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Review of
Public Administration and Management

Review Article

Towards Socially Responsible Mining Investment in Ethiopia: Imagining a New Moral Economy

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ABSTRACT

Ethiopia is a home to untapped mining potential. Mining can do more than create wealth: it can contribute to the well-being of a whole country. On the contrary, unregulated mining investment could also result in unwanted consequences. Currently, in Ethiopia, the number of human rights violations is growing exponentially, particularly in relation to mining operations and extractive projects. Mining companies usually fail to respect the internationally accepted human rights and protection standards. This paper examines how the existing laws, policies and institutional frameworks of Ethiopia are promoting socially responsible mining investments in light of the recognized standards for local community welfare, occupational health and safety performance, discriminatory hiring and promotion practices with respect to race or gender, and labor disputes. In so doing, it relies on both primary and secondary sources of data. The primary sources of data are domestic and international laws relevant to the mining sector whereas the secondary sources are policies, governmental and non-governmental reports and literatures in the field. It finds that none of Ethiopia's mining legislation has provisions addressing employment benefits, training opportunities, or social benefits of local communities from the mining operations. It adds that the existing legislations are also not implemented as needed. Accordingly, it recommends that Ethiopia should adopt proper legal, policy and institutional frameworks in order to curb the negative impacts of mining investments. It also calls for broad-based participation and social awareness programs so as to build the sense of ownership in local communities.

Keywords: Ethiopia; Investment; Mining; Socially responsible investment; Sustainable development

INTRODUCTION

Investment plays a pivotal role in ensuring a country's economic growth and development. Even if its share in the Ethiopia's Gross Domestic Product is far from being significant, there are some progresses in creating job opportunity, increasing foreign currency, and facilitating technology transfer, among others. Apart from the positive effects that came with the promotion and protection of investments, there are also numerous challenges that are attributable to irresponsible investments. In particular, the country is witnessing various sorts of human rights violations, pollution including water, land, air and sound pollution and many more. Besides, the working conditions of workers engaging in the sector is also below the minimum standards set under international legal instruments to which Ethiopia herself is a party and other domestic laws. As a result, the attitude of the society and the government towards investment activities is changing rapidly. Numerous investment projects that would have contributed to the country's move towards transformation to industrial-led economy were destroyed as a result of peoples' discontent with the projects.

Lax investment regulation may result in harmful effects that may justify intervention. The World Commission on Environment and Development (WCED) suggested as far back as 1987 that "economics and ecology can interact destructively and trip into disaster." The Bhopal catastrophe of 3rd December 1984, which happened right after the 1970s Indian government's policy to encourage foreign companies to invest in local industry, best illustrates this scenario. In that industrial incident, more than forty tons of methyl gas was leaked from a pesticide plant in Bhopal, India and immediately killed at least three thousand eight hundred people and caused significant morbidity and premature death for many thousands more [1-3].

This paper aims at revisiting the legal and policy frameworks regulating mining investment in Ethiopia. It examines the interaction between mining investment and sustainable development, i.e., how should the mining sector be regulated in order to contribute its part to the country's journey towards a development that works for all.

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Received: January 27, 2021; **Accepted:** June 21, 2021; **Published:** June 29, 2021

Citation: Kebeta Djigsa W (2021) Towards Socially Responsible Mining Investment in Ethiopia: Imagining a New Moral Economy. Review Pub Administration Manag, 9: 291

OVERVIEW OF MINING INVESTMENT IN ETHIOPIA

Mining refers to any operation or activity directed at extracting minerals from a mineral deposit on or in the earth and water, any residue deposit or residue stockpile by any method, and any operation incidental thereto, such as storage, treatment, processing (excluding smelting and refining), transportation and disposal. Mineral is defined as any mineral substance of economic value, whether in solid, liquid or gaseous form, occurring naturally on or within the earth or in or under water and which was formed by or subjected to a geological process, and includes any mineral occurring in residue stockpiles or in residue deposits, but excludes: a) water, other than water used for the extraction of any mineral such as brine; b) natural gas and petroleum as defined in the relevant petroleum law; c) top soil and oil shale [4,5].

Ethiopia, one of the fastest growing economies in Africa, is a prime location for foreign investors. Some of the favorable conditions for investment include a young and productive population, vast untapped resources, and huge government investment in infrastructure. Ethiopia is teeming with resources, including undeveloped minerals and natural resources like gold and tantalum [6].

According to the Ministry of Mines and Petroleum (MoMP), Ethiopia has attracted over $106.4 million investment in the mining sector during 2019 [7]. Out of the total investment about $38 million is invested in exploration and production of gold, marble, iron and precious stones while the remaining close to $67.6 million investment is directed towards eleven petroleum exploration and production sharing and natural gas exploration.

The role of mining investment in Ethiopia’s economy is increasing from time to time. Governmental report indicates that the sector contributes 14% of the country’s export, 1% to the country’s GDP, 1% to the government revenue and creates 4000 job opportunities. The following table depicts the relatively recent data on the performance of the mining sector (Table 1).

Apart from its positive effects, unregulated mining investment has the potential of causing loss of lives of human, animal and plants as well as environmental destruction. The Mohammed International Development Research and Organization Companies' (MIDROC) gold mine at Lega Dembi (located in Guji Zone, Oromia region) could be a typical example in this regard. MIDROC was the only large-scale open-pit mine operating in Ethiopia, producing around 120,000 ounces of gold every year [8]. The remaining 80,000 ounces were mined from alluvial deposits by artisanal and small-scale miners. After Prime Minister Abiy Ahmed was appointed in April 2018, the then Ministry of Mines and Energy (MoME) on 9 May 2018 refused to renew MIDROC's operating license for Lega Dembi, following protests in opposition to environmental damage and health risks. The mine has since closed and operations until the completion of a third-party environmental impact assessment.

The nexus between investment and sustainable development

This section addresses the relationship between investment and sustainable development. Knowing this relationship is vital in directing investment activities towards the kind of development certain economy demands so as to easily reform the regulatory framework. Accordingly, it primarily examines the nexus from the angle of the justification for the right to regulate investment in one’s own territory.

Investment is not a panacea in and of itself. The extent to which the investment supports sustainable development depends on many factors. One of such determinants is the effectiveness of the regulatory measures that can be imposed to mold investment activities. This is because not all investment activities in all cases are beneficial to the host State. In other words, there are numerous instances where investment causes unnecessary harm. Accordingly, the ‘right to regulate investment is at the heart of ‘responsible investment.’

The right to regulate investment and sustainable development envisages two closely related concepts. The ‘right to regulate’ is necessitated, inter alia, by societal interests like the protection of the environment and other non-economic interests. The need to ensure proper balance between the promotion of investment and environmental protection reflects the competing interests posed by the principle of state sovereignty on the one hand and the need for international co-operation on the other. The right to regulate investment is an expression of a country’s sovereignty under international law and it includes both the general legal and administrative framework of host countries [9,10].

As mentioned earlier, states may resort to regulation for various reasons some of which are the protection of non-economic interests like the environment, labor, human rights etc. Under these circumstances, action taken in the name of a public interest can enter into tension with investment protection standards embodied in investment treaties [11]. It has to be reasserted that investment can bring about the desired development only when it coincides with the protection of the environment, i.e., when economic activities contribute to sustainable development.

Table 1: Mining sector.

Indicator	2015/16	2016/17	2017/18
Annual mineral revenue (in million birr)	176.69	164.79	161.6
Number of investors licensed on mineral exploration and production	56	61	7
Revenue generated from mineral investment (million birr)	176.69	164.47	161.6
Export earnings generated from gold, tantalum, and other gemstones (million USD) (ASM and Companies)	309.1	231.25	133.56
Gold production (kg)	4,387.49	3,449.03	2,643.93
Limestone (tonnes)	4,120,288.40	4,335,085.34	10,896,331.82
Gypsum (tonnes)	80,555.60	85,236.00	253,165.11

Source: Ministry of Mines and Petroleum, Overview of Ethiopia's Mining Sector - MoMP.

There is no consensus among scholars and literatures concerning the definition of sustainable development. According to the WCED definition of sustainable development of 1987, "sustainable development is a development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs."[13] This definition of sustainable development is a widely recognized one. The report, which came to be known as the Brundtland Report, attempted to reconcile the controversial issues between environment and economic activities. It goes without saying that sustainable development is both a conceptual and practical approach to addressing socio-economic and environmental concerns. The concept emerged out of a worldwide movement that recognized that development patterns were focusing on economic growth and accumulation without considering how this was harming the environment and other non-economic interests [12,13].

Sustainable development is a broad concept which encompasses socio-economic and environmental aspects among other things. This is to mean that sustainable development focuses on the interrelationship between the three dimensions of economic growth, social development and environmental sustainability. According to the environmental aspect of sustainable development, an environmentally sustainable system must maintain a stable resource base, avoiding over-exploitation of renewable resource systems or environmental sink functions, and depleting non-renewable resources only to the extent that investment is made in adequate substitutes. There is a concern that economic policies of individual countries and international economic relations both have great relevance to sustainable development. This is why lack of integration across sectors in terms of strategies, policies and implementation has long been perceived as one of the main pitfall of previous approaches to sustainable development [14-16].

It has to be recalled that investment activities are necessary for sustainable development but whether they lead to sustainable development depends on a number of factors, including effective domestic regulation in host states [17]. The effectiveness of domestic regulation, in turn, is dependent on the regulatory space available in investment agreements. Since investment agreements constrain domestic government action in the interests of protecting foreign investors and, it is hoped, encourage foreign investment as a result, they inevitably affect sustainable development.[14] In particular, social and environmental effects of investment necessitate ensuring that investment contributes to sustainable development objectives as a priority for all countries in general and for developing countries in particular.

Legal frameworks for the regulation of mining investments

The legal regime for the regulation of investment in Ethiopia is the synergy of different types of laws. It is obvious that every investment takes place on land and utilizes natural resources. This is particularly the case for investments in minerals. As such, how the government regulates land and other natural resources critically affect the livelihoods of peoples. land is not only a vital livelihood asset but also indispensable for the enjoyment of several human rights including the right to life, the right to food, the right to housing, the right to property, the right to development, and the right to self-determination [18].

Various legal frameworks are having been in place for the regulation of the mining sector. These include the Constitution, Mining Proclamation No. 678/2010 (as amended), Transaction of Minerals Proclamation No. 1144/2019, Mining Income Tax Proclamation No. 53/1993 (as amended), and Mining Regulation No. 182/1994 (as amended) for hard minerals and Petroleum Operations Proc. No. 295/1986 and Petroleum Operations Income Tax Proclamation No. 296/1986 for petroleum operations.

The FDRE constitution

The FDRE Constitution provides that "the right to ownership of rural and urban land, as well as of *all natural resources*, is exclusively vested in the State and in the peoples of Ethiopia. And the federal government is empowered to enact laws for the utilization and conservation of land and other natural resources. The Constitution empowers regional states to administer land and other natural resources in accordance with federal laws. It also obliges the government to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development. In addition, the government shall at all times promote the participation of the People in the formulation of national development policies and programmes; it shall also have the duty to support the initiatives of the People in their development endeavors [19-23].

With respect to environmental protection, the Constitution stipulates that the government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment and that he design and implementation of programmes and projects of development shall not damage or destroy the environment. It goes on saying that people have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly [24,25].

The Constitution recognizes the right to improved living standards and to sustainable development and, above all, the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community. [15] It reiterates that the basic aim of development activities shall be to enhance the capacity of citizens for development and to meet their basic needs. What is more, all persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmers have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance [26,27].

The mining operations proclamation No. 678/2010

The Proclamation recognizes that minerals are non-renewable natural resources and that the Government shall ensure the conservation and development of these resources to the socio-economic progress of all Ethiopians and that it is the obligation of the Government to protect the environment for the benefit of present and future generations and to ensure ecologically sustainable development of minerals. The overall objectives of the Proclamation are to give effect to the principle of the custodianship of the country's mineral resources by the Government; promote socio-economic growth of the country; promote employment and advance the social and economic welfare of all Ethiopians; provide for security of tenure for all investors in respect of exploration and mining operations; and ensure that the country's mineral resources are developed in an orderly and sustainable manner.

The Proclamation imposes various obligations on licensees including the duty to carry out mining operations in a prudent, diligent, and efficient manner, in accordance with the appropriate laws, technology and good mining operation practices generally accepted in the mineral industry; conduct mining operations in such a manner as to ensure the health and safety of his agents, employees and other persons, and comply with the applicable laws pertaining to environmental protection; and take proper precautions not to interfere with other legitimate occupants of the license area, the land covered by a lease and adjacent land. It also states that the Licensing Authority may revoke any license if the licensee. is in breach of the approved environmental impact assessment, and safety and health standards. Likewise, the license issues pursuant to the Transaction of Minerals Proclamation shall be suspended where the holder of the license, among others, violates safety and environmental protection obligations [28,29].

The Proclamation requires (not all) licensees to undergo environmental impact assessment, rehabilitation and community development. In particular, it states that "to be determined by the license area and by agreement, mineral licensee and, as appropriate, exploration license shall participate in community development plan of the peoples within the license area, and shall allocate money for such expenses [30-34].

Responsible investment: The new moral economy

Responsible investment is an approach to investment that explicitly acknowledges the relevance to the investor of environmental, social and governance factors, and of the long-term health and stability of the market as a whole. It recognizes that the generation of long-term sustainable returns is dependent on stable, well-functioning and well-governed social, environmental and economic systems. This can be tested in light of internationally recognized standards. For instance, the International Finance Corporation (IFC) Performance Standards guide the conducts of corporations requiring them to take into account various socio-environmental and cultural interests in the course of engaging in business activities. The IFC Performance Standards are an international benchmark for identifying and managing environmental and social risk and has been adopted by many organizations as a key component of their environmental and social risk management. The standards, encompassing eight topics, are presented in the following paragraphs [35,36].

First, environmental and social assessment and management system: Commercial clients/investees are required to manage the environmental and social performance of their business activity, which should also involve communication between the client/investee, its workers and the local communities directly affected by the business activity. This requires the development of a good management system, appropriate to the size and nature of the business activity, to promote sound and sustainable environmental and social performance as well as lead to improved financial outcomes.

Second, labor and working conditions: For any business, its workforce is a valuable asset and a sound worker-management relationship is a key component of the overall success of the enterprise. By protecting the basic rights of workers, treating workers fairly and providing them with safe and healthy working conditions, commercial clients/investees can enhance the efficiency and productivity of their operations and strengthen worker commitment and retention.

Third, pollution prevention and abatement: Increased industrial activity and urbanization often generate increased levels of pollution to air, water and land that may threaten people and the environment at the local, regional and global level. Commercial clients/investees are required to integrate pollution prevention and control technologies and practices (as technically and financially feasible as well as cost-effective) into their business activities.

Fourth, community health, safety and security: Business activities can increase the potential for community exposure to risks and impacts arising from equipment accidents, structural failures and releases of hazardous materials as well as impacts on a community's natural resources, exposure to diseases and the use of security personnel. Commercial clients/investees are responsible for avoiding or minimizing the risks and impacts to community health, safety and security that may arise from their business activities.

Fifth, land acquisition and involuntary resettlement: Land acquisition due to the business activities of commercial client/investees may result in the physical displacement (relocation or loss of shelter) and economic displacement (loss of access to resources necessary for income generation or as means of livelihood) of individuals or communities. Involuntary resettlement occurs when affected individuals or communities do not have the right to refuse land acquisition and are displaced, which may result to long-term hardship and impoverishment as well as environmental damage and social stress. Commercial clients/investees are required to avoid physical or economic displacement or minimize impacts on displaced individuals or communities through appropriate measures such as fair compensation and improving livelihoods and living conditions.

Sixth, biodiversity conservation and sustainable natural resource management: Protecting and conserving biodiversity (including genetic, species and ecosystem diversity) and its ability to change and evolve, is fundamental to sustainable development. Commercial clients/investees are required to avoid or mitigate threats to biodiversity arising from their business activities and to promote the use of renewable natural resources in their operations.

Seventh, indigenous peoples: Indigenous Peoples are recognized as social groups with identities that are distinct from other groups in national societies and are often among the marginalized and vulnerable. Their economic, social and legal status may limit their capacity to defend their interests and rights to lands and natural and cultural resources. Commercial clients/investees are required to ensure that their business activities respect the identity, culture and natural resource-based livelihoods of Indigenous Peoples and reduce exposure to impoverishment and disease.

Eight, cultural heritage: Cultural heritage encompasses properties and sites of archaeological, historical, cultural, artistic and religious significance as well as unique environmental features and cultural knowledge, innovations and practices of communities embodying traditional lifestyles, which are protected for current and future generations. Commercial clients/investees are required to avoid significant damage to cultural heritage due to their business activities.

DISCUSSION

The term "resource nationalism" typically refers to a policy used by a resource-rich country to ensure maximum revenues from its natural resources. It is related to the notion of permanent sovereignty over natural resources. The notions of 'nationalism' and 'sovereignty' are broad terms which are closely tied to expressions of self-determination and aspirations to partake in the fruits of natural resource development.[16] Local governments seek to protect mineral lands within their area of jurisdiction.[17] Communities support local governments to ensure they benefit from resources such as minerals within their vicinity and at the same time protect the surrounding environment that support forests and agriculture [37,38].

Resource nationalism also referred to, in some literatures, as quest by nation states to benefit from the ownership and control of natural resources within their jurisdiction has a long history and is evident periodically since the mid-twentieth century [39]. It is a widespread and normal policy of states. Such an understanding is at odds with dominant definitions of resource nationalism that assume antagonistic, zero sum, relationship between a state and foreign company involved in the extraction of a natural resource.

Resource nationalism has thus varied widely, from tax hikes, through demand for greater state equity and indigenous participation, to renegotiation of stability clauses in mining contracts. Companies seek unfair concessions, and they prejudice the rights of host communities. Let me end the discussion with what Khan wrote:

The new scramble (for Africa) is intimately linked to the emergence of the BRICS (Brazil, Russia, India, China and South Africa). Inevitably, African states face difficult choices in their engagement with the state and non-state actors of the BRICS countries. Many African states have weak institutions–administrative, health, education and communications included. In the attempt to advance development, some states have adopted resource nationalism, which has emerged as a response to the new modes of exploitation [40].

As such, for Ethiopia to properly utilize its natural resources without causing unnecessary harm to its communities and the ecology, it is important to develop the culture of resource nationalism.

CONCLUSION AND THE WAY FORWARD

Natural resources can play in the continent's economic transformation and socio-economic development of a nation. Ethiopia needs new industries to feed its ever growing population. Mining also yields important commodities for the country's export-oriented growth strategy. It has to be stressed at this juncture that, without the support from the local communities, it is hardly possible to operate mining investment. Accordingly, it is important to device a mechanism how the mining industry can work better with governments and local communities for ensuring better wealth distribution and human, animal and plant life and safety.

Due attention should be given to promoting investment in the mining sector to maximize domestic economic benefits and avoid, or at least minimize, the negative impacts on local communities and the environment. To accomplish this, governments and mining companies alike need to integrate social impact assessments (SIAs) into mining projects. SIAs are the process of determining, analyzing and evaluating the potential social impacts of a mining project, and designing appropriate implementation and management plans for the mining life cycle. This requires policy and legal reforms as well as capacity building schemes for the Ministry of Mines and responsible regional organs.

Thus, mining operations should be conducted only after a strict compliance with health and safety standards of the local community. Community development programs such as education, training, employment, health and other social services should also be introduced as the obligations of investors in the sectors thereby ensuring that local communities directly benefit from mining operations.

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