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Contents

pages 12 & 13 photo: *A mine site*

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African governments must let the African Mining Vision work

AFRICA is caught once again in the 'bust' of the 'boom- bust' cycle of mineral price fluctuations just at the time it is on the move to reform its mining policy framework to enable it gain more from its mineral resources. Accidental or timely some may say, but no matter the situation, African countries must not be intimidated into reversing or changing gear through the machinations of the transnational mining companies supported by their home governments.

Some African mineral-endowed countries have begun introducing reforms in the mining sector, thanks to the African Mining Vision (AMV), hoping to reap as much benefit as possible from their minerals instead of the current situation where transnational mining companies rip them off through dodgy contracts. These contracts most of which are shrouded in secrecy and mired in corruption between the transnational companies and the political elite of African countries are largely detrimental to Africa in its development efforts. The contracts have also led to the encouragement of illicit financial outflows from Africa as the mining companies aided by their registration in tax havens and dodgy accounting procedures 'spirit' away millions of dollars from the continent.

The AMV, adopted five years ago by African countries, as an answer to stemming the hemorrhaging of Africa's natural resources by transnational companies is yet to be systematically implemented by most African countries. As a comprehensive mining policy framework that aims at using Africa's natural resources to transform the economy from a commodity-based one to an industrial one, the AMV has not drawn the much needed attention from African countries. Indeed, instead of going with the sea of change that the AMV proposes in the use of mining as a catalyst to Africa's industrialisation, African countries are tinkering with the status quo by implementing minimalist reforms in contracts and tax regimes. The 'cherry-picking' approach of selecting such issues as contract and tax regimes are no solutions to problem. A comprehensive policy change that moves mining from an enclave activity to an industry with linkages to the rest of the economy just like in the developed countries is what is needed. The major overhaul of the policy regime that will bring the necessary change to Africa's mining sector has remained largely untouched.

It is in this regard that Guinea, Mali and Niger have been touted for showing the way in spearheading reforms in their mining sector even though their reforms have not gone far enough. ***(See pages 5-8, Keita stirs up Mali's mining sector on review of contracts and Major amendments to Guinea's mining code)***. Niger has begun an audit of the French mining giant Areva as its 10-year uranium mine's contract comes up for renewal at the end of the year. The aim according to the country's Mining minister is to increase tax takes from the company and also make sure Areva puts in infrastructure investments like roads especially a 1,000 km road from the mining region of Arlit to Niamey, the capital. Niger hopes its reforms should increase its revenue from uranium to at least 20 percent of its budget from the previous 5 percent.

Ghana, one of the major mineral endowed countries in Africa, has also put in place for the past couple of years a mining contract review committee. Even with these minimalist efforts, the mining companies are not taking these intended reforms lying down. They have threatened in various ways, overt and covert, to protect the status quo. Using, as an excuse, the current fall in mineral prices, they want to preempt the reforms by threatening to lay off workers or close down mines for being unprofitable. The result is that some African governments are in two minds, carry out these minimalist reforms and lose even the little revenue and employment opportunities from the mining companies' operations or allow the status quo to continue.

The solution as envisaged in the African Mining Vision is a regional/continental approach that would not allow the mining conglomerates to play one country against the other in their inordinate drive for profit. In the 1980s and 1990s thanks to Structural Adjustment Programmes championed by the Bretton Woods institutions, most African countries in their quest for FDI to revive the mining sector gave overly liberal terms to the mining companies. Indeed, the situation induced what became known as a 'race to the bottom' as the countries competed to give the most liberal and welcoming terms to the companies. The situation must be reversed now as at least there is in place a continent-wide mining document, the AMV, which offers an alternative continental mining framework seeking to improve the fortunes of mineral endowed African countries.

What African countries need to do is, promote and incorporate the AMV into their national laws and ensure its implementation. There are fears, however, that even the AMV, an African-scripted document may in the end be captured and misinterpreted by the very people and institutions who are currently beneficiaries of the status quo. This is so because African countries and their agencies like the African Union are looking to the likes of Australia, the European Union, Canada and others whose companies have entrenched interests in Africa's minerals to support the financing of the Africa Mineral Development Centre (AMDC) which is to serve as the continental coordinating point for the implementation of the AMV. For African countries to take the commanding heights of their mineral economies, it is important that they fund institutions such as the AMDC which is to play a critical role in transforming Africa's economy through judicious use of its minerals.

African civil society groups must also 'push' their governments to implement the AMV if there is to be a policy change in the mining sector. To achieve this, they must send the AMV message to as many citizens and citizen groups as they can to ensure the African citizenry buy into the AMV and are thus empowered to hold their governments accountable for the implementation of the AMV. This calls for the involvement of labour unions, women's groups, youth groups, students, traditional leaders, local business groups and faith-based groups among others.

President Keita

Keita stirs up Mali's mining sector with review of contracts

Mali's new government's decision to review all mining contracts in the wake of the country's new mining code has yet to provoke a reaction. A similar exercise in neighbouring Guinea following review of its mining code in 2011 has yet to yield intended dividends, writes ***Kwesi W. Obeng**.

MALI now has a new and democratically elected president. President Ibrahim Boubacar Keita who was elected in a run-off election took the oath of office in September for a five-year term.

Uniting the country is at the top of his agenda after the bitter war that pitched Tuareg rebels and elements of Al Qaeda in the Islamic Maghreb (AQIM) against the weak and disorganized army. The French-led military intervention has enabled the Malian Army, with additional support from ECOWAS and the UN to take back the country, at least for now.

But also important on the new president's agenda is how to get the best out of the country's mining sector which is gaining growing importance in the Malian economy. Mali, which produces about 50 tonnes of gold each year, is Africa's third largest producer coming after South Africa and Ghana. Mining contributes 25 per cent of Mali's GDP and 75 per cent of national revenue.

Just days in office, the Keita administration has announced its intention to carry out a "complete inventory" of the extractive sector, notably minerals and oil. This is understood to mean a decision to review mining contracts, titles and licenses. According to the new Mines Minister, Boubou Cisse, the outcome of the inventory will trigger a review and renegotiation of any contract which undercuts the interest of Mali.

According to the United Nations Conference on Trade and Development, Foreign Direct Investment (FDI) flows to Africa went up by 5 per cent to US$50 billion in 2012 even as global FDI fell by 18 per cent. FDI levels in sub Saharan Africa are now more than double the levels of ten years ago. A substantial share of this FDI went to the extractive sector with new discoveries of minerals, oil and gas from Senegal in the west of Africa to Kenya in the east coast of the continent.

Mali's mining sector is considered a growth industry. However, like many other mineral-rich African countries, Mali has a mining code but not a mining policy. The country recently reviewed its mining code ostensibly to improve the mining sector's overall contribution and linkage to the larger Malian economy which until the year 2000 was largely dependent on cotton, another primary commodity.

The political instability which immediately followed the adoption of the new Code in 2012 stalled its promulgation into law. The new Mining Code has since come into force. The code is supplemented by a new Mining Regulation. The implementation of the new code has pitched the country against major mining companies operating in the country.

The Malian economy took a hit in 2012 to register a negative growth of -1.5 per cent against an initial estimate of +5.6 per cent. The economy is now projected to rebound to +5.4 per cent this year (and +5.1%) in 2014). Central to this optimistic outlook is the assumption of a rebound in production of gold especially and to a lesser degree cotton and rice and the creation of a third mobile network operator along with the resumption of international assistance to cushion the economy. However, the country is unlikely to measure up to these upbeat projections precisely because of the political and economic uncertainties that characterized the first half of this year.

In spite of the central role of gold in Mali's economy over the last decade, there is hardly any endogenous creation of added value through beneficiation neither has it spurred the creation of national operators and service providers. This, in part, is what has informed the new Malian Mining Code. However, unlike neighbouring Guinea's new mining code adopted in September 2011, Mali's new code is not a comprehensive restructuring of the country's mining regime. The framework of the regime first adopted in 1991 and revised in 1999 remains substantially the same, albeit with a number of innovations and amendments essentially to protect Mali's interest. The new code also toughens procedures for acquiring permits.

"In spite of the central role of gold in Mali's economy over the last decade, there is hardly any endogenous creation of added value through beneficiation neither has it spurred the creation of national operators and service providers."

The new changes in the code are geared significantly towards the promotion and implementation of some form of transformation within Mali and to ensure the development of local communities, protect the country's fragile ecological environment and ensure site rehabilitation and mine closure.

In terms of participation, Mali's new mining code retained the state's right to a 10 per cent non-dilutable free carried interest in the capital of a company holding an exploitation permit, in addition to an option to acquire another 10 per cent for cash. Contrast that with Guinea where the new code nearly doubled to 35 per cent the state's share in mining projects (this include a 15 per cent golden share) and 0.5 per cent share in projects to local government with regards to gold and diamond and one per cent in respect of bauxite and iron.

But Mali's code also introduced the option for local private investors to acquire for cash at least five (5) per cent of the shares of the exploitation company, but under the same conditions as other private shareholders.

The code has introduced new albeit rather flexible beneficiation rules requiring mining companies to carry out with the treatment and refining of minerals in units based in Mali. In addition, the code has tightened company obligations in relation to the protection of the environment and new rules on mine closure and site rehabilitation.

It also imposes civil liability on the holder of an exploitation permit in respect of damages or accidents caused by old equipment, even after the closure of the mine and issuance of an environmental discharge.

According to Mamadou Goita, this is a direct response to the growing disquiet over destruction of the environment especially as surface mining has expanded since 1999. National civil society organizations are quite happy with the innovations in the new code, according to Goita who is the executive director of the Institute of Research and the Promotion of Alternatives in Development (IRPAD) in Mali.

Mali's new code also takes community development seriously. The code obliges mining companies to file Community Development Plans (developed in consultation with local communities, local and regional authorities) along with exploitation permit applications. These Community Development Plans must be updated every two years.

On stability regime, the new mining code introduced no significant changes with the exception of the provision for new exclusions covering rights, taxes and royalties set by international institutions to which Mali is a party. The new code halved, to 10 per cent, the tax rate on capital gain arising from the assignment of a mining title.

AngloGold, Gold Fields, IAMGold, Cluff Gold and Randgold Resources are some of the major mining corporations operating in Mali.

The challenge for the new president will be how to safeguard the peace after the brief war and translate the country's mineral wealth to both restore fiscal stability and revive the productive capacity of Malians to address the deepening poverty levels in the country.

It remains to be seen what the "complete inventory" of Mali's mining sector will yield. A similar exercise in Guinea has yet to yield meaningful dividends. Kabinet Cissé executive director of the Center for International Trade Development (CECIDE) in Guinea in a recent interview with *African Agenda* noted that a similar project in Guinea lacked teeth as the process was heavily hinged on the goodwill of companies to re-negotiate the terms.

** Kwesi W. Obeng is assistant editor, African Agenda.*

Major amendments to Guinea's Mining Code

In September 2011, the Guinean authorities completed a comprehensive review of the country's mining code to attract investors, improve the country's stakes and address under-development and poverty. The West African country is home to about half of the world's known bauxite reserves with high alumina content and the largest untapped iron ore deposits.

Bauxite by rail to Conakry's port for export : Guinea, like many other African countries, exports its minerals unprocessed

THE main amendment was taxes on bauxite. These taxes were brought down to about US$4 (four dollars) per tonne of raw bauxite exported instead of US$11 - 13 per tonne previously. Another major amendment is that taxes on corporate profits were reduced from 35 per cent to 30 per cent. Customs duties on equipments for processing were reduced from six per cent (6%) to five per cent (5%) and for mining from eight per cent (8%) to six-and-half per cent (6.5%).

In addition, maximum areas covered by exploration permits were reviewed taking into account the concerns of operators in the mining sector to encourage prospecting and avoid the freeze of resources (from 350km2 to 500km2 for bauxite and iron and 50 to 100km2 for other minerals). Local employment and community development were emphasized.

These amendments, according to the Conakry government, confirm its "new pro-business approach" to accelerate investments in the mining sector and sustain economic development.

Here are highlights of the new mining legislation.

Exploration permit (Article 19):

If the permit is not transferable, the holders are allowed to conclude technical partnerships to develop their mineral deposit and stimulate the development of the mining sector in Guinea.

Work commitment (Articles 34 and 41):

Commitments to the implementation of the mining and concession permits were restated and strengthened to avoid the freeze of resources and extension of construction periods. Meanwhile, processing projects shall benefit from an additional year to reach the mining phase.

Investment threshold for mining concessions (Article 37):

Investments in the mining of some substances (iron, bauxite) are structurally higher than those of other minerals (gold, diamond). Consequently, the minimum investment threshold required to obtain a mining concession (US$1billion) is reduced to US$500 million for minerals other than bauxite, iron and radioactive substances.

Transfer of interests in mining titles and taxation of capital gains (Article 91, and article 88):

Rules governing the transfer of interests in a corporate body holding a mining title were strengthened and clarified to facilitate the effective supervision of financial transactions by the state and the payment of a fair share of capital gains made by operators while protecting investors against slow or arbitrary decisions. Article 88 was updated to take into account a possible withdrawal of mining title in case of non payment of taxes on capital gains.

Mining infrastructure (Article 121):

Mining companies are responsible for the construction of mining infrastructure, based on their operational needs. The ambition of the Government is to become in the end the owner of all mining infrastructure and related ones. Mining companies themselves will operate such infrastructure or call on an independent operator or regulator, especially in the case of shared infrastructure.

Aware of the financing obligations of mining companies, the Government amend the duration before the takeover of the infrastructure by the state to correspond to the period required to recoup investments plus five years to ensure fair returns for investors.

Public purpose (125):

Emphasis is laid on the consent of land owners for the use of the land by mining title holders before the option of the declaration of public purpose.

Control of transfer pricing (Article 138-A):

In response to companies' concerns and in line with international best practices, the proposed rule is such that the State must approve prices or price formulas contained in long term purchase contract and or long term price agreements. If the company does not want to submit to this rule, the State may use a pre-emptive right on quantities of minerals sold at prices below those of free competition.

Incentives for processing (Article 139):

Financial incentive measure were introduced by instituting a single export tax payable only on unprocessed substances and by reducing the non contributory interest of the States in processing projects.

State Share (Article 150):

The State's Share in mining companies capital is key element of the Government's mining policy and the rate of contributory and non contributory share remain the same as in the 2011 Code. However, it is specified that the sale of the non contributory share of the State is prohibited.

Mining Royalties (Articles 161 à 163):

Royalties on bauxite were reduced from 0.55% to 0.15% of the price of a ton of aluminium LME for raw bauxite exported from Guinea. Half of this royalty (0.075 %) represent a tax on the extraction of any bauxite and the other half in an export tax imposed on unprocessed bauxite only. These royalties take into account the grade of the ore and will be adjusted based on the quality of the bauxite. The standard ore grade has been reduced from 50% to 40%. The Government is of the view that the tax regime will enable alumina and bauxite project to obtain adequate returns.

Activity Phase and Mining List (Articles 166 to 168):

To clarify procedures while limiting the widespread use of exemption granted during the exploration and construction phases, the activity phase of mining companies have been specifically defined. Customs incentives granted at each phase must go through the mining lists approval procedure which has been clarified in order to strengthen the regulation and improve the business environment.

Tax on corporate profit (Article 176):

The tax on corporate profit has been reduced from 35% (general regime) to 30% in order to align Guinea's tax regime on those of countries in the sub region.

Value Added Tax (Article 176):

All imported goods on the mining list are VAT exempt during the exploration and construction. At the mining phase the VAT is payable.

Customs duties (Articles 171-A, 172, 174, 174-1, 178, 179 and 180):

The provision on customs duties have been specified and clarified for simplified and rigorous application. All companies are exempted from customs duties during the exploration and construction phase as stated in the 2011 Mining Code and in accordance with international practices. The customs duty rate on materials and equipment for the extraction of mineral at the mining phase has been reduced from 8% to 6.5%. Heavy fuel meant for mineral extraction, concentration and processing activities are exempted from VAT and customs during all the phases of activity.

Operational barriers (Article 181-C):

This provision which is in conformity with international best practices will help prevent the abuse of exemptions granted to companies during the exploration and construction phase. For example, a company cannot benefit from incentives granted in respect of an exploration permit for imports meant for mining and other activities.

Stabilization of tax and customs regime (Article 182):

The stabilization period has been extended from 10 to 15 years in accordance with regional and international standards. While the tax rates are stabilized, the bases are not in order to take into account future General Tax Code reforms that will help protect the State against tax revenue erosion due to the abusive use of some deductions (financial charges, etc.) Only the royalties' base (extraction and export taxes) is stabilized to give assurances to investors.

Let the glitter of tanzanite affect our lives

The people of Mirerani, where the precious gem Tanzanite can be found want their government to facilitate the creation of a local industry around the precious stone. They believe that it is the surest way that the problems of poverty, unemployment and nonexistent infrastructure can be addressed, writes ***Fred Avornyo**.

TANZANITE is a blue/purple variety of gemstone used for necklaces and earrings and Mirerani home to this gem, is some 15minutes drive from the Kilimanjaro International Airport in the northern part of Tanzania. Mirerani is however, a sharp contrast to the mineral wealth in the bowels of its earth and its rich cultural heritage. This mining community is surrounded by beautiful hills where authentic Maasai culture mixes well with tanzanite mining.

The beautiful tarred road from either Arusha or Mosi, two major cities close to the mining community, however, ends at the Kilimanjaro International Airport and the rest is a dusty undulating road passing through an arid stretch of land.

Though mining has been going on since the late 1960s when tanzanite was discovered, Mirerani located in the Manyara Region, is just another poor resource rich African community. Besides tanzanite, the community is also awash with other rich stones such as green garnet, red garnet, moonlight and rodlight.

Small scale mining

Through a lot of advocacy by various civil society groups however, the Government of Tanzania has facilitated a well regulated small scale mining industry, which has literally made illegal mining unattractive and virtually non-existent, the local miners said. About 70 percent of the population of Mirerani is engaged in one form of activity or the other related to mining with over 50 women miners according to Hussein Msokoto, a small scale miner and Vice Chairman of Manyara Regional Miners Association (MAREMA)

During a recent fieldwork by journalists from Ghana, Uganda and Tanzania to Mirerani, Council Members of the Local Authority and members of the associations of small scale miners, told the journalists of the urgent need for government to set up an Export Processing Zone (EPZ) in the community. Such a body, they noted will create a hub for a local tanzanite industry where there will be value addition to the gem before they are sold locally or exported directly from the town. An EPZ, they say will provide ready market for the gems mined by the small scale miners at a fair rate, while it will also create jobs for those who cut and polish them as well as attract investors, and generate more businesses in the area.

Tanzanite ring

Poor infrastructure

Mirerani township Chairperson Albert Siloli who also addressed the journalists, said despite the taxes and levies paid, government has done very little to support the community which is so dependent on the mineral resource. He spoke of the bad roads, poor health and educational facilities among others. He acknowledged that government supported tanzanite exhibitions in Arusha and California in the United States of America but said such fairs should also be held in Mirerani in order to create a vibrant local economy around the gem. He stressed that setting up the EPZ was crucial and has the potential to turn around the deprived nature of the mining community.

Siloli was also not happy about the lack of support from the large scale mining companies. He accused them of failing to employ the youth from the community. The community also accused the government of taking concessions away from them and reallocating them to the big mining companies.

Some major mining companies including TanzaniteOne, Kilimanjaro Mines and Tanzanite Africa operate from the Mirerani community, but the contracts with their government remain a secret. This is a major factor accounting for tension between the community and the large mining companies which has sometimes resulted in fatalities, police arrests and brutalities, the small scale miners alleged.

This is because the leadership of the mining community has no idea about the obligations of the major mining companies towards them and yet they expect sufficient investments in the community by the big miners. The local authorities claim that several attempts to meet with the large scale miners have proved futile.

Non-transparency

The opaqueness of the contract between the government and the large mining companies which is symptomatic of many other resource rich Africa countries is believed to be stifling the potentials of mining in Tanzania. Hamis Lyoba, chairman of Arusha Regional Miners Association (AREMA) for 18 years, and now an advisor to the group, decried government's refusal to make these contracts public. His group has been advocating better conditions for small scale miners and pushing for better deals from big mining companies but Mr. Lyoba and his group are also challenged because they are clueless about what is contained in the contracts that their government has signed with the foreign investors. He told the group of journalists, who also visited his Arusha office that he wants government to publish its mining contracts so that they would know what rights have been extended to them and what their obligations are to government and the people of Tanzania.

"The opaqueness of the contract between the government and the large mining companies which is symptomatic of many other resourced rich Africa countries is believed to be stifling the potentials of mining in Tanzania."

Meanwhile, an extensive gas field has been identified off the coast at Songo Songo and Mnazi Bay in Tanzania and these are in the process of being developed. Unfortunately, just like the mining contracts contract the government has signed with Statoil, a Norwegian state company, also remains a secret.

Mustafa Mhinda Amani, founder and Executive Director of Haki Madini, , a local civil society group which has been fighting for the betterment of the lives of locals in mining, said the export of tanzanite and other gemstones without creating a local economy amounts to transferring jobs out of Tanzania to other countries. He noted during his interaction with the journalists that over 70,000 jobs have been created out of tanzanite in India, while the youth in the resource rich African country cannot find work to do. He also urged the Tanzanian government to focus attention on the nationals to ensure that more of the wealth generated from the rare gemstones and other minerals stay within the Tanzania economy.

** Fred Avornyo is a freelance journalist based in Accra, Ghana.*

Equity between state and investor in Africa's mining industry

African governments challenged to reinforce ongoing fiscal reforms and mining contract renegotiations with other measures to improve the equity between state and investor in the booming extractive sector and also to finance the AMV in full, writes ***Kwesi W. Obeng**.

Decades of mining has hardly improved the quality of life for ordinary people

THIS year's strategy meeting of the African Initiative on Mining, Environment and Society (AIMES), the 14th in the series, was held in Accra, Ghana's capital against a backdrop of a sturdy growth rate right across Africa and a consequential renewed interest in the continent as an emerging "growth pole".

This optimism is feeding a growing notion of an "Africa rising", if even this is sometimes misplaced. The benefits of the growth of the last decade fuelled in large parts by high global prices for Africa's primary commodity exports have mainly inured in favour of transnational corporations which dominate the sector. African governments and national elites have also monopolised the relatively minor pickings that are left over.

The meeting was also organised against a gradual softening in the prices of some major minerals, notably gold and iron ore, and the peaking of global efforts, if even half-hearted, to tackle the broken international tax regime that allows rich multinational companies to shift elsewhere the huge profits they generate from their operations in Africa without paying the appropriate taxes to African states.

The Africa Mining Vision (AMV), adopted by African leaders four years ago, makes the case for Africa as a continent to harness its vast finite natural resources to underpin a broad-based growth to structurally transform its raw material export-dependent economy.

Today, Africa's minerals are mainly exported as ores, concentrates or metals without any significant value-addition. In effect, there is a large untapped potential for mineral beneficiation and the creation of high quality jobs.

It is to improve the equity between state and investor in the extractive sector that many African governments have embarked on fiscal reforms and contract renegotiation in the last few years of the current commodity price boom. Needless to say, these reforms fall far short of the radical shift away from the prevailing dominant mining regime that the AMV advocates.

Themed *"The Africa Mining Vision: From Promise to Realisation"* and co-sponsored by the United Nations Development Programme (UNDP) and Third World Network African (TWN-Africa), the meeting brought together 40 representatives of non-state actors and key social constituencies from Africa to deepen their knowledge of the content of, status and processes around the ongoing mining reform agenda at various levels and define an advocacy agenda and strategy for the network in respect of the AMV reform agenda. Presentations were made on a range of topics including "Contracts Negotiations and Struggles", "Leakages and Illicit Flows, "Linkages and Diversification", "Implications of Trade and Investment Regime for AMV" and a three-member panel debate on the "Strengths and Weakness of the AMV". Sixteen country reports on the extractive sector were also presented.

A key feature of the new optimism about Africa's economic future, as noted by a number of speakers, is the broadening of consensus for a re-orientation of policies towards an agenda for structural transformation of Africa's economies, even as it is possible to discern a spectrum of meanings and consequences in the use of the concept "structural transformation".

Central to most of the conceptions of Africa's structural transformation is recognition that Africa's economies should evolve from their raw material commodity export dependence, a feature which has been accentuated by the ongoing commodity boom, and must embark on a course of commodity-based industrialisation and transformation. This position re-emphasizes a central thesis of the AMV.

Mineral prices have been declining since 2011, however reliable indicators point to an intensification of mining dependence by African economies. This of course resonates with the logic of an Africa Rising or Africa as a global growth pole as some prefer to call the phenomenon, which assumes a certain predication of strategy.

The current narrative, Yao Graham co-ordinator of Third World Network Africa said, underlines three important elements, namely minerals as engine of growth; a growing African middle class; and Africa's financial market as rich pickings by financial speculators.

However, the decade-long economic expansion in Africa, as rightly noted by a declaration from the AIMES meeting, has not translated into improved conditions of living for ordinary Africans. Indeed, many Africans remained trapped in the circle of joblessness, material deprivation, poverty, insecurity, loss of livelihood and mining-related environmental disasters.

It is in the face of this reality that many mineral-rich African countries have set in motion measures towards reforming their extractive sector regimes, mainly fiscal regimes and renegotiation of contracts to improve the benefit of the sector to their economies. The latest to rejoin the list is Mali. President Keita's government announced days after coming into office on September 4th that the administration will undertake a "complete inventory" of its mining contracts and licenses. This exercise is expected to lead to renegotiation of mining contracts and licenses. Mali is Africa's third largest gold producer.

But these reforms are insufficient to resolve the fundamental issues around Africa's extractive industry to fire up sustainable growth and the structural transformation of the continent's primary commodity export dependent economies.

Take for example Guinea, home to over a third of the world's known bauxite reserves, it is one of the first countries to have published all its mining contracts online but is today grappling with one of the world's biggest mining contract scandals.

At the regional level, the Southern African Development Community (SADC) for example has adopted a model bilateral investment treaty. In West Africa, a project on defining the ECOWAS Mineral Development Policy is ongoing.


A mine site

The AMV has emerged as an important reference point for a wide range of actors, from bilateral and multilateral political and finance institutions, through campaigning CSOs, mining multinational corporations to intellectuals of varying orientations - with all of them expressing their support for it in whole or in parts.

Participants at the Accra meeting were concerned that four years after African leaders adopted the AMV there is very little movement on its implementation. There is also a lack of public awareness about the transformation agenda, although the policy process the AMV has initiated represents a programmatic crystallisation of the questioning by governments and communities as well as decades of demands by CSOs for reform of the operative mining regime.

The AMV is in many ways caught in a web of contested interpretations and there is the danger that donors may dismember it by picking and choosing what they want from it.

In a two-page declaration, AIMES lauded African governments' active pursuit of revising fiscal terms in laws and contracts with mining corporations in a bid to improve equity between state and investor. The group however noted that these steps do not go far enough and therefore urged Africa governments to reinforce efforts at fiscal revision and contract renegotiations with other measures including a stronger commitment to public accountability for contract renegotiations as well as improve states' capacity to prevent illicit flows from the sector through legal and institutional reforms and cooperation with CSOs.

Illicit outflows

Illicit financial outflows constitute a major source of revenue leakage from Africa as it runs down foreign exchange reserves, depresses investment inflows, undermines domestic resource mobilisation efforts, shifts the burden of taxation on to the poor and worsens poverty on the continent.

This form of tax evasion and tax avoidance facilitated by the global tax regime, costs African countries an estimated US$40 billion each year. That is about half of what Sub-Saharan African countries expend on healthcare each year.

This is on top of excessive concessions to international mining companies operating on the continent. The practice is heavily detrimental to these economies because mineral extraction in Africa is also largely an enclave economic activity with limited linkages to the larger economy. Tax revenue is therefore an important source of beneficiation to these economies.

AIMES also challenged African governments to own the AMV package, take steps to operationalise it as an organic policy package and take responsibility for funding the AMV's implementation, including financing the African Mineral Development Centre, rather than adopt the same donor-aid dependent approach.

For non-African governments and donor organisations which proclaim support for the AMV, AIMES challenged them "to support the leadership role and agenda set by African governments and their people, rather than use their resources and leverage to distort the implementation for their own interests".

Established in 1998, AIMES is a pan-African network of CSOs working on mining and development issues. It brings together a broad array of non-state actor groups working on different aspects of mining and development but unites them around the theme of mining's role in Africa's development.

The coalition comprises organisations from Africa's key mining countries and has been an important framework and platform for capacity building, mutual support and collective advocacy engagement.

The annual review and strategy meetings of AIMES have served as an important platform for capacity building, collective reflection on issues, shared analysis and adoption of common campaigns and strategies.

The practice of rotating the meetings among AIMES members in different countries has helped strengthen the domestic legitimacy and influence of AIMES members who have hosted the annual meetings. The last review and strategy meeting in Harare, Zimbabwe, brought together 40 participants from 16 countries.

** Kwesi W. Obeng is assistant editor, African Agenda.*

Zimbabwe Indaba makes case for communities

At its recent Alternative Mining Indaba, Zimbabwe civil society groups have called for special attention to be paid by their government to communities in mining areas. Below are excerpts from the Declaration of the Indaba.

WE, members of civil society, community based groups and activists, traditional leaders, faith based organisations, youth and women groups, the media, with regional representation from South Africa , Mozambique and Zambia having gathered at the 2nd Zimbabwe Alternative Mining Indaba (ZAMI) in Harare, from the 10th - 11th of September 2013 at the Crown Plaza Hotel, jointly hosted by Zimbabwe Environmental Law Association (ZELA) and the African Forum and Network on Debt and Development (AFRODAD) under the theme *"Community Rights, the Key to Empowerment"*,

CONFIRM that the ZAMI is a yearly alternative platform for different participants to share and exchange ideas, experiences and strategies on how to promote the rights of communities affected by mining operations and noting that those affected by mining operations are not always afforded an equal opportunity by private sector actors who organise Mining Indaba's and other platforms to participate and share their problems;

CONVINCED that while Zimbabwe is resource rich, there are high levels of poverty and under-development in many communities and that communities that are directly affected by mining operations and citizens in general, have not benefited from the mineral wealth;

HAVING deliberated during the Zimbabwe Alternative Mining Indaba, we specifically demand that the Zimbabwean government;

1. Enacts legislation that will transform the extractive sector from being a raw material activity to an industrial one through promotion of value addition. This should be done through the passage of a new Mining law than the current Mines and Minerals Act which is old.
3. Uses the Africa Mining Vision (AMV) to strengthen the provisions of the current draft Minerals Policy and other legislation governing the mining sector.
4. Strengthens the capacity of the Zimbabwe Revenue Authority (ZIMRA) and other revenue collection institutions for maximum mineral revenues collection to eliminate tax evasion and avoidance. Further, government should provide scope for further consultations with communities and civil society on the formulation of the Income Tax Bill on issues related to mining revenue collection.
5. Undertakes a comprehensive geological survey and audit of the mineral resources in the country to ensure that mining contracts are negotiated from a geologically informed position.
6. Ensures enhanced transparency and accountability throughout the whole mineral value chain from the negotiation and awarding of mining contracts, public disclosure of contracts, production figures and mineral revenues. In this case there is need for continued implementation of the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) to enable the public disclosure and publication of mineral revenue for purposes of transparency and accountability.
9. Adopts clear and transparent mechanisms for the implementation of the Indigenisation programme in the mining sector and to ensure that all laws and policies are clear and easy to interpret and apply.
10. Ensures that Community Share Ownership Trusts be provided with financial performance information of the companies in which they own shares and get Share Certificates. In this regard, Community Share Ownership Schemes should also provide information to community members about how much they are receiving and how the funds have been used. Therefore, information should be made publicly available.
11. Passes laws to legalise artisanal mining and organize them into groups to ensure they comply with environmental laws and ensure that they pay reasonable taxes commensurate with their operations and means. In addition, Small Scale miners should be provided with adequate financial and technical support.
12. Develops a gender sensitive Minerals Policy and ensure adequate participation of women and other marginalized groups during the consultation processes towards the development of the policy.
13. Provides adequate financial and technical resources to the Zimbabwe Human Rights Commission to investigate and monitor cases of human rights violations in the mining sector, especially environmental, economic, social and cultural rights.
14. Ensures that the Environmental Management Agency improves its environmental monitoring activities in mining areas and compel mining companies to rehabilitate and reclaim open pits created by mining operations in areas such as the Great Dyke. The Environmental Management Agency and the Ministry of Environment must take comprehensive steps to address the plight of communities living along Save River and Odzi River which are being affected by diamond mining companies operating in Marange to stop polluting the rivers. In the same vein mining companies operating in Marange and other mining areas must adopt proper environmental management systems to curb and control pollution of rivers and dams.
15. Protects and promotes the rights of mine workers and Chinese mining companies in particular must abide by the labour laws of Zimbabwe.

Zambian govt to tighten mining sector rules

Zambia lost a great opportunity with the windfall tax when the metal price was high. Now the price is set to decline but the Zambian government says it is determined to tighten mining sector regulations, writes ***Judith Namutowe**.

THE Zambian government is set to improve regulation and monitoring of the mining sector to increase its contribution to the country's Gross Domestic Product (GDP), Mines deputy minister Richard Musukwa has said.

Musukwa said the strategic focus of government on mining during the 2014 to 2016, would be to improve regulation and monitoring of the mining sector to enable it increase its contribution to GDP.

To achieve this, the deputy minister said the government would concentrate on key issues which include, mine technical audits, monitoring of the gemstone sector, geological and structural mapping, mineral exploration and resources survey, increasing mines safety department capacity and promotion of value addition in the mining sector among many others.

Musukwa explained that currently, government had insufficient capacity for monitoring the mining industry in the country and as a result, it had no reliable production statistics database, making it difficult to verify production costs and sales data declared by the mines as a basis for royalty and tax computations.

Hence, Government would begin conducting mine technical audits to ensure current taxes and mineral royalty were complied with.

Zambia is Africa's top copper producer. In 2009, the government scrapped 25 per cent windfall tax introduced a year earlier in response to pressure from mining companies.

President Michael Sata's government doubled royalties on copper to six per cent in 2012 on assumption of power to fund increased spending on the social sector and agriculture.

Musukwa reiterated that government would continue to attract Foreign Direct Investment in the mining sector but not at the expense of exploiting Zambians, Mines, Energy and Water Development Deputy Minister Richard Musukwa has said.

The deputy minister said this when he presented a paper on government priorities in the extractive industry in Lusaka on September 13.

He said President Michael Sata's administration recognised the importance of private investment in the development of the mining industry and would, therefore, endeavour to work closely with the industry in implementing the process.

"Care will be taken to ensure that Zambia maintains the favourable investment climate for continued growth of the sector," Musukwa said.

Government would like to see this partnership exhibited in Extractive Industries Transparency Initiative (EITI) in all areas for transparency and accountability.

Musukwa said the government realised that investors needed to get a fair return on their investment, but that this would not be done at the expense of Zambians.

He said the government would continue to support the implementation of EITI as it was one tool being used to promote accountability and transparency in the management of mineral resources in Zambia and it was his desire to see many Zambians using the initiative to ensure accountability and transparency.

Government has been and will continue implementing measures that would lead to increased benefits from mineral resources for the people of Zambia, while at the same time, ensuring that mining remains profitable for the investors.

Musukwa said government would start monitoring the gemstone sector to ensure its contribution to the treasury.

He noted that the gemstone sector had for a long time been neglected, hence its insignificant contribution to Government revenue. If monitoring is enhanced the sector's contribution can be raised to that of the base metals.

He also said the lack of geological information not only hindered investment but also makes it difficult for government to obtain a fair deal from the concessions in the sector.

Focus would be on minerals for which there have been inquiries by potential investors and these include rare earth elements, limestone, gypsum, clays and aluminous rocks.

Government will continue to promote the setting up of value addition industries as way of increasing benefits from mineral resources.

Zambia has a wide range of minerals which can be used to expand the manufacturing industry, thereby creating more jobs and increasing contribution to government revenue.

Last year, the country's Finance Minister, Alexander Chikwanda announced that Zambia will not reintroduce a mining windfall tax. It therefore remains to be seen what form the tightening of mining rules as announced by the government on September 13th will take.

Switzerland's Glencore, London-listed Vedanta Resources Plc and First Quantum Minerals are some of the major international mining companies operating in Zambia.

** Judith Namutowe is a journalist with the Times of Zambia. This article was first published by Times of Zambia.*

Accra city centre, (insert) Shantanayan Devarajan of the World Bank

"Structural Adjustment Programmes worked in Africa" - *World Bank*

The World Bank's chief economist for the Africa division, Shantanayan Devarajan, credits "Africa Rising" in part to World Bank and IMF policies, writes ***Lambert Mbom**.

THE World Bank's influence as a political actor across the African continent has been on the wane for the past two decades. It has come in for heavy criticism from some corners of the activist, political and academic communities for the social and distributional effects of the economic policies both it and its sister institution, the IMF, have prescribed.

Following the rise of Chinese and other non-traditional sources of capital, the World Bank's dominance as a developmental lender has been called into question. Despite a forced rethink in some policy frameworks and recently being outspent by China, the World Bank continues to be a sizeable economic and norm-creating institution. Think Africa Press recently interviewed Shantayanan Devarajan, the Chief Economist of the World Bank's Africa division, who defends the World Bank's record, provides his analysis of the economic situation on the continent and plots where things may lead.

Across Africa, there is still a worrying preponderance of poverty and food insecurity. How can this be reconciled with the assertion in Africa's Pulse (the World Bank's biannual Africa publication) that "African countries are among the fastest growing countries in the world"?

A taxi driver in Senegal told a colleague of mine, "I cannot eat growth". I think that captures the average African's view.

"Across Africa, there is still a worrying preponderance of poverty and food insecurity. How can this be reconciled with the assertion in Africa's Pulse (the World Bank's biannual Africa publication) that "African countries are among the fastest growing countries in the world"?

African economies are growing mostly because commodity prices are very high, so natural resource prices are high - such as oil and gas - and many of these countries are exporters of natural resources like Ghana, Gabon, and Nigeria.

Also, investment is growing in Africa and so you are seeing quite a lot of foreign investment coming in as well as domestic investment. The investment rate, which is usually a predictor of future growth, means you are building capacity and capital stock is rising.

But, I think, it is fair to say the taxi driver in Senegal has a point because while poverty is declining, it is not declining at a fast enough pace. While the economic growth is a result of commodity prices, the poor are working in agriculture and there is no direct link between the growth in natural resources and agricultural growth.

Agricultural productivity has not been growing very fast across the board and many of these countries that are seeing very high growth rates are actually seeing very little agricultural growth - which has a high concentration of the poor.

Most Africans, the ones in rural areas as well as people in the urban areas, are in the informal sector. And there is a reason for that: they cannot afford to be unemployed. Most of the unemployed in Africa are people with secondary school degrees, who have finished secondary school or even university. They are the ones who can actually afford to sit around and wait for jobs because their families can support them.

Most Africans are working very hard, full time but in very low productivity jobs - like selling vegetables in the streets, or the guys who clean your windshield and try to sell you stuff while you are stuck in traffic. They are working in order to make a living but the problem is that they are working in very low productivity jobs.

How do you translate this into poverty reduction?

First, increase the productivity of agriculture. There are different ways to do it; there are good ways and bad ways. What governments have traditionally been doing is to say 'lets subsidise farmers' - subsidising fertilisers or seeds.

The trouble is that this helps the large-scale farmers. When you subsidise fertilisers, the larger farmers use a lot more fertilisers than small-scale farmers. We need to come up with different ways of ensuring that farmers can benefit from the mineral wealth - including giving them cash transfers directly that will enable them to buy fertilisers rather than subsidise fertilisers.

Second, and very importantly for the informal sector, is the need to improve the skillsets. One of the reasons people are in the informal sector is because they do not have access to education. Something like 50% of those working in the informal sector have not finished secondary school. Strengthening the education system and teaching those skills that are not part of the traditional curriculum - soft skills, teamwork and work ethic - are crucial so that these people and their children have a chance of moving out of the informal sector into the formal sector.

Lastly, infrastructure is important. Another reason why agricultural productivity is low is because farmers do not have roads on which to take their produce to the market. This often gets neglected in favour of a flashy big motorway in an urban area.

These are the basics; this is an opportunity that may not come around very often. Right now, mineral prices are very high and Africa is the place where there seems to be the most undiscovered minerals. This could be a window into which Africa can translate this opportunity into sustained growth.

Discussions of the economic growth drivers never mention the Structural Adjustment Programmes that the World Bank and IMF promoted in Africa. Is this a deliberate acknowledgement of the criticisms levelled at them?

There is no question that one of the major reasons for Africa's growth over the last 10-15 years is because macro-economic policies have improved. Average inflation is half of what it was in the 1990s. Fiscal deficits are down. Current account deficits are down.

The reason is that African policymakers followed Structural Adjustment Programmes over the last 10 - 15 years. It worked, it delivered results. It delivered economic growth and poverty reduction. You can't dispute that.

Today, non-fragile African countries have the best macro-economic policies in the whole world compared to other low-income countries. This has been a tremendous change.

This is why it is a puzzle or may be, seems like a puzzle: why is it that the structural adjustment programmes of the 80s and 90s are so criticised?

I think that there is a difference and this is the critical point: It is not that the policies were wrong but that there is a big difference with those policies being designed in Washington, London and Paris versus those policies being designed in Abuja, Yaoundé and Nairobi. And I think that is the difference we are seeing. After debt relief, African policymakers decided they had to have a plan. They sat down and worked it out and they came out with the exact same policies as the Structural Adjustment Programmes.

If you look at the programmes of the 2000s and compare them to the SAP, they are exactly the same but there is a big difference if it is home-grown and owned rather than externally imposed and I think that is the big difference.

There's a lack of reliable statistics for Africa. Where are these figures coming from and how problematic is this?

There is a huge problem with statistics in Africa. No question about that. These figures are coming from best estimates we have. We are not trying to project anything other than do some real estimation.

And the other thing we try to make sure we do is not rely on any one estimate. We do not for instance take a whole view of a country just by viewing the GDP. We look at poverty, which is evaluated in a completely different way from GDP. This is done by individual household consumption surveys. This involves actually meeting and asking a household how much they are consuming. And then you triangulate.

These are not statistics based on just one or two estimates. But that said, I think there is a real problem because the capacity is very weak and frankly the political support for statistics is very weak in African countries.

I want to see more and more African policy makers championing statistics. It's easy to see why there isn't such political support for this - statistics can make for uncomfortable reading, they might actually expose the failure of governments. But that is precisely why we need it. Statistics aren't just for economists, they are for the people. They are for citizens to know, so they can decide whether what the government says it is trying to achieve it is actually working.

Credit: Think Africa Press.

** Lambert Mbom is a freelance reporter working in Washington DC..*

How the World Bank's SAPs impoverished Africa

In response to the World Bank's claims that the SAPs are to be credited for Africa's current economic growth, ***Carlos Lopes** argues the contrary and that it has had a devastating impact on the continent.

Conakry : protesters in the Guinean capital, (insert) Carlos Lopes of UNECA

SUCCESS has many fathers, while failure is an orphan, as the saying goes; and now that Africa is witnessing an era of economic growth, many are lining up to claim the credit for it. A number of African countries are experiencing economic growth fuelled by their endowment with commodities at a time of surging prices as well as improved political environments, prudent macroeconomic management, rising domestic consumption and strong public investment.

The Bretton Woods institutions - the World Bank and the International Monetary Fund (IMF) - are emboldened by these developments and have laid claim to the success story currently coming out of Africa. Recently, in an interview with Think Africa Press, the Chief Economist of the Bank's Africa Division, Shantanayan Devarajan, credited Africa's robust economic performance to the policies of the World Bank and the IMF.

The success came, according to him, because African policy makers followed the Bank's policy of Structural Adjustment Programmes (SAPs) in the past 10 to 15 years. The SAPs, he claims, "delivered economic growth and poverty reduction".

Really?

There is abundant evidence to the contrary. Before we look at these contrary views, let us provide a background to the SAPs in Africa.

African countries ran to the World Bank and IMF for loans as a result of a serious financial crisis that engulfed them in the wake of the debt crisis in the 1970s. In return for providing loans to stabilise these economies, the Bank, under the Structural Adjustment Programmes, imposed conditions on the borrowing nations. These included a massive reduction in the role of the state in the economy, the deregulation of the economy, trade reforms and privatisation of public enterprises.

The official intended consequences of the SAPs were to structure the economies of the developing countries in the likeness of the American economy. However, instead of providing for growth and development, its impact was largely negative.

Liberalisation of domestic markets sent prices through the roof, increased unemployment, worsened poverty and created social unrest. Newly privatised enterprises were required to rationalise their production methods and this translated into increasing unemployment as a result of reduction in the workforce. In addition, globalised financial markets together with a deregulated financial environment induced wild swings in exchange rates and extreme volatility of markets. The conditions also focused on lowering inflation and budget deficits, devaluing local currencies and removing price controls.

Mixed results

The 29 sub-Saharan countries which signed up to the arrangement during the 1987-1991 period experienced mixed results, according to the Bank.

Most assessments of the impact of SAPs on African countries and on development on the continent are to a large degree negative. The reduction of the role of the state resulted in the downsizing of the civil service, a decline in real wages and cuts in public expenditures. Along with the weakening of bureaucratic capacity and public institutions, these factors compromised the provision of basic services and investment in infrastructures, which eventually led to a reduction in private investment.

Although the policy restored macroeconomic stability in some countries, economic growth stagnated and social conditions worsened considerably. For example, the decay in public health services in Nigeria made people to coin the phrase that government hospitals had become "mere preliminary consulting rooms".

Many families were destroyed as their bread winners, who were rationalised out of employment or whose take-home pay could hardly take them home, were no longer able to cater for their dependants. One report said, thanks to the SAPs, some men in Zambia left home and abdicated their responsibility to their wives.

Due to its one-size-fits-all nature, the adjustment programmes were unable to respond to specific country conditions and changing circumstances, leading to a lack of shared vision between the Bank and recipient governments concerning the aims of the programmes. No wonder they did not get the buy-in of many nations. In the end many opted out and, in the case of Nigeria, Ethiopia and others, developed their own homegrown equivalent.

The SAPs' devastating impact

In 2011, the Economic Commission for Africa (ECA) noted that the negative impact of SAPs was particularly visible in the African industrial sector. The Commission observed that growing dependence on imported goods driven by the SAPs' trade liberalisation eroded the weak industrial base of most African economies.

Effects on income and welfare were magnified by an increased debt burden, deteriorating terms of trade, declining flows of private capital and accelerating capital flight. The lack of industrial development in Africa is at least in part a consequence, if not a result, of these interventions. In most of the cases, industries are yet to recover from the SAPs period.

> **"The Economic Commission for Africa (ECA) noted that the negative impact of SAPs was particularly visible in the African industrial sector. The Commission observed that growing dependence on imported goods driven by the SAPs' trade liberalisation eroded the weak industrial base of most African economies."**

More importantly, as many country examples in Africa demonstrate, the implementation of SAPs compromised government capability to design and put into action long term economic and social development strategies that are critical for enabling the private sector to develop and compete globally.

SAPs left behind, bright future ahead?

In their 2013 report, the ECA further highlights the failings of the SAPs: "They did not raise productivity, boost manufacturing export performance or enhance value addition." It also claims that the policy actually hurt technological capability and skills. "Today, the weak African industrial structure still has to move out of the shadow of those interventions - a task made more onerous by the new international context," it said.

Now, thanks to a surge in the price of their natural resources and the development strategies and good economic management of more development-oriented governments, African nations are emerging from that period with some optimism. The headlines in the international press these days usually proclaim "Africa Rising". The trend has been helped by the emergence of China, Brazil and India that have ramped up demand for African raw materials for their burgeoning manufacturing industry. Chinese investment and aid has also helped to build roads, hospitals, railroads, and other infrastructure on the continent.

To keep the continent on the rise, the ECA is robustly arguing for governments to be involved in developing their countries rather than toe the IMF/World Bank line of promoting market fundamentalism with little or no state involvement. The Commission is of the opinion that if Africa could leverage on its primary commodities to industrialise through adding value to them and linking the commodity sector to the rest of the economy, then the 21st century could indeed be Africa's. The recent successes of Asian countries who did not take the prescriptions of the Washington Consensus bear testimony to the strength of the model.

Credit: Think Africa Press.

** Carlos Lopes is the Executive Secretary of the Economic Commission for Africa. Dr Lopes previously served as executive director of the UN System Staff College in Turin from 2007 to 2012.*

G-8 leaders at a roundtable

Africa likely to lose in G8 'tax haven' deal

African countries are losing around $50 billion a year in irregular financial flows, mainly tax havens - a figure higher than what they received in official aid. But the recent G8 measures to crack down on 'tax havens'may not benefit African countries, writes ***Paul Redfern**.

THE tax haven "deal" that was agreed at June G8 summit in Northern Ireland may not benefit African countries, according to aid agencies and a group of high level African former leaders led by Thabo Mbeki, former president of South Africa.

Mbeki, who chaired the high level group on the topic also in June said that African countries are losing around $50 billion a year in irregular financial flows, mainly tax havens - a figure higher than what they received in official aid.

According to the June 18 G8 deal, new rules will be put in place to disclose the real owners of companies, as they have been hiding their identities in order to enjoy tax havens.

Leaders of the G8 major economies also agreed on new measures to clamp down on money launderers, tax evaders and corporate tax evaders. Governments agreed to give each other automatic access to information on their residents' tax statuses.

They will also require shell companies - often used to exploit tax loopholes and invest money anonymously - to identify their effective owners.

The measures are designed to combat tax evasion as well as legal tax avoidance by large corporations that make use of loopholes and tax havens.

But the deal fell short of what campaigners had demanded by not committing countries to making information public, only sharing that information with other tax authorities.

Mr Mbeki and his group expressed their concern that the deal does not appear to enable African nations to know what information to request with regard to international firms which operate in their country, particularly those about whom concerns have been expressed over the stripping out of vital natural and mineral resources.

Tax waivers do not necessarily attract investors; they impoverish these African countries

To enable African countries to do this, aid agencies argue, there should have been public registers of the companies concerned, not just a sharing of information between tax authorities.

The UK-based aid agency War on Want's tax campaigner Murray Worthy said: "If all of these promises become reality this could have an enormous impact on tackling one of the greatest scandals of our time. But there is a long way to go and today all we have is a general statement of principles with no detail and no deadlines."

He added: "As always, the devil will be in the detail, and there's no detail here. Talk of stopping companies shifting profits to avoid taxes is a huge step forwards, but we've heard great promises from the world's heads of state before - it's what they do that counts."

Tanzania is among the worst affected countries and is estimated to be losing up to US$1.1 billion or five per cent of its potential GDP because of tax exemptions to entice businesses into the country.

This reiterates a 2012 sentiment by lobbyists Tax Justice Network-Africa and the campaign group ActionAid that East African countries were losing US$2.8 billion in revenues a year to exemptions, with Tanzania consistently giving away the highest amount.

But Alvin Mosioma, the co-ordinator of Tax Justice Network-Africa, who is pushing for the removal of tax exemptions for Tanzania's gold mining sector says waivers do not necessarily attract investors.

"When you look at the top 10 reasons given by investors as enabling factors you find they mention things like rule of law, human resources capacity and infrastructure, issues that are more influential and significant than just tax incentives," said Mr Mosioma.

Zitto Kabwe, who chairs Tanzania's Parliamentary Public Accounts Committee and is shadow finance minister, said the main problem is that the exemptions, which amount to a tenth of the government's annual budget, are often opaque. It is unclear who is receiving them and how much they are worth.

Now the Tanzanian government plans to reduce the tax incentives it offers to companies. But the country finds itself in a dilemma facing other governments in East Africa as well, as their economies develop, with critics arguing that global organisations are sending mixed messages on the subject.

On the one hand the IMF is urging Tanzania to reduce its tax exemptions, while on the other, the World Bank's annual global ranking of business environments rewards countries that offer such incentives.

The International Monetary Fund estimates that Tanzania's tax revenues, 15 per cent of GDP, are 5 percentage points below its potential.

Speaking at the G8 Summit, African Development Bank president Donald Kaberuka said it was laudable that the G8 was putting emphasis on the issues around resource mobilisation through greater transparency on taxation issues in Africa's natural resources.

Citing a larger internal governance agenda in the sector of natural resources, he called on the international community to do its part, to ensure balanced contracts, minimise tax avoidance and evasions, and bring light and transparency in the natural resource sector, which is often very opaque.

Kaberuka said this was the only way African countries will find the financial resources they need to fund infrastructure and trade corridors, which are now very dependent on donor funding.

He said that the African Development Bank was fully behind this agenda and had put in place the Africa Legal Support Facility four years ago which has been instrumental in assisting a number of countries to negotiate complex contracts and unbundle others with the aim of ensuring that they (countries) get what they deserve, investors get the return they look for and everyone is a winner.

Paul Redfern writes for the The East African. This article was first published by the East African.

Intra-African trade continues to plummet - says UNCTAD

Steel rods for construction

INTRA-AFRICAN trade presents opportunities for sustained growth and development in Africa. It has the potential to reduce vulnerability to global shocks, contribute to economic diversification, enhance export competitiveness and create employment.

African governments have made several attempts to exploit this potential of regional trade for development, the most recent being the decision by African leaders at the African Union summit in January 2012 to boost intra-African trade and fast-track the establishment of a continental free trade area.

Against this background, UNCTAD's Economic Development in Africa Report 2013 subtitled Intra-African Trade: Unlocking Private Sector Dynamism focuses on how to strengthen the private sector to boost intra-African trade.

The report notes that in recent years the share of intra-African trade in total African trade fell from 22.4 per cent in 1997 to 11.3 per cent in 2011. Intra-African trade (both exports and imports) totalled US$130.1 billion in 2011. These statistics may be underestimates, given the prevalence of informal cross-border trade on the continent, but they are nevertheless low when compared to other parts of the world. For example, over the 2007-2011 period, the average share of intra-regional exports in total exports was 11 per cent in Africa, compared with 50 per cent in Asia and 70 per cent in Europe.

The report argues that although the elimination of trade barriers is important, it will not have the desired impact if it is not complemented by efforts by governments to increase the variety and sophistication of the goods that their economies produce - the process that economists call expanding productive capacity. That involves measures such as upgrading infrastructure, improving the skills of domestic workforces, encouraging and enabling entrepreneurship, and increasing the size of existing manufacturing firms so that they can satisfy larger markets and produce their goods with greater economies of scale.

Having cleared the field for increased regional trade - and the economic growth that it promises - African nations need to provide the goods to sell to each other, or foreign competitors will fill the vacuum, the Economic Development in Africa Report contends. It also recommends that African governments strengthen the private sector by making finance more accessible and less costly, and by enhancing mechanisms for government consultation with the private sector.

Short-term unexploited opportunities for regional trade in Africa are to be found particularly in agriculture, the report says. Africa has about 27 per cent of the world's arable land, and that can be used to expand agricultural production. And yet many countries on the continent import food and agricultural products from countries outside Africa. For the period from 2007 to 2011, the study notes, 37 African countries were net food importers, and 22 were net importers of agricultural raw materials. But only about 17 per cent of the continent's world trade in food and live animals took place within Africa. The report argues that a key challenge for African policymakers is how to exploit these opportunities for regional trade, the so-called "low-hanging fruit", and to ensure that the gains accrue predominantly to Africa.

But the greater long-term opportunity - and greater challenge - is to improve industrial capacities to provide the goods for which regional trade typically increases demand, the report says. The benefits of greatly expanding regional trade - amply illustrated in Asia - are that selling in nearby markets gives firms cost advantages through proximity, potentially reduced transport expenses, better knowledge that allows goods to be fitted to local conditions, and, if sufficient customers can be found, enough critical mass to justify expanding industry, the report notes.

Some of the potential is apparent in existing trade flows: African countries tend to export a higher percentage of manufactured goods to each other (43 per cent of all intra-African trade), while manufactured goods account for only 14 per cent of total African exports to overseas markets.

The challenge is clear, too. Africa accounts for only 1 per cent of global manufacturing. And manufacturing represents about 10 per cent of African GDP, compared to 35 per cent for East Asia and the Pacific and 16 per cent for Latin America and the Caribbean. The low level of manufacturing development in Africa means that manufactured goods - such as cars, machines, and electronic gadgets - must be imported from overseas, a problem that is also an opportunity. If various national markets can be effectively integrated into a larger regional market, the report says, there should be sufficient numbers of customers to support the expansion of industry within the region.

An additional challenge noted by the report is that Africa has some of the highest costs in the world for transporting goods. In Central Africa, transporting one ton of goods along the route from Douala in Cameroon to N'Djamena in Chad costs US$0.11 per kilometre, which is more than twice the cost in Western Europe ($0.05) and more than five times the cost in Pakistan ($0.02).

The report contends that the nature of the goods produced and exported by African enterprises matters for the growth and expansion of intra-African trade. African countries produce and export a narrow range of goods, most of which are primary commodities such as oil, natural gas, and metals. Over the period from 2007 to 2011, two products accounted for over 80 per cent of exports to other African countries from Algeria, Angola, Mali, Mauritania, Niger and Nigeria. Africa's lack of economic diversification and weak manufacturing base inhibit intraregional trade, the study says.

The report says that unlocking the trade potential of the private sector requires the distinctive features of Africa's enterprise structure that inhibit regional trade to be addressed. For example, African firms tend to be very small, which makes it difficult for them to operate at the minimum scale necessary in order to be competitive. The average size of a manufacturing firm in sub-Saharan Africa is 47 employees, compared with 171 in Malaysia, 195 in Viet Nam, 393 in Thailand, and 977 in China. There are also weak linkages between small and large firms in Africa, making it difficult for small firms to benefit from the skills and innovation capabilities of large firms, with dire consequences for the growth of small firms. Other structural problems of Africa's constellation of enterprises include a high share of informal firms, low levels of export competitiveness, and a lack of business innovation capability.

In addition, it is vitally important for African countries to maintain peace and stability as a prerequisite for strengthening private-sector development and boosting intra-African trade, the report says. Recent evidence, for example, has shown that the political conflict in Côte d'Ivoire that began in the late 1990s reduced intra-trade within the West African Economic and Monetary Union (WAEMU) by around 60 per cent over the period from 1999 to 2007.

HIGHLIGHTS OF THE REPORT

- The report provides some facts on intra-African trade and highlights distinctive features of Africa's enterprise structure that have to be addressed to promote intra-African trade. It also examines the challenges for intra-African trade posed by non-implementation of regional trade agreements and provides new insights into how to enhance implementation of existing regional agreements.

- The report argues that for African countries to reap expected gains from intra-African trade and regional integration, they will need to place the building of productive capacities and domestic entrepreneurship at the heart of the policy agenda for boosting intra-African trade. In this context, the report recommends that African Governments should promote intra-African trade in the context of developmental regionalism.

- In particular, it stresses the need for a shift from a linear and process-based approach to integration, which focuses on elimination of trade barriers, to a more development-based approach to integration, which pays as much attention to the building of productive capacities and private sector development as to the elimination of trade barriers.

Short-term fixes - the bane of West African agriculture

Boosting agricultural productivity in the Sahel region is crucial to reduce chronic food in security, improve families' nutrition, promote economic growth and help build people's resilience, say experts, but governments still under-fund the sector, as do international donors who favour short-term fixes.

Vegetable farmer nurturing her plants

WHILE there has been a renewed interest in investing in agriculture over the past five years, partly spurred by a drive towards more self-sufficiency given rising food prices (which spiked in 2008 and remained high), the sector is still under-served in West Africa.

In 2009 the Economic Community of West African States (ECOWAS) renewed the 2003 Maputo pledge to commit at least 10 percent of their national budgets to agriculture. But as the accord approaches its 10-year anniversary later this month, only 10 of the 54 African Union countries have met this goal.

While growth in small-scale agriculture can benefit the poor twice as much as growth in other sectors, global development aid for agriculture declined by 77 percent between 1983 and 2006, according to a report by Oxfam.

In Senegal, for example, where agriculture accounts for nearly 14 percent of the country's GDP and employs more than two-thirds of the labour force, ActionAid says the government invested just 4.7 percent of its budget on agriculture in 2012.

Consciousness did rise, however, in 2008, when food prices spiked and West African governments realized they were overly dependent on imported staple grains.

"Many countries realized that being too dependent on the international market was not sustainable, and from that moment on, said 'OK, if we want to be able to feed ourselves and if we want to improve the food security of our populations, we need to have a minimum level of food sovereignty. And to do this, we need to invest more in agriculture'," said Eric Hazard, campaign manager for Oxfam's GROW campaign. Since then "agriculture has been back on the agenda in the region."

But in those countries that have achieved the 10 percent goal, such as Burkina Faso and Niger, Hazard said the quality of the investment remains an issue.

"When you secure, say, 17 percent of your budget for agriculture, but only spend 65-70 percent of that on farmers, and the rest goes to expenditures of the Ministry, such as meetings, salaries, 4x4s, etc., you haven't really hit that 10 percent mark," he told IRIN.

Benefiting the poor

Investment in smallholder farmers is especially important, as not only do they contribute to an estimated 80 percent of the continent's food production, but they are also among the region's most vulnerable and food insecure people.

"In most countries in West Africa, the majority of the population lives in rural areas, where agriculture is the main provider of food and income," said NGO Catholic Relief Services' (CRS) regional technical adviser for agriculture Mireille Totobesola Barbier. "But production assets and financial access constraints, limited knowledge of improved production techniques and marketing skills, all impede growth [in the sector]," she said.

In the Sahel, repeat drought also impedes projects to boost production. It can take 3-4 years to recover from a crisis like the 2012 drought, and only if those years are good, said Food and Agriculture Organization (FAO) regional head Patrick David. "There has been a gradual erosion of farmers' livelihoods in the Sahel - more and more farmers are moving to cities," he said.

When a harvest fails, small farmers will sell the few animals they have; pull their children from school; become further indebted; exhaust their food and seed stocks; become more food insecure; and will be all the weaker in the face of the next crisis. This is the cycle of impoverishment in the Sahel, said David.

Burden on aid agencies

The lack of or poorly directed government funding has put increased pressure on aid agencies to secure donor funding, which is a struggle.

"Donors are often more keen to give money toward emergency or crisis situations [as opposed to long-term development projects], where you might not see the impact of the investment right away," said the World Food Programme's West Africa focal point for its Purchase for Progress scheme, Isabelle Mballa.

FAO for example, called for US$122 million to aid agriculture in the 2012 Sahel food security crisis, but only 48 percent of the requested funds were received. Activities that suffered included seed distribution, soil and water conservation projects, vaccinating animals, sending fodder to animals, and other schemes.

This year, agriculture has received just 23 percent of the agricultural funds it has called for, for the Sahel.

This underfunding has especially affected smallholder farmers, who often cannot afford basic inputs, such as seeds and fertilizers, and cannot access credit. Not only does their overall agricultural productivity suffer, but a lack of investment puts them at an increased risk of vulnerability during times of crisis and increases their dependence on external food aid.

FAO has three main areas of emergency response in the Sahel: supporting families to plant market gardens in the dry season; supporting rain-fed planting during the July-September rainy season; and helping families practice planting when water recedes from flood plains from August to December.

This year's poor funding response means "it's too late to do any more for this year's rain-fed harvest," said David. As Robert Piper, humanitarian coordinator for the Sahel, put it, "The window is closed."

What smallholder farmers need

Todd Crosby, the assistant director for YaaJeende, USAID's Feed the Future's Senegal programme, told IRIN: "The idea [behind investing in smallholder farmers] is to give them everything they need in order to succeed. It's to provide them with things like seeds, fertilizer, tools, and crop and livestock insurance. Teach them better land preparation and irrigation techniques, if they need. Help them get their product to the market."

By doing so, farmers can not only produce more, high-quality crops - which will increase their incomes - but can also help reduce the rates of undernutrition and malnutrition in the country.

Research from Feed the Future, which works with 12 African countries to reduce poverty and undernutrition through investing in agriculture, says it was able to increase the value of food exports by $84 million in 2012 by focusing on smallholder folders. This has meant that more than seven million smallholder farmers in the region saw increased profits last year.

CRS's Development Assistant Programme in Burkina Faso helped increase the crop yields of millet and sorghum by an average of 30 percent between 2004 and 2010, simply by teaching smallholder farmers how to better manage water, preserve good seeds for replanting, and other activities.

Despite these and other successes, donors shy away from funding smallholder farmers, favouring emergency aid or larger-scale agribusiness.

"These small farmers, they are seen as not being competitive with large-scale producers, because they don't have the tools, the technology, the resources or the means," said WFP's Mballa. Many believe smallholders cannot produce quality products in sufficient quantities. "But if they [smallholder farmers] are just given a little help, they too can be successful. Being a small-scale farmer does not mean you can't be productive and that you cannot earn money."

Try machines

USAID's Crosby said there now needs to be shift towards mechanized agriculture, as well as agricultural credit for smallholder farmers. "Smallholder farmers often lack tractors and other machinery in the field, and there's only so much you can do with a hand hoe. But in order to get those tools, you need to have access to credit." He told IRIN.

While there are currently a variety of microfinance schemes that offer farmers' agricultural credit, Oxfam's Hazard said most have loan rates of 14-30 percent, which makes it nearly impossible for small farmers to earn enough money to pay back the principal plus interest within the six-month lending period, and still earn a profit.

Many of these microfinance schemes also tend to target larger-scale, urban producers.

"It's a lot harder to work with small, rural farmers because they're much more dispersed and also riskier, than a few big companies or producers," Crosby said. "Their [smallholder farmers'] livelihoods - and the ability to pay back the loan - often depend on weather and other factors outside their control."

Crop and livestock insurance is one answer - it could help reduce some of the production risks, and make farmers more adaptable and resilient to climate change. The question is: where are the investors to make this work?

Credit: IRIN

Citrus farmers

Africa's farmers seek private money

By **Busani Bafana**

AFRICA currently imports almost 40 billion dollars worth of food a year, but it should implement measures to attract private sector investment in agriculture in order to reduce its food import bill and increase its self-reliance, experts in the sector tell IPS.

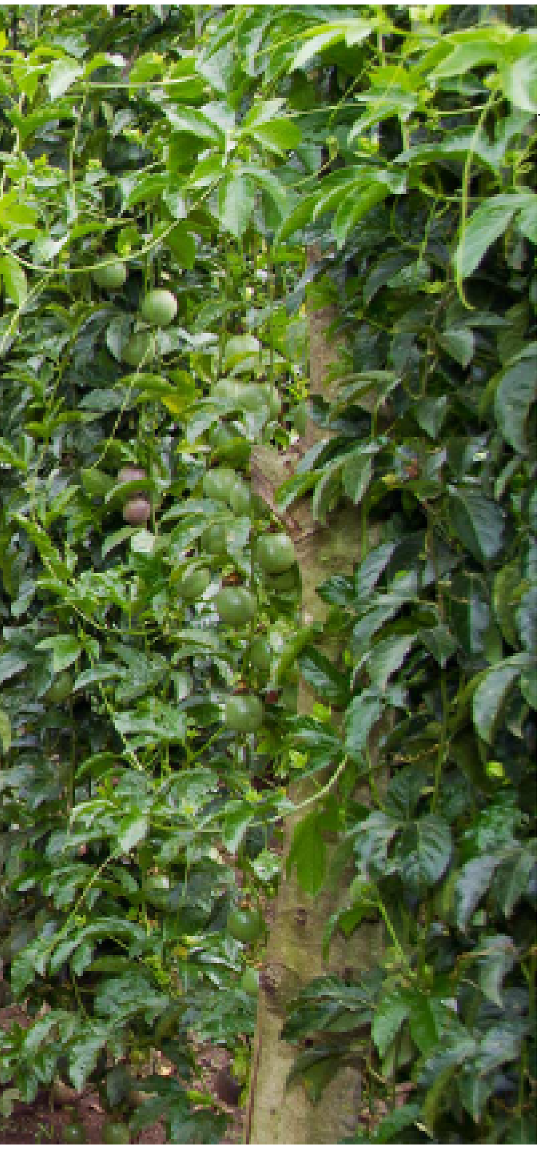
" In the next 10 years, African countries should not rely on food aid, but should produce their own food and buy from within Africa when they run out of food," agriculture researcher and director of the Barefoot Education for Africa Trust, Professor Mandivamba Rukuni, told IPS.

"Food self-reliance means wealth creation and farmers should be directly linked to markets. More people will have more money in their pockets if more smallholder farmers are farming profitably, and this can be done," Rukuni said.

African countries, according to an Alliance for a Green Revolution in Africa (AGRA) African Agriculture Stats Report launched in Maputo, Mozambique's capital, on Sep. 4, produced 157 million tonnes of cereals and imported 66 million tonnes in 2010. In August, the Forum for Africa Research in Africa put the continent's current food import bill at more than 40 billion dollars, money it said would be better spent enabling African farmers to become self-sufficient.

African heads of state and government committed themselves to improving agricultural and rural development in Africa in the Maputo Declaration of 2003. It includes the ambitious goal of governments allocating at least 10 percent of national budgets to agriculture and rural development.

But in the last 10 years, only a few of the 54 African Union (AU) member states have made this investment. These include



Burkina Faso, Ghana, Guinea, Mali, Niger and Senegal. A further 27 have developed formal national agriculture and food security investment plans under compacts. Compacts are a result of country roundtables that bring together key players in agriculture to agree on investment priorities.

Currently one of the few countries prioritising investment in agriculture is Nigeria. In that West African nation, the government developed the Nigeria Incentive-based Risk Sharing System for Agricultural Lending (NIRSAL), which seeks to reduce the risk in the agricultural finance value chain by building long-term capacity and institutionalising incentives for agricultural lending. The goal of NIRSAL is to expand bank lending in the agricultural value chain.

Nigeria's minister of agriculture and rural development Akinwumi Adesina told IPS that Nigeria was leveraging 3.5 billion dollars for agriculture from local banks. The government is shouldering the risk in a bid to attract the participation of the private sector.

"We are developing an approach for the private sector to have access to finance because without finance you cannot do much," Adesina told IPS. "We are working on new financing instruments that will allow our capital markets to work for agriculture. Agriculture accounts for 44 percent of our GDP and 70 percent of all employment but it has only two percent of all bank lending in Nigeria."

Meanwhile, Rukuni told IPS that while most African countries have not been able to commit 10 percent, they have seen the wisdom of doing so.

"Although 10 percent is a nice figure to talk about, it is not a magic figure. What is more important moving forward is catalytic public financing, where government, its experts, farmers and private sector work together and really understand here it is important for government to invest to trigger private sector investment," Rukuni said. Citing China, India and Brazil as examples of public-private partnerships at work, Rukuni said it was time for Africans to understand that there is no competiveness in agriculture without governments and the private sector setting joint targets in infrastructural development, for instance.

"The biggest trick is the private sector putting more money into agriculture," he said. "There is nowhere in the world today where you can get the government or industry moving if government and the private sector are not working together."

The AGRA report notes that despite having over 70 percent of prime uncultivated land, land holdings in Africa continue to shrink. This shrinkage has impacted on the productivity of the 33 million smallholder farmers responsible for up to 90 percent of the continent's agricultural output.

The alliance estimates that a one percent growth in agriculture will increase the income of the poor by more than 2.5 percent, yet only 0.25 percent of bank lending in the Common Market for the Eastern and Southern Africa region goes to smallholder farmers.

AU Commissioner responsible for agriculture and rural development, Rhoda Peace Tumusiime, told IPS that investment in African agriculture has become more urgent than before and this was reflected in the political movement towards the development of national agriculture plans as proposed under the Comprehensive Africa Agriculture Development Programme (CAADP) framework of eliminating hunger and reducing poverty.

"Despite having over 70 percent of prime uncultivated land, land holdings in Africa continue to shrink. This shrinkage has impacted on the productivity of the 33 million smallholder farmers responsible for up to 90 percent of the continent's agricultural output."

"The 70 percent of the population who depend on agriculture is a big figure, so if we focus on improving the situation of this 70 percent, poverty will be eradicated. We do not want a situation where the economies are growing but agriculture is not," she said.

In a March 2013 report, "Growing Africa: Unlocking the Potential of Agribusiness", the World Bank projected African agriculture would top a trillion dollars in 2030 on the back of increased domestic and international demand for food. The bank also urged African governments to improve their agriculture policies and promote agribusiness as a driver of growth.

Abraham Sarfo, agriculture, technical and vocational education advisor at the New Partnership for Africa's Development, told IPS that agriculture used to be part of dual development planning but was now on the continental agenda through the Africa-driven CAADP agenda of eliminating hunger and reducing poverty through agriculture.

"A sector that contributes over 30 percent of the economy of a country and is still at subsistence level shows how it is underdeveloped compared to mining or ICT that attract the private sector," Sarfo told IPS. He called for the increase of innovative financing models that will remove risk in agriculture investment to attract the private sector.

Phillip Kiriro, president of the East Africa Farmers Federation, which represents about 200 farmer bodies told IPS that access to critical inputs and better technologies has slightly improved in the last 10 years but governments still need to help farmers live off their land.

** IPS*

Nairobi massacre and what it means for terror in East Africa

On September 21, a band of jihadists from Somalia's Al-Shabaab militant Islamic group mounted an attack on Nairobi's Westgate Mall slaughtering dozens including a leading Ghanaian poet, university lecturer, politician and diplomat Prof Kofi Awoonor.

THE occupation of the upscale Westgate Mall in Nairobi, Kenya by the militant group Al-Shabaab is now over, leaving at least 70 civilians dead. The standoff lasted for four days and is likely to boost the image of the militant group in the region. Here's what you need to know about the group and what it means for Africa's terrorism landscape:

A mother and daughters duck from flying bullets. All three were rescued unhurt.

What is al-Shabaab?

Al-Shabaab is a militant Islamic group based in Somalia, with the expressed intention of establishing a fundamentalist Islamic state in Somalia. Though group is affiliated with Al-Qaeda, it also represents a diversity of interests and cannot be considered a homogenous entity. Though many observers reported that the African Union's campaign in Somalia had weakened the group, the recent attack on Westgate Mall suggests that the movement has gained an international following and remains a force to be reckoned with in the region.

How were these attacks carried out?

Reports vary, but 10 to 15 gunmen were able to take control of the Westgate shopping mall and fend of Kenyan security forces for more than 72 hours. The attack was far from spontaneous; some reports have suggested that machine guns were stored in the mall the night before the attack and that the gunmen had studied the layout out of the mall extensively prior to the attack. Reports suggested that the attacks were possible because of colluding mall employees and the Kenyan government's inability to police its border with Somalia. There is still significant confusion as to the nationality of the gunmen, with some reports suggesting that Americans and Britons may have been involved, in addition to Arabs and Africans.

The attackers' motivation was similarly unclear. Some survivors report that civilians were questioned at gunpoint about their religion, suggesting that this was a religiously motivated attack, but other reports have found that Muslims are among the scores of casualties. Some analysts have suggested that al-Shabaab's targeting of the Westgate Mall is retribution for Kenya's support for the UN peace-keeping mission in Somalia and for Kenya's political and security ties with the United States.

What is the significance of this attack?

While the motivation behind this attack is unclear, the implications for security policy in East Africa are stark. Though Somalia has long been a base for militant Islamic groups, this attack may suggest that Somalia and al-Shabaab are now the locus of global militant Islam. The reports suggesting that British and American citizens were among the gunmen indicate the widening scope of al-Shabaab's influence. The efficiency with which this attack was carried out suggests that the "global war on terror" Kenyan President Uhuru Kenyatta alluded to may be increasingly fought on Africa's Eastern coast, as opposed to in the Middle East. If this attack was, in fact, a response to Kenya's cooperation with United States military operations in the Horn of Africa, increased US involvement in the region may only fan the flames of discontent.

Credit: Hilary Matfess and The Atlantic.

Facing the ICC : President Uhuru Kenyatta and Vice President William Ruto

Can the African Court save us from the ICC?

At least two sitting African leaders are facing charges at the International Criminal Court in the Hague. Couldn't these leaders be tried by the African Court on Human and Peoples' Rights? The nature of the ICC and the African Court on Human and Peoples' Rights are radically different. It is complex and only mass action by African States can resolve this, writes ***Luis Franceschi**.

CERTAINLY, anything can happen. But for things to happen we must first set the structures right. Can the ICC Kenyan cases be referred to the African Court of Human and Peoples' Rights? No, they can't. At least not yet!

Why? Because the nature of these courts is radically different.

What is the ICC? It is a criminal court. This means that the State takes the person to court for committing a crime.

What is the African Court on Human and Peoples' Rights? It is a human rights court. This means that the person takes the State to court for violating his or her rights. Sadly, the nature of the ICC and the African Court of Human and Peoples' Rights are radically different.

Can this be resolved? Only mass action by African States can resolve this. It is complex.

Are they up to the task? Only God knows.

We should keep in mind two key treaties here: the Constitutive Act of the African Union and the African Human Rights Charter.

Article 5 of the Constitutive Act of the African Union foresaw the creation of the Court of Justice of the African Union. This Court was created on paper but it is not yet operational.

The African Human Rights Charter did not expressly consider a human rights court, but implied it.

This Court, the seat of which is in Arusha, Tanzania, was created and is now operational. It took almost two decades to materialise. It became a reality at Ouagadougou, Burkina Faso, in January 2004.

How were these courts born?

The African Courts have been born through "protocols" or additional treaties negotiated by the African Union.

In Africa we have drafted and adopted three main protocols in this area: Protocol of the African Court of Justice (creating the African Court of Justice), Protocol of the African Court of Human and Peoples' Rights (creating the African Court of Human and Peoples' Rights) and the Protocol of the merger of these two courts, a marriage that begot the African Court of Justice and Human Rights. This one is known as "the Merger Protocol."

Currently, there is only one active court at the Continental level: The African Court of Human and Peoples' Rights.

The African Court of Human and Peoples' Rights

Ratification

The protocol that created this Court has been ratified by only 26 African States, out of 54 members of the AU.

Only six of these States have signed the declaration allowing individuals and NGOs to access the Court.

The Court has been actively engaged in a sensitization exercise throughout Africa. The fruits are a work in progress.

Two courts are an expensive venture to maintain.

The African Court of Human and Peoples' Rights is perhaps the best funded, in relative terms, among its Inter-American and European counterparts.

Its 2010 budget reached US$ 7,939,375. It is a small court, still with a comparatively low volume of work and composed of part-time judges. If the AU doubles this expense it can go bankrupt.

Certainly, the European Court of Human Rights had a 2010 budget allocation of more than US$ 70 million, but it issued hundreds of judgments and it seats 47 judges on a full-time basis.

The Inter-American Court has a budget of around USD 4 million. Its work volume and output is also far superior to the African Court's.

The idea of merging the Court of Justice of the African Union and the African Court on Human and Peoples' Rights was first raised in 2003.

However, opponents of the merger argued that the process would relegate human rights issues.

The negotiations became heated and the Executive Council of the African Union ruled that: "the African Court on Human and Peoples' Rights shall remain a separate and distinct institution from the Court of Justice of the African Union..."

Surprisingly, the merger issue re-emerged in 2004 during the third AU Ordinary Session. It was decided "that the African Court on Human and Peoples' Rights and the Court of Justice should be integrated into one Court."

"In Africa we have drafted and adopted three main protocols in this area: Protocol of the African Court of Justice (creating the African Court of Justice), Protocol of the African Court of Human and Peoples' Rights (creating the African Court of Human and Peoples' Rights) and the Protocol of the merger of these two courts, a marriage that begot the African Court of Justice and Human Rights. This one is known as "the Merger Protocol."

Mandate

The Commission criticised this move harshly. It said that the two courts had "essentially different mandates and litigants and that the decision could have a negative impact on the establishment of an effective African Court on Human and Peoples' Rights."

Three years later, in Sharm El-Sheikh, Egypt, the 'Protocol on the Statute of the African Court of Justice and Human Rights' (the Merger Protocol) was adopted at the African Union Summit.

At this point it was clear that the merger was irreversible.

This merged court, the African Court of Justice and Human Rights (ACJHR) is not yet operational.

The merged court does not include in its protocol a criminal chamber. This matter is under study. It will take long.

As Justice Ben Kioko says, if a criminal chamber is finally added the African Court and the ICC could have concurrent jurisdictions and be guided by the principle of complementarity.

There are still political, legal and financial contentious issues which the AU experts are trying to resolve.

It would be wonderful if they managed to get it through. It may not be perfect, but as the Egyptian proverb says: A beautiful thing is never perfect.

What is certain is that nothing will happen until the whole legal mayhem is resolved.

A number of structures within the African human rights systems were created, willingly or unwillingly, toothless.

To change this requires African political will and financial independence.

Otherwise we will multiply organs and increase expenditure, but no change will be forthcoming.

The big question is: Will the Assembly of Heads of State and Government of the Union be up to the task?

They should know that they may be turning Arusha into our own Hague… and be ready to pay for it and live with it.

** Dr Luis Franceschi is the Dean of Strathmore Law School and a regular contributor to the Daily Nation, Kenya.*

Mali's post elections challenges

With President Keïta's accession to power, efforts to resolve the complex crisis facing Mali enter a new phase, which will be decisive in terms of consolidating the security and political gains of the past months, write ***Lori-Anne Theroux-Benoni** and **Baba Dakono**.

Tuareg rebels

ON September 4, 2013, the new president of Mali was inaugurated. Ibrahim Boubacar Keïta was voted into office in August with an overwhelming majority. It had been a high-risk election, held against the background of a multidimensional crisis with regional consequences. With Keïta's accession to power, efforts to resolve the complex crisis facing Mali enter a new phase, which will be decisive in terms of consolidating the security and political gains of the past months.

The transition period, which is now coming to an end, had two main functions: to manage the crisis in the north and to organise countrywide elections. The first aim was partially accomplished through the military intervention of France's Operation Serval and the African-led International Support Mission to Mali (AFISMA). As to the second, a preliminary peace agreement was signed between, on the one hand, the Malian transitional government and, on the other, the National Liberation Movement of Azawad (MNLA) and the High Council for the Unity of Azawad (HCUA), which had taken control of the Kidal region after the military intervention.

The Preliminary Agreement for the presidential election and inclusive peace talks, signed on June 18 in Ouagadougou, Burkina Faso, was to be implemented in two stages. First, it had to create conditions allowing presidential elections to be held across the country, including in the Kidal region. Second, after the election, it had to ensure the continuation of an inclusive dialogue that would lead to the signing of a final and comprehensive peace agreement.

The presidential election passed the crucial test on July 28 and August 11, 2013, when its two rounds of voting took place.

Given the political, logistical and security challenges, the presidential elections were considered successful both nationally and internationally. First, the entire country was able to participate, although the voting in Kidal turned out to be largely symbolic. Second, no major security incidents were reported during the polls.

Third, participation rates in the first and second rounds exceeded all predictions, amounting to 48.98 per cent and 44.41 per cent respectively. While analysts initially feared that the president-elect would lack legitimacy, Keïta, leader of the Rally for Mali (RPM), was elected with an overwhelming majority of 77.62 per cent in the second round. And while there was concern about post-election protests calling the results into question, Keïta's rival, Soumaïla Cissé, representing the Union for the Republic and Democracy (URD), conceded defeat even before the announcement of the provisional results.

In terms of the challenges ahead, Keïta urgently has to address the thorny security issues in northern Mali, including the problem of Tuareg armed groups, as well as Arab and Songhai militias. In this regard, the inclusive dialogue, a central part of the reconciliation process, will deal with the following themes: the administrative and institutional organisation of Mali, particularly in the northern regions, the strategy for regional and local integrated development, and the reorganisation of the defence and security forces, as well as the socio-economic disarmament, demobilisation and reintegration programme for the northern armed groups.

The inclusive dialogue will also discuss the improvement of administrative, economic and political governance, the return of refugees and internally displaced persons and their resettlement, and the protection and promotion of human rights, justice and reconciliation.

According to the Preliminary Agreement, the Dialogue and Reconciliation Commission plays a central role in the dialogue process, which should lead to a final comprehensive peace agreement. Keïta also plans to organise a national conference on northern Mali. This conference, which will be a prelude to negotiations for the final comprehensive agreement, will lay the foundations for dialogue and reconciliation.

To fully address the security issue, Keïta, with the support of external partners,

Kids in Kidal celebrate government recapture of town

will also need to tackle the reform of the defence and security sectors, a theme that figured prominently in the election campaign. The development of regional cooperation will also need to be adequately taken into account to address the security dimension of Mali's problems.

Other major challenges are consolidating the political gains and continuing the installation of democratic institutions, including the renewal of the National Assembly. The deputies' mandate, which had expired over a year ago, was extended to allow the Assembly to serve until the next parliamentary elections. However, ever since the transitional government announced that the first round of these elections would take place on 27 October 2013, the Malian political class has been divided.

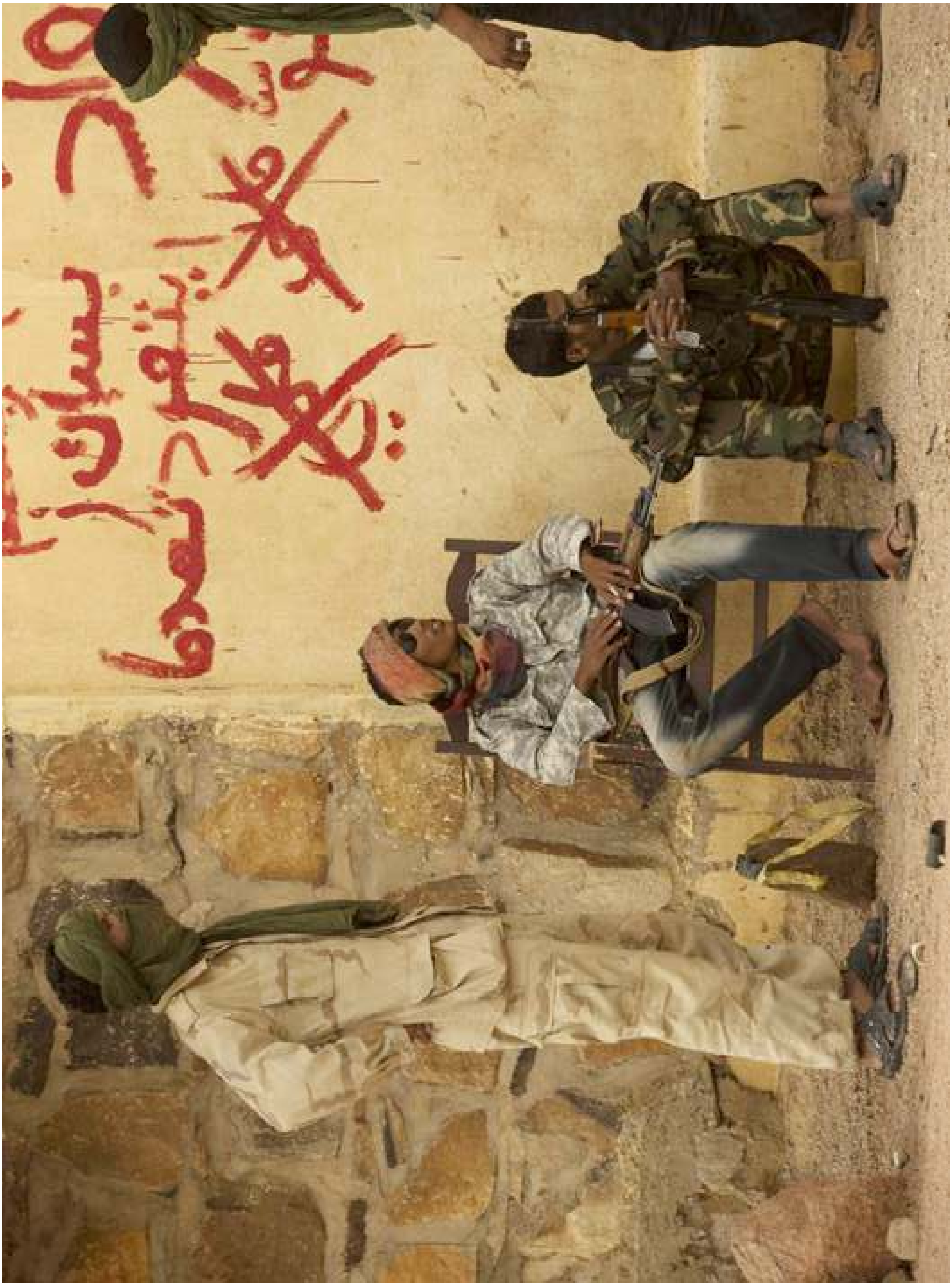
Part of the political class, especially supporters of the United Front for the Protection of Democracy and the Republic (FDR), feel that the elections should be held as soon as possible. Others, especially those close to the coalition led by Keïta, believe it is important to use the pre-election period to better address those aspects that proved problematic during the presidential election, including the question of voters who recently turned 18, refugees and internally displaced people. The next steps in the democratic process will largely depend on the ability of the government to create the conditions for a constructive working relationship with the opposition. In addition, in some areas of Mali, especially in the Kidal region, the parliamentary elections could lead to violent power struggles between or within communities.

Finally, the new president is expected to start showing results in terms of the country's economic recovery. The Malian economy was badly affected by the security and institutional crisis. On May 15, 2013, a high-level conference of donors for the development of Mali was held in Brussels, at the end of which €3.25 billion was raised to finance a "2013-2014 plan for the sustainable recovery of Mali".

The introduction of good governance practices remains the cornerstone for the mobilisation of these external resources. The success of the economic recovery, beyond the support of the international community, also depends on the ability of the new government to create conditions for the development of economic activities in peripheral regions.

The success of the presidential election is a victory for Mali and its partners. However, it should not overshadow the important challenges that lie ahead. The full implementation of the Preliminary Ouagadougou Agreement must remain a priority for the new Malian authorities and external partners. Close attention must be paid to the post-election talks, as well as to defence and security sector reform, the organisation of parliamentary elections and economic recovery.

** Lori-Anne Theroux-Benoni, Senior Researcher, and Baba Dakono, Junior Fellow, Conflict Prevention and Risk Analysis Division, ISS Dakar*



M-Pedigree's innovation allows drug buyers to verify the authenticity of a medicine via SMS

Cameroon's sick at risk from fake drugs

Fake drugs continue to wreak havoc on unsuspecting Africa's sick population as ***Monde Kingsley Nfor** writes.

WHEN Francois Biloa fell ill with malaria, his family did what they had always done in the past - they gave him anti-malaria drugs and antibiotics bought from the local market. Only when his condition worsened and he became bedridden and fell unconscious, did his family take him to a local clinic in Cameroon's capital Yaoundé.

According to the clinic's health attendant, six out of every 10 patients there had been using illegal or counterfeit drugs readily available in this Central African nation's market place prior to admittance.

"We bought medicine from a store because it worked for us with [previous] malaria attacks and it is very affordable. With just about two dollars we usually afford a [fake] Coartem packet, which is a full treatment for malaria," Biloa tells IPS from his hospital bed.

In pharmacies, a packet of Coartem costs seven to eight dollars, while on the illicit market a packet can be bought for less than three dollars. A medical consultation costs four dollars on average.

"But in this hospital, I am told my bill is now over 75 dollars. The doctor says that I have a resistant strain of malaria and also typhoid fever," Biloa says.

"I felt like I was dying during my attempted treatment at home. I only started regaining energy and full consciousness after [coming to] this clinic."

In markets and on roadsides across Yaoundé, fake and illegal drugs are stacked on wooden racks and tables, openly displayed for sale. Trading in these drugs is illegal. The are available as a result of weak regulation, poor health services and high medical costs.

There are no precise figures on the quantity of illegal drugs entering Cameroon, but up to 70 percent of drugs sold here are traded on the black market, says Christophe Ampoam of the National Council of the Pharmaceutical Society of Cameroon.

According to Ampoam, this trade in illicit medication is so well organised that government officials and the police are helpless to halt it.

"The trade in illicit drugs in Cameroon operates like a very powerful mafia-like network, which is very difficult to dismantle. It is estimated that investment in illicit sales of medicines is five times more lucrative than through the regular system. Local officials dread dismantling the network because it has also infiltrated the judicial and customs system," Ampoam tells IPS.

"Corrupt regulatory and legal systems are easily exploited by criminal smugglers and additional rules have only increased corruption."

Ampoam says that most of the counterfeit drugs are made in the Middle East and East and South Asia, yet many carry the inscription 'Made in Germany'. They are smuggled into Cameroon by sea and through the porous borders this country shares with Nigeria and the Central African Republic.

"Although it is difficult to give an exact statistic on the percentage of illicit drugs found in local markets today, the availability of drugs in local markets, makeshift shops, on the streets and along the highways tells of the deplorable situation in Cameroon," he says.

The World Health Organisation (WHO) estimates that worldwide 200,000 deaths per annum could be prevented if people did not use counterfeit drugs. According to the International Policy Network report, fake tuberculosis and malaria drugs alone are estimated to kill 700,000 people globally each year.

"Most of the drugs in circulation have been banned in certain countries because they are toxic or counterfeit. Some have the correct ingredients but in low quantities. Some of the drugs are samples or medicines donated by NGOs," Ampoam explains.

Marlise Loudang, director of the pharmaceutical inspection service at the ministry of public health says that government teams in every region across the country are clamping down on the illegal trade, but so far efforts have been unsuccessful.

"Self-medication [with illegal and counterfeit drugs] is a big public health problem in Cameroon that affects almost every family. This stems from the easy access to drugs of doubtful origin and quality all over the national territory," Loudang tells IPS.

Marcel Olinga is a vendor of counterfeit and illegal drugs and says that even though authorities have raided him, it has not deterred him from continuing. "Once in a while the police come around and seize my drugs, but it is a loss worth incurring because the raids are not regular and our main stocks are never where we sell."

Olinga says he makes about 40 dollars a day.

"We receive many customers daily. Some come with prescriptions from doctors others seek our advice before buying and some simply demand what they want," he tells IPS.

According the WHO, there are 13,514 patients for every doctor in Cameroon, although some say the ratio is higher, especially in rural areas. Poverty also limits many from seeking medication from hospitals and health clinics.

"Some patients run from costs of consultation in hospitals and fall in the hands of illegal drug vendors who are ready to sell drugs at prices far more below the legal market price," Williams Takang from the Yaoundé University Teaching Hospital tells IPS.

"Self-medication [with illegal and counterfeit drugs] results in common health problems in local hospitals and the worst of these cases are in hospitals found in poor neighbourhoods and rural communities where the poverty level is very high and access to a doctor is costly," he says.

"The intake of fake and illegal medicines can lead to life-threatening consequences especially for diseases with high mortality rates like malaria. Unfortunately most of the patients suffering from these common diseases put themselves on medication without any prior medical consultations," Takang says.

** Monde Kingsley Nfor writes for IPS from Yaounde, Cameroun.*

Most brides in Niger are children

In Niger, 75 percent of girls get married before the age of 18 writes, ***Souleymane Maazou**.

FOR El Hadji Souley Moussa, a 60-year-old retired bank employee in Niger, "marrying off a daughter when she is young is a source of great pride. This way, she is protected from pregnancy outside of marriage."

It is no wonder that a population and health survey conducted in 2012 by the Ministry of Public Health, and released this July, revealed that 75 percent of girls get married before the age of 18 in this Sahelien country of 16 million in West Africa. According to the study, young girls aged between 15 and 19 years are the most vulnerable.

In 2011 the United Nations Children's Fund State of the World's Children report ranked Niger first on its list of countries with a high prevalence of early marriages. Yahaya Issa, a guidance counsellor at the Ministry of National Education, told IPS that parents who marry off their young daughters usually cite their religion as the reason.

"For us Muslims, marriage holds an important place in our lives," Aminatou Abdou, 53, a housewife in Niamey told IPS. She married off her two daughters at the ages of 15 and 16. "It is unacceptable for Muslim daughters to have no husband after puberty."

Not all Muslims share this view. "There is misinterpretation of the religion. Islam advocates social wellbeing. This is why I am against prematurely marrying off a daughter because this has bad implications for her health," Malam Issa Dogo, a religious preacher, told IPS.

"Those who marry off their daughters early do so because of ignorance. Islam is a religion which is against lack of knowledge," he added.

According to Abdou Sani, an anthropology doctorate student at the University of Abidjan, people use religion as a false pretext. The real reasons for these early marriages are ignorance and poverty, he said. "In most cases, these young girls are married off to older people who are financially well-off or have a high social status," he told IPS.

"Early marriages result in early pregancies, which compromises the girls' future as many do not go to school once they are of marriageable age. Medical sources indicate that 40 percent of young brides fall pregnant a few months after marriage."

Early marriages result in early pregancies, which compromises the girls' future as many do not go to school once they are of marriageable age. Medical sources indicate that 40 percent of young brides fall pregnant a few months after marriage.

"Socio-cultural pressures, particularly the desire to have a child before the first marriage anniversary often forces the young girl to prove her fertility a few months after marriage," Salissou Habou, a sociologist in Niamey, Niger's capital, told IPS.

According to 2011 statistics from the Ministry of Public Health, teenagers make up 19 percent of women of reproductive age and contribute 14 percent to the total female fertility in this country.

"Less than 40 percent of teenagers go for antenatal care," Hadjara Tinni, a midwife based in Niamey, told IPS.

According to Tinni, because young girls fall pregnant before their bodies are mature, they are twice as likely to die during childbirth than women who over the age of 20.

According to the Ministry of Public Health's 2011 survey, the rate of maternal mortality in Niger is 554 deaths per 100,000 live births - among the highest in the world. Teenagers account for 13 percent of these deaths.

"Survivors often suffer from illnesses such as obstetric fistula," Hassan Idrissa, another midwife in Niamey told IPS. In April 2013, out of 163 obstetric fistula victims counted in the country's six healthcare centres, 80 percent were married before the age of 18, the Ministry of Public Health stated.

"We must educate and keep young girls at school in order to put an end to this situation," urged Hadiza Issoufou, a teacher and member of the Nigerien Association for the Defence of Human Rights.

However, the draft law drawn up in 2002 setting the minimum age for marriage at 18 is still being opposed by religious associations.

"The situation of teenage girls is a major concern, but unfortunately a large segment of the population is ignorant about the problem," declared Dr. Makibi Dandobi, Nigerien population minister on World Population Day on Jul. 11.

** Souleymane Maazou writes for IPS from Niamey, Niger.*

Gaps in Guinea's penal system rob children of their rights

Guinea's children thanks to some gaps in their penal system are robbed of their rights as the law which calls for use of detention as a last resort is thrown aside, according to a ***IRIN** report.

IN a police station at Port de Boulbinet, in Guinea's capital, Conakry, a teenager brushes his hand across the foot of a friend - a sign of asking forgiveness.

As part of mediation by police officers and an aid worker from the local NGO Sabou-Guinée, the youth is begging pardon from his companion for having attacked him. Officers had detained the two the previous day for brawling in public. Thanks to the intervention, led by Sabou-Guinée, a police commander agrees to let them go instead of sending them to the central prison - a common route for minors and older offenders alike, even in cases of petty crime.

The mediation approach is supposed to be the rule, but it's the exception in Guinea, child rights experts say.

Guinean law says that when a minor is apprehended for a crime, authorities should make detention a last resort, giving precedence to mediation and family involvement, awareness raising, and other preventive measures. In initial questioning, children are to be accompanied by a parent or guardian and a lawyer. But in this, and in many other procedures, the system falls short.

Children are routinely deprived of legal representation because of a severe shortage of state lawyers handling minors' cases; there are just 10 for the whole country, according to the International Bureau for Children's Rights (IBCR).

As of 2009, the latest year for which data are available, 611 children were detained in Guinea, among them 86 girls, according to a 2012 study by IBCR, the UN

Children's Fund (UNICEF), Save the Children and Sabou-Guinée. UNICEF says the number probably still hovers around 600.

"You can find minors who did nothing worse than steal some food or a small amount of money spending six months, a year or more in the central prison, having never seen a single judge," said a gendarme in Conakry's Matam neighbourhood who requested anonymity. "Rather than contributing to their reintegration into society, we are hardening their hearts."

Olivier Feneyrol, head of the international NGO Terre des Hommes (TdH) in Guinea, puts it this way: "Every time we put a child in prison, we produce a delinquent."

Implementation

This is one of the things Sabou-Guinée looks to prevent, as its workers regularly make the rounds at police and gendarme posts in Conakry and other parts of Guinea, intervening on behalf of minors in trouble with the law.

Guinea passed a children's rights law in 2008, based on international conventions the country has ratified; it sets out rules for handling minors suspected of crimes.

"Every time we put a child in prison, we produce a delinquent."

"Guinea has a very good law. The problem is in its application," said Thierno Sadou Diallo, a Conakry-based legal scholar who worked on this issue for years with Sabou and TdH. "For example, outside of Conakry, we don't have tribunals specializing in handling minors [as the law calls for]. This means in the rest of the country, the same personnel are treating both adults' and minors' cases, yet the latter require a specialist in children's rights."

International children's rights researchers have expressed concern that children in police custody and in detention are subjected to ill treatment and torture.

Justice Ministry spokesman Ibrahima Béavogui told IRIN: "Those charged with handling minors' cases lack the resources to follow these cases closely and carry out their work properly… But it is not only a question of resources. It's a question of specialized education and training for all judicial personnel." He said proper handling of minors is part of ongoing reforms in Guinea's justice system.

As part of its intervention TdH trains police, gendarmes and judges in Conakry.

"After one seminar, we went to the central prison," said the Matam gendarme, who participated in a training about minors' rights. "Seeing young people locked up there - that really hit me."

"Every time we put a child in prison, we produce a delinquent."

He said one colleague wept when a youth at the prison recognized and greeted him, saying: "Do you remember me? You're the one who ordered me sent here." The youth had been in detention for a year.

Detention without trial is not just a problem for minors in Guinea, Béavogui said. "Even in temporary custody, you'll see people spending a week or two without an initial questioning. All the way down the line, the system is dysfunctional."

He said Guinea has a lot of work to do "to make the judiciary strong and independent".

When they learn of minors who are remanded into custody, Sabou-Guinée workers follow up to see that the detainees do not spend longer awaiting trial than the law stipulates - four or six months, depending on the degree of the crime, renewable once - in quarters separate from older offenders.

In cases where the authorities opt for alternatives to detention, the aid workers visit minors' homes, checking that stay out of trouble, and assisting them in getting training or work when possible.

"This is about protecting minors' rights, but it's also for the whole of society, in that it educates and monitors youths who might otherwise fall into a life of crime," said Sabou-Guinée's Maurice Kamano.

Rights and responsibilities

When Kamano visits various police stations throughout Conakry, he is greeted like family. Police officers and gendarmes ask him for updates on cases. Many of the officers joke with him. "Ah, the kids' lawyer is here," chimes one. "No special treatment for kids today - a crime is a crime," quips a policeman.

Joking aside, those involved in the programmes do not say minors who have committed crimes should get away with them. "On the contrary," said TdH's Feneyrol. "The idea is to protect the child's rights and find alternatives to putting minors in prison with hardened criminals."

For lack of means, Guinea does not have detention facilities for minors, and organizations like Sabou and TdH encourage alternatives such as community service and education centres - approaches provided for in Guinean law.

"It would take significant resources to set up the infrastructure needed for minors in trouble with the law," said Feneyrol. "It's not just about creating a separate prison building for children. You've got to have staff specially trained in children's rights and programmes adapted to minors."

Legal scholar Diallo says: "The objective of justice when it comes to minors is to help these young people reintegrate into society. From questioning to detention to judgment, the idea should be to help them get back on the right track, come back to the family and community, and become upstanding adult members of society."

Looking forward

The officers at the port police station said they face touchy decisions daily as they look to uphold these principles, protect minors' rights, and at the same time keep order. Their hands are full with unoccupied, unruly youths, and they say drugs are a major problem. "There's a pill the kids take today - renders them utterly irrational and defiant," one policeman said.

Aid worker Kamano runs into some youths at the port who are trying to stay on the right track. As they approach, he marvels at how they have grown. Years ago, he helped them when they were children drifting through the streets and flirting with crime. Today, they make money cleaning fish, transporting goods in pushcarts and doing other odd jobs at the port.

Amadou Condé, 23, says Kamano helped him out years ago, when he was in the streets. Condé received training in carpentry, but later left that to clean fish, which promised quicker money. He makes just enough to get by, but wants a better life for his five-year-old son, so he now hopes to establish himself as a carpenter.

"I want to put my son in school," Condé said. "He mustn't live this unstable life I've lived. I want a better future for him."

** An IRIN report from Conakry, Guinea.*

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