Canada's role in promoting mining and development policy reforms in Sub-Saharan Africa

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Abstract
Accessing sufficient capital on terms conducive to development is a major challenge in achieving Sub-Saharan Africa’s (SSA) mining potential. The effects of neoliberal policy reforms promoted by the IMF and World Bank and other Western actors has ensured that mining and development policies are dominated by foreign direct investment (FDI)-led approaches. The disappointing development benefits generated in SSA by the 2000s commodity boom has led to a re-evaluation of these FDI-led development models and to SSA calls for country-led development strategies wherein states play an increased role.

Canada has become a major source of mining capital and policy advice for SSA. This dissertation examines Canada’s interventions in SSA mining and development policy reforms, specifically related to the promotion of bilateral investment treaties (BITs), global mining policy diffusion networks and best practices. The core question is whether Canada’s interventions support the development of the policy options needed in SSA to ensure that mining contributes to sustainable social and economic development.

Chapter 1 provides an orientation to mining and development issues in SSA, examining the continued influence of the FDI-led model that was central to the World Bank’s 1990s mining policy reforms that focused on generating revenue and rejected state-led socio-economic development mining policies. Chapter 2 examines Canada’s recent conclusion of nine BITs with SSA countries. The chapter analyzes the potential development impacts of Canada’s BITs, finding that they are particularly economically liberalizing and that they undermine the ability of SSA states to generate socio-economic benefits. Chapter 3 examines the role played by Canadian funded institutions and networks in the diffusion of the FDI-led mining and development model. The chapter contends that Canada is playing a central role in reducing the parameters of what are considered viable policy options for SSA states.

Overall, this dissertation argues that Canada’s interventions have promoted policy reforms that focus on increasing and protecting opportunities for Canadian registered mining companies and that these policies undermine the ability of host countries to ensure that FDI contributes to economically sustainable development, thereby undermining the emergence of developmental states and regional initiatives such as the Africa Mining Vision.
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My parents, John and Maria Jacobs, have had a major influence on the content of this document through instilling in me social justice values, internationalism and intellectual curiosity. These values both stimulated the pursuit of a PhD and informed the content of this thesis.

The support of my family has been essential to the completion of this PhD – it has been a long journey! For Erik and Anton, I hope the experience has been somewhat intellectually stimulating and perhaps even entertaining at times. And finally, I would like to express my sincere and deep appreciation to my partner Anne Webb without whom this thesis and PhD. would not have been possible. Anne shared the challenges and sacrifices and her support was central to this accomplishment. In this sense this thesis is an accomplishment for all of us: thanks Anton, Erik and Anne!
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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AMV</td>
<td>Africa Mining Vision</td>
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<td>AU</td>
<td>African Union</td>
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<td>AMDC</td>
<td>African Minerals Development Centre</td>
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<td>BIT</td>
<td>Bilateral Investment Treaty</td>
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<td>CIRDI</td>
<td>Canadian International Resources and Development Institute</td>
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<td>CSO</td>
<td>Civil Society Organizations</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>EDC</td>
<td>Export Development Canada</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>ICMM</td>
<td>International Council on Mining and Metals</td>
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<tr>
<td>IFI</td>
<td>International Financial Institutions</td>
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<tr>
<td>IGF</td>
<td>International Governmental Forum on Mining, Metals, and Sustainable Development</td>
</tr>
<tr>
<td>ISG</td>
<td>International Study Group on Africa’s Mineral Regimes</td>
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<tr>
<td>IGO</td>
<td>Intergovernmental Organizations</td>
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<tr>
<td>LDC</td>
<td>Least Developed Countries</td>
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<td>MPF</td>
<td>Mining policy Framework (IGF)</td>
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<tr>
<td>MSS</td>
<td>Mining Supply and Services Sector</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
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<tr>
<td>PDAC</td>
<td>Prospectors and Developers Association of Canada</td>
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<td>SSA</td>
<td>Sub-Saharan Africa</td>
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<tr>
<td>TSX</td>
<td>Toronto Stock Exchange &amp; Toronto Stock Exchange Venture</td>
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<tr>
<td>TNC</td>
<td>Transnational Corporations</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<tr>
<td>UNECA</td>
<td>United Nations Economic Commission for Africa</td>
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<tr>
<td>WEF</td>
<td>World Economic Forum</td>
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Introduction
Sub-Saharan Africa’s mineral potential is often promoted as indicative of the continent’s development potential. But generating economic development through mining presents a number of challenges for developing countries, in particular accessing sufficient capital, usually foreign, to locate and extract deposits. Canada has become a global leader in raising mining exploration capital and is the registered home to many of the mining companies operating in Sub-Saharan Africa (SSA). The Canadian government has been aggressively supporting its extractives industries internationally prompting The Economist magazine to conclude in 2014 that “few governments have aligned their interests so closely to those of their country’s energy and mining firms as Canada’s” government.

The Canadian government claims that its actions in support of the mining industry abroad are also simultaneously promoting sustainable development in Sub-Saharan Africa (SSA), which leads to the question of whether, and under what circumstances, these two objectives can be reconciled with one another. Because mining often imposes high social and environmental costs and rarely generates major forward or backward economic linkages, its contribution to sustained development is often questioned (Bebbington et al. 2008, 674). In response, the mining industry has been actively seeking to shore up its reputation by undertaking initiatives designed to provide it with a “social license to operate” and undertaking initiatives that recast the industry as an agent of sustainable development. Within this context, Canada itself has become a key player in promoting mining as a central pillar of sustainable development and poverty reduction in resource rich SSA countries based on the “Canadian advantage.” Indeed, the Canadian government has claimed that, due to insights garnered from its domestic mining industry, its position as a major global centre for raising mining capital, and its active promotion of corporate
social responsibility (CSR) among Canadian registered mining companies, it is uniquely positioned to advise developing countries on policy reforms needed for SSA countries to effectively attract and benefit from mining-related foreign direct investment (FDI).

This dissertation examines FDI-led approaches to mining and development in the context of SSA calls for mining to play a transformative role in the resource rich economies in the region. It specifically examines the case of the Canadian government intervening in mining and development policy reforms in SSA while simultaneously promoting Canadian registered mining companies’ profitable access to the region’s mineral resources. The thesis provides an analytical framework that links FDI-led approaches in mining and development with the broader neoliberal political-economic trajectory. It provides three integrated stand alone articles which form the core of this dissertation as per Carleton University’s “Integrated Thesis policy”\(^1\) that address related aspects of the same core problematic, namely what is the appropriate role of FDI and states in ensuring that mining contributes to sustainable social and economic development in SSA. The first chapter presents the context for Canada’s interventions and provides an orientation to mining and development policy reform issues in SSA. The second chapter examines the potential impact of the bilateral investment treaties (BITs) that Canada has recently concluded with SSA governments. The third chapter examines the form, the content and processes of Canada’s mining and development policy initiatives in SSA. The policies examined in this thesis were implemented after 2005 and continue to be in place at the time of submission of this thesis (March 2017).

\(^1\) Section 12.4 of Carleton University’s 2016-2017 Graduate Calendar (http://calendar.carleton.ca/grad/gradregulations/)
The reforms being promoted by Canada, as discussed below, in its promotion of the FDI-led mining and development strategies have implications that go well beyond the mining sector. They include, for example, the facilitation and enforcement of corporate rights through the protection of private property rights that have long-term development implications. This study ultimately suggests that this “Canadian version” of the FDI-led development model is best understood as a powerful force for neoliberalization.

By focusing so centrally on the promotion of mining FDI as the leading element in resource rich least developed countries’ (LDCs) development strategies, these Canadian initiatives are essentially promoting and reinforcing the same Washington Consensus policies that are widely held responsible for the disappointing socio-economic benefits yielded by the mining sector in SSA during the commodity price boom in the 2000s. Indeed, the claim that minimally regulated markets and a heavy reliance on FDI will promote sustainable development is not supported by the historical evidence which, as discussed below, tends to suggest that active and strategic state intervention has been a major, if not essential, component of relatively successful socio-economic development. Indeed, the FDI-led perspective has been challenged in SSA, notably in the Africa Mining Vision (AMV), which draws attention to the unsustainability of long term reliance on FDI and calls upon governments to take a lead role in implementing regionally coordinated, country driven strategies that will help mining play a transformative role in SSA’s resource rich economies. Rather than solely contributing to economic growth, such strategies call for mining to play a more pivotal role in the continent’s structural transformation by simultaneously fostering the creation of new, more productive economic sectors through various economic linkages and externalities based on a reallocation of resources from less to more productive sectors (ADB et al. 2013, 12).
Ultimately it is the fundamental external orientation of foreign investment in mining which means that host countries seeking to promote sustainable socio-economic development need to complement their encouragement and acceptance of FDI with policy tools and enforcement mechanisms that will maximize the benefits to the host country. In resource rich LDCs, development strategies that intend to stimulate economic development through attracting FDI are built upon seeking to resolve a contradiction, or least a tension, between the pursuit of national development strategies and a reliance on foreign investment. The allocation of resource rents\(^2\) is subject to intense negotiations as companies seek profitable access, extraction and export of minerals and countries seek development benefits from the exploitation of their non-renewable resources.

Governments stake their claim for a larger portion of the resource rents on their ownership of minerals, whereas companies claim that they, by discovering and extracting the minerals, create the value and therefore most of the rents should go to them in compensation for the risks they take in a volatile global market (World Bank 1992, 29). The need for FDI to reap the continent’s resource and development potential (Taylor et al. 2009, 105) increases the bargaining power of companies in establishing the terms of access to resources. This tension leads to two key questions that underlie the creation of mining development strategies for resource rich LDCs: what is the degree of divergence, or convergence, between host states and FDI; and what leverage can a host state, promoting the long-term interests of its citizens, exert on foreign investors without losing their investments altogether.

\(^2\) “Mineral rents reflect the difference between the market price of the minerals and the relevant costs, including the costs of exploration, production and any necessary processing (processing or treatment required to make transportation economically feasible), as well as a certain (“normal”) return on investment. (UNCTAD 2007d, n. 27, p. 154).
Capitalist development through primary resource extraction presents several distinct characteristics and challenges. In traditional conceptions of capitalist industrialization, increased capital investment increases demand for labour which in turn increases income, savings, and investment opportunities in productivity enhancing industries. Resource extraction based economies’ reliance on foreign investment and the export of minimally processed commodities, exports resource rents from the host economy thereby limiting the capital accumulation opportunities in the host economy. Large scale industrial mining increasingly relies on high-tech equipment and skilled workers that are often not readily available locally (Sigam and Garcia 2012, 11, 12), thereby limiting local employment opportunities and mining’s poverty reduction potential (Loayza and Raddatz 2010, 142, 148).

In practice empirical studies have shown that extractive industries in developing countries are often associated with “poverty aggravation” and increased economic inequality (Gamu, Le Billon, and Spiegel 2015, 165). Furthermore, mining tends to economically isolated, an enclave with limited linkages and spillovers to the host economy (Gamu, Le Billon, and Spiegel 2015, 172). The increasing use of new technologies contributes to more efficient and faster depletion of deposits leaving host economies with a shorter time frame in which to derive benefits, develop linkages and establish spinoffs that survive beyond the duration of the mine (Freudenburg and Gramling 1998, 572). Finally, the environmental and social disruption associated with mining has resulted in conflicts within and between communities, CSOs, mining companies and governments on a scale that put the net benefit, and the future of mining as a contributor to sustainable development, in doubt (Bebbington et al. 2008). These characteristics indicate the distinctive nature and challenges resource dependent countries face in seeking to
foster productivity enhancing industrialization through mining and the need for access to a broad range of policy options and interventions.

The overall hypothesis in this dissertation is that Canada’s mining and development policy interventions promote reforms that reduce the room for policy maneuver by host countries in their dealings with foreign investors, and especially so in the mining sector. Canadian policies are, in effect, reducing the bargaining leverage of host states and thereby undermining the capacity of resource rich SSA economies to ensure that the exploitation of their mineral resources contributes to their countries’ sustainable socio-economic development.

The argument is developed as follows: first, I provide an analytical framework that locates FDI-led development strategies (i.e., state policies as subordinate to FDI promotion) within the broader neoliberal policy paradigm and I conclude that FDI-led strategies have become a key means of neoliberalization (the promotion and entrenchment of “market rule” internationally) even though the historical evidence, and the post-Washington discourse, calls for states to play leading strategic roles if sustainable socio-economic development is to be achieved. The development strategies that prevail in mining and development and more broadly, while allowing for a broader scope of state activities, subordinate these activities to the attraction, promotion and protection of FDI.

Second, I test my hypothesis through a detailed examination of two key Canadian policy interventions in SSA mining and development: the negotiation of Canada-SSA BITs, and the creation of global mining policy networks. I show that these initiatives are clearly designed to strengthen the FDI-led model of mining and development and that these policies are essentially the same as those promoted in the, ostensibly discredited, Washington Consensus policy framework.
Overview of the dissertation chapters
The following section provides an overview of the dissertations’ core three chapters.

Chapter 1: An Overview of Revenue Flows from the Mining Sector: Impacts, Debates and Policy Recommendations

This chapter provides an introduction to the policy problematic of mining and development in SSA. It presents an overview of current analyses and policy recommendations for revenue flows in the context of mining regime reforms over the past 20 years in Africa. The examination of the impacts of previous World Bank promoted reforms provides insights into current calls for mining to play a transformative role in Africa, and indications as to how resource revenue might better contribute to the sustainable development in mineral rich countries in SSA. The analysis suggests that past reforms have been informed by FDI-led perspectives which have oriented the manner in which the contribution of tax revenue from mining to local economies has been conceived, measured and interpreted. The heritage of these FDI-led policies continues to influence current mining and development reforms as SSA governments seek to generate increased benefits from the exploitation of their natural resources.

The chapter proceeds as follows: 1) I provide a very brief overview of World Bank inspired mining policy reforms in Ghana, Mali and the Democratic Republic of Congo (DRC). 2) I provide a synthesis of the model which has informed such past reforms and identify key issues at the heart of debates about alternative approaches to mining taxation. 3) I identify the main areas of controversy shaping the evolving policy positions of key actors, including the World Bank. 4) I explore the context which has given rise to current calls for a renewed

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3 The paper was published as a chapter in the book “Modes of Governance of Revenue Flows in African Mining” (Bonnie Campbell 2013b).
emphasis on public policies. 5) The chapter concludes with a brief overview of Chile\(^4\) and Norway’s use of mining policies and revenues as catalysts for sustainable economic development.

Chapter 2: The Impact of Canada’s Bilateral Investment Treaties on Mining and Development Strategies in Africa

Chapter 2 examines Canada’s emerging role as a promoter of SSA mining in the context of calls by multilateral agencies for a new generation of investment policies and agreements. It addresses the potential impact of Canadian BITs on SSA’s prospects for structural transformation based on mineral extraction. Canadian registered mining companies are major players in the exploitation of SSA’s mineral resources. The negotiation of BITs by Canada with resource rich SSA countries is in large part driven by Canadian mining interests’ desire to provide and protect investment opportunities and by SSA governments’ interests in increased access to FDI. Recent experience and initiatives, such as the Africa Mining Vision, have put the generation of direct tangible benefits at the forefront of negotiations of mining contracts and the reform of mining codes. This paper examines these agreements in the context of what we know about mining and economic development. It is argued that Canada’s BITs promote and entrench the FDI-led approach to mining development and thereby undermine domestically driven development agendas. By privileging investor rights, these BITs reduce development policy

\(^{4}\) The use of Chile as an example of successful development of the mining sector must be qualified with the recognition of the ongoing debate as to what degree Chile’s “success” in mining is due to the neoliberal model imposed by the Pinochet dictatorship. State ownership of the copper industry through Codelco, despite its inconsistency with neoliberal ideas, was promoted because it provided a key source of revenue for the military regime (Harvey 2005, 8; Undurraga and Undurraga 2015, 22).
space and options, thereby undermining the ability of governments to ensure that mining
contributes to poverty reduction and building sustainable economies.

The chapter proceeds as follows: 1) I examine the challenges of mining and development
via FDI and the agreements which seek to promote and protect these investments; 2) I examine
Canada’s rise as a mining power in SSA and Canada’s strategies to increase investors’ access to
SSA’s resources. 3) I closely analyze the content of Canada’s foreign investment promotion and
protection agreements as they relate to mining and development in SSA and assess their likely
impact on host country room for policy maneuver.

Chapter 3: Canada’s Role in Mining and Development Policy Reforms in Africa

Chapter 3 examines Canada’s role as both a home country for international mining
investors, via the TSX\(^5\), and as a central player in the reformulation of SSA host country mining
and development policies. This chapter assesses whether these policy reform initiatives are
likely to contribute to sustainable socio-economic development benefits in SSA.

Global policy networks have become increasingly important in developing and sharing
policy models and “best practices.” This chapter examines the role played by the think tanks and
policy networks that Canadian development assistance funding has established, and their role in
the diffusion of the FDI-led mining and development model. The chapter identifies that the
model which informs Canada’s interventions and is being promoted by Canada is essentially FDI

\(^5\) For the purposes of this paper, TSX is understood to include both Toronto Stock Exchange and the TSX Venture.
TSX Venture is comprised of smaller less established junior mining exploration companies whereas the TSX is
comprised of established senior companies. Both exchanges are owned and operated by TMX Group (TMX Group
2016). The data presented in this paper is taken from TMX which includes both TSX and TSX Venture.
- led. It contends that, as a result of its reliance on this model, Canada is playing a central role in reducing the parameters of what are considered viable policy options in SSA mining.

Chapter 3 proceeds as follows: 1) I discuss the changes in orientation of official development policy discourse related to the respective roles of states and of FDI in long-term development in the context of the rejection of the Washington Consensus policy framework; 2) I examine the increasing role of global policy networks and models in policy development and diffusion; 3) I examine Canadian mining interests and Canada’s international mining and development model; 4) I describe the ways that Canada is seeking to facilitate the diffusion of the FDI–led mining model through think tanks and global policy networks; and 5) I conclude with an examination of the Intergovernmental Forum’s (IGF) Mining Policy Framework as an example of the policy “best practices” diffused by Canada.

**Methods and Contributions**

In this dissertation, I use the following methods to assess Canadian mining and development policy interventions in SSA. I hypothesize that Canada is promoting reforms that reduce resource rich host countries’ room for policy maneuver in their dealings with foreign investors and by doing so Canada is undermining the capacity of these countries to ensure that the exploitation of their mineral resources contributes to sustainable socio-economic development. I develop this hypothesis in the analytical framework and chapter 1, by setting out the terms I use in the chapters and by showing that FDI-led strategies have become a key means of promoting neoliberalization. Then, in chapters 2 and 3, I test the hypothesis by assessing the role of states in the development models being promoted by Canadian policy interventions related to mining and development in SSA.
Explicit prohibition of state-led development policies, such as the imposition of performance and local content requirements, is a strong indicator of FDI-led strategies and supportive of this dissertation’s hypothesis. Alternatively, explicit support in Canadian policy interventions for a lead role of states, relative to the role of FDI, in development strategies would provide proof that my hypothesis is false. As the dissertation shows (for example in chapter 3), best practice models and frameworks are not always explicit in depicting the role of states in development and, as argued below, some are deliberately vague in this regard. The interpretation and implementation of such mining and development policy frameworks in theory provides host states with discretion. However, they are, in practice, subject to the influence of power asymmetries and the prevailing hegemonic ideas that are shaped beyond the influence of host states. For example, they are subject to the development and global diffusion of frameworks that do not contradict hegemonic policy ideas.

I use several methods to gain insights into the mechanics of Canadian policy influence and the outcomes of this influence. For the most part this dissertation relies on publicly available policy documents, media reports, journal articles and data. Data sources include UNCTAD’s database on investment agreements negotiated internationally and TSX investment data. I also rely on various key policy documents, such as Canada’s model bilateral investment treaty (BIT) (the Canadian model agreement that is used as the starting point in BIT negotiations). I also refer to Canada’s agreement with Tanzania, as the first of Canada’s revised BITs implemented in SSA, and to the agreement with Burkina Faso, as the most recently negotiated Canadian BIT.

The examination of the Canadian government’s initiatives is based on official government policy documents and presentations. The reliance on publicly available document reflects the abundance of source material available through access to databases and other
research sources. Given the highly scripted and tightly managed communication by the Harper government’s Prime Minister’s Office (PMO) during the period covered by this thesis (Blanchfield and Bronskill 2010; Bourrie 2015), the publicly available government policy and communications documents are deemed to be an accurate representation of the government’s official objectives and approach. Conversely, due to this attention to message management and restrictions on government officials’ ability to speak on issues, accessing a variety of governmental perspectives through, for example interviews, was limited during the time when this thesis was written.

The characterization of the dominant mining model is based on reviews of some key industry documents and an examination of Canadian international mining practice. The emphasis on practice is important for providing information that contrasts with the Canadian and the mining industries’ sustainable development discourse which dominates the “best practice” mining policy models and frameworks.

This dissertation contributes to the literature by critically examining Canada’s mining model in order to gain a better understanding of the degree to which Canada’s active intervention in SSA mining reforms is driven by Canadian ‘domestic’ mining interests and the impact this has on Canadian policy advice. It also contributes to our knowledge of the mechanisms through which a developed country, working closely with international mining interests, influences policies in resource rich developing countries and identifies the challenges this poses for SSA governments seeking to use their resource wealth to articulate and ultimately implement, country-led long-term socio-economic development strategies. Furthermore, this dissertation contributes to the literature by providing a close analysis of the Canada’s BITs as applied to
mining and development in SSA. Canada’s BITs negotiation initiative with SSA governments marks the first attempt to apply the NAFTA derived investment agreements to SSA.

The three chapters are prepared as stand alone articles that are linked in addressing aspects of the same core problematic. Given that these are intended to be stand alone articles there is some unavoidable overlap and repetition between the dissertation introduction and analytical framework and the three chapters that form the core of the dissertation. Accordingly, the introduction to each of the chapters reiterates some of the core observations regarding, for example, the linkages between the Washington Consensus and the FDI-led approaches, as each chapter seeks to establish the context for the specific analysis presented.

The rest of this dissertation is presented as follows: first I present an analytical framework, and this is followed by the three chapters, each of which has a separate introduction and conclusion. The three chapters are followed by a conclusion for the full dissertation.
Framework: Conceptualising Canada’s Role as Lead Promoter of FDI-led Mining and Development Strategies

In this section I seek to answer the question as to why Canada and other leading capital exporting countries and the multilateral organizations they dominate, continue to promote FDI-led approaches to mining, in the absence of supportive evidence of their effectiveness and in the face of calls for state and country led strategies. In answering this question, I develop a framework that roots the application of FDI-led models in the currently hegemonic neoliberal policy paradigm and argue that the promotion and reliance on FDI-led strategies has become a central means of expanding “market rule” internationally. I take as a starting point that the central task in the examination of global policy ideas, models and networks is the “recognition of an analytical necessity to contextualize policymaking behaviours, and not to abstract inappropriately from power relations, social practices, institutional rules or political conjunctures” (Peck and Theodore 2015, 27–28).

FDI-led strategies can have a substantial impact on the orientation of a host economy. The prevalence of FDI-led strategies in mining relates to the fact that, given mining’s capital intensive nature, resource rich developing countries have become reliant upon foreign investors. The concept of FDI-led refers not only to the fact that a development strategy prioritizes attracting FDI or that the amount of FDI is higher than domestically sourced investment – these strategies also have implications for the host country’s overall policy agenda, institutional development and political economy. This can range from the promotion of enforceable private (corporate) property rights to a decentering of state power, whereby host countries’ development strategies come to focus almost exclusively on attracting and accommodating FDI rather than on, for example, poverty reduction. FDI-led strategies also promote a specific orientation in the role
States have historically, both in theory and in practice, played an essential role in the political economy of development in creating and protecting opportunities for domestic accumulation and investment in conjunction with a domestic or national capitalist class. In the current subordination of states to FDI-led strategies, the accumulation project of the domestic economic elites is either abandoned by states or subordinated to the accumulation projects of foreign investors. The adoption of FDI-led strategies can contribute to, facilitate and entrench a shift in the orientation of host country economic elites, from a nationally driven accumulation and investment development strategy to an accumulation strategy that is focused on capturing a portion of the economic rents generated by externally driven transnational economic enterprises.

The neoliberal turn in official multilateral development policy under the auspices of the Washington Consensus placed FDI at the centre of development strategies in the context of broader policy reforms and the development of market enhancing institutions (Williamson 1990b, 6). Market-based reforms and a reduction in state activities were justified by the claim that they would provide a more conducive business environment for FDI. Increasing FDI was promoted as the objective of development strategies. “Led by transnational corporations (TNCs), the hope was the FDI would transfer superior technology and management skills, stimulate domestic investment and growth, generate efficiency spill overs, and integrate developing country firms into global markets” (K. P. Gallagher and Zarsky 2006, 1).

In SSA, the World Bank advised that “private companies […] take the lead” in mining, and that governments should abandon “pursuing […] economic or political objectives such as control of resources or enhancement of employment” (World Bank 1992, xiii, 10). The strategy depicted FDI as inherently positive and essential to economic development, with little critical
attention to the composition of the investment, the sectors involved and the capacity of the host
country to benefit from it. The Washington Consensus focus was “mainly on the quantity of FDI
rather than its quality” (Lall and Narula 2004, 450) – the more foreign investment an economy
could attract the better.

But the evidence of a direct link between increased FDI and economic development has
been inconclusive at best and, more often than not, simply not borne out by the empirical data.
Their review of studies on the impact of FDI on development led Gallagher and Zarsky to
conclude that there is no consistent relationship between increased FDI and economic growth
and technological spill overs: “… the purported benefits of FDI are exaggerated and its centrality
in development strategies is misplaced” ; furthermore, “the poorer the country, the more likely is
the FDI impact negative” (K. P. Gallagher and Zarsky 2006, 1). Other studies have concluded,
for example, that “in the vast majority of [the 28 studied developing] countries there is neither a
long-term nor a short-term effect; in fact, there is not a single country where a positive uni-
directional long-term effect from FDI to GDP is found to exist” (Herzer, Klasen, and Nowak-
Lehmann D. 2008, 808). A 2007 study found that while efficiency and market-seeking FDI
contributed to economic growth in developed countries, “in line with existing literature, [there
were ] no significant effects… [of FDI] in developing countries” (Beugelsdijk, Smeets, and
Zwinkels 2008, 452).

While neoliberal assumptions, such as the centrality of FDI to development, continue to
hold sway within official international development discourse, they are at odds with the evidence
of successful industrialization which shows that states have been key players in organizing,
supporting and asserting domestic economic interests to foster accumulation, investment and
increased productivity and innovation. This is consistent with what we know about the role of
states and industrial policy in economic development historically (Dunning 1997, 65): states played an active, central and essential transformative role in the industrialization of Europe and the US (Chang 2003), the later industrializing East Asian economies (Chang 2006), the investment-led strategies in Association of Southeast Asian Nations (ASEAN) countries (UNCTAD 2007a, 46–47) and in China (Akyüz, Chang, and Kozul-Wright 1998; Jomo 2001). States have also played crucial developmental roles in Norway and Chile’s industrialization through resource extraction (Havro and Santiso 2008).

The failure of the Washington Consensus has done little to diminish the role of FDI in official development discourse of Western actors as promoted by, for example, the IFIs. Post-Washington Consensus policy prescriptions have, rather than abandoning the neo-liberal FDI-led model, expanded the terrain for state action in development but only in so far as it supports and is consistent with the FDI-led model (Fine 2010, 68, 69).

Development policy reforms continue to be based on a perceived need to increase FDI. This has led, according to Gallagher and Zarskey, to two “standard prescriptions” in economic development strategies:

[First] currently, the focus is on fashioning the right “enabling environment” for FDI; that is, creating or strengthening legal, regulatory and political institutions which provide transparency, property protection, and financial stability to foreign investors (…) The second prescription is that investment agreements – global, regional, bilateral – should aim to “make the world safe” for FDI, including by expanding the protections for and the rights of foreign investors. Greater rights for investors have come at the expense of flexibility and diversity of national development policies (2006)

As shown in the chapters in this dissertation, Canadian international mining and development policy continues to promote as “best practice” models that are based on FDI-led strategies. This approach is, as discussed in this dissertation, contradicted by the historical
evidence supporting the need for developing countries to have access to a broad range of development options. The persistence of this model can be explained by understanding that policy models and ideas, rather than being based on a rational evidence-based objective assessment, are the product of the ideological and social context within which they are constructed. The policy models that are deemed “best practice” and dominate official discourse therefore bear the imprint of the power asymmetries of the social context within with they are generated.

The fact that policy ideas and models rise to international prominence as accepted ‘best practice’ is not an indication that they are inherently effective or the best option available (Temenos and McCann 2013, 344). Rather, the promotion of a policy idea as best practice is an indicator of a policy’s compatibility with the hegemonic ideology and effectiveness in advancing the interests of powerful and dominate classes. In the context of the continued hegemony of neoliberalism, this dissertation argues that the promotion of FDI-led models is based more on the model’s ability to promote “market rule” and the interests of transnational capital than on an assessment of the ability of these strategies to promote economic development.

Policies bear the imprint of the historical, locational and associated power relations of the context within which they are constructed (Temenos and McCann 2013, 344). Traditional conceptions of policy transfer build on the assumptions of rational decision making by policy decision makers. But in practice, as Peck and Theodore note,

the environments in which policies are variously borrowed, formed, and implemented are not inert backdrops to policymaking, but are both ideologically and sociologically structured; they are shaped by competing projects and marked by contestation. Here, an array of institutionally situated policy actors draws upon a range of positional resources and capacities to mobilize their variously conflicting and complementary projects for institutional transformation, wielding
alternate “models” in ways understood to advance strategic interests. In this context, “policy transfer” denotes not so much an interconnected web of behavioral practices, or a zone of rational decision-making, but more of an arena of contest and struggle. (2015, 26–27)

FDI-led models have, I argue, become the dominant development strategy and organizing principles for mining and development discourse in identifying the problems and “legitimate” solutions. The content and the promotion of policies internationally is informed and shaped by a confluence of interests. “What is important about them,” as Temenos and McCann note, is not so much that they move around in some abstract sense but that people move them around for particular purposes. New planning and design strategies, economic development models, etc. are social products, built up from the ground over time and bearing the imprint of the interests involved in producing them. (2013, 344)

Furthermore, in practice ”policy models that affirm and extend dominant paradigms, and which consolidate powerful interests, are more likely to travel with the following wind of hegemonic compatibility or imprimatur status” (Peck and Theodore 2010, 170). That is, their transferability is enhanced by the degree to which they are compatible with the broader hegemonic ideology and the degree to which the ideas and models further the broader agenda as promoted by dominate interests.

As a hegemonic policy paradigm, neoliberalism has become the “framework of ideas and standards that specifies not only the goals of policy and the kind of instruments that can be used to attain them, but also the very nature of the problems they are meant to be addressing” (Hall, 1993, 279). From this perspective, FDI-led development models are promoted as best practices not so much because of their ability to foster economic development, but because they are consistent with neoliberalism as the hegemonic ideological orientation and because of their ability to further dominate economic interests.
FDI-led development strategies have become central to neoliberalization – especially in the context of the failure of neoliberal ideas as implemented via the Washington Consensus. These strategies have become the hallmark of neoliberalization. In the context of the failure of the Washington Consensus promoted neoliberal policy framework, economic liberalization is justified not so much by the inherent appropriateness and effectiveness of the foundational neoliberal policy ideas, but by the need to implement economic liberalization because such policies will make the developing countries attractive to FDI. The perceived potential to increase FDI becomes the incentive and the organizational framework for host countries in reorienting the role of states in development, making states and governments active players in promoting the interests of foreign investors. In this sense FDI-led strategies are at the forefront of neoliberalization in that to attract FDI countries are encouraged to promote private property rights, deregulate, facilitate free flows of capital and remove constraints on potential profit-generating opportunities for transnational corporations (TNCs).

These strategies to promote FDI are at the core of neoliberal theory which posits that states’ economic policy interventions should be limited to “creat[ing] and preserv[ing] an institutional framework appropriate to … strong private property rights, free markets, and free trade”, where markets do not exist as in education, social security and environmental protection markets must be created “by state action if necessary” (Harvey 2005, 2). But neoliberalism is more than a set of ideas it is also a “political project to re-establish the conditions for capital accumulation and to restore the power of economic elites” in response to the economic crisis of the 1970s (Harvey 2005, 19). Neoliberalism, from this perspective, is not restricted to a specific set of ideas but rather these ideas are a means of reformatting the international political economy on terms that establish, promote and protect increasingly transnational investment opportunities.
This goes some way to explaining why neoliberal thinking contradicts the historical evidence of successful industrialization – neoliberal development strategies are not designed to facilitate national economic development, rather the objective is to increase investment opportunities for global economic elites. The neoliberal solution to national economic development challenges is to open economies to the free flow of capital and goods, and to create investor friendly developing economies.

From the perspective of economic development, it is important to distinguish between the creation of investment opportunities for international capital and a national development strategy. Neoliberalism conflates the two in, for example, FDI-led development strategies, arguing that the promotion of the interests of global economic elites is synonymous with social and economic development. Historical evidence and debates, particularly from the perspective of late developing countries, indicates the need to make this distinction – the promotion of the interests of leading capital exporting countries are not necessarily supportive of the national economic development in later developing countries. List’s (1985) contribution to the debate is one of the early articulations of this argument as he describes the challenges later developing economies faced in fostering economic development in the context of the UK’s dominance of the global economy. More recently Chang has provided empirical evidence showing: 1) successful industrialization has been the result of national policies that prioritized domestic economic development, and 2) leading capital exporting countries have historically sought to promote and protect their economic interests by curtailing the ability of later developing economies to promote their own domestic economic interests through, for example, policies restricting the free flow of goods and capital from the advanced economies (Chang 2003).
The conception of neoliberalization as “a politically guided intensification of market rule and commodification” (Brenner, Peck, and Theodore 2010, 184) indicates that the content, the consistency and the validity of the ideas promoted by neoliberalism are less important than their ability to advance market rule as guide for development policy. This conception of neoliberalism as a political project is useful in explaining its persistence, in spite of the bankruptcy of its ideas and the seeming mutability of neoliberalism beyond the confines of the Washington Consensus policy ideas.

It is also helpful in understanding the apparent ideational shift in the aftermath of the Washington Consensus which has entailed an expanded role of states in development. Neoliberal ideas are not restricted to the ideas of a very limited role of states in development, as posited in the Washington Consensus; neoliberalism can also be consistent with an expanded role of states in development. States in post-Washington Consensus strategies are resurrected as essential players in development, but in the current mandate rather than taking the lead in development strategies, they are tasked with establishing social and economic conditions that are conducive to the promotion and protection of profitable opportunities for FDI – that is the subordination of the host political economy to FDI-driven development strategies. The rejection of the Washington Consensus in official development discourse is from this perspective not a call for more active developmental states but rather it promotes a reconfiguration of the role of states to support of this broader neoliberal class project. States are repurposed to address narrowly focused “market failures” rather than for the more radical restructuring of political economies to facilitate domestically based accumulation and investment development agendas.
The failure of specific policy ideas and frameworks, such as the Washington Consensus, can be seen as essential to and indicative of the strength of the neoliberal project. As Brenner et. al. note:

policy failure is central to the exploratory and experimental modus operandi of neoliberalization processes – it is an important impetus for their continual reinvention and ever-widening interspatial circulation. Indeed, rather than causing market-oriented regulatory projects to be abandoned, endemic policy failure has tended to spur further rounds of reform within broadly neoliberalized political and institutional parameters. (Brenner, Peck, and Theodore 2010, 209)

The failure of the Washington Consensus has forced the proponents of the neoliberal project to address its weaknesses, overextensions and the local specificities when expanding neoliberalization. In this sense neoliberalization proceeds not as the coordinated imposition of a unified, consistent and non-contradictory single macro set of policies, but rather as a tentative project which, if it is to be successful in extending the reach of market rule, must address the contradictions, the contestations and the alternatives to neoliberalism that emerge and inhibit its expansion and entrenchment.

Critical studies of the spread of neoliberal policy globally have led to a more nuanced understanding of neoliberalization. Rather than it being a “worldwide homogenization or convergence of regulatory systems,” some studies have drawn attention to the “variegated character of neoliberalization, [indicating that] across all contexts in which they have been mobilized, neoliberalization processes have facilitated marketization and commodification while simultaneously intensifying the uneven development of regulatory forms across places, territories and scales” (Brenner, Peck, and Theodore 2010, 184). Essential to the successful expansion of neoliberalism is its capacity to accommodate, absorb and engage in the transformation of local governance practices, institutions and political economies.
In this sense we can identify neoliberalization’s variegated nature as based on its ability to “exploit, transform and reproduce inherited geoinstitutional differences” (Brenner, Peck, and Theodore 2010, 207). The analytical challenge is to assess “how neoliberalism is specified in a variegated landscape of institutional, economic and political forms” (Collier 2012, 191). This dissertation locates Canada’s international mining policy interventions within the variegated landscape of global neoliberalization as the global mining industry seeks to rebrand itself as a catalyst of sustainable development.

FDI-led development strategies play a key role in advancing variegated neoliberalization. The promotion of neoliberalization in the aftermath of the Washington Consensus is more decentralized, mutable and adaptable compared to the earlier more centralized strategies, such as the SAPs imposed by the IFIs. The engagement of host states as promoters of FDI can in theory make the implementation of market rule more adaptable to the specificities of the local context where the reforms are to be implemented. The shift to less coercive and less centralized forms of neoliberalization along with the active participation of host countries through the implementation of FDI-led strategies can also be seen as an indicator of the hegemony (Cox 1983) of neoliberalism and market rule and the perceived absence of viable alternative models.

Alternative policy ideas can be generated by a radical counter hegemonic impulse and be successful in addressing a policy challenge. But these ideas upon adoption as best practices and diffused by international institutions, such as the World Bank, often become mutated and rendered less disruptive and more compatible with the prevailing hegemonic framework and power structure (Peck and Theodore 2015, 221). In effect, when the insights of a successful alternative policy are articulated into the prevailing agenda, e.g., neoliberalism, they contribute to the rejuvenation of the very ideological project they sought to challenge.
It is important to add that the neoliberal project continues to be contested and face challenges. This is especially the case in mining. The abandonment of the imposition of the Washington Consensus was a failure of neoliberal ideas, but it was also the result of global resistance to the social and economic costs associated with its implementation (Sheppard and Leitner 2010, 186–88). This contestation has contributed to a recalibration of neoliberalism, at least at the level of official discourse, intended in part to retain some legitimacy for strategies that subordinate ecosystems, communities and workers to the accumulation strategies of increasingly transnational capital.

While the Washington Consensus framework for the promotion of neoliberalism was unsustainable, the expansion and entrenchment of market rule continues in new and variegated forms. This section has argued that FDI-led development has become a key means of neoliberalization in the wake of the failure of the more direct, centralized and coercive Washington Consensus framework, certainly when compared to the SAPs. FDI-led strategies promote reforms and institutional changes in host economies, such as the establishment of property rights for foreign investors and state policies the support the activities of TNCs. Governments also appear to voluntarily relinquish their sovereign rights to regulate foreign investment by negotiating BITs that reduce their development policy space in expectation that the implementation of these agreements will result in increased FDI.

The overall contention in this dissertation is that Canada’s interventions in mining and development policy reforms are promoting a FDI-led strategy and by doing so Canada is at the forefront of promoting neoliberalization in SSA. Canadian registered mining companies are predominately exploration juniors funded by high risk capital – a key source of capital for unlocking SSA’s mineral potential. SSA states’ potential access to this capital and strategic
development assistance funding for mining policy reforms, have provided Canada with considerable influence in policy reforms in SSA. This dissertation argues that recent Canadian governments have used this influence to promote policy reforms in SSA mineral rich countries that provide and protect opportunities for Canadian registered mining companies but also undermine the ability of host countries to generate industrialization and economically sustainable development.
Canadian Policy, Economic Elites and Supports for International Mining

The contention that the Canadian government’s interventions in mining and development policy reforms will strengthen neoliberalization in SSA raises questions related to the Canadian political economy: why is Canada promoting these particularly economically liberalizing development models in mining and how do we conceptualize the Canadian state as an player in international mining in the context of an increasingly globalized world economy? The working assumption has usually been that Canada is promoting Canadian domestic interests, and more specifically, the interests of the Canadian economic elite, but the empirical data on this is far from conclusive.

There is general agreement that there has been increased global presence of TSX registered mining companies and that the Canadian government has gone to great lengths to support Canadian registered mining companies in general. There is also agreement that international operations of Canadian registered mining companies have resulted in considerable social and environmental cost to developing countries and that the expansion of these activities continues to be contentious, generating conflict both within communities and between communities, mining companies and governments. Mining, including that done by Canadian registered firms, has also coincided with, and in some cases fueled, violence and war in, for example, the Congo during much of the mid 2000s commodity price boom (Dent 2007).

It is difficult to conclusively characterize the linkages between the TSX operations in SSA and the Canadian political economy. In this section, I suggest that while there may be a Canadian specificity to junior exploration companies within a global division of labour in the mining industry, the increased integration of the global economy, specifically relating to capital flows and the high amounts of capital required to bring discoveries to production in the mining
sector, make the industry particularly permeable to both domestic and foreign sources of capital. This makes it very difficult to assess whether specific Canadian economic interests are driving Canadian mining policy interventions in SSA. I also contend that there are considerable overlaps and shared interests between Canadian and transnational based capital. Further the political economy impacts of neoliberal globalization mean that nation states are increasingly shifting to promoting both foreign and domestic capital within the domestic economy and internationally. The observations in this section indicate that questions regarding the degree to which the TSX registered mining companies and the Canadian mining sector is “Canadian” have become decreasingly relevant to our understanding of the direction taken by the Canadian state and its support for the global mining sector.

In this framework, I have been deliberately ambiguous in my characterization of the interests driving Canadian policy interventions in SSA. This flows from inconclusive TSX data, but it also relates to the unresolved theoretical debate as to the role of the Canadian state in support of international mining (see for example, in relation to the extractives industry in Latin America, Garrod and Macdonald 2016).

As noted above, a key force driving neoliberal globalization has been the quest by economic elites internationally to reorganize their economic hegemony on a global scale through capital exporting states and the organizations they dominate. There is little doubt that the global economy has been transformed by an increasingly transnational orientation. This transformation is reflected in the growth of what some have described as a transnational capitalist class. While there are a variety of conceptions of the characteristics of this global social force (Carroll 2010; Robinson and Harris 2000; Sklair 2001), there is increasing agreement that capital is shifting from being based and reliant on nation states, to global strategies requiring a reorientation of
states and the development of global institutional arrangements that can facilitate and entrench this transformation. Changes in the Canadian political economy also reflect these international changes with a shift to increased presence in the Canadian economy of large foreign TNCs and the internationalization of Canadian-based TNCs. This is contributing to the integration of the Canadian economic elite into an emerging transnational capitalist class through, for example, networks of overlapping corporate directorships of foreign and domestic TNCs (Klassen and Carroll 2011).

While these networks relate for the most part to large TNCs, these global economic trends are to a lesser degree manifest in Canada’s international mining industry, making it difficult to characterize the operations of TSX registered operations in SSA as part of a Canada-based class accumulation project. Canadian mining interests have become increasingly transnational, such that in 2014 two-thirds of TSX registered mining assets were held outside of Canada (Natural Resources Canada 2016a). The TSX labels itself as “the leading exchange for mining companies in Africa” in terms of the number of companies operating in SSA, the number of properties and the capital invested (Wertheim and TSX 2012, 17; TSX 2014, 22). In 2013 the TSX listed 158 mining companies that accounted for investments in 575 mining properties spread across 37 countries in SSA (TSX 2014, 20) and controlling C$24 billion in mining assets (Natural Resources Canada 2015a, 1). Most of these companies are small junior exploration companies, but they also include some of the world’s largest mining companies in, for example, the gold mining sector.

While mining has long played a role in Canada’s economic development, Canada’s emergence as a home for transnational mining capital is relatively recent. It was only in the mid-1990s that Canada became a net exporter of FDI, which coincided with a sharp rise in outward
bound Canadian energy and mining FDI in SSA and in developing countries in general (Statistics Canada 2016). This economic reorientation is indicative of the deeper changes in the Canadian political economy as Canadian-based capital and the state coalesced around an international strategy, as indicated by the promotion of the Canada-US Free Trade Agreement (CUSFTA) signed in 1987. According to Klassen, the Canadian economy

has become enmeshed in a wider process of transnational neoliberalism…. By connecting the Canadian economy to global circuits of production and exchange, the Canadian state has sought to maintain itself as a competitive space of accumulation and to support the expansion of Canadian firms across the world economy. (2014, 117 emphasis in original)

In many cases the direct linkages of these international mining operations to the Canadian economy are tenuous. More than half (57%) of the mining companies listed on TSX’s exchange for established companies are also listed in other international exchanges (author’s calculations from TMX data) and 61% do not have operations in Canada (TMX 2016). Only 22% of the TSX companies with operations in SSA operate in Canada (author’s calculations from TMX data) (TMX 2016). Furthermore, 40% of the money raised on the TSX originates from outside of Canada (TSX 2014, 5), so we can surmise that a significant portion of the capital invested in the international operations of TSX registered companies is foreign sourced. These observations indicate that the TSX is transnational both in sources of capital and location of investments indicating that the Canadian “political economy has become tightly linked to global circuits of finance capital” (Klassen 2014, 147).

The Canadian mining sector has, in part due to the expertise garnered through the exploration of Canada’s vast mineral rich geography and a supportive policy framework,
developed an expertise in exploration within the global mining industry. In practice the TSX’s claim that it is the registered home to the largest number of mining companies relies on the high number of junior mineral exploration companies with few assets, the majority of which are registered on the TSX’s smaller venture exchange (TSXV). Exploration is the more speculative but least capital intensive stage of mining. Moving from exploration, to development and production, should a mineral deposit be discovered, requires much larger capital investments in the range of 200 times the project costs of exploration (Aboriginal Affairs and Northern Development Canada 2009). Therefore, discoveries by TSXV-based companies open up investment opportunities for both Canadian and foreign investors as these smaller entities require external financing if they are to develop discovered deposits. Most finds, even if they are made by Canadian entrepreneurs and capital, will need to seek outside equity investments, a significant portion of which would be foreign sourced via the TSX and through registering on multiple foreign stock exchanges as is the case with most TSX mining production companies, or they may deregister from the TSX in favour of another global mining exchange. A further indicator of this is that, while the TSX claims to register the largest number of world’s mining companies, in 2015 the TSX only registered 6 of the world’s top 40 mining companies (PwC 2016, 25–26).

A review of the TSX registered established mining majors that are in production shows that most are also registered on other global exchanges, providing a further indication that these companies rely on non-TSX sources of capital to fund production, further diluting what could be considered Canadian content at the stage of exploration. This indicates that even if we accept that exploration does have linkages to the Canadian economy, the need for large amounts of development capital and the permeability of the mining industry to foreign capital, suggests that these linkages to the Canada economy are diluted, if not lost entirely.
The limited linkages with the Canadian economy of TSX companies operating internationally begs the question as to why the Canadian government is so active in its support for TSX registered companies operating internationally. Part of the answer lies in the fact that the economic impact of the international mining industry on the Canadian political economy is amplified through linkages with Canada’s mining supply and services sectors (MSS) (see chapter 3). This includes industries that provide direct support, arranging and providing financing, legal support in establishing and maintaining regulatory compliance and accounting and audit firms. The sector also includes on-site exploration service and equipment suppliers seeking a foothold in international mining companies’ global supply chains. Arguably this sector with significant operations in support of international TSX registered mining companies is a Canadian-based driver of Canadian state support for TSX registered companies. But this sector is also comprised of numerous large transnational legal, financial and accounting corporations making generalization about the sector linkages with Canadian-based accumulation tenuous.

Another explanation for the Canadian government’s support is that, in the context of increasing globalization, the distinction between domestic and foreign capital in developed capital exporting economies has become less significant as capital becomes increasingly transnational in ownership and orientation. The increased role of foreign investment in domestic economies indicates, according to Albo, that, “as opposed to a ‘national bourgeoisie’ organizing a national economic space for itself, the state actively reproduces, ideologically, politically and through competitive supports, both domestic and foreign capital” (Albo 2003, 95 emphasis added).

The specific ”nationality” of capital is of diminishing importance in policy influence within neoliberal globalization. This points to another motivation for Canadian promotion of
economically liberalizing policies: in the context of increased transnationalization of the
Canadian and global economy, Canada’s international policy interventions are driven by the
broader influence of transnational mining capital rather than by more narrow Canadian domestic
interests.

The increasing transnationalization of economic elites raises questions as to the role of
nation states in facilitating global accumulation and the development of a countries’ international
trade and investment policies. In seeking to answer these questions some political economists
have sought to apply the concept of imperialism. This has, according to Albo, led to a broad
division of interpretation … over the form of interdependence in the new ‘empire’. One view is
that transnational capitalist classes have now fundamentally transcended national interests, so that
political sovereignty and economic coordination are now effectively global, ‘ultra-imperialism’;
the other is that the new empire is predominantly a reassertion of US hegemony, a ‘super-
imperialism.’ (Albo 2003, 90)

The characterization of globalized capitalism being organized as an empire depicts the
foreign policy of individual national states as subordinate to facilitating and ostensibly seeking to
benefit from enhancing global flows of transnational capital. Canadian international mining
policies from this perspective can be seen not so much as specifically promoting the Canadian
mining industry but capitalizing on the specific Canadian competitive advantages in support of
the global mining industry as generators of surplus and suppliers of the commodities to meet
demands of industries globally. The influence of transnational capital is extended to policy
development and governments through, for example, “transnational policy – planning networks”
that include and communicate with politicians, state policy makers and civil society (Carroll and
Sapinski 2010) as discussed related to mining in chapter 3. Canada’s promotion of liberalizing
international trade and investment agreements (e.g., most recently Canada-European Union
Comprehensive Economic and Trade Agreement (CETA) and Trans-Pacific Partnership (TPP) that have been strongly supported by Canadian and international TNC networks and industry lobby organizations, can be seen as a manifestation of the integration and arguably subordination of Canada’s policy agenda to the facilitation of transnational capital flows and the influence of these networks (Carroll and Sapinski 2016, 510–11).

Some observers, drawing from the experience of the extractives industries in Latin America, have argued that a distinguishing characteristic of the current imperialism is the heightened role of the extractives industries within the “globalizing dynamics of capital” (Veltmeyer and Petras 2014, 10). Other observers have questioned the usefulness of applying the concepts generated by 20th century capitalist expansion and consolidation to neoliberal globalization characterized by increasing transnationalization of operations, supply chains and ownership (Garrod and Macdonald 2016, 111).

Within the division of labour in the global mining industry, Canada has developed a competitive advantage in the financing and organizing of international exploration projects. The emergence of capital as a global social force continues to rely on competition not only between firms but also between leading capitalist states, such that “international [corporate] competition does not occur apart from or against states, but through states” (Albo 2003, 94) in seeking to attract investments from both foreign and domestic capital. Canada’s TSX has been the preferred exchange for raising exploration capital building on the countries exploration knowledge, expertise in raising venture mining capital, and its mining exploration heritage. Exploration has been supported by government policies, such as the “free mining” land access system for exploration and mineral rights (Lapointe 2014), supportive tax policies, a stable and mining friendly financial sector and more recently becoming more open to international trade
and investment through the NAFTA. As the commodity price boom got underway in the early 2000s, the Canadian government sought to capitalize on this expertise by making Canada an extractives superpower (Caulfield 2015; Harper 2006).

These factors have contributed to a competitive advantage for Canada as it emerged as the registered home to most of the world’s junior mining companies. But this position has recently been under threat as a number of mining capital exporting countries, such as Australia, the UK and South Africa (Younglai 2014) have sought to increase their share of the world’s mining investment SSA. The need to maintain a competitive advantage can be seen as one of the drivers for Canadian policy interventions in SSA. As presented in this dissertation, Canada has sought to do this through supporting TSX companies’ CSR strategies with development assistance funding, the promotion of the FDI-led model, the development of networks that bring together the mining industry with government officials and some civil society organizations and through the negotiation of BITs that provide unparalleled access to SSA mineral resources. These investment agreements are particularly important to in this regard. While SSA provides significant mineral potential, it is also among the world’s least economically liberalized regions. In a global economy increasingly characterised by treaty shopping by investors, treaties, such as Canada’s BITs – built upon NAFTA as one of the world’s most investor friendly trade regimes – which provide investors with minimally restricted exploration opportunities and access to third party dispute settlement mechanisms, become a significant incentive to register on the TSX.

This section of the framework has sought to locate Canadian international mining policy initiatives within the context of neoliberal globalization. I have questioned the significance of Canada as the registered home for Canadian mining, noting that while the Canadian mining heritage does appear to contribute to particular areas of Canadian expertise in exploration, once
discoveries are made foreign sourced capital takes on a greater role and ultimately the global industry dominated by large established mining TNCs not registered in Canada. This shift to transnational capital reflects broader global shifts towards the increasing transnational character of global economic elites, a shift that can contribute to a reorientation of nation states from promoting domestic economic elites through the domestic economy to promoting the interests of a transnational capitalist class.

In effect the objective of capital exporting economies’ economic policy is to increase investment opportunities for transnational capital both domestically and internationally. From this perspective, I have suggested that Canadian policy interventions in SSA are neither a promotion of specifically Canadian mining interests nor Canadian domestic interests but the promotion of global mining capital.

These observations should not be taken to indicate that nation states are no longer important. States, as the previous section has noted, have been repurposed to facilitate a global accumulation strategy for economic elites placing FDI as the lead player in economic development with social policies generally in support of this economic model. Neoliberal globalization has contributed to increased concentration of wealth and capital, increased economic inequality globally, to stalled industrialization in LDCs and to environmental destruction. Attempts to address these challenges will require a revitalization and reformatting of states as vehicles for organizing and implementing economically just and environmentally sustainable societies. Public policy agendas and states are sites of struggle and contestation within the context of competing social forces and asymmetrical power. This framework indicates that such struggles, within the context of globalization, will need to challenge the neoliberal agenda and will also need to take on a more international character.

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Abstract
The chapter presents an overview of current analysis and policy recommendations for revenue flows in the context of mining regime reforms over the past 20 years in Africa. The examination of the impacts of previous World Bank promoted reforms provides insights into current calls for mining to play a transformative role in Africa, and indications as to how resource revenue might better contribute to the sustainable development in mineral rich countries in Africa. The analysis suggests that past reforms have been informed by investment-led perspectives which have oriented the manner in which the contribution of tax revenue from mining to local economies has been conceived, measured and interpreted. The chapter concludes with a brief overview of Chile and Norway’s use of mineral taxation policies and revenues as catalysts for sustainable economic development.

Introduction
Approaches to mining reform in Africa have most often reflected, and often continue to reflect, a donor driven and ‘investment led’ perspective to the development of the sector and of the economies in which mining activities take place. This heritage has oriented the manner in which the contribution of tax revenue from mining to local economies has been conceived, measured and interpreted. It has in fact been a central contributing factor to the difficulties of tracing the actual impact of mining investment and to moving beyond what is increasingly recognised as an inappropriate and out-dated development paradigm.
This chapter presents an overview of current policy issues and debates related to revenue flows in the context of reforms of mining regimes in Africa. The reforms of the mining sector introduced in Africa since the 1980s and 1990s were ostensibly to contribute to poverty reduction through increased foreign direct investment (FDI). Underlining the measures introduced over the past 20 years, tax revenue was presented as the central contribution to result from FDI in the mining sector (World Bank 1992, 10). The reforms stimulated significant investment increases but neither the revenues derived, nor the development outcomes have lived up to expectations. The disappointing results have led to a fundamental questioning of past practices, and calls for a paradigm shift in resource development strategies (African Union 2009, 16). The objectives of this chapter are threefold: 1) to provide a general overview of the analysis and policy recommendations concerning revenue flows as a background for the case studies which follow in the volume; 2) to link analysis of the impacts of the previous reforms to current calls for mining to play a transformative role in Africa and in this context; 3) to consider how resource revenue might better contribute to the sustainable economic and social development of the mineral rich countries of the continent.

In the context of revisiting past approaches, it is important to examine the orientation, limitations and implications of the FDI-led reforms in terms of their impact on taxation and revenue flows. By way of illustration, the chapter provides a very brief overview of the design of the reforms in this area and their implementation in Ghana, Mali and the Democratic Republic of Congo (DRC). It also provides a synthesis of the model which has informed past reforms. This is followed by a second sub-section which sets out certain key issues of debates concerning mining taxation. The third sub-section identifies areas of controversy that have arisen and in this context summarises the evolving positions of key actors including the World Bank. The fourth
sub-section explores the context which has given rise to current calls for a renewed emphasis on public policies. The chapter concludes with a very brief presentation of the experiences of Chile and Norway, resource rich countries that have successfully used taxation policies and associated revenues as catalysts for sustainable economic development, and considers the implications of these experiences in terms of the potential contribution of mining to economic transformation in Africa.

**World Bank mining strategy in Africa: Ghana, Mali, the DRC and an Overview**

Reforms of the mining sector in Africa over the last two decades have been closely linked to, and in fact flow from the International Finance Institution (IFI) sponsored structural adjustment programs of the 1980s and 1990s. These programs sought to reorient development policy and national political economies to support the private sector and markets as drivers of economic growth. In its attempts to restore financial equilibrium of many indebted mineral rich countries of Africa, the World Bank Group (WBG) played a central and determining role in facilitating increased investment in Africa’s mining sector by providing the knowledge base and financing for policy reforms and economic adjustment.

The World Bank’s approach which privileged FDI was clearly set out in ‘Strategy for African Mining’ (World Bank 1992). The strategy proposed that private companies [...] take the lead [and] private investors should own and operate the mines’ and ‘existing state mining companies should be privatized at the earliest opportunity [...] to give a clear signal to investors with respect to the government’s intention to follow a private-sector-based strategy (World Bank 1992, xiii).

The World Bank recommendations encouraged governments to abandon ‘pursuing [...] economic or political objectives such as control of resources or enhancement of employment’
and to focus on ‘maximizing the tax revenues from mining’ (World Bank 1992, 10). According to the strategy,

‘concentration on maximizing tax revenues means the government has an interest in least-cost production. Mines should not be forced into downstream processing that would not be undertaken on normal commercial criteria’ (World Bank 1992, 27–28).

Given this perspective, an accommodating tax regime was considered crucial for attracting international mining investment (World Bank 1992, 30). The tax regime should, it was argued, include ‘some form of tax relief’, such as accelerated depreciation, ‘in early years which makes debt repayment easier and speeds recovery of the investment, [as this] considerably reduces risk and increases the incentive to invest’ (World Bank 1992, 32). ‘Tax regimes should be stable and predictable and based on the ability of investors’ to pay’ (World Bank 1992, 31). ‘Assurance of the stability of contract terms will lower the risk perceived by the investors that terms may subsequently be altered if a project turns out to be especially profitable’ (World Bank 1992, 30).

Economic policy, according to the Bank’s strategy, ‘should concentrate on enabling mining to maximize tax revenues over the long term (that is a 10 to 20 year period)’ (World Bank 1992, 27).

The 1992 document depicts the role of governments as that of facilitator of investment and as having a shared interest in the profitability of the private mining companies. The contribution of mining activities to the local economy was seen to be tax revenues and foreign exchange receipts which were presented as ‘the major benefits to be derived from mineral development’ (World Bank 1992, 27). A particular challenge for African nations, the Bank noted, was therefore the need to provide tax exemptions and rates below the globally competitive level as a risk premium given the perceived additional risk of operating in Africa. Accordingly, African governments ‘will have to provide highly competitive tax packages and incentives to
attract new high risk exploration and investment funds from international companies’ and away from other countries (World Bank 1992, 31).

Ghana was among the first African countries to implement mining sector reforms along the lines of the World Bank policy adjustment recommendations. The new mining legislation introduced in 1986 included fiscal measures which were considered at the time to be among the most liberal in the world (B. Campbell 2004, 11) including low income and royalty tax rates, and early investment write-offs. To illustrate, corporate income tax, which stood at 50-55 per cent in 1975, was reduced to 45 per cent in 1986, and further scaled down to 35 per cent in 1994. Initial capital allowance to enable investors to recoup their capital expenditure was increased from 20% in the first year of production and 15 per cent for subsequent annual allowances in 1975 to 75 per cent in the first year of operation and 50 per cent for subsequent annual allowances in 1986. The royalty rate, which stood at 6 per cent of the total value of minerals won in 1975, was reduced to 3 per cent in 1987. Other duties that contributed significantly to government revenue from the sector before the reforms, such as the mineral duty (5 per cent), import duty (5-35 per cent), and foreign exchange tax (33-75 per cent), were all abolished (T. Akabzaa 2009, 32).

The regime provided for flexibility in royalty and corporate income payment schedules, and in particular, it empowered the minister responsible for mining to use his discretion to grant any request from distressed companies for the deferment of royalty payments [and mining companies could hold] negotiated levels of their gross mineral sales in offshore accounts, ranging from 25 to 80 per cent (T. Akabzaa 2009, 33).

By the late 1990s Ghana’s tax regime was considered by the IFIs and investors to be uncompetitive when compared to other African fiscal regimes that had been designed to draw investor attention (T. Akabzaa 2009, 34). New reforms were subsequently introduced.
Mali’s 1999 code revisions sought to attract capital for the nation’s fledgling gold industry. Consistent with IFI advice, and to keep its mining code competitive, Mali shifted from tax holidays to accelerated depreciation, removed an \textit{ad valorem} royalty tax which effectively reduced the royalty rate from 6 to 3 per cent, and reduced the minimum government free equity share of the mines from 15 to 10 per cent (Belem 2009, 126).

Again under the auspices of the World Bank, in 2002 the Democratic Republic of Congo (DRC) revised its mining code in keeping with the trend towards more generous fiscal terms (Mazalto 2005). The new code provided for an income tax rate of 30 per cent, royalties ranging from 0.5 per cent for iron to 2.5 per cent for precious metals and 4 per cent for precious stones, options to hold 60 per cent of earnings in off-shore accounts, and allowed for accelerated depreciation (Democratic Republic of Congo 2002, 83).

In 2006 Ghana introduced another round of incentives in a new mining code that continued the trend of lowering income tax and royalty rates. It removed the windfall profits tax and the new code also allowed companies to negotiate stability agreements ensuring that new legislation would not negatively impact existing mines. As well, separate development agreements covering, for example, royalty rates and schedules, could be negotiated for investments of over US$500 million (T. Akabzaa 2009, 41).

The reforms of the mining codes such as those described here did indeed contribute to significant increases in foreign investment. For example, by 2004 FDI in mining in Africa had reached US$15 billion annually, representing 15 per cent of the global total, up from 5 per cent during the mid -1980s (UNCTAD 2005, 39). These investments boosted the role of the mining sector in mineral rich economies. Gold mining, to give one illustration, contributed 2.9 per cent
of Mali’s GDP in 1994 increasing to 12.7 per cent in 2002, and gold’s contribution to Mali’s
total exports increased from 18 per cent in 1996 to 65.4 per cent in 2002 (World Bank 2005, 24).

But the success in attracting investment has not been matched by proportionate increases
in government revenue. Various fiscal studies estimate that during the lifetime of a mine,
government revenue from metal mining revenue ranges on average from 25 to 60 per cent of
mineral export earnings (UNCTAD 2007d, xxiv). However, in 2003, Ghana for example,
received only 5 per cent of its mining generated export earnings (UNCTAD 2005, 50), while
Tanzania received an average of 10 per cent of export earnings between 1998 and 2003
(UNCTAD 2005, 50). Between 2004 and 2007, Mali received 15.5 per cent of its gold export
earnings (see Figure 1) (Camard, Thomas, and Wane 2008, 12). The reforms were advantageous
for the mining industry which, during the 2000s, was able to transform record high commodity
prices into record high profits (PwC 2011, 15).

As was the case in a series of mineral rich African countries, in response to growing
concerns regarding the low revenue flows, the DRC government established a review of mining
contracts in 2006. Of the 61 contracts reviewed, the Lutundula Commission found that none of
the contracts were satisfactory; that 39 should be renegotiated and 22 should be cancelled (IPIS
2008).

It is this context which explains why in 2012 the DRC, Ghana and Mali were all in the
process of revising or finalising the revision of various aspects of their mining legislation in
order to include measures that would ensure access to a greater portion of the resource rents
being generated by high commodity prices (Diallo 2012; Reuters 2012; Wild 2012).
The unsatisfactory revenue flows must of course be set in the context of the depletion of non-renewable resources. For example, Mali’s reforms have attracted significant foreign investment making it the third largest gold producer in Africa and the government has come to depend on mineral taxation for 20 per cent of government revenue (IMF 2011, 22). However, even after considerable exploration during the 2000s, at current production levels gold production is anticipated to start declining soon, and known reserves are expected to be depleted by 2018 (IMF 2011, 22). Such considerations underline the importance of careful analysis of the model that has informed past reform, the subject which will now be examined.

The development of a nation’s mineral wealth can, under quite specific circumstances, provide governments with a higher level of revenue than other types of investments and economic activity. However, resource extraction presents many challenges for economic development. Its direct socio-economic benefits are often limited, due to the capital-intensive nature of mining, and the fact that industrial mining tends to be undertaken within an export oriented enclave.

The World Bank sponsored reforms of the 1980s, 1990s and those that followed which increasingly emphasized the benefits at the national level and to local communities were premised
on the view that foreign investment in the mining sector could unleash the potential of the continent’s vast mineral wealth to create economic growth and reduce poverty. Governments were discouraged from encumbering mining companies with local and national development objectives, such as the provision of jobs and the procurement of local services. Several aspects of the design of past mining regimes that were put forward to attract investment merit attention. Five will be mentioned here (Bonnie Campbell 2008a, 2011):

1. What comes out clearly in a historical review of mining sector reform is the extent to which consideration of what was needed to attract foreign investment was very much premised on a ‘mono sectoral approach’ rather than one which sought to articulate the contribution of the mining sector into macro-economic objectives involving inter-sectoral linkages, with a view of improving the mining sector’s contribution to broader developmental objectives. Little provision was made to build eventual backward and forward linkages, such as the possibility of value added processing of minerals, which in a resource extraction economy would normally be considered important development objectives. The approach taken did not foresee a transformative role for mining in which the sector serves as a catalyst to spur activity in other sectors of the economy. It also clearly privileged large-scale industrial mining to the disregard and even the detriment of small scale and artisanal mining.

2. The revision of mining regimes was undertaken from the perspective and according to the interests of mining companies. In fact, proposed reforms were informed by the responses of major and junior companies to questionnaires as to what types of regimes might best suit their needs.
3. As noted, the goal of the contribution of mining activities to the local economy was seen to be tax revenues and foreign exchange receipts (World Bank 1992, 27). However, governments were also encouraged to be competitive in their taxes and incentives, driving down the levels of revenues actually received.

4. The environmental and social effects of mining, which were considered as secondary and marginal to the anticipated positive consequences of FDI, were not adequately covered in regulatory frameworks and were deemed to be appropriately regulated by the introduction of voluntary performance standards. Responsibility for the application of such standards was seen to rest above all with the mining companies, rather than interrelated and integral elements of development strategies requiring government responsibility and oversight.

5. Underlining all the above approaches of the 1990s, are the important changes in the definition of the role and functions of the state and the changes in the delineation between public and private spheres of authority that have accompanied this redefinition.

The new regulatory frameworks therefore led to a shift of authority from governments to industry actors, which impacted negatively on the capacity of governments to plan, to monitor, to negotiate and at times to ensure the implementation of the new regulations themselves.

Consequently, although revenue flows continue to be crucial to the strategies being developed by African governments, it is now generally recognised that relying on mining revenue on its own is by no means sufficient to stimulate economic transformation in Africa. As will be seen, sustainable development strategies emerging from the past experience of African countries now envision the explicit adoption of social and economic development objectives and the appropriate policies needed for their implementation, in addition to measures to increase mining
revenue flows in order for mining to contribute to sustainable economic transformation (African Union 2009; ISG 2011; UNCTAD 2007d).

Certain Key Issues Concerning Mining Taxation

The following sub-sections will illustrate issues and debates concerning the mining reforms of the past 20 years by examining different perspectives related to the prospects for mining revenue to contribute to sustainable development. Much of the current divergence in perspectives concerning mining taxation relates to disagreements over the following key issues and questions as to by whom and how these issues have been framed in the context of past historical processes and reforms: resource rents, risk, and appropriate tax measures, rates and incentives. A brief discussion of each of these issues follows.

Resource Rents

Investors are attracted to resource extraction projects because of their extra-ordinary profit potential. For developing nations rents from resource extraction are potentially a valuable source of capital that could be reinvested in other development initiatives. The literature refers to the need to establish a ‘fair balance’ between the interests of the investors and the citizens of developing countries, but there is no broadly accepted method for establishing what is fair. Based on the countries’ ownership of minerals, governments claim rights to rents generated over and above fair corporate return on mining investment, while ‘companies hold that whoever is responsible for finding minerals and giving them value, should receive most of the added value as part of the just reward for the risk involved’ (World Bank 1992, 29).
Investors seek compensation for the risk they incur in upfront costs such as exploration, mine site development, equipment, and commodity transport infrastructure expenditures that are required before any revenue accrues (Otto et al. 2006, 17). Some have therefore argued that the mining industry requires special tax considerations relative to the rest of economy given that the industry ‘is inherently quite risky, capital intensive, prone to wide commodity price fluctuations, and in nations where mineral ownership resides with the state, exploits a part of the national patrimony’ (Otto 2000, 3).

Rents may also promote rent seeking (efforts by groups to increase their share of the available profits) at the expense of rent creation (efforts that increase the total profits or wealth available for distribution). Even worse, rents may promote corruption, civil strife, and wars” (Davis and Tilton 2002, 2). Curtailing such detrimental effects of rent-seeking has fostered calls for greater transparency, an issue which is dealt with more fully below.

Tax Measures

As noted above, the reforms promoted by the World Bank have in fact been closely aligned with investors’ perspectives on mining taxation. Companies, according to Otto et al. 2000 seek control over all operating and mineral sales decisions without restrictions on debt servicing and the repatriation of dividends and profits (Otto, Batarseh, and Cordes 2000, 6). They assert that taxation should compensate for risk, be profit based and allow for early payback of capital investments (Otto, Batarseh, and Cordes 2000, 6). Taxes should not distort costs or incentives for managerial efficiency and should maintain incentives for companies to continue to invest in a project over time (Otto, Batarseh, and Cordes 2000, 6).

Given the above, mineral rich countries of the South are challenged to develop taxation regimes which are attractive to investors but which also generate significant revenue. The
taxation of resource rents provides revenue opportunities but also entails challenges as the tax measures implemented can have an impact on the investment decisions of transnational corporations (TNC). While this subject is extremely complex, suffice it here to suggest that government calculations must address at least two key decision areas: determining which tax measures to apply and at what rate to set taxation.

Developing nations have tended to rely on royalties based on the output of mines as their main source of tax revenue from resource extraction, but they continue to face pressure from the IFIs and the mining industry to shift to taxing mining profits through corporate income tax. Profit taxation could enable governments to take advantage of the high profitability that has accompanied the increases in commodity prices, but it can also increase the risk for governments – if a mine is not profitable, governments do not receive revenue (Otto et al. 2006, 10).

Moreover, profit taxation is problematic because of the capacity of transnational enterprises to shift profits to different locations in response to different tax rates as well as to alter the rate of profits declared through mechanisms such as transfer pricing. Profit taxes are more complicated to implement and more subject to tax evasion and therefore require strong administrative capacity (Otto et al. 2006, 11). Unit/value based royalty taxes ensure at least some revenue from a producing mine, regardless of fluctuations in the market, and shift more risk to investors – as investors pay governments royalties regardless of the profitability of a mine. Several countries such as Chile, Peru and South Africa that have traditionally relied entirely on profit taxation have turned to royalties to increase revenue flows (UNCTAD 2005, 47).

*Rates of taxation and tax incentives*
A further challenge for governments is to develop an optimal tax rate. ‘This implies a balance, because if taxation is too high, investment and the tax base will decrease as investors shift their focus to other alternatives, and if taxation is too low, the nation will lose revenue useful to serve the public welfare’ (Otto et al. 2006, 5). Low taxation rates also lower the resources which countries have available to provide development benefits such as infrastructure and services. This, in turn, can undermine the legitimacy of the mining industry and in this manner contribute to undermining the stability of the state concerned. To the extent that these trends raise such issues of legitimacy, as we shall see, they pose problems not only for governments but for private operators as well.

Governments may also seek to increase long-term revenue flows by increasing the number of mines and the scale of operations and by using an overall lower tax rate. Such measures may attract new investors and increase mining activity, including the development of marginal deposits. Foregone revenue in the short-term can then lead to increased long-term revenue flows as new mines begin to produce. But the intensification of mining activity raises other concerns as it leads to quicker depletion of a non-renewable resource and increased social and environmental costs. Alternatively governments can increase revenue in the short-term by increasing the tax rate, but this involves a risk in terms of a decrease in long-term investment as companies may choose not to develop new and marginal mines (Otto et al. 2006, 9) or to develop mines in other countries with lower tax rates.

In conjunction with the reforms of the 1990s promoted by the IFIs, governments have tended to use various incentives such as tax holidays, exemptions and early write offs of capital expenditures to attract investment. Incentives have focused on attracting investment with relatively little attention paid to the long term costs in terms of foregone revenue (Wells et al.
Offering tax incentives also puts countries in direct competition with their neighbours and can contribute to a downward pressure on tax rates (Keen and Mansour 2009, 26).

While the IFIs have been promoting lower levels of taxation to attract investment, certain more recent studies suggest that such an approach is misplaced. It is useful in this regards to recall the position of the World Bank:

Most African countries fall into the category of medium to high country risk – especially compared to USA, Canada and Australia. Accordingly they will have to provide highly competitive tax packages and incentives to attract new high risk exploration and investment funds from international companies (World Bank 1992, p. 31).

According to the 2010 African Economic Development Outlook, experts indicate that natural resources can be substantially taxed "without scaring away investors" and "multinational enterprises do not rank tax considerations very high among the concerns they cite as influencing their investment decisions in Africa" (African Development Bank and OECD 2010, 109). Another study found that mining companies surveyed by the International Council on Mining and Metals ‘highlighted stability and predictability as probably the most important aspects of taxation regimes’ rather than the level of taxation (ICMM 2009, 56).

Recent experiences have taught that there tends to be an inverse relationship between the generous fiscal incentives offered to investors and the stability of the fiscal regime. Where low tax rates are offered to attract investment, it tends to be more likely that subsequent political pressure will result in a realignment of fiscal regimes in later years, when mining operations become productive (ICMM 2009, 57).

According to the same source, in cases where there is strong public pressure on governments:

to increase the fiscal burden on mining companies, there has been increasing pressure on companies to make voluntary contributions towards what would normally be considered
public expenditures. Although such voluntary contributions increase costs for mining companies, they tend to be preferred to less predictable *legislative changes to tax or royalty rates* (ICMM 2009, 57; emphasis added).

Investors have been reluctant to enter into renegotiations of agreements, instead proposing that governments should design tax regimes that create incentives for sustained investments and adopt a ‘thirty to fifty year time scale [...] [with] mechanisms [...] for periodic and collaborative re-assessment’ (ICMM 2008, 4).

Companies have also used stability clauses to establish predictability and maintain favourable taxation agreements in the context of perceived political risk.

The agreements have often locked in fiscal conditions to safeguard companies from future legislative changes. The application of so-called stability clauses has become somewhat contentious. Such clauses can provide investors with enhanced protection at a time when host countries’ bargaining positions are weak. Recent changes in the balance of power between governments and mining investors and recent high mineral commodity prices have led to renegotiation demands in many countries (ICMM 2009, 9).

Stability agreements represent a mixed blessing for investors. They seek to lock-in low taxes and other incentives for terms of up to 25 years (Open Society Institute of Southern Africa et al. 2009, 26) but they also provoke the anger of citizens unhappy with the low returns they are receiving in the context of high investor profits. In effect they provoke the political risk against which the agreements were intended to protect investors. Ultimately these agreements have locked governments into arrangements made under very different conditions and a failure on the part of corporations to accommodate renegotiations jeopardizes the ‘social licence’ of mining companies in the communities in which they operate.
In an attempt to ensure a social licence to operate, companies have increasingly in the context of discussions framed in terms of corporate social responsibility (CSR), opted as noted to make ‘voluntary’ contributions towards what would normally be considered public expenditures. Ongoing discussions in this area increasingly question whether companies should indeed contribute payments to local communities in order to compensate for the negative impacts which they provoke or whether they should concentrate revenue payments at the national level in order to contribute more to the sustainable and equitable development strategies for which the government is to be held responsible. The tendency of such CSR initiatives to by-pass governments is among the concerns raised by the United Nations Economic Commission for Africa (UNECA):

A thorny issue posed by the expectations of CSR in community development is defining the boundary between the state’s responsibilities to its citizens and how mining company’s CSR complements the state’s efforts. In many African countries the coordination between state planning and investment and CSR investments is inadequate. More significant, CSR could reduce the motivation of government to fulfill its responsibilities to its citizens, and the latter could come to see the company as the provider of those services that they should be looking to the state for. Better coordination between planning and investment of the state and corporate outlay under CSR could improve the value of both streams of expenditure. So, for example, the sustainable use of a school or clinic built as part of CSR is better assured if the project is coordinated with the state—to ensure that it fits into a larger plan and that the state can support health staff or teachers should the mine cease its support (ISG 2011, 88). A discussion of taxation would be incomplete if it did not take into consideration the volatility of commodity prices. Such fluctuations influence resource rents, government revenue flows and perspectives on
The reforms of the 1990s have contributed to an increased investment, but it is important to underline that the growing global demand for commodities and the accompanying increase in commodity prices have also played a crucial role (UNCTAD 2007d, 34, 89).

Current re-evaluations of mineral taxation are taking place in the context of recent increases in commodity prices (see Figure 2). It should be recalled that the reforms to mining legislation during the 1980s and 90s occurred during a period of low commodity prices. Competition with industrialized countries and the Latin American countries which had already undergone reforms put African governments under pressure to provide generous tax concessions and low tax rates during a period when the low commodity prices had decreased the bargaining power of governments relative to investors (ICMM 2009, 10; UNCTAD 2005, 162).

This brief review of certain key issues concerning mining taxation indicates that the delicate balance between favourable conditions to draw investment and what governments consider a ‘fair’ share of resource revenue does in fact evolve over time in the context of different economic and political circumstances. Increasing concerns about the development
implications of mining investments appear to be shifting policy debates but certain investors continue to resist legislative changes, deferring instead to stability agreements and various voluntary corporate social responsibility initiatives. Such initiatives can decrease tensions but do not in and of themselves form the basis for a sustainable development strategy, much less a transformation of African economies.

Revisiting Questioning Mining and Development – Evolving Responses
While the reforms introduced by African governments in the 1980s and 1990s have been largely successful in providing mining companies with accommodating mining codes and increased opportunities, they have also presented difficulties for both industry and governments. With regard to industry the challenges from governments and communities have taken the form of demands for greater social and economic benefits, as well as greater environmental protection given the increasing evidence that contradicts assumptions regarding the contribution of resource wealth to economic development\(^3\). Since the late 1990s the limitations of past mineral development strategies driven by investor perspectives and founded on low taxation and minimum regulation have become increasingly apparent and explicit. A 2002 report commissioned by the ICMM\(^4\) indicated that:

> the mining and minerals industry faces some of the most difficult challenges of any industrial sector – and is currently distrusted by many of the people it deals with day to day. It has been failing to convince some of its constituents and stakeholders that it has the ‘social licence to operate’ in many parts of the world, based on the many expectations of its potential contributions (MMSD 2002, xiv).

In making the case for a social licence to operate, the ICMM has sought to broaden the potential benefits of mining. According to its commissioned report:
In addition to gaining hard currency from taxes and royalties, benefits from mineral development should include employment, infrastructure such as roads and hospitals, linkages upstream to industries that supply goods and services or downstream to industries that process mineral outputs, and technology transfer (MMSD 2002, xix).

In the context of sustainable development concerns, the emphasis has shifted to broader development contributions with the fiscal benefits to governments assumed or arguably downplayed. For example, ICMM’s ten principles for mining’s contribution to sustainable development focus on decreasing the negative social and environmental impact of mining and engaging with various levels of government and local communities as partners, rather than addressing revenue flows to governments (ICMM 2003).

In 2001, a managing director for Rio Tinto lamented the ‘lacklustre performance’ of the mining industry, claiming it is no secret that, as an investment, mining overall has failed to fulfil the promise that seemed so obvious in the sixties and early seventies. In the last fifteen years few companies have earned their cost of capital. And equally few have delivered above average shareholder returns (Cusack 2001, 2).

Time was to show what difference five years of steadily rising commodity prices could make. By 2007 the industry was releasing publications titled ‘Let the Good Times Roll’ and ‘Riding the Wave’ of ‘spectacular’ performance and record profits (PwC 2007). The spectacular returns for investors led to calls from governments and civil society for a portion of the windfall resource rents captured by investors, and contributed to increased pressures to systematically include such clauses in reformed fiscal regulatory frameworks (The Economist 2012).

In response, recent ICMM publications have begun to explicitly address taxation issues. This is related to what Ernst and Young identify as the ‘challenges’ the mining industry faces associated with the rise of what is presented as “resource nationalism” (Ernst & Young 2011). In their 2011 risk assessment Ernst & Young noted that ‘the continuing boom in commodity prices
has seen the mining and metals sector targeted as an area in which they [governments] can raise revenue’ (Ernst & Young 2011). Ernst and Young advise accounting clients to respond to resource nationalism by:

- Investing in transparent relationships with host governments to foster a greater understanding of the value of the project to the host;
- Aligning with the host government's long-term economic and political incentives and thereby become an invaluable part of the infrastructure in the host country;
- Focusing on generating direct and sustainable benefits for the host community through pro-active and well organized social and community development programs (Ernst & Young 2011).

Past patterns of industrial mining, and the fact that massive investment in the sector has provided few direct linkages to local economies, have contributed to mining in Africa becoming increasingly a contentious area of debate. Traditionally much of the mineral taxation debates have focused on the distribution of benefits between central governments and investors. Progressively, communities have become much more vocal in their concerns, demands and expectations regarding new mining developments, thereby pressuring companies and governments to allocate some of the development benefits to the locale of the mine. As Davis and Tilton note, ‘local communities tend to bear most of the environmental and other social costs associated with mining, while the benefits flow largely […] elsewhere’ (Davis and Tilton 2002, 11).

A challenge for companies is therefore to make evident the benefits to communities in which mines are located. As we shall see below, there are important current debates in this area as to the role of different actors concerned whether public or private. Given this situation, while
there is by no means consensus with the mining industry, certain organisations have taken an increasing interest in the allocation of government mining revenue to local communities.

The use of mineral revenues has an impact on the way in which companies are perceived, depending on whether or not citizens in mining countries and areas see benefits from extraction. Where public revenues from mining are spent effectively, companies are less likely to receive pressure from local communities for them to provide infrastructure and services normally provided by the public sector (ICMM 2009, 58). As is well known however, mining companies have frequently argued that one of the obstacles to significant development benefits has been government corruption and waste (ICMM 2011). This has led them to take an increasing interest in transparency initiatives and the management and expenditure of resource revenues. According to industry officials, companies emphasize transparency-related issues in relation to ensuring that citizens are made of aware of [mining’s] fiscal contribution and how revenue is spent. [...] An additional necessary next step is to look at policies and procedures to ensure that these revenues are disbursed appropriately and spent effectively (ICMM 2009, 57).

However, the issue of transparency is multifaceted and far more complex than is at times suggested and as described below there are complementary and useful perspectives to those noted here.

In the absence of government resources in the context of decentralization and in response to demands from citizens for greater benefits, mining companies have increasingly found themselves moving into areas, such as infrastructure and education, which have traditionally been the domain of governments. Reliance on companies for such initiatives raises questions in
terms of long-term sustainability given the finite nature of mineral deposits and it poses
governance and accountability questions, as foreign investors take an increasingly influential role
in host country policies and ultimately politics. It also draws attention to the broader
ramifications of low tax regimes which can lead to decreases in government capacity and thereby
increasing social tension and demands on companies.

Before concluding this sub-section, it is useful to return to the evolution of the thinking
within the IFIs around these issues. The World Bank has played a central role in reforming
several generations of mining codes and facilitating increased investment in Africa’s mining
sector. By the 1990s ‘mining law reform became the bread and butter of Bank support for the
sector with 35 such projects of over $1 million [globally since 1990] […] almost two-thirds (21)
of these projects have been in Sub-Saharan Africa’ (McMahon 2010, 7–8).

The Bank’s perspective on the contribution of mining to development has been influential
and evolving, shaped by the dynamics of the institution’s dual and not always compatible
mandates of increasing private investment and supporting governments in promoting socio-
economic development. Since the 1980s, the World Bank Group (WBG) has played the role of
both an investor in private mining companies and an advisor to governments concerning reforms.
For example, during the 1990s the International Finance Corporation (IFC) arm of the World
Bank Group was investing in mines in Mali and Ghana (World Bank Group 2013) while at the
same time the World Bank provided support to the Malian and Ghanaian governments to reform
their mining codes (McMahon 2010, 31).

The Bank’s promotion of mining investment has led to some tensions within the
organization. In 2003, reflecting government and civil society concerns, the Bank’s Extractive
Industry Review report drew attention to the lack of significant socio-economic benefits being
derived from the industry and the Bank’s focus on investor led development, claiming that the focus of the Bank’s work in the extractive sector ‘has been “too much on strengthening the private sector” and too little attention has been paid to sustainable development and poverty alleviation (Extractive Industries Review 2003, 44).

The Review directly questioned the Bank’s preference for long term stable and fixed mineral taxes, stating that legal and regulatory frameworks ‘need to include […] a transparent tax system with the capacity for governments to impose and collect taxes [and] adjust with the cyclical nature of commodity markets’ (Extractive Industries Review 2003, 47). The Review also recommended, again in contrast to the Bank’s 1992 strategy, that a broader development agenda be applied to Bank support for mining investment in order that the mining sector provide local socio-economic benefits for all citizens in the communities where Bank supported mining investments occur (see for example Extractive Industries Review 2003, 49).

By 2005 the Bank had shifted from revenue raising as the only objective to increasingly promoting mining as a potential source of integrated local economic development through which socio-economic development and poverty reduction objectives could be met (McMahon 2010, 7). The World Bank gradually acknowledged the need for increased local content, noting in a 2009 guide to developing mineral taxation regimes the need for governments to develop productive strategies that exchange mineral rights for local content conditions, whereby foreign investors are obligated to use domestic suppliers on an increasingly greater scale (World Bank Group 2009, 44).

Another emerging issue for the Bank has been the inadequacy of the taxation regimes negotiated during the 1990s. According to McMahon the mining fiscal regimes negotiated under
Bank guidance ‘emphasized simplicity, stability, and relatively low rates’ (McMahon 2010, 18).

The design of these regimes came under greater scrutiny in 2003 because:

for the first time in three decades there was a large, sustained increase in mineral prices (which still continues in 2010) and, hence, potential fiscal revenues. Mining fiscal regimes developed in the past (often under Bank guidance) were not adequate to capture much of the large increase in rents generated by these price increases, which caused great concern in the host countries, reforms to fiscal regimes and even contract renegotiations (McMahon 2010, 9).

The Bank’s earlier conclusion that governments should focus on revenue generation also had an unintended implication in the light of the ‘resource curse’ thesis. By encouraging revenue generation over other possible benefits, the Bank was arguably making countries more susceptible to rent seeking. The Bank’s 1992 strategy makes no mention of transparency issues associated with the resource wealth but over time, Bank publications start to take on the challenges of the ‘resource curse’ thinking, eventually becoming a backer of the Extractive Industries Transparency Initiative (EITI) and host of EITI++, which builds on EITI by broadening the focus to include support for ‘implementing good policy and practice throughout the whole process of natural resource (World Bank 2008, EITI++) utilization’ (World Bank 2008). The development of transparent government finance institutions has since been identified by the IFIs as a key contributor to successful management of resource revenues (IMF 2007, 4).

For the most part the World Bank’s transparency initiatives have focused on the management of resource revenues and the development of institutions and capacity to curtail rent-seeking. In a bid to circumvent corruption the Bank has also been floating the proposal that governments should allocate ‘resource dividends’ via direct cash transfers to citizens and bypassing government programs and mechanisms (Devarajan and Giugale 2011). As is shown by Akabzaa,
the particular manner in which the World Bank has approached issues of revenue transparency has had significant implications (T. M. Akabzaa 2013).

The Bank and the IMF continue nonetheless to take a lead role in developing tax policies, and increasing taxation implementation and enforcement capacity (IMF 2010). The Bank has been providing governments with advice related to contract renegotiation and in some cases, for example in Zambia and Mozambique, recommending tax increases (World Bank Group 2009, 43–44). This encouragement for governments to renegotiate unfavourable contracts should not however be taken to mean support for a general rise in tax rates. A recent IMF review of Mali’s taxation rates supported the government’s royalty reduction, from 6 to 3 per cent, which according to the review is close to the optimal rate for the country (Thomas 2010, 19).

The recommendations of the World Bank seek to improve the administrative capacity of governments to manage resource revenues but continue to be based on a foreign investment led strategy. In this sense the IFIs continue to privilege a limited conception of the state as an administrator of public resources rather than as a strategic agent of development. It remains to be seen how the more recent emphasis on development is to be translated into recommendations which are in line with, for example, the position of the UNECA and African Union that more state involvement in the sector is required as a means to ensure better oversight and greater control of the terms and conditions on which resources are to be mined.

**Addressing power asymmetries and the role of public actors: areas of ongoing debate**

While many investors and the IFI continue in large part to adhere to the core of the FDI-led model with its preference for low taxation and accommodating governments, there is growing and strong recognition in other arenas of the need for a reorientation towards far more direct
development benefits from mining. According to the United Nations Economic Commission for Africa:

African fiscal resource regimes should […] be made more effective in garnering rents from the mineral industry, especially differential windfall rents. Similarly, the skewed mineral development contracts […] will need to be renegotiated so that they not only reflect a fair return to the investor, but provide development resources for African economies (Economic Commission for Africa 2009, 12).

The UNECA perspective of which a more equitable distribution of benefits may be considered the tip of the iceberg, entails a fundamental change of paradigm concerning the role of the mining sector in development. The renewed perspective involves integrating mining policies within a broader transformative framework in which the sector serves as a catalyst to bring about transformative and structural changes in the medium and longer term. However, in order for this to happen there are certain important preconditions. With regards to the more circumscribed objective of increasing revenues, African countries must address several policy obstacles that presently curtail such initiatives, including the role of stability agreements, tax avoidance and the imperative need for reliable taxation data.

The role of stability agreements and tax avoidance

As noted above some mining companies have relied on stability agreements to lock in highly favourable tax concessions. The industry itself has called into question the usefulness of stability agreements as they are not binding and vulnerable to reopening at the will of governments, often due to popular demands for more benefits (ICMM 2008, 3). A survey of mining companies has indicated that investors, given the limited enforceability of stability agreements, are ‘attracted by investor protection schemes, such as bilateral investment treaties with their home country’
Such avenues are the object of debate with detractors claiming that they can curtail governments’ capacity to introduce measures at a future date to encourage increased local inputs into the mining sector as a means of building linkages with other sectors of the economy. According to the United Nations Conference on Trade and Development and reflecting the developmental perspective of the countries concerned, bilateral investment treaties constrain governments ‘sovereignty by entering into treaties that specifically limit their ability to take necessary legislative and administrative actions to advance and protect their national interests’ (UNCTAD, 2009 quoting Salacuse and Sullivan 2005, 77).

A number of organizations have been drawing attention to the challenges that mineral rich countries of the South face in taxing the mining sector and have called for greater transparency and accountability in the transnational activities of investors. A 2009 report concluded that in addition to the loss in revenue flows due to subsidies and incentives, African nations have not been able to capture a significant portion of resource rents due to the “high incidence of tax avoidance by mining companies conditioned by such measures as secret mining contracts, corporate mergers and acquisitions, and various ‘creative’ accounting mechanisms” (Open Society Institute of Southern Africa et al. 2009, viii). UNCTAD, the Organisation for Economic Co-operation and Development (OECD) and the African Development Bank (ADB) have also drawn attention to tax avoidance accounting mechanisms, such as transfer pricing, which allocate profits to low taxation jurisdiction in which the corporation has a presence (African Development Bank & OECD 2010, 108; UNCTAD 2007d, 137; UNDP 2011, 19) (UNCTAD 2007d, 137) (African Development Bank and OECD 2010, 108). An international accountants report found that ‘92% of the mining and metals companies surveyed have cross-border intercompany transactions’ and that managing transfer pricing has become the top tax
concern for mining companies in the face of increased government surveillance of such practices (Ernst & Young 2009).

While transfer pricing seeks to avoid taxation through accounting strategies, these transactions are also prone to transfer mispricing strategies which illegally inflate costs and allocate these inflated costs to a TNC’s operations in countries where taxes are high and allocate profits to operations in jurisdictions where taxes are low and thereby evading taxation (Hollingshead 2010, 7).

A United Nations Development Programme (UNDP) report has conservatively estimated that Africa has lost US$ 170 billion in illicit individual and corporate capital flows (69 per cent of global illicit capital flows) between 1990 and 2008 (UNDP 2011, 12). During this period, it is estimated that the DRC lost approximately US$3.5 billion to illicit flows and Mali lost US$1.7 billion (UNDP 2011, 13). According to this UNDP report, transfer mispricing ‘is the major source of illicit capital from most developing countries’ (UNDP 2011, 12).

The organisation Global Financial Integrity estimates that between 2002-2006 transfer mispricing annually cost developing nations globally between US$98 and US$106 billion a year in lost tax revenue, with Mali and DRC both deprived of approximately 25 per cent of non-grant government revenue (Mali, US$200 million in lost revenue a year while the DRC lost US$375 million each year) (Hollingshead 2010, 4).

These observations indicate that a significant part of the difficulty in raising mining revenue lies with the actions of the transnational mining industry and that the full collection of this revenue is beyond the capacity of individual national governments. They also indicate the
scale of financial resources that have been drained away from African development efforts and the potential for increased revenues (Ndikumana and Boyce 2011).

**Taxation and Revenue Data**

Independently derived data on actual and projected revenue is essential for ensuring transparent and accountable taxation procedures. Revenue projections provide government officials with the tools for long-term expenditure planning in the context of the commodity price volatility. They also enable communities and governments to assess the costs and benefits of a proposed mine, providing a benchmark which enables citizens to anticipate and monitor revenue flows and development options. Government bargaining positions with mining companies can be strengthened by informed public debate and engagement in the development of a mining strategy.

In the context of the limited administrative capacity of governments to deal with the rapid expansion of the mining industry, governments have relied upon company data as the basis for measuring and monitoring taxation. For example, a review of the 2006 EITI report on Ghana found that the government relied on unverified company data for the quality of the mineral extracted and the quantity exported (Murphy 2007, 14, 15). This calls into question the reliability of taxation data and provides considerable opportunity for tax avoidance and abuse. For tax purposes, businesses have an interest in under-reporting revenue and over-reporting expenses to decrease their overall tax bill. Ultimately corporate financial data is compiled in the interest of accountability to investors not host-country governments.

**Current Approaches and Policy Implications**

Calls for a paradigm shift such as that put forward by the UNECA and African Union as of 2008 and 2009 have drawn attention to the limitations of past reforms and above all pointed to the
need for transparency and the renewal of policy orientations in order for mining revenue to contribute significantly to sustainable development.

Greater transparency has become a central component in efforts to increase the contribution of mining revenue to development, but according to some observers the initiatives to date do not go far enough and are not necessarily framed appropriately. The EITI for example focuses on transactions between governments and companies at the national level when foreign investment is transnational in nature (Murphy 2007, 2).

Certain analysts have argued that much of the international transparency work is limited by its focus on the ‘demand side of corruption’:

This has led to an obsessive focus on public officials (politicians and state employees) and a lack of attention to other elites, including company directors or financial intermediaries. Now the focus must shift to the enablers on the supply side. A radical change is needed in the public understanding of what constitutes corruption. The focus needs to shift from individuals to the systems and processes that encourage and enable corrupt activities (Christensen 2009).

A demand side orientation can be seen in many of the IFIs and industry transparency initiatives which focus on the management of resource revenues with relatively little attention paid to the transnational flows of capital out of Africa.

In the context of increased evidence of tax evasion, civil society organisations (CSOs) and multilateral agencies are calling for increased transparency and enforcement in terms of corporate accounting and tax compliance. The transnational nature of mining requires that verification mechanisms operate on an international scale to monitor all capital flows associated with mining investments. The European Union and Securities Exchange Commission in the
United States have developed measures for monitoring transfer pricing, including country-by-country and project by project reporting mechanisms (Commission européenne 2011; United States of America Congress 2010). The UNDP has recommended that donor governments ‘support the development of an international accounting standard requiring that all multi-national corporations report sales, profits, and taxes paid in all jurisdictions in their audited annual reports and tax returns’ (UNDP 2011, 4). International efforts to support governments in Africa would also benefit from enforcement mechanisms in the home countries of mining companies (UNCTAD 2007d, 183).

**Strengthening Negotiating and Administrative Capacity**

The lack of revenue generated by tax regimes is due not only to the nature of the World Bank’s reforms, but in a related manner also reflects the weak negotiating position of African governments (UNCTAD 2007d, 139).

Perhaps more than in any other industry, mining is subject to complex bargaining pressures over the terms of investment and the appropriate tax regime which best reconciles the interests of the different actors involved. Trends in the global economy tend to suggest that the bargaining environment has shifted significantly in favour of mining TNCs over the past two decades (UNCTAD 2005, 45).

International agencies, including the African Development Bank through its African Legal Support Facility for example, are now investing in strengthening the bargaining and administrative capacity of governments through programs which provide technical support and training in the development, implementation and enforcement of tax codes. According to the Africa Mining Vision,

one of the most critical interventions of some donors in recent years has been the effort to correct this asymmetry through the contracting of world-class consultants to support the state in these crucial contract/license negotiations and the concurrent development of the state’s own capacity (African Union 2009, 21).
The strength and negotiating capacity of governments are also increased through the existence of alternative mineral development options.\(^7\)

**Conclusion: Mining Revenue and Economic Transformation**

The investment-led development strategy has left many African economies dependent on commodity exports and stuck in a low-level development, poverty trap (UNCTAD 2005, 29, 36). Past strategies to attract investment through generous tax regimes have resulted in low revenue flows from mines. Moreover, in order to generate significant revenues, governments had to increase the scale of mining, by providing incentives for further exploration and development of new mines. The result has been to tie the mineral rich economies of Africa to a long term, low revenue, and externally oriented development strategy dependent upon foreign investment.

Through FDI-led development of mining, the exploitation of a nation’s resources becomes integrated into transnational operations and profit maximization strategies rather than national sustainable development strategies. FDI can contribute to national development strategies but, as UNCTAD has noted, not only is attracting FDI not the same thing as development, but it seems clear […] that whether it contributes to development depends on macroeconomic and structural conditions in the host economy. To date, and in the context of two decades of liberal reforms, FDI seems to have reinforced a pattern of adjustment that privileges external integration at the expense of internal integration, typified by the establishment of enclave economies. Behind this trend lies a policy philosophy that wrongly contrasts the efficiency of foreign firms with the distortionary economic impact of the local state (UNCTAD 2005, 82). Recent African initiatives have called for a fundamental rethinking of the foreign investment led export dependent development model for the mining sector. The Africa Mining Vision (AMV) and the Report of
the International Study Group (ISG) to the UNECA have called for the extraction of the continent’s mineral resources to play a transformative role, that is to move the ‘mining industry beyond a focus on extracting and exporting raw materials and sharing the resulting revenue to it being a strategic part of a process of industrialization and structural transformation’ (African Union 2009; ISG 2011, 2).

Central to such a strategy are country-led national development strategies. FDI’s contribution can be leveraged to contribute to a strong internally linked profits/investment nexus when it is managed within a broader sustainable development strategy that facilitates increased investments, profits, accumulation and reinvestment in the host country (UNCTAD 2005, 32). Late industrializing countries and, more recently, East Asian economies have successfully used foreign investment in the context of national development strategies as the basis for rapid industrialization (Chang 2003; UNCTAD 2005, 54). The role of public policies is moreover, clearly at the centre of recent interesting experiences of some resource rich countries.

A review of the of Chilean\textsuperscript{6} and Norwegian economies in the context of the generally disappointing record of resource rich economies provides some insights into the orientation and scope of changes needed to transform resource rich economies in Africa\textsuperscript{8}.

Country led development requires a policy reorientation to a framework which focuses on increasing internal economic capacity and capital accumulation, and ensuring that most of the resource rents generated are reinvested within the domestic economy. Overall, national economic transformation in Chile and Norway was built on a strategy that ‘included decisive

\textsuperscript{6} See footnote 4, page 8 above.
government action to develop natural-resource related industries, sometimes with more state involvement than has been recommended in the literature’ (Havro and Santiso 2008, 30). Resource rents in Chile and Norway were retained domestically through taxation and partial or full state ownership of resource extraction companies and through policies which increased economic opportunities for host country businesses.

In both countries, state owned and privately owned domestic mining companies operated in an open economy that encouraged and integrated FDI (Havro and Santiso 2008, 16, 17). Chile’s state owned mining company, Codelco, the world’s largest copper producer and 5th largest mining company, has been a key ingredient in Chile’s success (Havro and Santiso 2008, 16). During the 1990s and early 2000s Chile relied on low taxation to attract FDI to the mining sector and at the same time it was able to generate stable flows of revenue from Codelco (Havro and Santiso 2008, 17). The state mining companies also led the way in procuring the services and developing the capacity of local service providers for the extractives industry (Havro and Santiso 2008, 15).

Both Chile and Norway have maintained stable and sustainable revenue flows through the development of stabilization funds. During periods of high commodity prices and revenue, legislation requires that surpluses be allocated to investments to maintain long-term value. During periods of low prices, revenue generated by the funds is used to cover government operating deficits (Havro and Santiso 2008, 13, 14). Allocating these revenues to external sovereignty funds protects other export sectors of the economy from currency appreciation associated with high commodity prices. Revenue volatility and dependence on natural resource exports is reduced through having a broad tax base which enables governments to capture increased revenue from a diversifying economy (Havro and Santiso 2008, 14).
Tax revenue can contribute to a development strategy indirectly as the funding source for social and economic infrastructure that supports economic diversification, but taxation can also be used directly through, for example, tax incentives introduced strategically in exchange for the achievement of development objectives, such as technology transfer, local content, and reinvestment. During the early stages of resource development, Norway successfully applied both relatively high taxes and legislated local content requirements in exchange for foreign investor access to its resources (Havro and Santiso 2008, 15).

Revenue flows from the resources sector in Chile and Norway provided key supports for economic transformation through investments in human resources, infrastructure and innovation, that both supported the growth of domestic resource industry linkages but also provided support and subsidies to other sectors of the economy (Havro and Santiso 2008, 15, 17). Revenue targets and sustainable levels of expenditure were established through independent forecasts of commodity prices and output (Havro and Santiso 2008, 14).

The experiences of Chile and Norway illustrate that strong state legislative and administrative capacity are crucial to developing and implementing taxation policies, local content regulations and managing revenues in support of broader social and economic development priorities. Stability funds, as used in Chile and Norway, have become an increasingly important tool internationally in resource revenue management strategies. Although many African countries may not be in a position to allocate revenue to a national external sovereign wealth fund, a regional development fund focusing on regional infrastructure and human capital investments could be useful to enable countries to allocate funds to meet development objectives (ISG 2011, 96)
Amid regional calls for a new development paradigm, the investment led assumptions have been drawn into question. Both the success of East Asian economic development strategies and resource rich countries such as Chile and Norway indicate the need for a country led development strategy if mining is to contribute to economic transformation. Recent initiatives introduced by the Economic Commission for Africa are contributing to the implementation of these insights to the transformation of African economies. As a result the African Union has called for the redefining of the role which African states assume in order that they may contribute to expanding development options beyond the current FDI-led model and support increased economic diversification and productivity (ISG 2011, 82, 96). Mineral taxation can play a direct role through promoting linkages and an indirect one through generating the revenues essential to financing the increased developmental capacity of African states.

The Report of the International Study Group on Africa’s Mineral Regimes notes that African governments have significant room to increase mining taxation while remaining globally competitive (ISG 2011, 34) and considers a variety of revenue raising measures including the use of windfall taxes and competitive bidding mechanisms which allocate mining concessions to mining companies that provide the most development benefits, including tax revenue, infrastructure investments and economic linkages (ISG 2011, 95). Fifty per cent state ownership of mining projects would also effectively raise revenue and enable governments to influence the practices of transnational mining companies (ISG 2011, 121).

Recent initiatives by several Africa governments indicate that these proposals reflect a shift in policy approaches to mining taxation. Ghana has recently noted that it will be reopening stability agreements to increase profit taxes and to implement a windfall tax (Reuters 2012). Mali is reported to be decreasing mining profit taxes but increasing state-owner ship of mining
projects (Diallo 2012) and the DRC is in the process of changing its mining code to increase taxes, limit tax incentives and encourage domestic processing of commodities (Wild 2012). While it is too early to evaluate the impact of these measures, the scope of the proposals is indicative of the ongoing search by governments for country led alternatives to the FDI-led model.

Notes

1. The author wishes to thank Bonnie Campbell, Pascale Hatcher and Molly Kane for their contributions to the final revision of this chapter.
2. Unit and value based taxes assess taxes based on the quantity (unit-based) or the financial value (value-based) of commodities produced regardless of the profitability of the mining company. Profit based taxation (corporate income tax) is based on a company’s ‘ability to pay’ (profitability). Taxes are only assessed when companies and/or mines generate a profit (Otto et al., 2006, p. 19).
4. The ICMM has led efforts by transnational mining companies to communicate the contribution of mining to development and serves ‘as an agent for change and continual improvement on issues relating to mining and sustainable development’ (ICMM, 2011).
5. For more on investment treaties see Van Harten, 2010.
7. To a certain extent this may already be the case due to China’s increasing investment FDI in Africa (IMF, 2011b) which may represent a potential alternative to the exclusive reliance on traditional transnational mining investors.
8. Norway is not what would normally be called a developing country however it was not a ‘rich country by OECD standards when oil was discovered’. Since then it has used mineral wealth to achieve a high level of growth relative to its neighbours (Havro and Santiso, 2008, p. 12).
9. This review of Chile and Norway’s experience is for the most part based on Havro and Santiso’s 2008 OECD policy Brief: ‘To Benefit From Plenty: Lessons From Chile and Norway’.
10. Chile has traditionally relied on lower taxes but in 2005 the government introduced a royalty tax that is directly allocated to an innovation fund (Havro and Santiso, 2008, p. 17).
Chapter 2: The Impact of Canada’s Bilateral Investment Treaties on Mining and Economic Development Strategies in Africa

Abstract

This paper examines the impact of Canada – sub-Saharan Africa (SSA) foreign investment promotion and protection agreements (FIPAs) on SSA’s prospects for structural transformation through mineral extraction. Canadian registered mining companies are major players in the exploitation of SSA’s mineral resources. The negotiation of bilateral investment treaties by Canada with resource rich SSA countries is in large part driven by a desire on the part of mining interests to promote and protect these investments and by African governments seeking to increase FDI. Recent experience and initiatives, such as the Africa Mining Vision, have put the negotiation of direct tangible benefits at the forefront of negotiations of mining contracts and the reform of mining codes. This paper examines these agreements in the context of what we know about mining and economic development. It is argued that the FIPAs promote and entrench FDI-led development of mining and thereby undermine domestically driven development agendas. By privileging investor rights, these FIPAs curtail development policy options, thereby undermining the ability of governments to ensure that mining contributes to poverty reduction and building sustainable economies.
Introduction

Sub-Saharan Africa’s mineral potential is often promoted as indicative of the continent’s development potential. But generating economic development through mining presents a number of challenges for developing countries, in particular accessing sufficient capital, usually foreign, to locate and extract deposits. This paper examines foreign investment (FDI)-led approaches to mining and development in the context of calls for mining to play a transformative role in the resource rich economies of sub-Saharan Africa (SSA). The Toronto Stock Exchange (TSX) is the registered home to many of the mining companies operating in SSA and accordingly this paper examines initiatives by the Canadian government to promote, specifically through the conclusion of bilateral investment treaties, TSX registered mining companies’ profitable access to SSA mineral resources.

Much of the policy thinking on the continent has shifted away from a reliance on FDI-led development strategies (e.g., UNECA and AU 2011; e.g., J. E. Stiglitz, Patel, et al. 2013). Instead, African states are encouraged to play a more active role in more fostering the accelerated industrialization and economic transformation needed to eliminate poverty within a rapidly growing population. This is echoed by calls for an “industrial policy revolution” in Africa based on policies that challenge the prevailing neoliberal policy framework (Chang 2012; J. E. Stiglitz, Esteban, et al. 2013). At the height of the commodity price boom SSA leaders issued the Africa Mining Vision - a call for mineral extraction to play a revitalized and pivotal role in the continent’s economic transformation driven by initiatives to increase African ownership of economic development policy and increased intra-African trade and investment
Foreign investment is key to the strategy along with a strengthened and strategic role for states and development policies.

In this dissertation, I examine Canada’s emerging role as a promoter of mining in SSA in the context of calls for a new generation of investment policies and agreements. This paper argues that negotiating bilateral investment treaties (BITs) is a key component of Canada’s economic strategy in SSA mining. This raises potential challenges for SSA development strategies that rely on mineral extraction. Observers, such as the International Study Group on Africa’s Mineral Regimes, have raised concerns that these agreements may limit the development options available to states, cautioning that in the context of some BITs, SSA governments may find it difficult to link the goal of creating a stable, predictable and transparent FDI policy framework that enables international firms to advance their objectives with [states’] objective of retaining the margin of freedom needed to pursue their development goals (ISG 2011, 127) (See also A.M.A. Pedro 2012)

This paper addresses these issues through an examination of various key policy documents, focusing on Canada’s model Foreign Investment Promotion and Protection Agreements (FIPA, the Canadian model BIT that is used as the starting point in investment treaty negotiations). I also refer to Canada’s agreement with Tanzania, the first FIPA implemented and the agreement with Burkina Faso, the most recent negotiated. I use UNCTAD data on investment agreements negotiated internationally and TSX data. The findings of this paper are based on a close examination of Canada’s model FIPA to assess whether it contains measures that prohibit the use, by FDI host countries, of policies that have historically been important to economic development and that have recently been called for and used by SSA governments
given the failure of the Washington Consensus. A key question is how Canada’s BITs affect the balance of balance of power between FDI and host states in the context of calls for more country-led and state coordinated development strategies.

Indications are that Canada, rather than supporting a country-led mineral development strategy, is, through its FIPAs, entrenching the neoliberal FDI-led approach. Not all BITs are the same. This paper contends that Canada’s agreements are particularly restrictive for developing countries by enforcing a FDI-led development strategy that is substantially the same as the discredited Washington Consensus approach to mining and development in SSA. Ultimately I conclude that Canada’s intervention in SSA mining seeks to provide international capital with minimally regulated access to mineral resources. This could provide much needed FDI for the sector but in the context of Canada’s liberalizing investment agreements, African governments may end up relinquishing the very policy options that have historically proven essential to economic transformation and to the potential of the Africa Mining Vision.

The paper proceeds as follows: first, I examine the challenges of mining and development via FDI and the agreements which seek to promote and protect this investment; second, I examine Canada’s rise as mining power in SSA and Canada’s strategies to increase investors’ access to SSA’s resources, and third, I closely analyze the central platform of Canada’s strategy – the signing of foreign investment promotion and protection agreements.

**Mining and FDI**

Mining exemplifies some of the challenges of FDI-led economic development strategies and the need for active measures by governments to ensure that mining contributes to structural transformation – that is the creation of new more productive economic sectors and the
reallocation of resources from less productive sectors, to these new sectors (ADB et al. 2013, 12). Mining is capital intensive and accessing sufficiently large investments, usually foreign, is key to the exploration, development and production of mineral deposits (UNCTAD 2007d, 91, 131). Mining’s boom and bust cycle and the high upfront exploration costs with no guarantee of any returns and the high development costs before production begins means that mining is reliant upon large amounts of risk capital. Mining tends to be economically isolated, an enclave with limited linkages and spillovers to the host economy (Gamu, Le Billon, and Spiegel 2015, 172), South Africa is a notable exception to this with well developed economic linkages to mining supply and services sectors (Kaplan 2012)

Large scale industrial mining increasingly relies on high-tech equipment thereby reducing employment opportunities and limiting mining’s poverty reduction potential (Loayza and Raddatz 2010, 142, 148) and relies on skilled workers that are often not readily available locally (Sigam and Garcia 2012, 11, 12). Many of the supplies and services for the sector are provided by international firms as part of international supply chains, for example by engineering and equipment service companies, thereby limiting the benefits for host countries (Hanlin and Hanlin 2012, 470, 471). Foreign investment funded resource extraction has a propensity to drain both the non-renewable resources and associated revenue and profits (rents) from the host economy and the extractives sector is “especially prone” to illicit financial flows out of SSA (High Level Panel 2015, 56).

The increasing intensification of mining through new technologies that make extraction more efficient means that deposits are depleted more quickly leaving host economies with a shorter time frame in which to derive benefits, develop linkages and establish spinoffs that survive beyond the duration of the mine (Freudenburg and Gramling 1998, 572).
For resource-based least developed economies (LDCs) the evidence indicates that it is “much more difficult to benefit from FDI than to attract FDI” (Nunnenkamp 2004, 674). Developing countries, without economic advantages to offer TNCs, are usually limited to resource-seeking FDI (Narula and Dunning 2000, 151) and this by default often becomes the basis for integration with the international economy (McMillan, Rodrik, and Verduzco-Gallo 2014, 26). In a global development policy framework that restricts development strategies to strategies for attracting FDI, countries lacking the competitive advantages of sizable markets or economic efficiencies are less likely to attract the productivity enhancing FDI. Resource-seeking FDI is less conducive to host country economic development than market-seeking or efficiency seeking FDI which is drawn to the economic capacities and policies of the host economy that can contribute to a TNCs global strategy (Nunnenkamp 2004, 665). The external orientation of FDI is amplified in the case of the mining industry – local extraction directly exported with minimal processing to the global commodities markets.

Mining has historically contributed to economic industrialization in, for example, Canada, the US, Australia and the Scandinavian economies (Barbier 2011; Blomstrom and Kokko 2002). More recently Norway and Chile have based their industrialization on resource extraction (Havro and Santiso 2008). In these cases states have been key players in organizing, supporting and asserting domestic economic interests in fostering accumulation, investment and increased productivity and innovation. For example, in Chile and Norway, overall, national economic transformation was built on a strategy that “included decisive government action to develop natural-resource related industries, sometimes with more state involvement than has been recommended in the literature” (Havro and Santiso 2008, 30). For Chile, nationalization of the copper mining played the central role in developing economic linkages while Norway made
extensive use of legislated local content requirements in exchange for foreign investors’ access
to resources. (Havro and Santiso 2008, 15).

This is consistent with what we know about the role of states and industrial policy in
economic development historically, including industrialized economies of Europe and the US
(Chang 2003), the experiences later industrializing East Asian economies (Chang 2006), the
investment-led strategies in ASEAN countries (UNCTAD 2007a, 46–47) and in China (Akyüz,
Chang, and Kozul-Wright 1998; Jomo 2001) – states have played an active, central and essential
role in economic transformation. However, state action to promote resource extraction does not
automatically lead to poverty reduction as identified by the resource curse literature. A crucial
component of successful strategy, as noted in the AMV, is the development of transparent,
accountable and effective governance institutions (African Union 2009, 18).

The Implementation of FDI-led Mining in SSA

Many of the current mining regimes in SSA were set in place in the 1990s fostered through
World Bank conditional loans and policy prescriptions that included the privatization of state-
owned mining projects, deregulation of the sector and the development of mining regimes
attractive to foreign investors. The World Bank’s FDI-driven approach as set out in its ‘Strategy
for African Mining’ (World Bank, 1992) proposed that: “private companies […] take the lead
[and] private investors should own and operate the mines” (World Bank, 1992, p. xiii), and
governments should abandon “pursuing […] economic or political objectives such as control of
resources or enhancement of employment” (World Bank 1992, p. 10). The strategy noted that
“the government has an interest in least-cost production. Mines should not be forced into
downstream processing that would not be undertaken on normal commercial criteria” (World

Numerous countries in SSA privatized their mines and revised their mining regimes in accordance with the Bank’s advice (Bonnie Campbell 2009). These revised mining codes did contribute to significant increases in foreign investment. By 2004 FDI in mining in SSA had reached US$15 billion annually, representing 15 per cent of the global total, up from 5 per cent during the mid-1980s (UNCTAD 2005, 39). For the global mining industry these investments in the context of high commodity prices contributed to “spectacular” returns and record profits (PwC 2007). However the Bank-sponsored mining reforms did not produce the anticipated development benefits in terms of poverty reduction and economic transformation (see for example Africa Progress Panel 2013, 20; Bonnie Campbell 2013b; McMahon 2010, 9). Mining regimes that were based on concessions granted in the context of low commodity prices and a desire to attract investment were not up to the task of capturing the super profits generated by the record high commodity prices. These conditions and a review of data covering the commodity boom led the Africa Progress Report on extractives to conclude that “across a large group of resource-rich countries economic wealth does not translate into the type of health and education indicators that might have been anticipated” (Africa Progress Panel 2013, 23). The varied and often disappointing returns directly contributed to increased demands for host country and community benefits – a tendency the mining industry labels as resource nationalism – such that by 2012 the global mining industry identified resource nationalism as their number one business risk (Ernst & Young n.d.).
**Bilateral Investment Treaties**

Canadian mining companies have become major players in African mining - by some accounts “the largest source of foreign investment in Africa’s mining sector” (McCarthy 2010, data below). Facilitating access to the SSA’s resource wealth figures prominently in Canadian foreign policy towards the region. A central pillar of Canada’s international extractives strategy is the signing and implementation of bilateral investment treaties (BITs) such that Canada is currently on a BIT signing spree, concluding agreements with eleven SSA countries since 2013 (Government of Canada 2017).

Most of the BITs that have been negotiated over the past 50 years tend to cover similar terrain but not all agreements are the same – a small minority contain liberalization measures that go well beyond WTO agreements and the protection of investments (UNCTAD 2007b, 143). Canada’s FIPAs are at the forefront of these liberalizing BITs in seeking to ensure “free entry of foreign investment into the territory of the host country” (UNCTAD 2007b, 23) and to restrict the application of broad range of development tools (UNCTAD 2007b, 141). For example, only 40 of the more than 1000 new BITs negotiated between 1995 and 2006 included the “right of establishment” provisions that are provided for in the Canadian, Japanese and American agreements (UNCTAD 2007b, 141). The ‘right of establishment’ disallows host governments from setting terms upon which TNCs can access a host county’s mineral deposits, such as employment creation, technology transfers, procuring local services and supplies and mineral refining.

The enforcement of liberalization and investor rights through the inclusion of investor-state dispute settlement (ISDS) mechanism is arguably the most transformative and controversial component in investment agreements (Simmons 2014, 42; UNCTAD 2014, 24; Van Harten
While WTO agreements are subject to state-to-state dispute settlement, BITs increasingly include dispute settlement mechanisms that enable investors to make compensation claims against host countries for public policies that adversely impact investors’ “legitimate expectations” associated with their investment (VanDuzer, Simons, and Mayeda 2013, 145). Claims are adjudicated by ad hoc tribunals comprised of corporate trade and investment lawyers (Van Harten 2010, 36–39,47) in a process usually coordinated by the World Bank’s International Centre for Settlement of Investment Disputes (ICSID). Foreign investors are increasingly turning to ISDS, with a record number (70) of new claims being initiated in 2015 (UNCTAD 2016).

The highest portion of claims is generated by the extractives sector at 26% (ICSID 2015, 12). Eighty-five percent of claims have been made by investors from developed countries and 57% of the claims were against developing countries (and 16% against transition economies) (UNCTAD 2014, 7,8). In 2014, 72% of claims were settled in favour of investors and record-high damages were awarded (for example $1.8 billion in damages was assessed against Ecuador), providing an indication of the role of the ISDS regime in enforcing the investment rights contained in international trade and investment agreements (UNCTAD 2013a, 25). An increasing dynamic in ISDS is third-party financing whereby private investors fund the claims, usually of investors, to cover legal fees etc., in exchange for a contingency fee or a percentage of the damages awarded, should the claimant(s) win their case. While this is a fairly new to ISDS proceedings, indications are that it already plays a “significant role” (Gaukrodger and Gordon 2012, 37).

The number of claims and size of settlements only captures the formal impact of the ISDS. The existence of, and the threat to use, ISDS is often enough to influence host country
policies and the treatment of foreign investors (Tienhaara 2010; Van Harten and Scott 2016). In effect, by establishing foreign investor rights, liberalizing investment agreements have become the “constitutions” for economic globalization driven by transnational capital (Schneiderman 2008). In the context of the power inequalities within the international political economy, recent research confirms that while developing countries may not have been fully aware of what they were signing onto, BITs “reflect the deliberative strategies on the part of powerful states” (Allee and Peinhardt 2014, 82).

The emerging account is that capital-exporting states desire stronger treaties, often because of the preferences of domestic actors, leading them to push for these more enforceable treaties with all treaty partners. The resulting treaty often includes strong arbitration provisions due to the former’s considerable bargaining power, thereby cementing a so-called credible commitment to respect FDI. ... The explanation for treaty design resides squarely within the preferences and power of “home” states and not the varying conditions in the heterogeneous “host” states, almost all of whom end up having their hands tied for them (Allee and Peinhardt 2014, 49).

Studies indicate that developing countries make more concessions when negotiating with a more powerful country (Allee and Peinhardt 2010), when their competitors have completed a BIT (Elkins, Guzman, and Simmons 2006) and when they face economic difficulties and downturns (Simmons 2014, 21–29). These factors give investors and capital exporting countries distinct advantages in negotiating BITs. The ongoing economic impacts of the 2008 recession and the associated decline in commodity prices and FDI flows, thus strengthen the position of Canada in the negotiation of BITs with SSA countries reliant upon mineral exports.

Privileging foreign investor rights and relinquishing economic and judicial sovereignty (Tienhaara 2011) has a powerful effect on the development and orientation of host country institutions. Institutional development is an essential component of economic transformation and
industrialization. For the advocates of increased investor rights, changes promoted by BITs and ISDS are said to contribute to the modernization of dysfunctional legal systems, and thereby facilitate increased investment (e.g., Franck 2007, 367–70). Others have argued that having the option of bypassing local judiciary institutions via ISDS impedes and/or distorts the development of host country institutional quality (Ginsburg 2005, 122–23). In this sense investment agreements constrain the development of citizen accountable host country institutions, given that BITs “enable the form of legal commitments made to investors to resist the forces of change often demanded by the political and economic life in host countries” (Jeswald W. Salacuse 2007, 242–43). In effect BITs, in particular those that include ISDS, establish investor rights and “destabilize the functioning of democratic processes” (Schneiderman 2008, 225) and they can contribute to investor interests taking priority over economic development and poverty reduction.

**Reorienting Mining and Development in SSA: The emergence of a new mining policy framework?**

The failure to translate the high levels of FDI and record commodity prices in the mid 2000s into sustainable development benefits (Africa Progress Panel 2013; UNCTAD 2011), along with the broader rejection of the Washington Consensus, has led to a questioning of the FDI-led development and to calls for increases in FDI to be accompanied by state initiatives that ensure mineral wealth contributes to the continent’s industrialization and economic transformation (African Union 2009; ISG 2011).

For too long, according to UNCTAD,

external actors have had significant influence on the choice of policies and development paths in the region and this has had serious consequences for the attainment of national
development goals [in Africa]. Promotion of industrial development requires active
government policies to build domestic capabilities and direct investment and resources to
priority areas (UNCTAD 2013b, 3).

Several African initiatives have called for a fundamental rethinking of the foreign investment-led
development model for the mining sector. For example, the Africa Mining Vision (AMV) and
the Report of the International Study Group (ISG) to the United Nations Economic Commission
for Africa (UNECA) have called for the extraction of the continent’s mineral resources to play a
transformative role; that is by shifting economic resources into new more productive economic
activities. In the case of the mining industry, that means moving “beyond a focus on extracting
and exporting raw materials and sharing the resulting revenue” to an approach wherein mining
becomes “a strategic part of a process of industrialization” (African Union 2009; ISG 2011, 2). From
this perspective foreign investment’s contribution can be leveraged to contribute to a strong
internally linked profits/investment nexus when it is managed within a broader sustainable
development strategy that facilitates increased investments, profits, accumulation and
reinvestment in the host country (UNCTAD, 2005, p. 32). There is a wide range of opinions as
to what is deemed appropriate state action, from limiting interventions to correcting “market
failures,” such as investing in improving “human capital, infrastructure and institutions” to
promoting economic transformation through infant industry protection (Lin and Chang 2009,
485), nationalization (Michael Solomon n.d.) and the developmental state (Edigheji 2010).

This shift has coincided with a broader reorientation in development thinking generated
by the failure of the Washington Consensus policy agenda and the challenge that the success of
the East Asian economies posed for Consensus’ policy prescriptions. At the World Bank this led
to what some have called a “radical rethink,” challenging the dominance of Washington
Consensus orthodoxy (Rodrik 2006, 977). This reorientation in thinking has resulted in advocacy of a more pragmatic, flexible and country-driven approach to the formation of development policy and a reconceptualization of the role of governments.

In the mining sector, the Bank’s reorientation aligned with calls for more attention to poverty and development benefits, given the record-high commodity prices in the early 2000s. The Bank’s altered policy advice for mining and development shifted from an exclusive focus on mining’s capacity to generate tax revenue, to advocating for mining to contribute to broader development benefits (McMahon 2010) (World Bank 2012, vii). For example, the Bank advised increasing the procurement of local content for mines via “strategies that exchange mineral rights for local content conditions, whereby foreign investors are obligated to use domestic suppliers on an increasingly greater scale” (World Bank Group 2009, 44). The “wider benefits” of such policies, according to the Bank, “include increased employment and skills, increased domestic and foreign investment, technology and knowledge transfer from international companies, exports and foreign exchange, and increased government tax revenues” (World Bank 2012, vii). This is in line with the Bank’s chief economist’s recognition of importance of state leadership, via industrial policy, in economic transformation (Lin and Chang 2009). The Bank’s advice now proposes a policy and regulatory framework that utilizes what policy space governments have left within the context of WTO and bilateral agreements but the World Bank also notes a tendency by many countries to resist the policy limiting WTO Trade-Related Investment Measures (TRIMS) (World Bank 2012, 66).

In characterizing this reorientation it is important to recognize that while there appears to be a new consensus that the direct development benefits from mining need to be expanded, proposals as to how this is to be achieved vary, ranging from initiatives by the mining industry
that focus on voluntary corporate social responsibility (CSR) measures to approaches which call for a more assertive regulatory presence of states to maximize benefits including fostering economic linkages with the host economy and negotiating performance requirements in return for access to mineral deposits (for example ISG 2011, 152).

The AMV seeks to situate mining oriented foreign investment within a broader development strategy driven by host governments. The objectives of the AMV are supported by a wide variety of domestic and international interests. But the AMV is a political, strategic and technical document subject to a range of interpretations modes of implementation. It presents a regionally initiated and integrated mining development strategy that was adopted by African Ministers responsible for mineral resources development in 2008 (UNECA 2916). The AMV is implemented at the national level through domestically generated Country Mining Visions which become the basis for a country’s mining development strategy (African Minerals Development Centre 2014).

According to some African CSOs “the AMV is an aspiration, it is also a challenge to the supremacy of neoliberalism …for which reason, the AMV is also a terrain for contestation between its proponents and beneficiaries of the current mining regimes” (Darimani 2012, 15). Others point out its potential as a “comprehensive framework for undertaking reforms, provid[ing] a stable policy and institutional framework for businesses to plan long-term” (Busia 2016, 3) while others, such as the Canadian government, in their support for the AMV have emphasized the importance of the “private sector” in moving the strategy forward (DFATD 2014a). A crucial and contentious issue is the respective roles of assigned to states and investors in the mining and development. Some SSA analysts have argued that the AMV “questions the merely regulatory role of the state” and promotes instead a return of the “development state”
(Akong 2015, 5) in contrast to, for example, the Canadian government’s interpretation of the AMV as “voluntary CSR framework” with a minimal regulatory role for the state (van Gaal 2014, 6).

The orientation of states in development is a key decision for citizens and governments, but implementing a BIT can preclude citizens and governments from choosing a more proactive role for their states in ensuring economic benefits, for example, in the implementation of the performance requirements, as advocated by the AMV (African Union 2009, 22). Accordingly, a key activity in the AMV implementation documents such as the “Action Plan” and the “Guidebook” is to assess if and how each BIT impacts host countries’ ability to implement economic linkage, “national beneficiation and value addition policies and strategies” (African Minerals Development Centre 2014, 159, 164; AU, ADB & UNECA 2011, 32) to ensure that the agreements “do not constrain policy space for mineral resource based industrialization” for resource rich SSA countries (AU, ADB & UNECA 2011, 32–33). The government of South Africa has concluded “that BITs pose risks and limitations on the ability of the Government to pursue its Constitutional-based transformation agenda,” and the South African government has decided it should therefore work towards the termination of existing BITs and “refrain from entering into BITs in future” (Davies 2012). It is in this context that the remainder of this paper assesses the impact of Canada’s FIPAs on development policy making in resource rich SSA countries, arguing that the agreements in seeking to promote and protect Canadian registered mining interests, Canada is setting the parameters for what role SSA states can play in pursuing poverty reduction and sustainable development through the exploitation of their non-renewable resources.
Canada as an Emerging Home for Transnational Mining Capital

While mining has long played a role in Canada’s economic development, Canada’s emergence as a home for transnational mining capital is relatively recent; indeed, it was only in the mid-1990s that Canada became a net exporter of FDI, which coincided with a sharp rise in outward bound Canadian energy and mining FDI in SSA and in developing countries in general (Statistics Canada 2016). This economic reorientation is indicative of the deeper changes in the Canadian political economy as Canadian-based capital and the state coalesced around an international strategy as indicated by the promotion of the North American Free Trade Agreement (NAFTA) signed in 1994. According to Klassen, the Canadian economy had become enmeshed in a wider process of transnational neoliberalism…. By connecting the Canadian economy to global circuits of production and exchange, the Canadian state has sought to maintain itself as a competitive space of accumulation and to support the expansion of Canadian firms across the world economy (Klassen 2014, 117 emphasis in original).

International mining related investment spiked throughout the commodity price boom in the 2000s, during which the Toronto Stock Exchange (TSX) has become the world’s foremost exchange for raising mining capital. Forty-four per cent ($C157 billion) of the global mining capital raised on stock exchanges between 2009 and 2013 was raised on the TSX and the exchange lists the largest number of mining companies in the world (TSX 2014, 10) with mining accounting for 57% of the issuers on the TSX (TSX 2014, 6). The TSX is transnational both in

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7 For the purposes of this paper, TSX is understood to include both Toronto Stock Exchange and the TSX Venture. TSX venture is comprised of smaller less established junior mining exploration companies whereas the TSX is comprised of established senior companies. Both exchanges are owned and operated by TMX Group (TMX Group 2016). The data presented in this paper is taken from TMX which includes both TSX and TSX Venture.
sources of capital and location of investments, indicating that the Canadian “political economy has become tightly linked to global circuits of finance capital” (Klassen 2014, 147). Forty percent (40%) of the capital raised on the TSX originates with international brokers (TSX 2014, 5) and 48% of the mining projects registered on the TSX are located outside of Canada (TSX 2014, 17).

Most of the companies registered on the TSX and operating internationally do not have operations in Canada. Sixty-one percent (61%) of the companies of the TSX do not operate in Canada and only 22% of the TSX companies with operations in SSA operate in Canada (author’s calculations from (TMX 2016) data). This raises the question as to why Canada’s Conservative government was promoting the Canadian registered mining companies so heavily.

Part of the answer lies with economic linkages that extend from the TSX to Canada’s mining financial and legal services sectors in Vancouver and Toronto (Canadian Chamber of Commerce 2013, 17–19). For example, in Ontario, Canada’s largest mining jurisdiction, the mining supply and services accounts for about 30% of the province’s mining generated economic activity and the provision of financial, legal and professional consulting services, which account for 33% of the mining supply and services sector, is predominately located in the vicinity of the TSX (PWC 2014, 20, 45).

This would indicate that while the direct impact on the Canadian economy is minimal, in terms of TSX companies operating internationally, the indirect impact is significant. This indirect impact also goes some way to explaining the impetus for Canada’s strong promotion of TSX mining companies operating in SSA as discussed below. These linkages also provide possible opportunities for Canadian-based mining supply and services companies that seek to
integrate themselves into the global supply chains for TSX registered miners operating internationally.

Competition from other global mining exchanges, such as London, Johannesburg and Sydney (Younglai 2014), also pressures Canadian regulators and policy makers to implement policies that support and protect transnational mining firms beyond Canadian borders through, for example, international investment protection agreements. The TSX labels itself “the leading exchange for mining companies in Africa” in terms of the number of companies operating in SSA, the number of properties and the capital invested (TSX 2014; Wertheim and TSX 2012). In 2007, at the height of the global mining boom, $2.6 billion was raised for mining projects in SSA (Ferron 2010, 4). In 2013 the TSX listed 158 mining companies that accounted for investments in 575 mining properties spread across 37 countries in SSA (TSX 2014, 20) and controlling C$24 billion in mining assets down from the C$31.6 billion in 2011 when commodity prices were still high (Lupick 2013; Natural Resources Canada 2015a). In 2012 it is estimated that the top 24 TSX registered mining companies generated just under $C12 billion in revenues – the largest portion in copper and gold (CIDP 2015).

The vast majority of mining listings on the TSX are small exploration companies (known as ‘juniors’) (TSX 2014, 12). The exchange is home to a large portion of the world’s mining merger and acquisition activity (Jamasmie 2012) as juniors seek to raise exploration funds, financing for the development of discoveries or are acquired by major producing mining companies (Canadian Chamber of Commerce 2013, 22).

**Canada’s Investment Protection Agreements In Sub-Saharan Africa**

In this section I examine the specific measures contained in Canada’s FIPAs. I am most concerned with the distinct characteristics of Canada’s BITs and their impact on development, in
particular on the ability of governments to use policies to leverage FDI to generate sustainable economic benefits from the extractive industry. This relates specifically to the right of admission and establishment of FDI, and the ability of host governments to attach performance requirements as a condition of FDI access to mineral deposits.

At the forefront of Canada’s support for TSX registered mining firms is the negotiation of a series of foreign investment promotion and protection agreements (FIPA) with governments in SSA that are, according to the Canadian government “designed, first and foremost, to protect Canadian investment abroad” (Government of Canada 2015d). These agreements are, according to mining industry legal experts, “one of the most effective tools for mining companies…to actively address and get out in front of the regulatory, policy, and geopolitical risks that foreign governments create for them” (Crowell & Moring 2014, 2). Accordingly the industry has called on the Canadian government to help mitigate the risk of “resource nationalism” by negotiating FIPAs and being “more aggressive in their application…their active enforcement.” This, according to the industry, “will go a long way towards protecting Canadian investment” (Canadian Chamber of Commerce 2013, 34). A survey of transnational mining companies found that companies are “attracted by investor protection schemes, such as bilateral investment treaties with their home country” as a means of enforcing “stability agreements” in facing calls by governments to renegotiate tax regimes (ICMM 2009, 56).

Canada’s FIPAs are a “pillar” of Canada’s Extractive Sector Strategy and central to Canada’s “Global Markets Action Plan” (DFATD 2013c, 13). They are being negotiated with countries in which Canadian mining companies have a presence and countries deemed to have significant mineral potential. For example, Canada has concluded or is in negotiations with four of the top five mining destinations in SSA for Canadian mining companies in 2013 (TSX 2014,
21). The exception is South Africa, which has, to Canada’s “disappointment,” implemented a moratorium on negotiating new investment agreements (Green 2013). While the rate of BIT signings is globally in decline, Canada has become particularly aggressive in pursuing new agreements, such that in 2014 Canada signed by far the world’s most BITs and virtually all of these agreements (5 of 6) were with African countries (UNCTAD 2015b, 1, 10).

![Figure 3: Canada's negotiated FIPAs](image)

Canada’s first SSA FIPA was implemented with Tanzania in 2013, followed by Benin in 2014, Côte d'Ivoire (2015), Senegal (2016), Cameroon (2016), Mali (2016) and Guinea (2017). Canada is in various stages of negotiations with 6 other sub-Saharan African nations, recently signing but not yet implementing agreements with Burkina Faso (2015), and Nigeria (2014). It has “concluded negotiations” with Madagascar and Zambia and is in ongoing negotiations with Ghana and Kenya. As indicated by Figure 2, these agreements account for almost half of the FIPAs being negotiated globally by Canada (F. A. Government of Canada Trade and Development Canada 2015).
Providing access to FIPAs in SSA is a competitive advantage for Canada as the home jurisdiction of mining investors, as investors engage in “treaty shopping” to seek out the most accommodating BITs. For example, in 2012, one of Canada’s major mining legal firms advised that to take advantage of treaty protection, investments should be routed in particular ways through particular jurisdictions. For example, Burkina Faso is one of the most popular destinations for mining investment in West Africa. Yet, it has no direct investment treaties with any of the major mining countries (Canada, Australia, United Kingdom and the United States). In order to gain investment protection, it is necessary to route investments through one of the jurisdiction with which Burkina Faso has a BIT, such as the Netherlands, Switzerland or Germany (Glennie and Maxwell 2012).

The lack of an agreement was disadvantageous for Canada in 2012 but by 2014 Canada had become the largest source of FDI for Burkina Faso mainly in mining (Government of Canada 2015c). In 2014 Canada and Burkina Faso successfully concluded FIPA negotiations and Burkina Faso was made a “country of focus” for Canadian development assistance (Government of Canada 2015c). The conclusion of a FIPA provided investors registered on the TSX with preferential and protected access to Burkina Faso’s mineral resources and was a selling point as the TSX competes with various other global mining centres to attract mining investors to register in Canada (Natural Resources Canada 2016b, 7).

There are many bilateral investment agreements in place internationally; however, Canada’s FIPAs are among the world’s most intrusive in terms of promoting investor rights. Many investment agreements, including measures associated with the WTO, contain provisions that protect investments, but Canada’s FIPAs are among “a small minority” of BITs that contain additional liberalization provisions (UNCTAD 2007b, 141). The Canadian model FIPA is similar
in content to the US model BIT and builds on the experience of the North American Free Trade Agreement (NAFTA) (Lévesque and Newcombe 2013). The North American model agreements ensure “higher levels of investor protection” than the model investment agreements used by other countries (e.g. the EU), in that they provide “prospective investors with a right to establish in a host state, impose restrictions on host state use of performance requirements, and include a robust investor-state dispute settlement mechanism” (VanDuzer, Simons, and Mayeda 2013, 516–17). Canada’s current FIPA negotiation initiative is the first major attempt to apply the North American model BIT to SSA.8

For the junior mining companies that dominate the TSX these investment treaties provide greater exploration opportunities, and protect transferability of mineral rights to larger transnational mineral production companies should deposits be discovered.9 For African governments in need of exploration capital to unlock their mineral potential, the agreements provide the prospect of increased access to investors from the TSX as one of the world’s key centers of exploration capital but in return these agreements lock in provisions that limit the ability of states to promote development.

Canada’s FIPA Provisions
While the rate of signing new BITs internationally is in decline, the rate of Canada’s FIPA signings has been increasing (UNCTAD 2015b, 10 and Figure 1 above). In the following section I show that this is particularly significant given that Canada’s agreements are based on the NAFTA BIT model, which is more restrictive of development policy options than traditional

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8 The US currently has 4 BITs in place with African nations. For the most part these agreements were based on the previous US BIT model (i.e. before 2004). Rwanda signed a BIT with the US in 2008 (Bilateral Investment Treaties (BIT): US - Africa n.d.; Office of the United States Trade Representative n.d.).

9 See for example (van der Vyver 2012, 137–38) regarding transferability of mineral rights in South Africa.
BITs and models not based on NAFTA. I show this by examining the key specific FIPA provisions that are derived from NAFTA: right of admission; performance requirements; investor-state dispute settlement; joint determination of tax disputes and regulatory exemptions, and analyze their potential impact on development policy options.

**Right of Admission**

UNCTAD has argued that “the right to control admission and establishment remains the single most important instrument for the regulation of FDI” (UNCTAD 2003, 102; see also VanDuzer, Simons, and Mayeda 2013, 105). Establishment requirements have been identified by the International Study Group as facilitating increased contributions to economic transformation via mining (ISG 2011, 152). Providing domestic investors with preferential access in the allocation of exploration licenses and mining concessions and negotiating performance requirements such as local employment, as a condition of FDI access to mineral deposits, can be among the few options open to countries without the administrative capacity to effectively regulate TNCs once they have commenced operations in host countries (VanDuzer, Simons, and Mayeda 2013, 105). According to the UNDP in Africa, a lesson from the recent commodity price boom is that “governments can encourage the development of local services and manufactures firms by conditioning multinationals’ access to natural resources on the establishment of linkages with the domestic economy” (UNDP n.d., 60). Performance requirements can include providing local employment (see for example Gay 2012), procurement of local goods and services and carrying on research and development activities in host countries.

Traditional international investment agreements include clauses that seek to ensure that foreign investors are treated at a minimum as well as host country investors post-establishment thereby enabling host countries to maintain control over the terms of FDI entry (UNCTAD 2002,
16) and to apply performance requirements. Canada’s FIPAs (and US BITs) are distinct from
other BITs in their inclusion of a ‘right of admission’ (also known as ‘market access’ or ‘pre-
establishment’ provisions) clause within the “national treatment provisions,” stipulating that host
countries shall accord to foreign investors from Canada treatment “no less favourable than that it
[the host country] accords, in like circumstances, to its own investors with respect to the
establishment, acquisition, expansion, management, conduct, operation and sale or other
dispensation of an investment in its territory” (DFATD 2013b, 6, Article 4; emphasis added).

Canada’s FIPAs are at the forefront in applying these provisions to SSA. Of the 137
investment agreements in SSA (in 2014), only three (specifically recent Canadian and US BITs)
contain right of admission clauses (Cosbey and Mann 2014, 14) and the imposition of these
provisions is specifically linked to extractive industry capital exporting countries such as Canada
(Cosbey and Mann 2014, 19) seeking to gain access to host country non-renewable resources.

The prohibition of host country preferential support to domestic investors severely
restricts the capacity of governments to create, for example, “national champions” in the
exploitation of the host country resources (Cosbey and Mann 2014). They can also curtail the
implementation of state ownership and equity-based options such as joint venture requirements
in mining (Cosbey and Mann 2014, 19) that have been successfully used in Botswana.

**Local content requirements (performance requirements)**

Most BITs do not contain specific restrictions on performance requirements, and those that do
tend to incorporate provisions from the WTO’s Trade Related Investment Measures (TRIMs)
agreement prohibiting local content requirements that specifically affect trade in goods. By
contrast, Canada’s FIPAs, along with the US model, restrict a broader range of activities than the
TRIMs measures, including requirements for local provision of services and for the transfer of technology (DFATD 2013b, Art. 9.1(c), (d)) – two key means of generating host country development benefits from transnational mining activities.

The WTO’s “special and differential treatment” provides developing nations with temporary exemptions which allow them to continue to apply local content requirements to facilitate economic development (WTO n.d.). Canada’s model FIPA provides no such exemptions, meaning that any exceptions to the prohibition on performance requirements must be negotiated into the agreement on a case-by-case basis and are contingent on the bargaining power and current priorities of the negotiating partners. Canada’s FIPA with Burkina Faso allows non-conforming policies for the “priority use of local products and services to the extent that those products and services are available at competitive terms of price, quality, warranty and delivery time” if the measures are otherwise consistent with the WTO TRIMs (Government of Canada 2016, Annex 2, Schedule of Burkina Faso, emphasis added). In this case TRIMs provisions (rather than the more onerous model FIPA restrictions) become the standard within the Burkina Faso’s FIPA. Canada’s FIPA with Tanzania does not contain similar exemptions (DFATD 2013a). In practice, exemptions such as those contained in the FIPA with Burkina Faso will likely contribute limited development opportunities given that the challenge for local producers is to get to the stage where they are able to provide globally competitive products and services.

The performance requirement section of Canada’s model FIPA provides an indication of the development model informing the agreements. Host governments cannot condition the provision of “advantages” (for example grants, subsidies, concessions) on the Canadian investor achieving “a given level or percentage of domestic content” or the purchase of a good produced
by the host country (DFATD 2013b, Art. 9.1.b, c). But host countries are able to set the conditions for receipt of an advantage on “locating production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development” in the host country (DFATD 2013b, Art. 9.4.a). In other words, the only way that governments can set development requirements on investor access to host country resources is by providing subsidies and the conditions cannot include two key development measures: domestic content and technology transfer requirements.

In effect this aspect of the Canadian FIPA aligns with the mining industry’s preference for voluntary measures and goes further by requiring that only by providing subsidies (lowering the cost of business) can governments establish requirements in a restricted number of policy areas. While host governments are not able to legislate performance requirements, foreign aid donors, e.g., the Canadian government, are able to establish “qualification requirements” such as domestic content and technology transfer, as a condition of companies receiving development assistance and export promotion supports that will benefit the mining project (DFATD 2013b, sec. Article 9)6.(a)). This shifts the site of decision-making as to what development benefits a mining project should provide, and how these benefits will be generated, to donor countries. This is similarly the case when Canadian export promotion programs, such as Export Development Canada, set the terms and conditions of supports provided to the mining project. These FIPA clauses in effect can erode the legislative authority of the host state. Furthermore, these programs may or may not be delivered and overseen by local governments and NGOs, again impacting the governance and local capacity building potential of these projects.
Investor-State Dispute Settlement WTO enforcement

In practice, local content requirements, while prohibited by the TRIMs regime, continue to be used by developing countries and developed economies (see for example Ramdoo 2015, Table 3, 10). Indeed there has been a resurgence in their use as economies seek to rebuild in the wake of the recession of 2008 (Cosbey 2015). In spite of the continued widespread use of performance requirements in contravention of TRIMs, very few claims have been brought to the WTO’s Dispute Settlement Body, possibly, according to Cosbey, “because states are reluctant to challenge tools that they themselves are using. Or it may be that the oft-invoked threat of WTO challenge is enough to forestall or alter legislation that really matters to affected states” (Cosbey 2015, 3).

Under Canada’s FIPAs, in contrast, the ban on performance requirements, even if at the TRIMs standard, becomes enforceable via the ISDS mechanism rather than the WTO state-to-state dispute settlement mechanism (VanDuzer, Simons, and Mayeda 2013, 198). The ISDS provision moves the initiative for enforcement from governments to transnational investors seeking to access host country resources and to protect that access.

According to mining industry legal experts the ISDS is an “extremely powerful tool for [mining] companies to enforce their IIA [international investment agreement] rights” that can be used strategically, for example, as “leverage” in negotiations with a host government to “cause [the host government] it to change its behavior more quickly and less expensively”(Crowell & Moring 2014, 2.B, 3). TNCs “in the extractives sector are increasingly turning to international arbitration tribunals to resolve resource disputes” (Perez-Rocha and Anderson 2013, 1). Indeed, investor claims related to energy and extractives sectors currently account for the highest portion of non-service sector claims (UNCTAD 2015a, 1). In 2014 investors most often challenged
states for cancelations and perceived violations of contracts and the denial or revocation of licences (UNCTAD 2015b, 1), both areas that have direct relevance to the activities of Canadian registered mining companies seeking to enforce mineral exploration and access rights and the transfer of those rights to other investors should, for example, exploration generate promising prospects. Canadian-based mining companies have recently become particularly active in their use of the ISDS – investors from Canada are among the highest users of the ISDS mechanism (UNCTAD 2015b, 6) and ISDS claims related to performance requirement have been generated by Canadian and US BITs (Nikièma 2014, 13). Furthermore, Canada’s rise as a home for international mining capital has been accompanied by a recent rise in ISDS claims with Canada as home state originating from the mining sector (see Figure 4).

![Figure 4: Investor ISDS Claims, Canada Home State](image)

**Source:** UNCTAD, Investment Dispute Settlement Navigator; author’s calculations

**FIPA’s Joint Determination regarding taxation disputes**

The management of “resource nationalism,” as governments seek to increase resource revenues, has become a major concern for mining companies. As a result many are looking to BITs to provide some protection against changes in tax regimes (ICMM 2009, 56). Whereas some
countries exclude taxation measures from the BIT coverage, the Canadian and US model include procedures that allow investors to make ISDS expropriation claims “where the tax measure is so severe that at least one state party, probably the investor’s state, thinks it is an expropriation” (VanDuzer, Simons, and Mayeda 2013, 232). In the case of, for example, the Canada-Tanzania FIPA, Canada’s tax authority is represented by the Assistant Deputy Minister, Tax Policy, Department of Finance, and Tanzania is represented by its Minister responsible for Finance (DFATD 2013a, Article 14.8). Canada’s FIPAs marks the first time that joint determination dispute settlement mechanism has been applied in SSA (Gordon and Pohl 2015, 29). If parties are not able to reach state-to-state agreement within six months the investor can then take the claim to ISDS arbitration (DFATD 2013b, 14) 6.b)).

On the one hand this can be seen as an improvement in that it provides some protection for investors and an alternative to investors proceeding directly to ISDS with claims — on the other hand it increases the influence of the capital exporting country (in the case of Canada a country heavily involved in promoting and protecting extractives industry interests) over the taxation policies of LDCs.

**Determination of FIPA regulatory exemptions**

All sectors of the economy are covered by the FIPA provisions with the exception of those sectors specifically identified by each negotiating partner in the agreement’s listing of reservations and exceptions for existing and future measures. This “negative listing” approach, which is drawn from the NAFTA model, is, according to UNCTAD “useful from a perspective aimed at comprehensive (and rapid) liberalization” and but it is less “development friendly” than

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10 Gordon and Pohl’s research for an OECD paper found that only 3.7% of 2060 BITs they reviewed contained joint determination on tax measures (Gordon and Pohl 2015, 29)
the traditional “positive listing” approach in which liberalization is restricted to sectors that a party country specifically identifies as covered by the IIA (UNCTAD 2006, 18, 17). The positive listing approach “is less administratively burdensome and more likely in practice to leave the state with greater residual policy-making flexibility” (VanDuzer, Simons, and Mayeda 2013, 107), yet Canada and the US continue to rely on the negative listing approach.

Because it exempts only sectors identified at the time of signing, the approach limits the range of options and reduces the scope of government action in seeking to address future unanticipated policy challenges in the context of changing circumstances such as economic downturns, climate change and new technologies. Negative listing also operates as a liberalizing “ratchet” whereby amendments to reservations are only compatible if they are more conforming (liberalizing) than the original Annex I reservation (DFATD 2013b, Art. 17, 15; VanDuzer, Simons, and Mayeda 2013, 241). Once more conforming (liberalizing) legislation is in place, parties are not able to return to the less liberalizing (non-conforming) reservation. In this sense, as new governments take office their development policy options are constrained by the FIPA and the liberalization measures of previous governments. For example, the Canada-Tanzania FIPA has a reservation related to the restriction of the ownership of a “primary mining licence” (for small scale mining – investments of under US$100,000) to citizens of Tanzania (Ministry of Energy and Minerals 2010, Sec. 4, page 11; Sec. 8, 15). Should a future government remove or relax this restriction, thereby, for example, allowing Canadian registered mining companies to engage in small scale mining over US$50,000, future governments would not be able to return to the previous reservation stipulating only Tanzanians can have small scale mining rights to investments of under US$100,000. In this sense Canada’s FIPAs contribute to a reduction of
policy space for future governments as the agreement is biased toward expanding the portion of the economy subject to FIPAs and ISDS claims.

**Indirect impacts of FIPAs on development**
The FIPA provisions discussed above have several indirect potential impacts on development strategies for LDCs that extend beyond the investment relations between Canada and SSA. These implications extend the reach of the agreement and its long-term impact.

BITs raise the costs of LDC’s implementing policies that promote and defend domestic development interests. Host countries can implement policies that run counter to the provisions of a BIT, at which point it is left to investors to decide whether it is on balance worthwhile to take the case to ISDS arbitration. Even if a country loses in arbitration it can delay and refuse to comply with and pay the assessed damages, but doing so has long term implications as countries are no longer seen as reliable jurisdictions by investors. Non-compliant countries can also be denied access to development assistance and loans which can be a particularly costly outcome for LDCs. The possibility, and the threat, of an ISDS complaint is often enough to cause countries to retract or adjust a policy initiative (J. G. Brown 2013; Van Harten and Scott 2016). Indeed indications are that the number of the claims that go to ISDS greatly underestimates the number of times that investors informally use investment treaties and the option of accessing ISDS arbitration, to lobby for favourable policy outcomes in negotiations with host countries. This situation led one investment agreement expert to conclude that this is the “primary use” of BITs (Luke Peterson quoted in Gallagher and Shrestha 2011, 923). The ensuing regulatory chill undermines countries’ development capacity as governments adopt less active, comprehensive and assertive policy agendas in the knowledge that their policies are potentially subject to investor claims via the ISDS.
Being subject to an ISDS claim can have significant implications for host countries. The costs to developing countries of responding to an investor claim alone, can be prohibitive. Legal costs (for claimants and defendants) total on average over USD 8 million and “exceeding USD 30 million in some cases” (Gaukrodger and Gordon 2012, 19). These cost challenges would be exacerbated in LDCs with limited in-house international trade and investment legal expertise, which would require them to access outside international expertise. Amounts claimed by companies in 2014 range from $US 8 million to $US 2.5 billion (UNCTAD 2015b, 7) and awards for an earlier period (to 2012) averaged between $US 16.6 million and $US 45.6 million depending on which claims are taken into account (Franck 2014, 14). These costs can be especially onerous for developing countries when taken as a portion of government expenditures as compared to developed countries (Gallagher and Shrestha 2011, 926–28).

Research indicates that by simply initiating a claim a company can have a negative impact on FDI flows into the host economy and that this impact is exacerbated should a host country lose a dispute (Allee and Peinhardt 2011). When taken in the context of research which finds that ISDS “arbitrators tended to favour claimants in general and claimants from major Western capital-exporting states in particular” (Van Harten 2012, 216), the ISDS mechanism is indeed a powerful and persuasive tool at the disposal of TSX mining companies operating in countries which have a FIPA with Canada.

The development of investment agreement compliant policies in LDCs is further complicated by the inconsistent and unpredictable nature of ISDS tribunal rulings, given that tribunal claims are assessed on a case-by-case basis and “not constrained by a formal doctrine of precedent” (Spears 2010, 1040). “Decisions about public issues with economic and political consequences are resolved in private before different sets of individuals who can and do come to
conflicting decisions on the same points of law – and no single body has the capacity to resolve these inconsistencies,” contributing to what some have argued is a legitimacy crisis for ISDS (Franck 2005, 1521–22).

Ultimately both the high cost and the unpredictable outcomes of ISDS claims can lead to regulatory chill as policy makers become uncertain and more reluctant to consider proactive, unorthodox and innovative policy initiatives. This is especially the case as countries face new policy challenges in seeking to develop environmentally sustainable industrialization strategies in the context of economies increasingly dominated and dependent upon TNCs (J. G. Brown 2013; Spears 2010, 1040; Tienhaara 2010). The hesitancy to take aggressive regulatory action against TNCs could undermine efforts to, for example, curb illicit capital flows out of SSA which is particularly associated with oil and gas and mining industries (High Level Panel 2015, 97 Table AIII.4).

The prohibition of performance requirements in Canada’s FIPAs has development implications beyond economic exchanges between Canadian registered investors and the SSA FIPA partner country. Canadian FIPAs not only ban performance requirements on investments from Canada but also indirectly disallow requirements from being applied to third party country (i.e. non-Canadian registered) investors. They are disallowed because allowing host countries to apply performance requirements to third party investors could result in a FIPA signing FDI host country giving preference to third party investors that have performance requirements attached, e.g. technology transfers, thereby discriminating against Canadian based investors (UNCTAD
This provision is unique to the Canadian and US model BITs (VanDuzer, Simons, and Mayeda 2013, 200).

FIPAs could also set a new benchmark for protection of Canadian and non-Canadian investors. Other African BITs which include most favoured nation (MFN) provisions could allow investors not registered in Canada to claim treatment no less favourable than is accorded to Canadian investors thereby extending the reach of FIPA provisions (Cosbey and Mann 2014, 27; VanDuzer, Simons, and Mayeda 2013, 125). Moreover, while the impact of Canadian FIPAs may generally be aimed at the mining sector, these provisions would also extend to other sectors of the economy unless host governments explicitly exclude sectors as ‘carve outs’ from the agreement, such as the service sector in the Tanzanian FIPA (DFATD 2013a, 14, Annex II).

The inclusion of MFN obligations can also have implications for regional trade agreements and the facilitation of increased trade, investment and integration within SSA, which is at the heart of African Union mandate (African Union n.d.) and a central tenant of Africa Mining Vision (African Union 2009, v). Such regional economic arrangements can be exempted if negotiated as MFN exemptions, as in the FIPAs negotiated with Burkina Faso and Tanzania (DFATD 2013a, 6, Art. 16.5; F. A. T. and D. C. Government of Canada n.d., 34, Annex III). In practice, given the extensive unrestricted access to host country markets and resources provided by the FIPA, there are limited possibilities for additional preferential benefits for investors from within a regional African economic community over those that favour international investors from Canada within the context of a FIPA.

11 “The rationale for this is to ensure a single investment policy of each contracting party concerning all investments regardless of their origin, and thereby to foster a more uniform level playing field for foreign investors.” (UNCTAD 2007b, 68)
Furthermore, FIPAs privilege Canadian investors over domestic and regional investors in a number of ways. FIPAs stipulate that Canadian registered investors receive “fair and equitable” treatment as established by international norms, rather than the standards of the host country, while domestic investors are treated according to host country standards (UNCTAD 2014, 10). While FIPAs disallow the application of performance requirements, domestic investors could still be subject to requirements. And Canadian registered FDI has access to ISDS, to enforce, for example, “fair and equitable” treatment and the associated clout that provides, while domestic and regional investors are subject to domestic courts for dispute settlement, ensuring a privileged position of Canadian investors in the host economy.

The reach of FIPAs can also be increased if companies attracted by the FIPA open a listing on the TSX. Indeed, some international law firms advise that companies consider “structuring … investment into [a] market through a third country that has a strong IIA with that country” (Crowell & Moring 2014, 6). This expands the potential impact of the FIPAs to companies that joint list or have dual listings with another stock exchange and on the TSX to access FIPA protection.

This review of the indirect impact of Canada’s FIPA beyond investment relations between Canadian registered companies and host countries that implement FIPAs provides insights into the broad and long term policy impacts of a FIPA. These potential impacts confirm that FIPA is not like other BITs and developing countries need to be highly cautious in negotiations with the Canadian government. The Canadian government has developed an unique expertise in negotiating and implementing agreements modelled on the NAFTA, which can provide considerable benefits to its own firms, to the detriment of SSA governments and peoples.
Conclusion

Allee and Peinhardt’s recent empirical study of the BIT data leads them to the conclusion that “the content of treaties do not arise randomly or represent a functional response to a contracting problem; instead, they reflect deliberative strategies on the part of powerful states” and reflect the preferences of these economically powerful states and their domestic interests (Allee and Peinhardt 2014, 82). Canada’s rise as the preferred global home for high risk mining capital (especially junior exploration companies) has provided it with bargaining power to negotiate expanded investor opportunities, protections and rights with African governments needing access to foreign investment to support their economic transformation strategies through the exploitation of their mineral wealth. Canada is using this newfound clout to negotiate the global economy’s most liberalizing agreements in terms of opening host economies to FDI and the most restrictive in terms of curtailing the capacity of host governments to regulate markets and FDI. In effect, Canada’s FIPAs continue the long standing tradition of leading industrialized countries “kicking away the ladder” for developing countries by denying them the policy options that have historically proven essential to industrial development (Chang 2003).

Canada’s attempts to increase investor rights run contrary to what UNCTAD has described as the emerging need for a “new generation” of investment policies and agreements. These new models of investment agreements flow from the recognition that the protection of investors’ rights must be balanced more realistically against the need for measures that provide adequate policy space for developing nations (UNCTAD 2013c), leading to agreements that leave developing countries with the capacity to “integrate investment policy in overall development strategies, enhance…sustainable development as part of investment policies [and] balance rights and obligations of States and investors in the context of investment protection and
promotion” (UNCTAD 2012, 106). Canada’s FIPAs do not appear to facilitate the emergence of this balance; indeed UNCTAD’s Investment Policy Hub, which ranks policy options on a scale ranging from “the most investor friendly” to “options granting more flexibility to the State,” indicates that Canada’s FIPAs are heavily weighted towards being investor friendly (UNCTAD n.d.).

Canada’s strategy is at odds with the Africa Mining Vision, which is promoting an active country and regionally led strategy to develop the continent’s non-renewable resources. In effect the adoption of FIPAs marks the entrenchment of FDI-led mineral development strategies that were promoted (in the 1990s) by the World Bank and from which the Bank is ostensibly now seeking to distance itself. The link between BITs and increased FDI is far from conclusive, but even if the implementation of FIPAs increase foreign investment, host countries under a FIPA lack the policy tools to facilitate development benefits from mining.

The removal of certain development policy options leaves resource rich African LDCs in a more difficult position as countries will be left to once again rely on mining taxation revenues while competition between nations will continue to keep taxation rates low. In such a world, revenues can only be significantly increased by increasing FDI and by bringing more mines in production so that resources are extracted ever more rapidly and intensively, inevitably increasing the social and environmental challenges, while governments will be hampered in their efforts to implement regulations to protect communities and the environment due to the risk of ISDS claims.
Chapter 3: Canada’s Role in Mining and Development Policy Reforms in Sub-Saharan Africa

Abstract
There have been calls for Sub-Saharan African (SSA) governments to take a lead, and play a proactive role, in ensuring that industrial mining contributes to economic transformation, as articulated in, for example, the Africa Mining Vision. Many SSA governments are seeking to build their capacity to generate long term development benefits from mining by drawing on the expertise of foreign governments and multilateral agencies including the Canadian government, which has undertaken a variety of initiatives to support mining and development in SSA. This paper examines Canada’s role as both a home country, via the TSX, for mining capital and as a central player in the reformulation of SSA mining and development policies. Canada’s international mining model and Canadian initiatives to support the diffusion of this model are examined. This paper finds that the model promoted by Canada is essentially FDI - led and driven by Canada’s domestic economic interests. Global policy networks have become increasingly important in developing and sharing policy models and “best practices.” This paper examines the role played by the think tanks and policy networks that Canadian development assistance funding have established and their role in the diffusion of the investment-led mining and development model. The paper contends that Canada is playing a central role in reducing the parameters of what are considered viable policy options in SSA mining.
Introduction

The Canadian government has been aggressively supporting its extractives industries internationally, prompting the *Economist* magazine to conclude that “few governments have aligned their interests so closely to those of their country’s energy and mining firms as Canada’s Conservative administration” (The Economist 2014). This will not surprise many observers. Canada is the registered home to many international mining companies and has become a leading global center for raising mining exploration capital. But the Canadian government is also claiming that its actions in support of the mining industry internationally are simultaneously promoting sustainable development in Sub-Saharan Africa (SSA), leading to the question as to whether, and under what circumstances, these two claims can be reconciled with one another.

Because mining often imposes high social and environmental costs and rarely generates major backward economic linkages, its contribution to sustained development is often questioned. In response to such criticisms the mining industry has been seeking to shore up its eroding legitimacy by undertaking initiatives to regain a “social license to operate” by recasting itself as an agent of sustainable development. It is within this context that Canada has become a key player in promoting mining as a central pillar of sustainable development and poverty reduction strategies in resource rich SSA countries and, to this end, it has funded SSA mining policy reform initiatives that build on the “Canadian advantage.”

According to the Canadian government, due to insights garnered from its domestic mining industry, its position as a global centre for raising mining capital and its promotion of corporate social responsibility (CSR) among Canadian registered mining companies, Canada is uniquely positioned to advise developing countries on the policy reforms suited to effectively
attract and benefit from mining related FDI. Development benefits, from this perspective, are
best generated by increasing openness to global markets and implementing institutional and
regulatory reforms that promote and protect mining FDI thereby making the host country more
attractive to FDI. This includes providing supportive social and physical infrastructure,
minimizing regulations that may adversely impact profitable operations and encouraging mining
companies’ adherence to global voluntary corporate standards. The operating assumption is that
increasing FDI within a supportive policy environment is the most effective means of
contributing to economic development and thereby poverty reduction. From this perspective, by
promoting SSA investment opportunities for Canadian registered mining companies, the
Canadian government is simultaneously promoting development in SSA. As is shown below,
this mining development model is closely aligned with the FDI-led models being promoted by
the mining industry globally.

By focusing so centrally on the promotion of mining FDI as a critical element in any
potentially successful development strategy, these Canadian reforms are essentially reinforcing
the same Washington Consensus (Washington Consensus) policies that are widely held
responsible for the disappointing socio-economic benefits yielded by the mining sector in SSA
during the commodity price boom. This focus on minimally regulated markets and FDI is not
supported by the historical evidence, which as discussed below shows that active development
states have been crucial, if not essential, components of industrialization. Indeed, the FDI-led
perspective has been challenged in SSA, notably in the Africa Mining Vision (AMV) adopted by
the African Union Heads of State (African Union 2009). The AMV draws attention to the
unsustainability of long term reliance on FDI and calls upon governments to take a lead role in
implementing a regionally coordinated, country driven strategy that ensures that mining plays a
transformative role in SSA resource rich economies. Rather than solely contributing to economic growth these SSA initiatives call for mining to play a central role in the continent’s structural transformation - that is the creation of new more productive economic sectors through for example, economic linkages, and the reallocation of resources from less productive sectors, to these new sectors (ADB et al. 2013, 12).

As a signatory to the Paris and Accra declarations on aid effectiveness Canada has broader obligations beyond promoting its mining interests. It is committed to making its “first priority” to ensure that “developing countries determine and implement their development policies to achieve their own economic, social and environmental goals,” to “respect partner [recipient] country leadership and help strengthen their capacity to exercise it” and to base “overall support – country strategies, policy dialogues and development co-operation programmes – on partners’ national development strategies” (OECD 2008, 16, 3).

Accordingly, and given the evidence, as discussed below, that developmentally active states have historically played, and continue to play, an important, role in successful industrialization, this paper questions if Canada’s policy advice includes the support for the development of broad range of development policy options that are essential to emergence of country-led developmental strategies. In terms of mining policy reforms, we can pose a more specific question: does Canadian policy advice include support for legally enforceable local content and performance requirements? Local content and performance requirements have been identified as traditional means of promoting local employment and business opportunities and promoting linkages with the local economy. The reduction of these options has also been identified as evidence of a reduction of development policy space (Johnson 2016). The objective of this paper is not to make an argument for a specific policy, e.g., local content requirements,
but to assess the range of development options available for countries within the framework
promoted by Canada. The inclusion of local content requirements in “best practice” frameworks
is an indication of breadth of development policy options with in a development model.

Furthermore, in the light of calls for mining to play a transformative role, is Canada’s
mining model and its policy advice compatible with the new strategies as articulated in the
AMV? The Canadian government has become a central player in the interpretation of the AMV
by funding the organizations and global policy networks that inform the implementation of the
AMV. This raises the question as to what impact Canada’s funding will have on the emergence
of alternative models to the FDI-led approach being promoted by global mining industry and
Canada.

Canadian mining policy advice is part of the broader trend towards increasing
globalization of policy advice and diffusion and a shift to “fast policy”, characterized by
pragmatic borrowing of “policies that work,” by compressed development and implementation
horizons, iterative forms of deference to best practice and paradigmatic models, by enlarged roles
for intermediaries as advocates of specific policy routines and technologies and by a growing
reliance on prescriptively coded forms of front-loaded advice and evaluation science (Peck and
Theodore 2015, 4–5).

Fast policy, according to Jessop, privileges interests and actors able to “operate within
compressed time scales, narrow[ing] the range of participants in the policy process, and
limit[ing] the scope for deliberation, consultation, and negotiation” (Jessop 2008; as cited in
Peck and Theodore 2015, 4).

This paper argues that the fast policy processes are informing the norms and “best
practice” frameworks of mining and development that are increasingly being developed,
articulated and disseminated through global policy networks. The contention is that Canada, in
establishing and maintaining these mining and development policy networks, is providing policy fora which are permeable to the influence of capital exporting countries and transnational mining investors. As a result, the mining models/frameworks promoted by these organizations are informed by the FDI-led model and are not protecting and promoting the policy options that are essential for the construction of developmental states, nor are they facilitating a shift in the balance of power from foreign investors and capital exporting countries to FDI host governments.

This paper uses several methods to gain insights into the mechanics of Canadian policy influence and the outcome of this influence. For the most part it relies on publicly available policy documents, media reports, journal articles and data. I start by developing an analytical framework based on a critical examination of the growing role of global policy networks and policy “best practices.” This framework provides the lens through which I examine how powerful interests and hegemonic ideas influence the activities of global policy networks and the content of the “best practices” they generate.

The characterization of the dominant mining model is based on reviews of some key industry documents and the international mining activities of Canadian-registered companies and the supports provided by the Canadian government. The emphasis on practice is important in providing contrast with the Canadian and the mining industry’s aspirational sustainable development discourse. I seek to provide some support for the hypothesis that hegemonic ideas and powerful interests dominate the determination of best practices by examining the “best practice” framework promoted by the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), a Canadian initiated and funded international intergovernmental organization focusing on mining and development policy reforms.
We do not have access to internal IGF documents that could provide insights into the influence Canada as funder and central mining capital exporter has on the selection of “best practices” advocated by the IGF. I therefore assess Canada’s and the global mining industry’s influence by comparing IGF’s Mining Policy Framework with the model being promoted by the Canadian government and global mining industry associations, such as the World Economic Forum’s “Mining and Metals Partnership Community” and the International Council on Mining and Metals, which is the global mining industry’s lead mining and sustainable development advocacy organization. I assess the degree of support for a broad country-led mining and development strategies by the degree to which the Framework includes and promotes state-led development, in contrast to a focus on FDI-led models.

The paper proceeds as follows: first I discuss the changes in orientation of official development policy discourse related to the respective roles of states and of FDI in long-term development in the context of the rejection of the Washington Consensus policy framework; second, I examine the increasing role of global policy networks and models in policy development and diffusion; third, I examine Canadian mining interests and characterize Canada’s international mining and development model as FDI-led and consistent with the model being promoted by global mining industry to address its legitimacy crisis; fourth, I describe the ways that Canada is seeking to facilitate the diffusion of the FDI–led mining model through think tanks and global policy networks; I conclude with a an examination of the International Governmental Forum’s Mining Policy Framework as an example of the “best practices” diffused by Canada.
This paper finds that the mining and development policy model being promoted by Canada is essentially FDI-led and driven by Canada’s domestic economic interests. Canada is promoting this model through the allocation of development assistance funding to think tanks and policy networks that are oriented towards informing mining policy reforms in SSA. By doing so this paper contends Canada is playing a central role in reducing the parameters of what are considered viable policy options in SSA mining, thereby undermining the ability of SSA governments to use their resource wealth to articulate and ultimately implement, country-led long-term socio-economic development strategies.

Global Policy Diffusion: Contesting “Best Practices” in SSA Mining and Development

Canada’s engagement with mining and development policy reforms in Africa occurs within the context of increasing global policy transfer, sharing and diffusion. This section examines the increase in global policy networks and the impact of interests and power on the workings and content of these networks. Recent analysis and research has recognized the complex processes of policy diffusion facilitated by international networks that can include state agencies, international organizations and “non-state actors” such as think tanks and advocacy organizations that incorporate “independent societal and corporate interests into a policy network” (Peck and Theodore 2015, 227–38). These networks can decenter the policy making process from, for example, an exclusively intergovernmental network to a process that increasingly includes non-governmental players. This can open the policy transfer process to increased influence of powerful corporate interests which in turn raises questions about the independence of formal publicly funded policy networks, such as the Intergovernmental Forum on Mining (as discussed below) that Canada has founded and financed.
Global policy networks and “best practices”
Transnational policy networks contribute to the formation of “epistemic communities” (Haas 1992) wherein experts and advocates share their expertise and information and develop common patterns of understanding through regular interaction at international conferences, government delegations and sustained communication (Stone 2004, 559). “A key feature of these networks is a shared problem about which information is shared and which generates debate, disagreement, persuasion, a search for solutions and appropriate policy responses” (Stone 2004, 560). These communities can play a powerful role in establishing what are considered viable policy options and in building international coalitions in support of these policies. They are also influential in “the introduction of policy alternatives ...[and] pointing out which alternatives are not viable on the basis of their causal understanding of the problems to be addressed, the community members can limit the range of alternatives under consideration” (Haas 1992, 16).

The challenges for these policy networks is, as Stone notes, that ultimately given that the objective of these networks is to influence public policy, they

are dependent on governments and international organizations to see policy transfer instituted. Accordingly, these organizations are often to be found in partnership or coalition on either an ad hoc or more permanent basis with government departments and agencies, international organizations or with other NGOs (Stone 2004, 558)

The creation of international policy transfer institutions can provide a forum for knowledge and evidence-based policy discussions but these forums are also subject to the influence of hegemonic ideas, ideologies and powerful interests seeking to inform the understandings of policy problems and the articulation of ‘solutions.’ In the case of mining, much of the official discourse on mining and sustainable development is dominated by well-
funded corporate policy diffusion initiatives, such as the International Council on Mining and Metals (ICMM) and the World Economic Forum (WEF).

Traditional conceptions of policy transfer build on the assumptions of rational decision making by policy decision makers. But in practice, as Peck and Theodore note,

the environments in which policies are variously borrowed, formed, and implemented are not inert backdrops to policymaking, but are both ideologically and sociologically structured; they are shaped by competing projects and marked by contestation. Here, an array of institutionally situated policy actors draws upon a range of positional resources and capacities to mobilize their variously conflicting and complementary projects for institutional transformation, wielding alternate “models” in ways understood to advance strategic interests. In this context, “policy transfer” denotes not so much an interconnected web of behavioral practices, or a zone of rational decision-making, but more of an arena of contest and struggle (Peck and Theodore 2015, 26–27)

The fact that policy ideas and models rise to international prominence as accepted ‘best practice’ does not mean they are inherently effective or the best option available (Temenos and McCann 2013, 344). Policy ideas are constructed and assembled within a social and political context. The content and the promotion of policies internationally is informed and shaped by a confluence of interests. “What is important about them,” as Temenos and McCann note,

is not so much that they move around in some abstract sense but that people move them around for particular purposes. New planning and design strategies, economic development models, etc. are social products, built up from the ground over time and bearing the imprint of the interests involved in producing them (Temenos and McCann 2013, 344)

This draws our attention, in examining Canada’s interventions in SSA policy formation, to the interests (as discussed below) involved in developing and promoting the model/framework being diffused by Canada and the power asymmetries between these interests.
Being deemed as ‘best practice’ seeks to elevate a policy idea or model beyond the specificities of the context within which it was generated. This may potentially provide the policy idea with greater legitimacy and transferability, but the policy models still carry with them the imprint of the context within which they were developed – the assumptions, social relations, institutional biases and political priorities:

Shaped through these multi-sited interactions, global policy models can be seen as mobile condensates of preferred policy making rationalities. They are carriers of multilaterally endorsed presumptions, and not just road-tested techniques. As such, they do not simply provide new solutions for old problems, they enable those problems to be reconceptualised, reformulated, and ‘reformatted.’ (Peck 2011, 177–78)

Answering the question of how policies are transferred raises questions as to the content of models that become internationally diffusible as so-called “best practice.” In practice “policy models that affirm and extend dominant paradigms, and which consolidate powerful interests, are more likely to travel with the following wind of hegemonic compatibility or imprimatur status” (Peck and Theodore 2010, 170). The continuing dominance of the neoliberal policy paradigm in this way contributes to the filtering of which policies become models and how well they travel. Alternatives which challenge the neoliberal assumptions are deemed unworkable and unrealistic. Or in some cases, alternative policies can become hybridized and mutate into variants of the global best practice original model but in a form compatible with the hegemonic paradigm (Peck and Theodore 2015, 227–38).

This is not to say that alternatives do not exist. Alternatives exist but their emergence and sustainability is generated by the specific power relations and social conditions of the local context within which they are generated. For example, South Africa’s Mining Charter challenges many of the assumptions in the models being promoted by capital exporting countries.
and the mining industry, but the Charter is also likely the product of the specificity of the South African political economy.

A central task in the analysis of global policy models and networks is the “recognition of an analytical necessity to contextualize policymaking behaviours, and not to abstract inappropriately from power relations, social practices, institutional rules or political conjunctures” (Peck and Theodore 2015, 27–28). This paper seeks to examine Canada’s interventions, as a capital exporter, in the reform of mining and development policies in SSA, and how these interventions are mediated through global policy networks, which are subject to the influence global mining interests. It seeks to examine not so much the specific policies but the role the models and frameworks being promoted by mining policy networks assign to states in relation to foreign investors and the development policy space allocated to governments.

**Foreign Investment, States in Mining and Development**

In this section I discuss the role of states in development models with specific attention to their role in industrialization. Historical evidence, as presented below, indicates that to support structural transformation/industrialization, governments should have access to the full range of policy options including those associated with what has been called developmental states. Therefore, I argue that development policy advice from donors and multilateral agencies should expand beyond the neoliberal policy framework to include support for the development of a broad range of development policy orientations and tools including a central and leading role for states in facilitating development.

FDI has been promoted as the cornerstone of economic development in the context of the neoliberal policy framework. Industrial mining is capital intensive. The exploratory stages of mining require significant amounts of high risk capital up front (Morgan 2002, B116). Should
minerals be discovered, much larger investments are required to access deposits and produce and export commodities to a volatile global commodities market. In resource rich LDCs, development strategies that seek to stimulate economic development through attracting FDI are built upon seeking to resolve a contradiction, or least a tension, between the pursuit of national development strategies and a reliance on foreign investment.

The allocation of resource rents[^12] is subject to intense negotiations as companies seek profitable access and rights to extract and export minerals, and countries seek development benefits from the exploitation of their non-renewable resources. Governments stake their claim for a larger portion of the resource rents on their ownership of minerals, whereas companies claim that they, by discovering and extracting the minerals create the value and therefore most of the rents should go to them in compensation for the risks they take in a volatile global market (World Bank 1992, 29). The need for FDI to reap the continent’s resource and development potential (Taylor et al. 2009, 105) increases the bargaining power of companies in establishing the terms of access to resources. In the preproduction stage countries provide incentives to induce the investor to provide the capital to discover deposits and develop mines. But the capital intensive nature of mining provides host countries with bargaining power in the production phase of operations, once the mining capital invested and the scale of deposit and revenue flows become clear the bargaining power of host countries increases and they may seek to renegotiate the mining and taxation agreements (Buckley 2008, 101; Vernon 1971)

[^12]: “Mineral rents reflect the difference between the market price of the minerals and the relevant costs, including the costs of exploration, production and any necessary processing (processing or treatment required to make transportation economically feasible), as well as a certain (“normal”) return on investment. (UNCTAD 2007d, n. 27, p. 154).
The neoliberal turn in official multilateral development policy under the auspices of the Washington Consensus\textsuperscript{13} sought to resolve the tension between TNCs and host countries through an entrenchment of FDI-led development strategies (Williamson 1990b, 6), with the World Bank advising in its “Strategy for African Mining” that “private companies […] take the lead” in mining (World Bank 1992, xiii), and that governments should abandon “pursuing […] economic or political objectives such as control of resources or enhancement of employment” (World Bank 1992, 10). The strategy depicted FDI as inherently positive or even essential to economic development, with little critical attention to the composition of the investment, the sectors involved and the capacity of the host country to benefit from it – the Washington Consensus focus was “mainly on the quantity of FDI rather than its quality” (Lall and Narula 2004, 450); the more foreign investment an economy could attract the better.

FDI-led strategies have not lived up to expectations. As argued by Gallagher and Zarsky, “[l]ed by transnational corporations (TNCs), the hope was the FDI would transfer superior technology and management skills, stimulate domestic investment and growth, generate efficiency spill overs, and integrate developing country firms into global markets” (Gallagher and Zarsky 2006, 1). But the evidence of a direct link between increased FDI and economic development

\textsuperscript{13} The Washington Consensus applies to the framework of economic development policy prescriptions that were the basis for IFI policy advice in the 1980s and 1990s. The reforms sought to promote adjustments that promoted “outward orientation, and free-market capitalism” in developing countries(Williamson 1990a; as cited in Babb 2013, 270; see also Williamson 1990b). These reforms, included deregulation, reduced government expenditures and privatization of state enterprises. The adoption of policies that promoted these reforms were often imposed on developing economies through the World Bank’s structural adjustment programs (SAP) as a condition of disbursement of loans. In the case of mining, the imposed privatization of state owned mines removed a tool developing countries have used for many years with varying degrees of success to benefit from resource extraction.
development has been inconclusive at best and, more often than not, simply not borne out by the empirical data. Their review of studies on the impact of FDI on development led Gallagher and Zarsky to conclude that there is no consistent relationship between increased FDI and economic growth and technological spill overs: “... the purported benefits of FDI are exaggerated and its centrality in development strategies is misplaced”; furthermore, “the poorer the country, the more likely is the FDI impact negative” (K. P. Gallagher and Zarsky 2006, 1). Other studies have concluded, for example, that “in the vast majority of [the 28 studied developing] countries there is neither a long-term nor a short-term effect; in fact, there is not a single country where a positive uni-directional long-term effect from FDI to GDP is found to exist” (Herzer, Klasen, and Nowak-Lehmann D. 2008, 808). A 2007 study found that while efficiency and market-seeking FDI contributed to economic growth in developed countries, it concluded that “in line with existing literature, [there were ] no significant effects... [of FDI] in developing countries” (Beugelsdijk, Smeets, and Zwinkels 2008, 452).

The risks associated with FDI-led strategies are particularly pronounced for resource rich SSA LDCs because resource-seeking FDI is generally less conducive to host country economic development, and less responsive to changes in the policy environment, than market or economic capacity seeking FDI (Nunnenkamp 2004, 665). There are many reasons for this. First, this form of production tends to be highly capital intensive which means that it creates relatively few employment opportunities and because these jobs tend to be highly skilled they are all too often filled by foreign workers (Sigam and Garcia 2012, 11–12). Second, mining projects tend to operate in enclaves that are closely integrated into TNC-led global value chains, hence providing few economic linkages to the host economy (Nunnenkamp 2004, 674). Finally, the extreme external orientation of an industry, closely linked with global supply chains, that extracts and
exports unprocessed commodities through complex corporate structures into global markets contributes to the extractives industries being especially prone to corporate tax avoidance and capital flight (High Level Panel 2015, 97).

While neoliberal assumptions, such as the centrality of FDI to development, continue to hold sway within official international development discourse, they are at odds with the historical evidence of successful industrialization which shows that states have been key players in organizing, supporting and asserting domestic economic interests to foster accumulation, investment and increased productivity and innovation. This is consistent with what we know about the role of states and industrial policy in economic development historically (Dunning 1997, 65): states played an active, central and essential transformative role in the industrialization of Europe and the US (Chang 2003), the later industrializing East Asian economies (Chang 2006), and in the foreign investment-led strategies in ASEAN countries (UNCTAD 2007a, 46–47) and in China (Akyüz, Chang, and Kozul-Wright 1998; Jomo 2001). States have also played crucial developmental roles in Norway and Chile’s industrialization through resource extraction (Havro and Santiso 2008).

Conversely the minimization of the role of states in development was the hallmark of the Washington Consensus and a contributing factor in its failure (J. Stiglitz 2016, 27; J. E. Stiglitz 2008, 41). The subordination of national development strategies to global markets and FDI coincided with weak and declining economic growth (Rodrik 2005, 970–71) and contributed to financial crises in Latin America (Rodrik 2006, 975) and Asia (Sheppard and Leitner 2010, 186). The countries that did well during the Washington Consensus reform period were those that contradicted Washington Consensus policy advice by maintaining a central role for states in development, such as China and India (Rodrik 2006, 975).
In mining, the Washington Consensus policy reforms in SSA were very effective in facilitating increased investment and generating record profits (PwC 2007). They were less effective at generating social and economic benefits for SSA (see for example Africa Progress Panel 2013, 20; Bonnie Campbell 2013b; McMahon 2010, 9) due to mining regimes that were overly accommodating of foreign investors (Bonnie Campbell 2013b). The lack of development benefits has led to what the mining industry has labelled as ‘resource nationalism’—resource rich developing countries seeking a greater portion of the resource rents generated by mining through, for example, partial state ownership and tax increases (EY Global 2016; The Economist 2012).

While the “coherence and nature” of a post Washington Consensus development policy framework remain uncertain (Sheppard and Leitner 2010, 189), the disappointing results of the Washington Consensus reforms has contributed to more pragmatic, more nuanced and focused policies emphasizing the need to take account of the political economic impact of ‘economic’ policy reforms as well as their dynamic socio-economic impact over time. It has also led to re-evaluations of the respective roles of states and FDI in mining and development in SSA.

A Reorientation in SSA Mining and Development?
This section identifies several dynamics that indicate a possible opening for a reorientation in mining and development policies in SSA, including the increasingly contested nature of mining in communities, a stated aspiration on the part of the mining industry to rebuild itself as an agent of sustainable development in developing countries, and the failure of the Washington Consensus and its associated FDI-led model. This has coincided with the recognition of the need for states to play a greater role in development and a consensus among SSA states on a continental strategy that promotes states as lead institutions in fostering industrialization through
mining. These factors would seem to indicate an opening for the rebuilding of the mining industry broadly speaking which could provide development opportunities, but in practice the resolution of these conjunctural tensions is also influenced by the power asymmetries of international political economy.

**Mining as Contentious**
Recasting mining as sustainable development has been a key driver of the industry’s lobbying and advocacy efforts since 2000. Mining’s inherent social and environmental disruption, its failure to meet development expectations and struggles between mining communities and companies over land control and community rights, have eroded the legitimacy of mining as a catalyst of development (Bebbington et al. 2008).

This crisis of legitimacy for the mining industry was first prominently raised by a World Bank commissioned review of Bank financing of extractives projects. It found that the focus of Bank lending to the extractive sector “has been too much on economic development and too much on strengthening the private sector” and not enough on environmental, social protection and states’ capacity to regulate the sector (Extractive Industries Review 2003, 44).

The combination of these tendencies has contributed to a resistance by communities and social movements to new mining projects (Bebbington et al. 2008). The increasingly contentious nature of mining has, to use the industry’s terminology, undermined its “social license to operate” and led to doubts that mining is compatible with sustainable development (Davis and Tilton 2002). In 2002, an industry commissioned study concluded that

the mining and minerals industry faces some of the most difficult challenges of any industrial sector – and is currently distrusted by many of the people it deals with day to day. It has been failing to convince some of its constituents and stakeholders that it has the ‘social licence to operate’ in many parts of the world. (MMSD 2002, xiv)
In response to widespread criticism, the international mining industry has actively invested in international advocacy initiatives to remake itself as a legitimate contributor to sustainable development. The industry’s efforts to rehabilitate itself has been led by the ICMM (International Council on Mining and Metals), comprised of many of the world’s largest mining companies. According to the founding ICMM Chair and former mining executive, the mining industry was at a “crossroads” with its “right to operate … under threat” (Yearley 2002, 2). The “ultimate prize” for the mining industry, according to the Chairperson, of gaining a social license to operate is “access to land and markets” (Yearley 2002, 6).

The contentious turn in mining and development continues to be felt. Surveys of the mining industry repeatedly indicate that “social license to operate” and ‘resource nationalism’ are among the top “risks” for mining projects (EY Global 2016; The Economist 2012). Mining companies’ legitimacy is contingent upon showing local benefits and addressing social and environmental concerns. A key challenge for the industry has been that “local communities tend to bear most of the environmental and other social costs associated with mining, while the benefits flow largely to the central government and elsewhere” (Davis and Tilton 2002, 11). For mining companies the establishment of the institutions of the local state is essential for the assertion, enforcement and protection of claimed rights to resources in remote regions where central governments have limited or no institutional capacity to enforce laws (Standing Committee 2012, 72–73). As Ferguson has noted, “the core feature of the "sovereignty" of weakly governed African states today is not actual or effective control over national territories... Rather, it is the ability to provide contractual legal authority that can legitimate the extractive work of transnational firms” (Ferguson 2006, 207).
The mining industry in Africa is also confronted with the active developmental approach taken by SSA’s largest and most developed mining economy (Orderson 2016). The South Africa Mining Charter provides an example of a country-led mineral development strategy. In contrast to the voluntary measures upon which investment-led models are based, the Charter includes legislated mandatory minimum local procurement, ownership and employment and contributions by companies to community development funds (Government of South Africa 2016).14

From a policy perspective, the repudiation of the Washington Consensus, the calls for mining to contribute to economic transformation and the need for the mining industry to build its legitimacy may provide an opportunity for the reconfiguration of the respective roles of mining companies, states and society in support of economic sustainability and industrialization in SSA. How these roles and development models evolve, beyond the aspirational discourse of sustainable development, is contested, but also subject to the influence of global mining interests.

**A New Role for the State in SSA Development?**

In its 2005 review of FDI in African development, the United National Conference on Trade and Development (UNCTAD) concluded that:

> not only is attracting FDI not the same thing as development, but it seems clear from the findings in this report that whether it contributes to development depends on macroeconomic and structural conditions in the host economy. To date, and in the context of two decades of liberal reforms, FDI seems to have reinforced a pattern of adjustment that privileges external integration at the expense of internal integration, typified by the establishment of enclave economies. Behind this trend lies a policy philosophy that wrongly contrasts the efficiency of foreign firms with the distortionary economic impact of the local state (UNCTAD 2005, 82).

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14 It is also important to recognize a contradiction in South Africa’s approach to the mining sector as the state has recently taken ruthless steps in seeking to ensure the viability of some mines as exemplified by the police killings of 34 striking mineworkers in the Marikana massacre (Alexander 2013)
In its 2011 annual report the UN Economic Commission for Africa (ECA) finds that “economic transformation in Africa demands the state play a central role … in planning, articulating and implementing policies aimed at efficient allocation of resources” within a “nationally owned development framework… in other words [this will] require a developmental state” that plays “a central role in … efficient coordination of crucial economic activities” (UNECA and AU 2011, 7). Former World Bank chief economists are calling for the revitalization of industrial policies, which they define as “government policies directed at affecting the economic structure of the economy” (J. E. Stiglitz, Lin, and Monga 2013, 2). In terms of FDI flows, the African Union (AU) finds that

concerns remain over the distribution of benefits between the origin and host economy. African countries should therefore adopt a selective approach in accepting FDI to ensure coherence between boosting FDI and pursuing their national development strategies (UNECA and AU 2011, 60).

This has been accompanied by calls for a preservation of policy space (UNCTAD 2007c) for states as they seek to negotiate “the tension between international economic integration and the autonomy available to nation states to pursue policies that effectively support their economic development” (Mayer 2008, 1) in the context of increasingly restrictive international trade and investment agreements (Gallagher 2005).

These calls for a revitalized role for states in development, increased policy space and structural transformation are for the most part being generated by UN agencies and multilateral regional institutions such as the AU and the African Development Bank. In practice these regional organizations, while they are formally accountable to SSA governments, are dependent upon national governments and their state apparatuses to act on these recommendations. In this sense, we can speak of these agencies as generating, advocating and disseminating policy ideas.
SSA governments have been less publicly vocal in calls for more active states and it is therefore difficult to assess whether developmentalist views are widely and strongly held by SSA governments and whether this reorientation is indicative of a substantive shift of power to SSA governments in the wake of the demise of the Washington Consensus.

In 2009 the African Union Heads of State adopted the Africa Mining Vision. It articulates a continent wide framework to ensure that the extractive sectors contribute to economic transformation and sustainable development – an “African conceived, owned, and operationalized… strategy for integrating [the] mining sector into broader social and economic development processes” (Busia 2014, 3). The AMV and its Action Plan were developed by the AU ministers responsible for mineral resources and approved by AU member governments and “embody key reform demands” from civil society organizations (CSO) and unions (Kabemba 2014).

The AMV strategy seeks to balance the need for states to play an active leadership role as catalysts while recognizing the reliance on FDI. Over the long term, the AMV concludes, “a resource sector dominated by foreign capital … is likely to be politically unsustainable or, at least, problematic” (African Union 2009, 20). The challenge is to use policies to leverage FDI in support of economic transformation. This tension is evident in the suggested AMV provisions which note that TNCs are the most important vehicle for building local capital but they “are not naturally inclined to facilitating the growth of local competitors,” therefore the document recommends that the state “impose” conditions early in the mining process (African Union 2009, 22).

The adoption of the AMV has become subject to various interpretations and is contentious. It has been described by some observers as “the most concrete or advanced
articulation of [African] agency to date...” via a developmental states (Shaw 2014, 257). SSA CSOs have mobilized in support of the AMV as a proactive and accountable development agenda (Graham 2013), with some arguing that the Vision challenges the neoliberal thrust that has dominated and undermined SSA development initiatives for much of the past 30 years (Darimani 2012). Some have argued that it is part of a “fourth generation” of mining governance initiatives that place “primary emphasis on transparency and accountability by both mining companies and host governments” (Besada and Martin 2015, 263). For others, such as the Canadian government, the AMV is a “voluntary CSR Framework” (van Gaal 2014, 6) that supports African governments in the technical processes of developing mining policies and administrative capacities to support “private sector-led economic growth” (Minister Paradis 2014).

CSOs, including trade unions, have mobilized in support of the AMV, motivated in part by a desire to counter the “power and influence exerted by mining TNCs over public policy” but these initiatives do not, according to some observers, appear to have translated into broad political support from individual SSA countries (Kabemba 2014). At a 5 year review of the AMV, a CSO sponsored concept note concluded that this outcome is a product of corporate resistance and a tendency by governments to treat “the political-economic contest with the TNCs as narrow bureaucratic-legal exchanges to be kept secret from society and its pressures” (Kabemba 2014).

This leads to questions as to the degree of support from individual governments for the Africa Mining Vision, a strategy conceived and promoted by the AU, a regional multilateral organization. There are indications that countries take different policy stances in multilateral fora than they take in bilateral economic agreements with FDI home countries. For example,
Blackwood and McBride have argued that capital importing countries often resist policies that curtail their ability to regulate FDI in multilateral fora, but more likely to accept these restrictions in bilateral agreements (Blackwood and McBride 2006, 44–46). One possible, explanation for resource rich developing countries agreeing to policies more accommodating to FDI bilaterally is that in practice they compete with each other for mining FDI – by providing more investor friendly mining policies, they expect that they will attract more FDI than competing jurisdictions (Elkins, Guzman, and Simmons 2008).

Addressing these questions is beyond the scope of this paper but it is important to note that it is within this political context that Canada is actively intervening to influence policy reforms and the interpretation and implementation of the AMV, bilaterally through funding policy reforms and through aggressively negotiating bilateral investment treaties (BITs) and policy advice and multilaterally through its funding of think tanks and mining policy networks. The different interpretations contribute to a “main challenge” for the AMV – the tension between the AMV and the policies and models being driven by “external” multilateral organizations, partners and donors (Busia 2015, 14; Maponga 2012, 4; UNECA and AU 2011, 9). Canada has become a major external partner in financing the institution charged with the implementation of the AMV and the international policy network involved in SSA mining policy reforms. The role of Canada, as a mining FDI home country, funding policy reforms raises questions as to what influence Canada has on the interpretation and implementation of the AMV, what model is being promoted by the institutions Canada is funding, and the impact these institutions are having on the ability of host countries to develop country and state led development strategies. These questions are ultimately related to the influence various interests have over the formation of policy models and the networks through which they are diffused. For
developing countries, the international rules of the game continue to be driven by the interests of
capital exporting countries and international investors. This is consistent with the historical
evidence indicating a tension between capital exporting developed countries and later developing
countries seeking to “catch up” economically. Advanced economies use their economic and
political power to discourage and restrict later developing countries use of the development
policy options that were essential to the industrialization of the advanced economies, a process
evocatively described by List and Chang as advanced economies, “kicking away the ladder” that
had enabled them economies to develop (List 1985, 295; see Chang 2003 for empirical data).

The issues raised by the experience of the “new-extractivist” development strategies in
South America point to further potential challenges faced by the mining and development policy
reforms in SSA. The 2000’s commodities boom generated what were perceived as new
development opportunities via the extractives sector. “The difference from earlier years of
experience with this [extractivist] strategy … is that the “new extractivism” entails a regulatory
regime and a concern to strike a better deal with the mining companies and capture a larger
share” of the resource rents (Veltmeyer 2013, 87). The evidence indicates that as long as the
commodity price boom lasted, government mining regimes across Latin America successfully
generated sufficient revenue from the extractives industries to invest in social programs that led
to poverty reduction through out the region (North and Grinspun 2016, 1496).

But the new extractivism has also contributed to in increased concentration of capital,
environmental degradation and social conflict within communities (North and Grinspun 2016,
1497–98; Veltmeyer 2016, 781). New-extractivism’s reliance on attracting FDI assigns a
“central role to powerful multinational corporations that are intent on blocking any substantive
structural change” (North and Grinspun 2016, 1496). States have become key players in
facilitating the access of foreign investors to mineral deposits and this has, in the context of the social and environmental disruption associated with the mining, and the ensuing resistance by some communities, has led to situations in which states sided with mining companies in struggles over land rights and the environment (Veltmeyer 2016, 781).

**Canada’s International Mining Interests**

The diffusion of the Canadian mining policy “advantage” to resource rich developing countries is, according to the Canadian government, designed to encourage “greater coherence and more effective implementation of efforts to advance the interests and opportunities for Canada’s extractive sector abroad” (Natural Resources Canada 2014). The strategy seeks to promote Canadian domestic interests by taking advantage of the opportunities in mining supply and service created by the operations of Canadian registered mining companies operating abroad (Natural Resources Canada 2014).

Trade and investment liberalization has, according to Canada’s mining industry, “underpinned the globalization of Canada’s mineral exploration industry,” and its rise as “a global mining superpower” (Caulfield 2015). The vast majority of mining listings on the TSX are small exploration companies (known as ‘juniors’) (TSX 2014, 12). The exchange is home to a large portion of the world’s mining merger and acquisition activity (Jamasmie 2012) as juniors seek to raise exploration funds, financing for the development of discoveries or are acquired by major producing mining companies (Canadian Chamber of Commerce 2013, 22). The TSX is also home to some of the world’s largest mining companies, in particular in gold mining (Basov 2016).
Canadian mining interests have become increasingly transnational, such that in 2014 two thirds (2/3) of TSX-registered mining assets were held outside of Canada (Natural Resources Canada 2016a). Canada’s stock exchanges have become the world’s major source of high risk exploration capital. The expertise developed within Canada’s stock markets in financing the high risk exploration phase of mining in Canada along with tax concessions and supportive regulations (Sylvester 2004) were essential to the emergence of the TSX as the preferred home to the global junior mining sector (Bonnie Campbell 1998, 19). This left Canadian mining exploration companies well positioned to take advantage of the wave of mine privatizations that occurred in Africa during the 1990s (African Union and UNECA 2011, 17).

The TSX labels itself “the leading exchange for mining companies in Africa” in terms of the number of companies operating in SSA, the number of properties and the capital invested (Wertheim and TSX 2012, 17; TSX 2014, 22). In 2009, at the height of the global mining boom, $2.6 billion was raised on the TSX for SSA mining projects (Ferron 2010, 4). In 2013 the TSX listed 158 mining companies that accounted for investments in 575 mining properties spread across 37 countries in SSA (TSX 2014, 20) and controlling C$24 billion in mining assets (Natural Resources Canada 2015a, 1). It is estimated that in 2012 the top 24 TSX registered mining companies in SSA generated $C13 billion in revenues – the largest portion in copper and gold (CIDP 2015).

In many cases the direct linkages of these international mining operations to the Canadian economic are tenuous (see Garrod and Macdonald 2016 regarding TSX companies in Latin America). Fifty-seven percent of the mining companies listed on TSX’s exchange for established companies are also listed in other international exchanges (author’s calculations from (TMX 2016) data). Sixty-one percent of the companies of the TSX do not have operations in
Canada and only 22% of the TSX companies with operations in SSA operate in Canada (author’s calculations from (TMX 2016) data). Forty percent of the money raised on the TSX originates from outside of Canada (TSX 2014, 5), so we can surmise that a significant portion of the capital for TSX-registered international operations is foreign sourced.

The limited Canadian operations of TSX companies operating internationally begs the question as to why the Canadian government is so active in its support for TSX-registered companies operating internationally. Part of the answer lies in the fact that the economic impact of the international mining industry on the Canadian political economy is amplified through linkages with Canada’s mining supply and services sector (MSS). A 2014 report by Pricewaterhouse Coopers on the MSS sector in Canada’s largest provincial mining economy provides an indication of the importance of the sector. Ontario is home to the TSX and the province’s MSS sector directly contributes $C3.9 billion to the provincial GDP (PWC 2014, 6). By comparison, mining operations contributed $C6.8 billion to the provincial GDP, indicating that the MSS accounts for 36% of the mining industries total contribution to Ontario’s economy (Statistics Canada Table 373-0030). The MSS sector is estimated to generate 41,000 jobs in the province (PWC 2014, 31). Financial, legal and other professional consulting services account for 33% of the mining supply and services companies, with most of these companies located in Toronto, where the TSX is located, and the surrounding area (PWC 2014, 20, 45). Seventy percent of MSS companies indicate that they export some of their goods and services (PWC 2014, 27). The size of the MSS sector is indicative of both the range of economic linkages in Canada to TSX registered mining companies, and the economic interests that benefit from the Canadian government’s promotion of international operations of these companies. The financing
of global exploration through the TSX increases the possibilities that Canadian supplies and services will be used in the operations of these projects (Dungan and Murphy 2012, 59).

The fact that TSX is the world’s leading source of exploration capital puts Canada in a strong position to influence mining policy reforms in SSA. It is estimated that SSA contains about 30% of known world mineral reserves (World Bank 2016), but more importantly for the industries’ long terms viability, according to the world’s leading geological agencies, “it is clear from the distribution of known deposits and by analogy with areas of similar geology elsewhere in the world that Africa has some of the most prospective areas for new discoveries of mineral resources in the world” (Taylor et al. 2009, 105). But the US Geological Survey finds that given the general geology of much of the continent, exploration is a particular challenge for Africa (Taylor et al. 2009, 105).

Accessing Canadian-registered capital and expertise can play a key role in unlocking the continent’s resource potential and the implementation of the AMV. As the home for a large percentage of the world’s exploration capital, Canada not only has an interest in ensuring industry accommodating mining regimes in SSA, but this also provides Canada with added clout in influencing SSA mining policy reforms.

SSA governments anticipate they will access more TSX based mining capital if they follow Canadian policy advice. Furthermore, several resource rich SSA LDCs are reliant on revenue derived from mining. Mali, for example, is one of SSA’s largest gold producers. Tax revenue generated by gold mining currently accounts for 24.8% of Mali’s own source revenue (IMF 2013b, 22). High production levels are outpacing new discoveries resulting in projected declines in production and tax revenue (IMF 2013a, 5). High production rates to meet pressing
demands increases the pressure on governments to attract exploration capital, thereby further contributing to Canada’s clout in influencing policy reforms in SSA.

Canada’s influence may also be increased by the competitive pressures on resource rich LDCs in SSA. Empirical studies indicate the greatest driver of countries taking on economically liberal policies that accommodate foreign investment is competition between countries (Garrett, Dobbin, and Simmons 2008, 349–50). As countries adopt policies to make themselves more attractive to foreign investors, they also provoke their similarly endowed competitors regionally to adopt investor-accommodating policies. This points to a strengthening of Canada’s hand in the diffusion of liberalising policies, but it also identifies one of the challenges for AMV as countries compete with each other to provide the most accommodating mining regimes for Canadian (and other) exploration capital.

Bilaterally Canada has used this economic clout to recently negotiate a series of bilateral investment treaties (BITs) with SSA governments, concluding agreements with eleven countries since 2013, and it is in ongoing negotiations with two more. These agreements provide preferential access to SSA’s resources and protection to mining companies registered in Canada. The agreements are among the most world’s most liberalizing in terms of opening up economies to investors, removing, for example, the ability of governments to apply mandatory local content requirements, protecting foreign investments and being enforceable through an international external dispute settlement mechanism that enables investors to sue host countries (Jacobs chapter 2 above).

That Canada is not a disinterested policy advisor to SSA governments is not necessarily problematic, the pertinent question is whether these interests determine the policy advice and models provided by the Canadian government to the detriment of host country development
aspirations. To answer this question we now turn to a review of the models and strategies being promoted by the global mining industry and the Canadian government.

**Mining and Development Models that Travel**

The global mining industry has invested extensively in rebranding mining as a catalyst of sustainable development while ensuring continued profitable access to host country resources. This section examines the models and frameworks being put forth by global mining capital to build its legitimacy as a catalyst of economic development. The key question for my purposes is whether this new model recognizes the rights of states as legitimate leaders in development and whether it cedes significant powers to host countries as regulators and as promoters of country led structural transformation. To do this I identify several core characteristics of mining industry model through a review of two of the central forums of the global mining industry: the World Economic Forum (WEF) and the International Council on Mining and Minerals (ICMM). In addition, in an attempt to gain insights into the application of the industry’s sustainability discourse, I examine Canadian international mining policies in practice. The examination of these models and Canadian practice provides key insights into the mining policies being diffused by powerful global mining interests through lobbying efforts and global policy networks. It also provides insights into the conceptualization of the problems faced by the industry and the formation of shared understandings within epistemic communities. This review indicates that at both the level of discourse and practice, the FDI-led model continues to dominate, little changed from the model informed by the Washington Consensus policy framework.
Global miners as agents of sustainable development (FDI – led models)

The World Economic Forum’s membership is comprised of “1,000 of the world’s top corporations, global enterprises usually with more than US$5 billion in turnover. These enterprises rank among the top companies within their industry and play a leading role in shaping the future of their industry and region.” (WEF 2016b). The World Economic Forum’s (WEF) “Mining & Metals Partnership Community” is comprised of the world’s largest mining companies working to raise “global awareness of issues and opportunities, and shape an agenda that will improve the state of the world” (WEF 2016a). The WEF’s Mining and Metals group “operate[s] at the local and national levels, exploring perceptions and attitudes regarding the value of the minerals industry and collaboratively assessing the mining sector’s social and economic potential, as well as its dealings with government” (WEF 2016a).

The WEF’s Scoping Paper: Mining and Metals in a Sustainable World “seeks to set the strategic vision” for the industry in reorienting mining and development policies (WEF 2014, 5). The paper identifies a shift in control of global resources from government, country, corporate and state based institutions towards

multistakeholder networks … govern[ing] global resources. Rather than simply regulating, governments improve industry behaviour by encouraging transparency and boosting civic engagement. This collaborative, trust-based governance model fosters legitimacy, inclusiveness and consensus-orientated stakeholder decisions (WEF 2014, 17).

Here the relationship between companies, communities and governments shifts to “partnerships.” In a “sustainable world” according to the Forum, “rather than to focus on development …. the partnerships serve to maintain and manage shared value opportunities” (WEF 2014, 7) and “policies are crafted to promote” this value (WEF 2014, 16). The committee’s view on
Regulation is informative and indicative of the long term vision of sustainable development by transnational capital. According to the *Scoping paper*,

Regulation is less formal in a sustainable world. Traditional regulatory frameworks were phased out after the 2008 global financial crisis, when industry and governments reached a consensus that those frameworks were too cumbersome to sufficiently reflect rapidly evolving, globally integrated marketplaces. Instead, certain minimum thresholds exist for safety, environmental performance, human rights protections and ethical financial behaviour. Beyond that, the market is self-regulating based on true value. (WEF 2014, 16)

In other words, the social and economic development benefits are assumed to flow from minimally regulated FDI, with states playing a subordinate role to “self-regulating markets” that purvey “true value” — attempts by states to regulate undermine the creation of “true value” in mining. Ensuring that minimum environmental standards are maintained is the responsibility of multi-stakeholder partnerships, which rely for the most part on voluntary corporate initiatives and self-regulation. This conception of the role of states, while seldom stated so explicitly, is the foundation of industry-driven policy diffusion initiatives.

The ICMM’s membership includes some of the world’s leading mining companies and regional and national mining associations including Canada’s largest mining associations and companies (ICMM 2016a). It has taken the leadership in the global mining industry’s initiatives to make the case for mining as a catalyst for social and economic development in developing countries. It seeks to “shape the policy environment” by bringing “evidence-based perspectives and considered thought leadership to inform the development of policies and standards that support sustainable development outcomes” (ICMM n.d.).

According to the ICMM, the mining sector’s “extraordinary potential to contribute to social and economic development” effectively is contingent on “good policy and governance
frameworks” being in place (ICMM 2016b). “Where governments create the conditions for mining, metals and other businesses to invest and flourish, progress towards the achievement of development goals can be accelerated” (ICMM 2016b).

Here the onus is on LDC governments to establish the conditions that make it attractive for mining companies operating in their countries to make economic links with the host economies. The lack of development benefits and linkages is conversely due to host governments failing to provide the right social and physical infrastructure and not providing a globally competitive mining supplies and services sector.

The WEF and ICMM approaches do not acknowledge the need for a shift in power to support development oriented states; indeed they, the WEF approach in particular, propose a reduction of state regulatory power as related to FDI. Where regulatory power is acknowledged it is to provide supportive minimal health, safety environmental standards. The state’s right to condition FDI access to resources contingent upon, for example, local content in mining projects is not addressed. Indeed, regulatory measures to support development are replaced by trust-based partnerships to oversee “shared value opportunities” and governments’ decision-making power is supplanted by “consensus-oriented stakeholder decisions.” Particularly revealing is the WEF’s framing of the 2008 global financial crisis as an indication that state regulatory frameworks were part of the problem and that solutions lie with “the market [as] self-regulating based on true value” (WEF 2014, 16).

Initiatives by mining TNCs to frame the problems the industry and sustainable development face, and thereby influence solutions as ‘best practices,’ has been identified as central to their participation in global policy networks and epistemic communities. TNCs,
according to Dahan, Doh, and Guay, “seek to influence institutional development by creating or participating in policy networks” (Dahan, Doh, and Guay 2006, 1571). A TNC can take part in a diffusion process by spreading institutional norms it favors to other countries. [TNCs] can achieve this by creating international fora (e.g. the World Economic Forum), think tanks and foundations promoting values, best practices, policy options, and regulatory standards. MNCs must participate in policy networks that will enable them to frame the policy area in a way which will lead public decision-makers to decide to adopt foreign policies. (Dahan, Doh, and Guay 2006, 1591).

Furthermore, according to the authors, TNCs “exploit these network relationships to influence emergent institutions and to advance convergence in institutional policies” (Dahan, Doh, and Guay 2006, 1571).

The Canadian government has invested in the development of institutions and networks that promote its interventions in international mining. Canada has built its policy advice on what it describes as the “Canadian advantage.” We now turn to examining what this mining advantage entails.

**Canada’s International Mining and Development Model**

Canada has taken a lead role in mining policy reforms in SSA. These interventions build on what the Canadian government and the domestic mining industry have branded the “Canadian Advantage.” This section seeks to gain insights into the Canadian model through an examination of the Canadian mining practice internationally.

Canada’s domestic mining policies are consistently ranked as the most investor friendly and least regulatory in the world (Jackson and Green 2015, 33, 41, 67, 68). Furthermore, TSX-registered mining companies face minimal regulations for their activities abroad. To the degree that there is any policy direction for companies, it is voluntary, such as encouraging companies
adhere to high standards of corporate social responsibility (CSR) and “to do business the
Canadian way” (Government of Canada 2014, 3). The Canadian government defines CSR in the
extractives sectors as “the voluntary activities undertaken by a company, over and above legal
requirements, to operate in an economically, socially and environmentally sustainable manner”
(Government of Canada 2014, 2). The federal government expects “Canadian companies
operating abroad to respect human rights and applicable laws, and to meet or exceed widely-
recognized international standards for responsible business conduct” and encourages companies
“to find ways to reflect Canadian values that also respect local laws. If this is not possible,
companies may wish to reconsider their investment” (Government of Canada 2014a, 3 emphasis
added). The notion that the consequence for companies contravening local laws is that they
should reconsider their investment is indicative of the unwillingness of the Canadian government
to take regulatory responsibility for TSX registered miners’ actions.

According to one study, Canadian mining firms operating abroad have been prone to
higher number of CSR infractions than mining companies registered in other countries, including
conflicts with communities and environmental and human rights incidents (CCSRC 2009, 8).
This is attributable to the heightened level of social and environmental impact generated by
junior mining companies during the exploration and pre-production stage of mining in remote
areas and due to “their relative lack of capital and small or non-existent community relations
teams – [they] are more likely to engage with communities in less subtle, more rushed and often
more antagonistic ways, and so are more likely to trigger social conflict” (Bebbington,
Bornschlegl, and Johnson 2013, 6). The Canadian government also promotes the interests of
miners through its network of embassies, with staff in some cases intervening on the side of
mining companies in disputes with workers and communities (Moore 2015; York 2013). The
Canadian government has been reluctant to provide a mechanism for host country citizens to hold mining companies to account (UN Human Rights Committee n.d.), claiming it is not responsible for the adherence of Canadian mining companies to the International Covenant on Civil and Political Rights in operations beyond Canadian borders. In effect Canada is providing investors with protection from legal claims.

Another component of Canada’s international mining model is the use of development assistance funds to support CSR projects linked to mining companies. The Canadian government “recommercialized” its development assistance by moving its primary focus from targeting poverty reduction to promoting activities which advance Canada’s commercial interests (Mackrael 2014) and thereby, it is hoped, promote growth and development in ‘client countries.’

Controversial pilot projects in Africa provide an indication as to the federal government’s evolving approach to the role of development assistance in supporting CSR projects in the communities within which Canadian mining companies operate. In support of a Burkina Faso youth training program linked to the mining sector, Canada’s development agency contributed 75%, the mining company, IAMGOLD, contributed 13% and the implementing NGO provided the remainder of the finances (S. Brown 2014, 278–79). In effect, governments and NGOs buy the mining company’s “social licence” to operate locally. “The message to sceptical local communities is that if they accept Canadian mining projects, the Canadian government will provide them with extra assistance” (S. Brown 2014, 280). In effect development assistance funding is being used to subsidize the operations of TSX mining companies abroad. Several recent Canadian funding initiatives confirm the shift in this approach from pilot projects to programs with expanded funding (Global Affairs Canada 2016c, 2016b).
By allocating development assistance funding to support CSR projects, the Canadian government is building the legitimacy of the investor-led model, premised on CSR, in the eyes of SSA resource rich countries and communities. A review of the empirical studies of industry-implemented CSR, however, found no evidence that it contributed to sustainable development, specifically poverty reduction, whereas qualitative studies indicated negative effects (Gamu, Le Billon, and Spiegel 2015, 170). This raises further questions as to the viability of the CSR model without development assistance – have government subsidies become essential to the functioning of CSR in mining communities? Furthermore, the allocation of development assistance funding to training and local business development will contribute to poverty reduction only if the mining projects hire and procure goods and services locally. Company CSR objectives may promote local sourcing (Natural Resources Canada 2015b), but in the absence of enforceable local content requirements there is no assurance that these funds will contribute to poverty reduction as engaging local workers and businesses is entirely voluntary and driven by corporate business decisions within the context of externally oriented integrated global supply chains.

Canada is utilizing development assistance funds to support local supply and services linkages, at the same time it is, by its promotion and subsidization of Canadian mining supply and service companies, undermining the potential of regional suppliers to develop more sophisticated linkages. The Canadian Trade Commissioner Service works out of Canadian embassies to increase and support Canada’s mining related exports and investments (Government of Canada 2015b; PDAC n.d.). Furthermore, the crown corporation Export Development Canada (EDC) seeks to insert Canadian companies into mining company global supply chains by providing subsidized loans for the purchase of Canadian goods and services by companies operating out side of Canada. The extractive industry accounts for EDC’s largest
and fastest growing major business sector (EDC 2015, 56, 79). In 2015 EDC opened an office in Johannesburg, its first office in Africa, to “connect more Canadian Businesses to the supply chains within intra-African trade” (EDC 2015, 28, 57). This office subsidizes the purchase of Canadian goods and services for the mining in direct competition with South Africa, the continent’s most advanced mining centre and likely the centre of any pan-African mining strategy as articulated in the AMV. Canada’s promotion of its MSS interests could undermine efforts by SSA governments to establish backward economic linkages through the development of a domestic MSS sector contributing to the operations of mining FDI.

Another characteristic of the ‘Canadian advantage’ is the extensive use by companies of ‘off shore tax havens’ thereby undermining the ability of host countries to capture their portion of resource rents through taxation measures (Africa Progress Panel 2013, 60). A recent review of mining exploration activity in SSA identified 18 “noteworthy” sites for 2014 (Wilburn, Stanley, and Karl 2015, 24). Thirteen of these sites were operated by TSX-registered companies. My review of corporate reports for these companies indicates that 12 of the 13 companies use known tax havens as part of their corporate structure. The integration of these jurisdictions into tax management strategies by mining companies drain potential tax revenue and investment capital from the host economy.

Perhaps the most explicit manifestation of the Canadian model is the in its bilateral investment treaties (BITs) that provide the rules framework for TSX-registered FDI in treaty implementing resource rich SSA countries. Canada’s foreign investment promotion and protection agreements (FIPAs) are among the most liberalizing in terms of opening providing and protecting investment opportunities in the global economy (Jacobs chapter 2 above). Canada has been at the forefront of introducing these agreements to SSA, signing FIPAs with countries
since 2013 and in negotiations with 4 more countries (Jacobs, chapter 2 above). Canada’s BITs provide TSX registered firms with open access to host country resources on the same or better terms than domestic investors and the agreements disallow the application of local content and performance requirements by host countries – key measures in AMV (Jacobs chapter 2 above).

A number of AMV strategy documents have warned resource rich SSA countries that some BITs may contain restrictions on their ability to implement the AMV (African Minerals Development Centre 2014, 159, 164; AU, ADB & UNECA 2011, 32–33; A.M.A. Pedro 2012). SSA governments have been warned that it is “important for African countries to maintain a consistent eye on the full implications of the specific provisions of treaties into which they are invited to enter and ensure that these agreements are development oriented” (A.M.A. Pedro 2012). The limitations imposed by the BITs on development options have led South Africa to not renew existing BITs and to place a moratorium on further BITs negotiations (Davies 2012).

Some have noted that the failure of the Washington Consensus provides a “more favourable political economy… [that] opens room for more policy space” that host governments can use to generate increased development benefits from SSA mining (Antonio M. A. Pedro 2012, 12). The model emerging from this paper’s review of Canadian international mining policy in practice indicates that the Canadian approach to international mining remains little changed from the Washington Consensus associated FDI-led model.

Indeed, it is remarkable how similar the role of investors, states and donors in the World Bank’s 1992 African mining strategy are to the current models being promoted by Canada and the global mining industry, despite the more recent call for reforms by African states and the African Union. In 1992 the Bank advised that investors “should take the lead in mining” (World
Bank 1992, xiii) as part of “an enlighten partnership” with governments (World Bank 1992, 10). Governments should abandon “secondary objectives” such as social and economic benefits (World Bank 1992, 27). In their negotiations with the industry, governments should not seek to achieve “economic or political objectives such as control of resources or enhancement of employment” (World Bank 1992, x) nor should they force downstream processing (World Bank 1992, 27–28). The role of donor countries was to “facilitate private investment and help reduce …. risks for the private investor” (World Bank 1992, xii). IFIs and donor countries are encouraged to take the initiative in reforming mining codes and the institutional framework in Africa (World Bank 1992, 54). The only discussion of enforceable regulations relates to environmental, health and safety standards (World Bank 1992, xiii–xiv).

As discussed above, it would appear that in the policy prescriptions promoted by Canada and the mining industry, the Washington Consensus policy model continues to prevail, now augmented with occasional development assistance-funded subsidies to mining companies and companies’ voluntary contributions. In the revived FDI-led model, communities and CSOs are to be consulted and governments are resource managers/administrators as mining companies drive the process by ‘creating true value.’ Canadian bilateral capacity building funding builds the legitimacy of mining industry by funding local government provision of minimum health, safety and environmental standards, the lack of which has become a flashpoint for conflicts between the mining industry and the communities within which they operate. Canada’s capacity building in terms of governance has also allocated funding to support the establishment and administration of land tenure rights and mining permitting which is a primary concern for Canadian registered mining companies (for example Global Affairs Canada 2016a; Standing Committee 2012, 72–73).
Canada’s Mining Policy Reform Initiatives in SSA

This section of the paper maps out Canada’s efforts to transfer more broadly the mining policy framework it has transferred bilaterally through the negotiation of foreign investment promotion and protection agreements with resource rich SSA countries. Canada promotes its mining interests and model through funding extractive policy reform institutions such as mining policy ‘think tanks’ and through support for policy development and diffusion networks that are instrumental in the interpretation and implementation of the AMV.

AMV Implementing “think tanks”
Canada is the top founding funder ($CAD 15 million (DFATD 2014b)) of the African Minerals Development Centre (AMDC) which has been designated by the AU as the implementing agency for the AMV (UNECA 2014) – the think tank of the AMV (Busia 2015, 6). According to the Canadian Government the AMDC will serve as a “one stop information centre on best practices in sustainable mining policy and management” (P. M. O. Government of Canada 2013). SSA-based organizations have high expectations for the AMDC. At its founding the AMDC was described as “turning a new chapter for Africa and its mineral resources from an enclave sector to that of inclusive development and broader ownership. ‘AMDC has a strategic place in history to push us to new frontiers, to punch our way into the future and cut a new deal where contract negotiations reflect the true worth of our resources’” (UNECA 2013).

According to the Canadian government, Canada’s funding of the AMDC, seeks to support the Centre’s capacity to “deliver guidance and policy advice to African countries” in reforming mining codes, legislation and tax systems (Foreign Affairs, Trade and Development 2013). The project is fully funded through the development assistance’s “private development
sector” category and a key “expected result” of the funding is “an investment-friendly mining sector” (DFATD 2014b).

Canada has directly linked its funding of the AMDC with the work of the controversial Canadian International Resources and Development Institute (CIRDI). The institute was founded in 2014 by the Canadian government with its development assistance funding (CIRDI 2014b). CIRDI is located in Canada and works with stakeholders and “developing countries to improve how they develop, manage and benefit from their natural resources” (CIRDI 2015). According to the federal government, the Institute “complements” Canada’s CSR strategy in seeking to “improve the competitive advantage of Canadian international extractive companies by enhancing their ability to manage social and environmental risks” (P. M. O. Government of Canada 2011). The Institute’s critics have drawn attention to its ties to the Canadian government and mining industry with a focus on mining promotion rather than poverty reduction (Mining Watch 2014). For the Canadian government the industry promotion is intentional and acknowledged. When he announced the founding of the Institute, the Canadian Minister responsible for international development at that time informed the Canadian mining industry that the Institute “will be your biggest and best ambassador” (Mackrael 2013).

The Institute focuses on opportunities developed through strategic partners where there is “significant presence of Canadian capital investment in the extractive sector in a [Canadian development assistance] country of focus or other significant bilateral relationship” (CIIEID 2013, 62). Strategic partners (those that provide financial and/or advisory support) include mining companies, mining lobbying organizations and some of the world’s leading international mining accounting and legal firms (CIRDI 2016). The Institute was started by the federal government with a one-time development grant with the intention that the organization would
become self-sustaining through service delivery and support from stakeholders, which will likely increase its reliance on the mining industry for financial supports and contracts.

The Canadian government and mining industry have expanded their participation and influence on the implementation of the AMV through CIRDI’s agreement to work collaboratively with the African Minerals Development Centre in implementing the Africa Mining Vision (UNECA 2014). For the Canadian government there is an intentional compatibility between the two organizations with the AMDC seeking to further the objectives of the AMV while the CIRDI is tasked with promoting the Canadian CSR strategy. But there are also potential tensions between the broadly industry-driven model of the CIRDI and the stated regional orientation and SSA driven intention of the AMV. This can add to what the AMDC’s coordinator, has described as the “concrete risk of diversions of energies/attention of African governments and citizens from pursuing the AMV… due to competition between alternative and “external” frameworks for mineral resources governance and regional/sub-regional instruments” (Busia 2015, 14).

Canadian government funding also influences the content and practice of the institutions it funds through the different funding regimes it has put in place. The evaluation criteria and objectives laid out for funding programs incentivize organizations to develop proposals and strategies that further Canadian government objectives. The removal of funding, or non-renewal of funding, sanctions the activities of organizations that do not comply with the government’s development assistance objectives. Funding allocation in this sense acts as the “carrot and stick” in reorienting the work of development organizations. The Conservative government of Canada was explicit and public in its application of the incentives and sanctions to Canadian funding of development assistance, shutting down and cutting funding to NGOs and policy research
institutes that did not fall into line with the governments international priorities (Munro 2014; Voices - Voix n.d.) and provided opportunities for organizations that were willing to shift to, for example, working with and supporting mining companies and their CSR projects.\textsuperscript{15}

Canadian funding of think tanks provides both opportunities and challenges for development knowledge creation. Think tanks can increase development opportunities by critically interpreting, adapting and transforming models and best practices thereby supporting the expansion of the range of development models and options governments have access to, as appears to have been the intent of the AMV. But donor funding can also provide incentives to explore and validate one strategy or model over others thereby curtailing development options. To return to the example of local content, both enforceable and voluntary approaches could be consistent with the AMV and, in the interests of providing host governments with access to a wide range of policy options, both approaches should be supported in policy reform advice SSA governments receive. But Canada, as the lead funder of AMV think tanks, has oriented its funding towards support for one of these approaches – voluntary FDI-led strategies.

\textbf{Canadian Support for Global Mining and Development Policy Networks}

The Canadian government also influences mining policy diffusion and promotion through its funding of global policy transfer networks. Such networks provide a key venue for sharing of information among resource rich developing countries, but they are also permeable to the influence of powerful international interests such as mining TNCs. The number of

\textsuperscript{15} The Liberal government has as of February 2017 not made an significant changes in development funding, in terms of amounts allocated, objectives and to whom funds will be allocated, The Liberals have held public consultations but have not yet announced the policy outcomes of these consultations (S. Brown 2016; Nash 2017). To date, no change in orientation in the government’s support for TSX registered mining companies has been announced (Mazereeuw 2016; Ferreyra 2016)
intergovernmental organizations (IGOs) has been increasing dramatically, such that on average states belong to almost twice the number of IGOs as they did in the 1960s (Lupu and Greenhill 2011, 5). Empirical research indicates that “countries’ embeddedness in IGO networks is an important driving force for domestic policy convergence” more so than, for example, “direct trade connections” (Cao 2012, 412). IGOs “project their influence by providing a ground for socialization for states to exchange information and cultivate a sense of community” contributing to the neoliberal policy convergence in IGO network participant countries (Cao 2009, 1123). They are instrumental in the formation of international epistemic communities but they are also potential sites of contestation between the various interests such as, for example, capital exporting and FDI host countries in the establishment of norms and frameworks.

The Canadian government has been instrumental in policy development in the SSA’s mining industry through its establishment of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). In the follow-up to the Johannesburg Summit on Sustainable Development, the IGF was founded, to complement the ICMM, to challenge “the perception of mining as a threat to development” (IGF n.d.). The IGF was tasked with addressing the public policy component of rehabilitating and casting mining as a means to sustainable development (Buxton 2012, 5, 17).

As the only global intergovernmental forum for the mining sector, the IGF serves as a “venue for dialogue among its 55 member country governments, mining companies, industry associations and civil society” with the objective of “enhancing the contribution of the sector to sustainable development by providing governments with a multistakeholder dialogue platform in order to discuss the opportunities and challenges faced by the sector” (IGF n.d.).
The IGF has become a major thrust of Canada’s efforts to support mining reforms in Africa. In 2005, Canada and South Africa, the two largest sources of investment capital for mining in SSA (NRCan (2006) as cited in Bonnie Campbell 2008b, 374), facilitated the founding of the organization. Canada has been since its inception, and continues to be, the only source of operational funding for the organization (IGF 2016a). The IGF was initially housed within the Canadian International Development Agency (CIDA), the agency formerly responsible for the delivery of Canada’s development assistance, and has recently (2015) being transferred to a Canada-based NGO, the International Institute for Sustainable Development (IISD), where its program budget continues to be fully funded by the government of Canada (IGF 2016a; personal correspondence IGF Sept. 2, 2016). This dissertation discusses the work of the IGF before the IISD took over the administration of the IGF.

African mining and development issues have been a major focus for the IGF since its founding. Ninety percent of its membership is comprised of developing countries, with SSA countries representing 70% of the IGF’s developing country members when it was created. Currently SSA countries continue to represent the majority of IGF developing country membership (IGF 2016b).

IGF has been identified as being less successful when compared to the mining industry’s initiatives such as the ICMM in moving forward the mining and sustainability agenda (Buxton 2012, 11, 17). This is an indication of the challenges faced by non-industry stakeholders in moving forward the policy side of mining and sustainability initiatives (Buxton 2012, 24) in the face of scepticism and resistance on the part of citizens and CSOs.
It is also likely a consequence of the diversity of governments that make up IGF membership, for example between mining capital exporting countries and FDI host countries, in the formulation of a mining policy framework acceptable to most IGF members. The IGF is comprised of diverse, unequal and not always compatible mining interests. Canada, for example, is home to many of the world’s junior exploration companies, while the UK is home to some of the world’s largest producing mining companies. South Africa has a well-developed diversified mining economy, which includes some of the Africa’s mining giants and an advanced mineral processing and supply and services sector. The Netherlands is the second most preferred jurisdiction for extractive industry companies to locate subsidiaries for reasons of ‘tax management’ and secrecy (Mathiason n.d., 22–24). The majority of IGF members are developing countries seeking to balance the challenge of attracting investment in the mining sector with generating domestic benefits from the exploitation of their resources. Generating agreement on policy recommendations is likely time consuming (evidenced by the time taken to establish the Mining Policy Framework, discussed below, as compared to more homogeneous industry membership organizations such as the ICMM (Buxton 2012, 11)).

The mining industry plays a significant role in IGF activities, for example through organizational “partners” such as the ICMM, the World Economic Forum (WEF), the World Gold Council and the Columbia Center on Sustainable Investment (IGF 2016c). Member country “government delegations” can include mining industry lobby groups (IGF 2013, 3). Mining industry representatives are regular presenters at, and sponsors of, sessions and networking events for industry and government ministry officials (see for example IGF 2014). IGF events are cohosted with industry-led organizations, such as the WEF, and staged in the
context of major global industry meetings such as the annual PDAC meetings in Canada and the Mining Indaba in South Africa (IGF 2016a, 2016c).

The role of the mining industry in IGF affairs and decision-making appears to be an area of ongoing debate. Some have sought to secure an official role for the mining industry in the IGF as the “Industry Advisory Committee (IAC)” and as “Official Observers (IGF 2014, 15). This has raised concerns about the autonomy of the IGF from the mining industry in, for example, the Annual General Meeting discussions regarding changes to the IGF’s organizational structure. According to official background documents “having industry representatives as official observers brings more defined institutional linkages between the IGF and the private sector. This could be perceived as conferring preferred status on private sector entities. Is this acceptable to members?” (IGF 2014, 17). Both the motion for the formation of an IAC and for Official Observers status were introduced at the 2014 annual members meeting but have yet to be formally adopted by IGF membership (IGF 2014, 15–17; personal correspondence IGF Secretariat 2016).

The Canadian government also encourages and funds events that bring governments, companies and some CSOs together as part of less formal but nonetheless influential networks that contribute to a shared policy orientation. The Canadian government organizes panels at industry trade shows such as world’s largest mining convention put on by the Prospectors and Developers Association of Canada (PDAC), a lobby organization for Canada’s mining industry. The Canadian government, the WEF and PDAC sponsor an annual PDAC conference on Extractives and Sustainable Development highlighting, according to the federal government, “continued Canadian leadership in engaging the private sector in development” (Global Affairs Canada 2015). The Canadian-funded AMV implementing think tanks CIRDI and AMDC also
sponsor, and participate in, PDAC panels that “unite international governments, academics, NGOs and industry” (CIRDI 2014a). The PDAC convention includes IGF’s regional conference also co-sponsored by WEF and PDAC (IGF 2016d). The IGF’s annual members’ meeting includes launches of industry promotional materials by lobbying organizations (World Gold Council 2014) and panels hosted by ICMM. In general, half of the presenters at these events are from the mining companies (See for example ICMM 2014; Government of Canada 2015) (see for example F. A. T. and D. C. Government of Canada 2016; ICMM 2014).

Some of Canada’s NGOs also participate in these broader industry sponsored networks. A number of Canada’s largest mining companies and development NGOs, many of whom work with the industry’s CSR initiatives that are funded by development assistance funding, have come together to form the Devonshire Initiative (DI) (Devonshire Initiative 2016b). The DI seeks to “develop a constructive space in which stakeholders can discuss complex problems facing mining and development, identify common opportunities, and develop innovative on-the-ground collaboration” (Devonshire Initiative 2016a) The Canadian government also participates in DI events and the DI and its members participate in various mining policy forms (Devonshire Initiative 2016c).

These events provide information sharing and networking opportunities for government officials and politicians, the mining industry and NGOs. For non-governmental and intergovernmental organizations, such as IGF, AMDC and CIRDI the events could be perceived as providing an opportunity to influence policy development. For the mining industry it provides informal information sharing and networking opportunities in a political environment where the official lobbying of government officials is increasingly regulated and restricted. They also provide the industry lobbying organizations such as ICMM with opportunities to have “a
collaborative international conversation” with non-industry organizations on “responsible resource management” (CIRDI 2014a).

For both interests, interaction and information sharing contribute to developing common understandings of mining and development. In effect, these network events establish the contours of what are legitimate conceptualizations of the challenges and what are deemed viable solutions – a common discourse and orientation that ultimately nurtures what become ‘best practices.’ A review of conference agendas, presentations, and policy frameworks indicates that policy options such as nationalization of extractive industries, restricting the use of tax havens by the extractive sector, curbing capital flight and tax avoidance by mining companies or limiting the export of unprocessed commodities and resource rents by investors, are seldom the focus of constructive policy discussions (Government of Canada 2015; ICMM 2014; IGF 2014).

**IGF Mining Policy Framework**

The section examines the IGF’s Mining Policy Framework (MPF) as an indicator of the influence of Canadian funding on multilateral mining and development policy networks. Here the premise is, as discussed above, that the mining and development model as promoted by Canada, is based on FDI-led mining strategies that curtail the use of local content requirements and mandatory development measures in general, as evidenced by Canada’s FIPAs. This section assesses how the MPF addresses these measures in the context of, on the one hand, calls from the AU for state-led industrial development policies, and on the other hand, the promotion by Canada of a mining and development model that seeks to restrict the use of industrial policy tools.
According to its authors, the Framework is “a compendium of activities” IGF members have “identified as best practices for exercising good governance of the mining sector promoting the generation and equitable sharing of benefits in a manner that will contribute to sustainable development” (IGF 2013, 4). It claims to provide “concrete objectives and processes,” but in practice it provides broad non-controversial aspirational principles that provide little in the way of specific policy mechanisms whereby host countries can generate development benefits beyond providing conditions to attract and support FDI and to “consult with communities” (IGF 2013, 7). There are no suggestions as to how specific the community plans should be or what enforcement mechanisms, if any, should be considered to ensure company compliance. There are, for example, no recommendations that governments consider requiring, similar to South Africa’s Mining Charter, that a specific portion of a mine’s economic inputs and workers be locally sourced.

IGF’s membership, composed of directors of national mining departments the majority of which are developing nations is a group that would be expected to maintain and protect regulatory space for governments. Yet the Framework provides surprisingly little detail on the range of policy options governments should consider, nor does it address the more contentious issues between host governments and mining companies.

The Framework is built on the industry promoted FDI-led model. The Framework is based on best practices in mining and development generated during the commodity price boom indicating that it reflects practices that were in place while mining regimes that were still based on Washington Consensus FDI-led policy framework in SSA (Jacobs 2013) – a framework that has, as noted above, been largely rejected as ineffective. The Framework is said to have “universal application” (IGF 2013, 6) and thereby does not distinguish between developing and
developed countries. The “best practices” of mining in Canada are of equal relevance to the experience of developing countries. We have no way of knowing the basis of the Framework given that there are no indications as to the criteria used to assess which policies were deemed as “best practices.” The Framework does not distinguish between, for example, LDCs and industrialized economies or between mining FDI host and home countries, leading to the conclusion that the Framework does not accept that the development policy needs of LDCs are different than those of industrialized economies.

Retaining the ability to implement local content requirements remains a critical issue for FDI host countries (Johnson 2016) especially given the curtailment of the some these development tools by international trade and investment agreements (Kumar 2005). Yet the MPF does not address or make recommendations related to local content requirements. Instead of performance requirements, the Framework notes that it is the responsibility of governments “to provide supportive legal and fiscal environment so that the socio-economic plan developed by the permit holder and approved by the government includes the promotion of opportunities” (IGF 2013, 32, 33). That is, the onus is on host governments to put in place conditions that make it sufficiently attractive for companies to include local hiring and procurement in their plans, which are required and subject to review but not enforceable.

Also absent from the Framework are active measures to develop economic linkages through the beneficiation of the commodities extracted before being exported - a key objective of the AMV. Beyond noting its desirability, little is presented in support for economic linkages related to the procurement of local supplies and services. It notes that creation by mining companies of local business linkages should be “driven by real market needs and nurtured by government policies” (IGF 2013, 34) and that this “needs also to be supplemented by
encouragement and understanding by the mine operator” in developing a “general environment of supportive of entrepreneurship” (IGF 2013, 34).

While legally binding performance requirements receive little attention, ensuring the property rights of mining companies does receive significant attention. According to the Framework when there is no socio-economic “net gain for society” from mining, it is due to “a failure of the legal environment and the permitting process” (IGF 2013, 33), thereby assigning the responsibility for insufficient net gain for society to the host country because it has not provided sufficiently supportive legal rights, specifically in terms of “land tenure” and “contract law” regimes and rights (IGF 2013, 24) – rights that are a key investment criteria for mining companies operating in developing countries (Morgan 2002).

Regulatory enforcement mechanisms are only explicitly recommended in the MPF in terms of occupational health and safety (IGF 2013, 10, 32), while social and economic development and environmental measures are acknowledged they are not allocated the same regulatory clout. This is troubling omission, given the findings of a 2015 IGF report on the readiness of three member countries, Dominican Republic, Uganda and Madagascar, to implement the MPF. It concluded that the weakest area of readiness was in “socioeconomic benefits optimization” (Crawford 2015, 3). The policy and legislation in these host countries the report found contained no obligations for the mining companies to invest in local development, instead there was a reliance on voluntary socio-economic contributions by mining companies in all three of the countries reviewed (Crawford 2015, 6). The report found that the absence of such legislation means that mining communities and the host country see minimal economic benefits from the mines operating in them (Crawford 2015, 6).
While the MPF does not explicitly preclude country and state-led strategies, it certainly does not recognize, let alone, promote and protect alternatives to FDI-led strategies that are being called for by SSA resource rich countries. The ambiguous nature of the best practices in various mining frameworks, such as the MPF, could be interpreted as providing governments with policy flexibility to implement “best practice” principles. But the ambiguity can also be an indication of the influence of TNCs and their home countries. That is, where key issues in “best practice” frameworks are left vague and indeterminate, they are left to be interpreted and resolved outside of a multilateral institution where, in the case of the IGF, developing countries represent a majority of members, possibly providing them with more clout in decision making. In the case of bilateral negotiations, the interpretation is subject to the power asymmetries of the broader international political economy E of the global mining industry, a process over which investors, and capital exporting and donor countries wield greater influence, now with additional clout provided by the IGF endorsement as “best practice.” By leaving the interpretation of various contentious measures open, the implementation of Framework measures is interpreted within the norms and assumptions of the prevailing, indeed hegemonic, framework, which as we have seen above is fundamentally FDI-led.

Another measure of the nature of the MPF, in the context of concerns with the declining development policy space due to international investment agreements, is the degree to which the framework is compatible with Canada’s model BIT which, as noted above, is at the forefront of providing foreign investors with minimally regulated access to host country mineral resources and in enforcing increased investor rights. While some SSA based studies and commentaries have cautioned governments on the potential impact of BITs (African Minerals Development Centre 2014, 159, 164; AU, ADB & UNECA 2011, 32–33; A.M.A. Pedro 2012), the MPF
makes no mention of the impact of international investment agreements on development policy options. Indeed, another indication of the FDI-led orientation of the MPF is that while Canada’s BITs are not compatible with the AMV, due to the AMV’s call for performance requirements (Jacobs, chapter 2 above), Canada’s model BIT is entirely compatible with the MPF, such that the only regulatory areas that are specifically protected from the BIT provisions are those related to health, safety and the environment, similar to those regulatory areas specifically promoted by the MPF.

The MPF provides little substantial policy advice related to how SSA governments can capture a greater portion of the resource rents generated through the extraction and export of their non-renewable resources. The “best practices” follow closely the industry recommendations, as promoted, for example, by the ICMM (ICMM 2009), but do not address some of the key challenges faced by SSA governments. For example, SSA’s resource sector is “especially prone” to illegal financial flows and tax avoidance (High Level Panel 2015, 56), mainly through trade mispricing in the extractives sectors (High Level Panel 2015, 97), with Canada and other IGF members being among the “main recipients” of illegal financial flows from SSA’s extractives sector, yet the MPF does not acknowledge, nor provide recommendation that would address, these issues. Nor does the framework address recommendations from the “Minerals and Africa’s Development” report published by the AU and ECA, such as, the use of windfall taxes and competitive bidding mechanisms which allocate mining concessions to mining companies that provide the most development benefits and “a capital gains tax on any mineral property sold before mining operations begin” (ISG 2011, 95, 3)(UNECA and AU, 2011, p. 95).
The framework allocates significant development responsibilities to host governments with few obligations placed on mining companies. In this sense the IGF policy advice could be interpreted as bestowing a greater role for host states in promoting development. But the essence of this development role, in line with the neoliberal policy framework, continues to be as support to investors and TNCs in, for example, providing the enabling conditions for FDI to establish profitable operations, such as a property rights and social and physical infrastructure. There is no concurrent promotion of the power of states to extract benefits from the activities of TNCs; indeed the ability of states to generate benefits is diminished due to the reduced range of “best practice” sanctioned policy tools prescribed in official development discourse and due to curtailment of development policy options by international trade and investment agreements. This is consistent with what others have observed in terms of increased responsibilities of states. As Fine has noted.

whilst the Washington Consensus deployed neo-liberal rhetoric not to withdraw state intervention but to use it on behalf of select interests, usually those of private capital in general …, so the PWC [post-Washington consensus] provided a rationale for such discretionary, piecemeal intervention, and on a broader economic and social terrain (Fine 2010, 68)

Given the eroded capacity of host states in the wake of the Washington Consensus, the focus of Canadian and IGF sanctioned development strategies has become to develop the capacity of states to provide the basic functions needed for the effective operations of mining FDI. Development policies are reduced to administering investments, often funded by external donors as is the case in the Canadian model, in building ‘human capital’ and infrastructure in support of the mining enterprises. The state is also tasked with building the legitimacy of mining through the administration of minimum health, safety and environmental standards.
Best practices and Technical Solutions

The generation and diffusion of best practice models and frameworks is at the heart of the discourse of global policy networks. They are promoted as being pragmatic self-evidently effective solutions to development challenges operating beyond the fray of particular interests. In practice they are highly subject to interests. They bear the “imprint of the interests involved in producing them” (Temenos and McCann 2013, 344). They carry with them the assumptions, rationalities, conceptions of problems, and a range of policy options that are compatible with these assumptions. As Peck notes these best practice models decisively pre-empt what would otherwise be variegated, locally specific debates around the causes and cures for poverty, further depoliticizing the policy making process through the circulation of prefabricated solutions, traveling in the disarming, apparently ‘neutral’ and post-ideological form of evaluation technoscience and best-practice pragmatism.”(Peck 2011, 177–78)

The diffusion of models and frameworks legitimized by notions of ‘best practice’ serves to depoliticize what is an inherently political exercise - the selection of one development model over another and accordingly to which interests the benefits flow. Countries and communities struggling to gain an increased portion of resource rents generated by the extraction of non-renewable resources, whose production and export are overwhelmingly controlled by powerful foreign interests is profoundly political (Bonnie Campbell 2013a, 235). The attempts to present mining policy development reforms as a technical rather than a political struggle close this political space and sets the parameters as to what are legitimate policy options and where CSO and communities and governments can insert themselves into the policy making process.

Support for capacity building projects is subject to similar tensions. Rebuilding LDC states, after decades of IFI-sponsored neglect, is crucial. But IFI driven structural adjustment
policies also prescribed a reduced role for states relative to FDI (Biersteker 1990) based on the Washington Consensus model. Effectively rebuilding state capacities related to mining must be based on the selection of a model appropriate to sustainable development and poverty reduction (Bonnie Campbell 2012, 140). The selection of mining models is not a technical issue. Furthermore, implementing capacity building programs without addressing issues of which model is selected decreases the likelihood that structural problems will be addressed and could thereby perpetuate and exacerbate these structural issues by entrenching the existing FDI-led models and approaches.

The increasing role of global policy networks increases the influence of non-state actors over domestic policy development and decision making. This can contribute to “fast policy” making, in that it speeds up the pace of policy learning in the absence of strong institutional capacity and domestically led policy learning experience (Peck and Theodore 2015, 3–4). At the same time these global policy networks are increasingly exposed to private corporate influence, directly through the industry’s participation in the networks and indirectly through the participation of mining capital exporting governments and the NGOs and public institutions they fund.

This means that not only are resource-rich country government officials exposed to fast policies as technical capacity building in these networks, but they are also influenced by the hegemonic models within these institutions - which, in the case of mining networks, are industry-led models. The preclusion or screening out of some models in these forums can contribute to a relocation of decision-making and the conception of problems and solutions from host countries to networks which are more permeable to the influence of TNCs and foreign investors. This
challenges the country-led generation of mining models and reduces the accountability of mining and development decision making to communities and host country citizens.

Conclusion

Canada as a major mining capital exporting country has significant clout when it comes to the reform of mining regimes in SSA. The question raised in this paper is whether Canada is using this influence to support SSA generated mining and development strategies. The Canadian government has been clear in its intention to promote its domestic mining interests by participating in the reform of mining codes in Africa, but the FDI-led model which Canada has used to justify its policy interventions is simply not supported by empirical studies and is inconsistent with broader re-evaluation of the role of FDI in development amid calls for industrial policies and greater country ownership over development.

This paper has shown that Canada is implementing a donor-led approach in shifting its development assistance from a focus on poverty reduction to subsidize Canadian mining companies CSR projects. These donor and FDI-led approaches challenge the principals of the Paris and Accra declarations on development assistance which state that developing countries should “determine and implement their development policies to achieve their own economic, social and environmental goals” (OECD 2008, 16).

The seemingly inherent external orientation of foreign investment in mining means that host countries seeking to generate sustainable benefits need to complement their acceptance of FDI with policy tools, options and enforcement mechanisms which are suitable to harnessing FDI to ensure it benefits the host economy. This sets up a possible tension between a developmentalist state and foreign investors. The point this paper has made is not that
interventionist policies are inherently better than other options, such as CSR-based initiatives, but that it is important, given that the track record of investment-led mining, that resource rich developing countries have access to a broad range of policy options. Historically successful practices of development have been driven by states accessing a wide range of development policy options. For industrialized economies to use their economic power to reduce these options continues the historic strategic subordination of developing economies to the interests of leading capital exporting countries (Chang 2003).

Canada is also engaging in SSA policy reforms multilaterally through the financing of institutions related to the implementation of the AMV and the related development of global policy networks. Such networks have become increasingly important in the development of state polices and are decentering domestic policy decision-making. I have sketched Canada’s extensive involvement in these networks but ultimately it is difficult to open the ‘black box’ of policy model development within these institutions. This paper has characterized the contextual forces at play as policy networks seek to rehabilitate mining as a contributor to development. I have argued that these networks are subject to the influence of global mining interests and reduce the policy space for domestically generated mining development strategies. Most of the policy initiatives described in this paper were initiated during the Harper government. To date the Trudeau government has not provided any indications that it will pursue a significantly different orientation, although the minister of international development has initiated a review of Canada’s foreign aid policy, including the support provided to mining companies in aid partnerships (Canadian Press 2016).

The relocation of policy development to global networks facilitates fast policy learning but it also, especially in mining, poses challenges. The tension for mining companies seeking to
build their local legitimacy is that if policy learning occurs too far removed from the local mining experience, it will be less able to address the concerns of local communities and CSOs particularly if it removes the ability of communities and host governments to hold accountable, and extract benefits from, the mines. The ongoing reports of conflict and disruption in mining affected communities and regions and the resistance to the development of new mining projects indicate that this is indeed an unresolved problem for the mining industry.
**Dissertation Conclusion**

The overall argument presented in this dissertation is that in its promotion of policy reforms that provide and protect investment opportunities for TSX registered mining companies, the Canadian government is undermining the ability of host countries to generate industrialization and economically sustainable development. FDI-led strategies orient host economies and institutions towards promoting, facilitating and protecting opportunities for global capital; in effect these strategies tie host countries’ economic futures to the profitable operations of foreign investors and TNCs, both domestically and globally. Furthermore, in the context of the failure of the Washington Consensus, the role of states has been expanded in development policy but only to the degree that it supports these FDI-led strategies. By focusing so centrally on promoting FDI-led strategies, Canada’s interventions in mining and development policy reforms are at the forefront of promoting neoliberalization in resource rich SSA – that is, promoting the further extension and entrenchment of market rule and commodification.

Chapter 1 contributes to the overall thesis by presenting the FDI-led mining and development model that is critically examined in the other chapters of this thesis and which is used to assess the policy model that informs Canadian mining policy interventions in SSA. The chapter provides an overall orientation for the challenges and possible alternative policy directions in mining and development in SSA including the need for an increased role of states relative to FDI in mining. The second chapter contributes to the thesis by introducing Canada’s role as global host via the TSX, to international mining exploration capital. It argues that the negotiation of BITS with eleven SSA governments is a clear example of Canada’s promotion of the FDI-led model in Canadian mining policy advice to SSA governments and shows how the
implementation of these BITs will undermine SSA governments’ efforts to promote economic development via mining. Finally, chapter 3 shows how the institutions and networks funded by Canada’s development assistance contribute to the diffusion of mining policy best practices that are based on the FDI-led model. By doing so these institutions, it is argued, do not promote nor protect government policy options that are essential, for example, to the construction of developmental states and a shift of power from foreign investors and capital exporting countries to FDI host governments. Both chapters 2 and 3 provide insights into characteristics of Canadian international mining interests. In chapter 1, I examined the limitations of FDI-led approaches informed by the Washington Consensus and applied in the World Bank’s 1992 *Strategy for African mining*. The investment-led development strategy left many SSA economies dependent on commodity exports and stuck in a poverty trap, with low levels of development (UNCTAD 2005, 29, 36). Strategies to attract investment through generous tax regimes resulted in low revenue flows from mines. Moreover, in order to generate significant revenues, governments had to increase the scale of mining by providing incentives for further exploration and development of new mines. The result has been to tie the mineral rich economies of SSA to a long-term, low revenue, low value added, and externally oriented development strategy dependent upon foreign investment.

The external orientation of foreign investment in mining means that host countries seeking to generate sustainable benefits need to complement their acceptance of FDI with policy tools, options and enforcement mechanisms that are suitable to harnessing FDI to ensure it benefits the host economy. Historically successful practices of development have been driven by states accessing a wide range of development policy options. The failure of the Washington
Consensus has led to calls from SSA states and civil societies for a new development paradigm and a questioning of the FDI-led development models.

Recent African initiatives have called for a fundamental rethinking of the FDI-led export dependent development model for the mining sector. The Africa Mining Vision (AMV) and the Report of the International Study Group (ISG) to the UNECA have called for the extraction of the continent’s mineral resources to play a transformative role, that is to move the “mining industry beyond a focus on extracting and exporting raw materials and sharing the resulting revenue to making it a strategic part of a process of industrialization and structural transformation” (African Union 2009; ISG 2011, 2). A central component of these strategies is the revived role of states in extractives-led development. The African Union has called for a redefining of the role adopted by African states in order that they may contribute to expanding development options beyond the current FDI-led model and to supporting increased economic diversification and productivity (ISG 2011, 82, 96).

The point this dissertation has made is not that interventionist policies are always and inherently better than other development policy options, but that it is important, especially given that the track record of FDI-led mining, that resource rich developing countries have access to a broad range of development policy options and the ability to enforce them. The issues raised by the experience of the “neo-extractivism” development strategies adopted by a number of “New Left” governments in South America during the 2000 commodity boom point to possible options and obstacles for mining and development in SSA. The neo-extractivist model, while continuing to rely on foreign investment, is oriented to generating benefits by focusing on capturing a greater share of resource rents through initiatives that sought to “strike a better deal” with mining companies and through revenue generating regulatory regimes (Veltmeyer 2013, 87).
The evidence indicates that as long as the commodity price boom lasted, government mining regimes across Latin America successfully generated sufficient revenue from the extractive industries to invest in social programs that contributed to poverty reduction throughout the region (North and Grinspun 2016, 1496). In this sense these revenues contributed significantly to the implementation an “inclusive development” model (ECLAC 2016, 143) in Latin America. But neo-ex extrativism has also contributed to increased concentration of capital, environmental degradation and social conflict within communities (North and Grinspun 2016, 1497–98; Veltmeyer 2016, 781). Neo-extrativism’s reliance on attracting FDI assigns a “central role to powerful multinational corporations that are intent on blocking any substantive structural change” (North and Grinspun 2016, 1496). States have become key players in facilitating the access of foreign investors to mineral deposits and this has, in the context of the social and environmental disruption associated with the mining, and the ensuing resistance by some communities, led to situations in which states sided with mining companies in struggles over land rights and the environment (Veltmeyer 2016, 781). The neo-extrativist experience in Latin America illustrates some of the challenges and contradictions associated with relying on FDI in mining as a central component of a national development strategy. There appears to have been little evidence of what can be called developmentalist industrial policies (North and Grinspun 2016, 1487) instead governments relied on the redistribution of revenues generated by high commodity price boom. The reliance on redistribution, rather than economic development polices is, according to North and Grinspun, influenced by the reduction of policy space by trade and investment agreements governments that prohibit the implementation of industrial development policies (North and Grinspun 2016, 1494). The volatility of commodity prices and the non-renewable nature of mineral resources limits the long-term the viability of a long-term
resource rent redistribution strategies. Ensuring that mining contributes to economically sustainable development will require that engagement with mining FDI moves beyond solely relying on capturing a greater potion of rents to include initiatives that increase the capacity of governments to implement developmentalist policies such as the use of performance requirements and local content. In its engagement with the policy reforms processes in Latin America, the evidence indicates that Canadian government has not encouraged the emergence of such policies (e.g., Veltmeyer 2013, 85–86).

Canada’s rise, over the past 20 years, as the global home for mining exploration capital and therefore a key source of capital for unlocking SSA mineral potential, has provided the country with considerable influence over the reform of SSA mining and development policies.

In chapter 2, I show that Canada is using its bargaining power to expand foreign investor opportunities, protections and rights in resource rich LDCs in SSA through the negotiation of some of the world’s most economically liberalizing BITs, thereby limiting development policy options for these SSA countries. Allee and Peinhardt’s empirical study of the BIT data leads them to the conclusion that “the content of treaties do not arise randomly or represent a functional response to a contracting problem; instead, they reflect deliberative strategies on the part of powerful states” and reflect the preferences of these economically powerful states and their domestic interests (Allee and Peinhardt 2014, 82). As shown in the evidence presented in this chapter, this is the case in Canada’s BIT negotiations with SSA governments.

Canada’s attempts to increase investor rights run contrary to what UNCTAD has described as the emerging need for a “new generation” of investment policies and agreements. These new models for investment agreements flow from the recognition that the protection of investors’ rights must be balanced with measures that provide adequate policy space for
developing nations (UNCTAD 2013c). UNCTAD calls for agreements that leave developing
countries with the capacity to “integrate investment policy in overall development strategies,
enhance[…] sustainable development as part of investment policies [and] balance rights and
obligations of States and investors in the context of investment protection and promotion”
(UNCTAD 2012, 106). Canada’s BITs do not appear to facilitate the emergence of this balance.
Indeed, UNCTAD’s Investment Policy Hub, which measures the content of international
investment agreements on a scale ranging from “the most investor friendly” to “options granting
more flexibility to the State,” indicates that Canada’s BITs are heavily weighted towards being
investor friendly (UNCTAD n.d.).

Canada’s BITS have implications for SSA beyond the direct impact on BIT partner
countries. Governments compete with neighbouring countries with similar resource endowments
when seeking to attract exploration investment and this increases the pressure for these countries
to negotiate a BIT and to provide concessions to FDI (Elkins, Guzman, and Simmons 2008,
298). In this sense the influence of Canada’s economic liberalization initiatives may extend
beyond the countries with which it has negotiated a BIT, as neighbouring countries face
pressures to liberalize their economy to match the reforms implemented in the countries with
which Canada has signed a BIT. Canada’s interventions in SSA mining policy reforms also
undermines broader regional initiatives, such as the AMV that has called for caution in signing
BITs that limit governments’ capacity to follow country and state-led development strategies.
These factors support the conclusion that Canadian mining policy reform initiatives in SSA
resource rich economies can, if implemented, contribute to neoliberalization in SSA.

As I show in chapter 3, Canada is also using its clout to create and fund institutions and
policy networks that promote “best practice” models that are compatible with and support
Canada’s BITs and the overall FDI-led model. I have shown that the models promoted by the institutions that Canada is funding do not promote access to a broad range of development policy options. They provide no clear support for policies that include strong proactive state intervention in mining to generate socio-economic development benefits. I have sketched Canada’s extensive involvement in these networks but ultimately it is difficult to open the ‘black box’ of how policy models are developed within these institutions. I have analyzed the contextual forces at play as global mining policy networks seek to rehabilitate mining as a contributor to development, arguing that these networks are subject to the influence of global mining industry interests and reduce the policy space for domestically generated mining development strategies. These observations point to the need for further research through, for example, interviews with participants in mining policy networks to assess the influence of private mining interests and FDI home countries in the development of international mining policy “best practices.”

The justification for Canada’s approach is that taking Canada’s advice in mining and development policy reforms will increase mining FDI, thereby, it is claimed, improving economic development prospects. But the links between FDI-led strategies and increased FDI are far from conclusive, and even if the implementation of Canada’s recommended reforms increases foreign investment, under the conditions of a Canadian BIT host countries would lack the policy tools to facilitate development benefits from mining.

This dissertation has also shown that Canada is implementing a donor-led approach in shifting some of its development assistance from a focus on poverty reduction to subsidizing Canadian mining companies’ CSR projects. These donor and FDI-led approaches undermine Canada’s commitments to the principals of the Paris and Accra declarations on development
assistance which state that developing countries should “determine and implement their development policies to achieve their own economic, social and environmental goals” (OECD 2008, 16).

Canada’s FDI promotion strategy in mining is consistent with the historical record of advanced industrialized economies in “kicking away the ladder” for developing countries by seeking to deny them the policy options that have historically proven essential to industrial development and using their economic power to subordinate later developing economies to the interests of leading capital exporting countries (Chang 2003).

The observations contained in this dissertation point to an important research agenda. Further research is needed to better understand the changing characteristics of the TSX registered companies in terms of size of operation and capitalization, the degree to which they are engaged in exploration or production and the role of transnational capital in TSX registered mining companies. The economic linkages between the TSX mining companies with foreign operations and the Canadian economy also needs further empirical research. We need further research into the changes in Canadian political economy and the mining sector. To what degree is the increasing openness to, and participation of, transnational capital in the Canadian mining sector influencing the policy orientation and limiting the space for significant change of direction in Canadian international mining policy.

Research is also needed on strategies that Sub-Saharan African governments can employ to generate domestically driven development strategies and expand development policy space in the context of capital exporting countries’ promotion of increasingly restrictive bilateral investment treaties.
TSX registered mining companies rely extensively on tax havens. For example, 66% [13 of the 18] “noteworthy” exploration projects identified by the US geological survey for 2014, in Sub-Saharan Africa were TSX registered. 90% [12] of these TSX companies made use of tax havens as part of their corporate structure. Further research is therefore needed into the corporate structures that mining companies use to avoid taxation in both Sub-Saharan Africa and Canada. This research is essential if we are to gain a better understanding of where resource rents generated by the exploitation of Sub-Saharan African resources flow and how they can effectively be harnessed to ensure a greater portion stays within the continent to support infrastructure, social expenditures and private investment.

Further research on these issues would (if possible) benefit from the generation of additional primary research data based on in-depth interviews with knowledgeable participants in the policy process in order to gain a deeper understanding of the thinking and the influences behind the Canadian government’s approach to mining policy reform in SSA. The change in Canada’s federal government in 2015 could open opportunities for interview based research with government officials.

Most of the policy initiatives described in this dissertation were undertaken during the Harper government. To date, although the minister of international development has initiated a review of Canada’s foreign aid policy, including the support provided to mining companies, the Trudeau government has not provided any indications that it will pursue a significantly different orientation (Canadian Press 2016).

This does not bode well for prospects for industrial mining to contribute to sustainable economic development in SSA. The removal of active state-led development policy options through FDI-led strategies leaves resource rich African LDCs in a more difficult position as
countries will, for the most part, be left to rely on volatile mining taxation revenues while competition between nations will continue to keep taxation rates, and the associated revenue, low. In such a world, revenues can only be significantly increased by increasing FDI and by bringing more mines into production so that resources are extracted ever more rapidly and intensively, inevitably increasing social and environmental disruption. Furthermore, governments will be hampered in their efforts to implement regulations to protect communities and the environment due to the risk of ISDS claims. These factors will further undermine the legitimacy of mining as a catalyst of sustainable development and increase the contestation of mining by communities and civil society organizations.
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