a balance of opportunities to all actors, in particular the three principal actors-communities, State, and mining companies. It also requires ethical investment i.e. investment regime or model that promotes and ensures a balance of the economic, social, and environmental objectives, from policy and regulatory design to their implementation and monitoring. The optimal benefit of any single mine investment or the totality of mineral resource extraction must meet the requirements of the commonly-used sustainability framework (Triple of the triple bottom line). The sustainability framework requires recognition of a diversity of interests and ensuring balanced relationships between and among economic prosperity, social well-being and the natural system. This recognition is central to whether mining and particular extraction technologies and methods receive approval, and whether particular interest is subordinated in order to maximise any other interest.

Over the last twenty years of the liberalisation of mining in Africa, the process of decision-making, policy frameworks and institutional practices have ignored such a sustainability framework. African governments have consistently made rules and policies that strongly favour the profitability of mining companies, with very limited attention to fundamental questions of equity, diversity, human rights, and ecological protection. Decisions are made or framed and operated essentially on a set of values that place corporate profits at the top of a hierarchy, and does not take into account crucial social, human rights and ecological norms.

From the onset of liberalisation, the mining sector was decoupled from the national investment codes of individual African countries. While the sector was isolated for greater attention, the capacity of the State to regulate corporate behaviour and to provide leadership for balanced relationships between and among actors and objects of production was completely diminished. At the same time, mineral codes did not make compelling provisions for addressing the natural system or the social costs of mining, including provisions for human rights protection and promotion. Indeed, most of the environmental safeguard measures that followed came much later and emphasised only mitigation measures to the physical environment without connecting such measures to the social and political realities of African societies. Also, while human rights standards already exist, they are not reflected in the policies, laws or practices of national governments or corporations. The result of this lopsided approach to Africa's mineral sector has been frequent and widespread social conflict of different levels of intensities, heightened environmental problems with attendant health problems, and economic marginalisation of citizens and governments of mineral endowed African countries.

The AIMES alternative framework takes as its starting point the sustainability analysis that posits all actors and objects of production in a complex relationship as opposed to a linear hierarchy. The framework focuses extractive sector policy making at the level of the state as the locus of struggle for change. Figure 2 demonstrates this relationship and the requirements for achieving sustainability. In Figure 2, each of the systems represented by a circle consists of its own imperatives. The social system provides structures, institutions and mechanisms, which guarantee and sustain the values that people cherish such as respect for human rights, equity, gender equality, justice and fairness.

Figure 2:
Sustainability Framework



Source: Adopted from Maponga Oliver, 2008

The economic system must ensure and maintain adequate material standards for prosperity through work. Within this system, for instance, each of the three principal actors i.e. communities, State and mining companies have separate interests with respect to mining. While local communities may be interested in safeguarding their livelihood, mining companies will be keen in profit maximisation, and the State for maximum revenue. The natural system must remain within certain limits capable of functioning as the supply depot and the repository of all manner of wastes in perpetuity. The realisation of one or more imperatives from one system should not come at a cost within the system or to the other systems. Sustainability is therefore attained when the relationship between actors in the mining sector lead to a simultaneous satisfaction of economic prosperity, maintenance of quality environmental outcomes, and promotion of social equity including respect for human rights and gender equality. This is shown by the shaded portion in Figure 2.

The complete sustainability in Figure 2 is attained through, as Paehlke (2004) puts it "the construction of valid, objective, and agreed upon" indicators which have meaning and are sufficiently valuable to each actor in the development process. This is because economic prosperity, social well-being, and quality environmental outcomes vary and mean different things to different actors. The State, and therefore the African state is central in providing leadership for the process of constructing the valid objectives and arriving at the agreed upon indicators for each system. This role of the state is represented by the rectangle in Figure 2.

Although this framework was adopted as an incomplete document for further collective work and for application in country-specific, and /or mineral-specific contexts, it provides an important set of broad principles valuable for an alternative agenda. It also animates the debate for alternatives by putting forward critical arguments for optimising the benefits of mining to African societies through sustainable development.

By putting out the state as the locus of struggle for change, the framework is calling for an increased role of the state in the planning, development and regulation of the mining sector in Africa. The current strategy in which the state takes a back-stage and allows "market forces" to determine and regulate mining is unacceptable. The history of economic development of nation-states shows that markets are created and shaped by social institutions including state policy and legal regimes, and therefore that "free" market forces is a creation of neoliberalism. A stronger role of the state raises the issue of the type of role expected of the state.

Both the increasing role of the state as well as the process of constructing and reconstructing valid objectives, underscores the central struggle for building a strong culture of citizenship and upholding the rights of all actors in relation to public policy choices and the extraction of mineral resources. This suggests a holistic view of mineral sector development process, which affects and encompasses all manner of interests and rights. Therefore, policy choices-- and decision-making in general-- must consider, acknowledge and incorporate different worldviews and practices and avoid all and any form of capture. These considerations must apply equally at all times and at all levels.

These considerations also draw attention to the need for policy, law and practices to appreciate, capture and uphold the rights of all people and the need for the protection of the environment. This point suggests that the human rights principles stipulated by various Conventions and Charters such as the African Charter on Human and Peoples Rights and the United Nations Convention on Indigenous Peoples should form the basis for setting investment agreements, operating standards, as well as institutional and corporate practices in the extractive sector. This means a departure from the current practice where international "best practices" only refer to fiscal incentives, investment protection (Including stabilisation clauses)and preferential treatments for corporations, without recognition of international human rights standards as key pillars. Where these are recognised, they are diminished and left in the fray of voluntary applications.

In addition, by demanding a balance of social, ecological and economic objectives, the framework is calling for an integrated mineral development strategy within which the role of mining could be defined. This calls for a departure from the current enclave production model, which is being perpetuated and practiced across Africa.

The idea of a "balance" points to a number of fundamental organising principles as bases for public policy choice and institutional practices. These principles include equal opportunities, accountability, justice, fairness, transparency, safety, the precautionary principle, participation, and equity of gender, class, and intra and inter-generation.

Applying this framework in practice involves a number of challenges, particularly in authoritarian regimes and conflict endemic countries. The return of many countries in Africa to democratic rule, including hitherto endemic conflict countries provides an opportunity for democratic engagement.

IV CHALLENGES TO THE REFORM AGENDA

Securing support and implementation for the alternative agenda will raise a number of challenges, some of which are summarised as follows: A number of international treaties on trade and investment impose severe challenges to the reform and alternative agenda. These treaties are known to be instruments for repositioning and retaining the existing imbalance of bilateral and global economic and political relations between the north and the south, particularly Africa. This is because these instruments have locking effects on possible economic flexibilities of developing countries and space for citizens' voice in public policy choice.

For instance, as part of strategic move of repositioning, Canada has launched negotiations for international investment treaties i.e. Foreign Investment Promotion and Protection Agreements (FIPAs) with a number of mineral-endowed African countries. *The Embassy Magazine,* a Canadian Foreign Policy Newsweek reported in its March 19th, 2008 edition that *Canadian mining interests abroad are at the root of the government's recent push to sign FIPAs with developing countries, a drive that now includes Tanzania and Madagascar.* FIPAs are government to government agreements intended to promote and protect Canadian mining companies operating internationally. These treaties have far reaching implications on State autonomy in relation to how a particular African government can make reforms or introduce alternatives.

Similarly, the WTO General Agreement on Trade in Services (GATS) through its formulation of the scope of services acts as an international investment treaty that has a bearing in our discussion on state autonomy, the direction of capital account movement, and citizens' policy space. The demand for equal treatment for all investment made by the Economic Partnership Agreement negotiated between Europe on one hand, and Africa and Pacific countries on the other also has a bearing on State autonomy for alternatives.

The convergence of opinion achieved during the commodity price boom might be difficult to retain following the bust in the price of several other minerals, in particular copper and diamond. The drop in the price of various minerals and metals will offer mining corporations the leverage to demand more favours and thereby make governments less enthusiastic to push for reforms and alternatives that will affect profitability. Indeed, some governments may view the price bust as justifiable grounds for lowering investment standards in order to attract more foreign direct investment to secure the needed foreign exchange earnings and government revenues. Regrettable as this will be, it is a reality that cannot be dismissed in thinking about the possibilities for alternatives.

Related to the price bust is also the issue of the credit crunch which has hit economies globally. The capacity of African governments to mobilise resources for development might be constrained since most economies of Africa are donor-dependent. The credit crunch therefore provides a rationale for governments to delay or dismiss alternatives that may be seen in the immediate to medium term as obstructing investment. Not only will African governments legitimise their action due to the credit crunch but also aid donor governments, agencies and multilateral institutions such as the World Bank Group and the International Monetary Fund may apply the same principle to coerce African governments into lowering standards for transnational corporations. But we know that even as the credit crunch has happened we know that there are efforts to reposition and build the legitimacy of neo-liberalism on the back of the State. This equally could provide legitimacy for the African State to strongly intervene to catalyse development.

The expected leadership role of the state in constructing and achieving valid objectives and balance between the three key pillars of sustainability has already been highlighted. Whether a particular government or country can cope successfully with the critical challenges of this balance depends in a large part on its governance system. The return of many countries to democratic rule, including hitherto conflict countries, provides an opportunity for democratic engagement. However, as is well-known, formal democratic rule reflected in routine elections does not mean the end of authoritarian rule or practices. We find in countries with a fairly long history of routine elections like Ghana, where incidences of authoritarian practices such as arbitrary arrest and intimidation of citizens by state security occur, and access to information is still a nightmare. This therefore, means developing a new culture of governance accompanied by programmes for institutional reforms, issue-based debates, and self-criticisms at all levels, including among NGOs.

There is also a question of the relations between Africa and the G8 of which Canada is part, and what those relations mean for the autonomy of African governments in policy making. There is a striking trend in which the G8 has become a policy making forum in relation to Africa. In the past eight years in particular, the G8 has made it a part of its agenda to create space for making pledges or announcement in relation to Africa and its developmental needs. These pledges or announcements become blueprints for African governments particular those who have the privilege to be invited as observers of the summit. But we know that the G8 summit is a forum for flaunting the false superiority of the neo-liberal project. For instance, when the New Partnership for Africa's Development (NEPAD) was launched, it was at the G8 forum that it was endorsed and an action plan devised as a basis for moving forward with Africa, Graham (2008) argues that "since then in Avian, in Gleneagles, in all the fora there is always a decision that G8 makes about Africa." "We need to ask what this means in terms of constraints on sovereignty and state autonomy because increasingly what is passed as original frameworks for continental development may be actually G8 frameworks agreed to by African leaders."

The restructuring and consolidation taking place in the global mining industry also poses a threat to the reform agenda because the size of a transnational mining company has bearing on the relative strength of the African State particularly for emerging conflict countries like the Democratic Republic of Congo (DRC) and small countries like Liberia, Sierra Leone and Madagascar in dealing with the industry. The merger of Anglo-American and Ashanti Goldfields meant a bigger challenge in dealing with Anglo-Ashanti than dealing with Ashanti Goldfields. In recent times, the aluminium industry has become even more centralized.

Finally, in addition to mergers and acquisition the industry is putting forward initiatives to diminish public perception about its real character. In 1998, Rio Tinto backed by BHP-Billiton, Anglo American and five other multinational mining companies set up the Global Mining Initiative (GMI). Implicit in this plan was to proclaim their "sustainable development" credentials, by sponsoring a somewhat independent examination of industry practices in order to address the failures of mining. This led to the establishment of the Minerals, Mining and Sustainable Development (MMSD) project. In fact, the neutrality of this project was questioned and led to its rejection by several NGOs in most mineral-dependent regions. Despite being widely criticised, the project went ahead and some of its conclusions were widely accepted though they never secured implementation.

In 2006, the International Council on Mining and Metals (ICMM) chose a title for its annual review report *"Leading by example: making a difference through partnership". In this report, the ICMM highlights commonly asserted "good practices" as "good tailings management",* or points to conclusions from workshops on "biodiversity good practice guidance and offsets", and "testing a Resource Endowment toolkit. The report includes case studies in Peru, Chile, Ghana and Tanzania". These initiatives are written up as if they were executed for the common good of all actors affected by mining. However, it is not clear if the ICMM and its members would endorse the concept of fully free prior informed consent (FPIC) to project approval, nor would they unequivocally reject the use of private and state security against communities or their forced removals, or accept legally binding penalties against companies that violate its codes.

Therefore, these initiatives present the illusion of commonly asserted good practices but they may in fact represent strategies for consolidating corporate power with consequential effects on alternatives.

On the part of civil society, there are challenges regarding how the alternative agenda is pursued. On the one hand, the question of alternatives, fundamental as it is for a better deal for Africa and its people, presents a challenge. How does a collective alternative agenda address the immediate needs and struggles of local communities? For instance, how do you work with communities to promote an alternative agenda when their immediate priority is to stop a company from polluting their water source? The strategy during the last few years has been to develop a two strand agenda; one which is collective and focused on common platforms, and the other that is specific to individuals and constituencies.

On the other hand, there is often an overlap or tension between building democratic culture and local institutions for alternatives and the more technocratic approach adopted and advanced by some NGOs. The challenge is that the technocratic becomes counter-productive to the alternative agenda. For instance, many NGOs have come to accept Growth and Poverty Reduction Strategy (GPRS) papers as a way of getting Africa out of "poverty". The struggle therefore has focused on fixing the nuances of country strategy papers. This does not only ignore or undermine the need for alternatives but also cast poverty as a *noun* that is responsible for Africa's peripheral status. However, poverty ought to be seen as a process (i.e. someone becoming poor and another becoming rich) through relationships of influence and power. Conceived in this way, the fundamental question should be how the GPRS addresses the imbalances. You find also contradictory approaches to the same issue. For instance, many NGOs have often criticised and condemned voluntary initiatives as counter-productive to mandatory rules and alternatives, yet many NGOs are focussed on the Extractive Industry Transparency Initiatives (EITI). Today, any time a demand for an alternative approach to relating with communities comes up; there is almost a chorus response from governments and companies that they are working on or implementing the EITI as a response strategy.

CONCLUSION AND PROPOSALS ON NORTH-SOUTH COLLABORATION IN SUPPORT OF THE ALTERNATIVE AGENDA

On the basis of the foregoing, we conclude that in the context of economic liberalisation with respect to the mining sector, the main source of policy for Africa has been multinational institutions, bilateral agencies and their home governments in the north in collaboration with local agents especially the political elites. This collaboration enables linkages from the global through regional processes to the national. We also notice that despite the rich mineral potential, the main beneficiaries have been transnational companies also from the north. A good number of them have ties or origins in Canada. Citizens from both the north and Africa have been resisting this imbalance. Recent developments in the mining sector have led to a convergence of opinion between civil society and policy officials, which presents an opportunity for the delivery of an alternative agenda. However, this convergence of opinion is conjectural, and therefore challenges the realisation of an alternative agenda that is in tension with a global architecture that supports the status-quo.

The activism of communities, citizens, and organisations has a great potential for contributing to the alternative agenda and the shape of the global architecture. Indeed, activism based on geographic location-specific or issue-specific can be a vanguard for change because it gives focus and graphic illustrations, increases pressure, and offers lessons. However, to promote the kind of alternative agenda, activism ought to be connected to and with other sectors, issues, professionals and constituencies who are influential in all kinds of areas. In the resistance agenda, we have seen this kind of interconnection between north and south but there has not been a junction yet between issues.

For example, there is hardly any conscious and consistent connection between activists in trade and those in extractives. This presentation illustrates that trade and investment policies and practices, which have undermined the developmental aspirations of African societies and environmental sustainability over the years, have a common source. Dealing with that common source is critical in the delivery on alternatives. The role of Canada in the G8 summit, the FIPA agenda, and other international treaties, clearly define specific areas for linking activists in the north and south. We need to draw together all the elements so that the agenda for alternatives is based on the unity of what has been experienced in the north and the south on extractives, trade and other related areas.

It also requires, more than ever before, a broader effort at alliance building beyond the specificity of extractives or trade, and the narrow geography of Africa without compromising the strength of our own internal unity as Canadian NGOs, African groupings of communities and NGOs, as trade or mining activists.

We advocate as a practical step, a common regional framework or an agreement on ceilings and floors that avoids and eliminates the current race to the bottom, and which also defines a comprehensive plan for diversification, transformation and technology sharing. This has already been espoused by the United Nations Economic Commission for Africa (UNECA) Mining Vision 2050.

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