The Resource Boom and FDI in Africa:
new players, new opportunities, a new agenda for development
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Columbia University

Conference Summary[1]

The Sixth Columbia International Investment Conference, on "The Resource Boom and FDI in Africa: new players, new opportunities, a new agenda for development" brought together 280 participants from 34 countries, reflecting a wide range of stakeholders, including high-level government officials involved in policy making and implementation, corporate executives, investors, academics, and civil society. This interdisciplinary group of experts set out to understand how this time around African peoples could truly profit from their resource rich lands by outlining the main obstacles and possible avenues for improvement. Since the conference was forward-looking and policy-oriented, this summary highlights the key policy orientations and implications discussed across the four panels. The discussion was "Davos-style," in other words, without formal presentations, in order to foster a productive and dynamic discussion among all participants. The conference program sets out the detailed background and issues raised by each of the four panels. Some of the main points advanced and discussed at the conference are summarized below:

1. **We need to promote inclusion of the new players in the dialogue**
The landscape of FDI in Africa has dramatically changed; China today accounts for 40% of inward FDI flows into Africa. It was observed that much of the investment by new players (including many emerging markets) is achieved through bilateral negotiations with the host government. There was widespread agreement of the need to engage these new players in multilateral dialogue and investment forums, as well as to seek the input of academics from China in multi-stakeholder forums, such as the Conference. This is to ensure that multilateral guidelines and standards framed with the goal of promoting sustainable development do not ignore the perspectives of these important new investors who will have an increasing share of investment in Africa, but rather have the buy-in of these investors.

2. **Transparency is in the mutual interests of countries and companies**
The discussion highlighted that corruption remains a core challenge to sustainable development, and is a particular problem in the extractive industries, partly as a result of the large rents associated with these mega-projects. It was observed that corruption happens on all sides and can take different forms; for example, by home countries that lean on host countries to take in favored corporations, and by host government officials at the national, local and village levels. A key area of agreement was that transparency of contracts is key, as a primary tool to fight corruption and to help ensure that countries benefit from investment in their resources.

   Many participants also noted that transparency is in *companies*' interests, as well. If communities and civil society are aware of and understand the terms of a deal, including the allocation of risks and responsibilities, then a fair deal is more likely to be upheld by communities and subsequent administrations, decreasing thereby the political risk for the

[1] Summary prepared by Jacky Mandelbaum, Research Fellow at the Vale Columbia Center on Sustainable International Investment. Special thanks to Julien Topal and Perrine Toledano for their useful inputs.

companies. It was noted that in quite a number of cases, it is *governments* that are resistant to transparency, but some commentators pointed to the strong corporate opposition to domestic laws and global initiatives demanding transparency.

It was further noted that the Extractive Industries Transparency Initiative (EITI) now has 12 countries validated as "compliant." In addition, transparency requirements have been introduced into legislation passed in the US (Dodd-Franck) and the EU – although the Accountancy and Transparency directive has to still pass national parliaments as well as the European Parliament – requiring companies registered on the relevant stock exchanges to disclose information regarding payments made, on a project disaggregated basis. Some questioned, however, whether the SEC and the companies could muster the needed monitoring capacity to oversee the reporting requirements under Dodd-Franck. The EITI remains important, in that it includes companies not covered by the US and the EU legislation.

Governments like Liberia and Ghana have sought more accountability and transparency by making contract negotiations dependent on parliamentary approval.

3. Only national strategic planning and multi-stakeholder dialogue can ensure that FDI is leveraged for sustainable development

A significant area of agreement was that national strategic planning needs to be implemented by a central 'brain center' of government to ensure that resources can be managed for sustainable development. The consensus in discussions was that resources 'under the ground' must be transformed into human capacity 'above the ground' as well as infrastructure and that they should act as a catalyst to ensure that economic activity in the region extends beyond the particular project.

The need for participatory dialogue in investment planning was emphasized, so as to take into account the needs and garner the support of the population of the country. This is one of the main challenges given the high level of distrust by many local communities to foreign investment. The historical record of investor state deals shows that land of peoples like the Masai has been sold off as 'unoccupied land' on several occasions. Civil society has a role to play to ensure that local communities can have input on proposed deals and the country's strategic planning. A goal should be that free, informed consent is obtained from local community prior to entering into any deal affecting that community.

A view from government representatives and more broadly was that it is vital for a country to be fully prepared prior to entering into negotiations with investors. A regional forum was viewed as important in this regard, to promote dialogue among African leaders to share the lessons learned from previous deals and better plan integrated development. Regional dialogue is important also for the planning of projects, which are transnational, for example, water supply, rail, power, ICT and roads. This is especially a pressing issue for the many land-locked countries facing major infrastructure gaps. The Mano River Union between Guinea, Liberia, Sierra Leone and Ivory Coast could be an example of such a forum for regional dialogue and cooperation.

A requirement for a broad impact assessment, including impacts on human rights (see note 7 below for further discussion of this) and poverty reduction for the whole country (not the project alone), was suggested as a mechanism to promote development.

An overarching and key concern facing countries today is that rapid growth is increasing the demand for commodities, making depletion of many primary resources a core reality that must be anticipated and managed. Water scarcity is increasing due to climate change and surface run off. In addition, land and habitats are under threat as a result of deforestation, resulting in species loss. The point was made that despite the major impacts we are already seeing, we are only at the beginning of the impact that climate change will have on agriculture and food supply. These environmental and resource threats are serious threats for vulnerable communities in countries around the world, making it imperative that the cumulative environmental impacts of these investments are taken into account as part of the integrated strategic planning of governments.

4. Capacity building of governments and communities remains an issue

The need for capacity building was a recurring theme. Governments will have to develop capacity to manage resources well. Governments must be in a position to: screen investments, which are proposed; negotiate the terms of investment deals; and monitor and implement deals, ensuring that the appropriate checks and balances are in place. Governments must harness outside assistance in this regard and ensure that it translates into capacity, which remains in the country. A senior government representative from West Africa stressed on multiple occasions the various opportunities to tap into external expertise, either directly through NGO involvement or indirectly through subsidies to hire legal and financial experts. The complexity of mining contracts is so high that the hiring of world-class firms is advantageous.

Many stressed that host countries should not feel the pressure of a 'race to the bottom' in terms of attracting extractive industry investors, as corporations will necessarily come to where the resources are. This insight should be remembered by countries in contract (re)negotiations. A potential 'race to the bottom' is more of a concern and a reality for investments in land, as land is more readily available in Africa and countries compete with other countries in the region to attract investment. It is very important therefore that tools are put in place now to assist host countries in establishing a sustainable investment framework for investment in land.

The Chad-Cameroon pipeline was brought up as an example of a case in which securing the investment trumped all considerations of sustainability, turning over a significant share of the resource revenues to foreigners without lasting domestic benefits. In addition, there was discussion of the Mozal deal in Mozambique, where large fiscal incentives (tax exemptions) were offered to BHP Billiton by the government, over and above what was demanded by BHP, as the government felt that the incentives had to be offered in order to secure the investment. As a result, while the BHP Mozal plant is responsible for 70% of exports from Mozambique, there is little or no tax income from these exports (and employment generation has been below expectations), so the country's benefits from the investment are limited.

Accordingly, it was agreed that governments must be adequately prepared when starting negotiations with investors, and moreover, that mechanisms should be put in place for countries to benefit from the upside of investments, and to revisit the contract when it is clear that the terms of a deal are, or have become, unfair. For example, in Liberia all contracts provide for 5 year reviews by the investor and the government.

Communities also require increased capacity to enable them to understand terms of deals and individual rights, including, for instance, rights to land.

5. **FDI can and should be an opportunity to bridge the gap in infrastructure and linkages**

The now well-known Chinese resource-for-infrastructure deals (in which the Chinese concessionaire builds infrastructure in return for access to the natural resources) appear to be particularly attractive to governments for two reasons. First, they provide an opportunity to bridge the major infrastructure gap (ICT, power, transport), which is critical for development. Second, they are immediate responses to the governments' infrastructure needs, as the infrastructure is built up-front. With the traditional cash deals, governments need to wait for the resource rents to be collected to afford infrastructure financing but these rents are generally only seen in the advanced stages of long-term projects, after production ramps up, delaying potential infrastructure investments.

However, the topic showed itself to be highly controversial with some critics labeling these deals as 'concealed debt' and a 'non-democratic rip-off.' These experts stressed the need for governments to oversee the construction of infrastructure transparently (even using the EITI reporting tools) and in line with national plans, to ensure that the infrastructure meets the needs of the country in general and the local communities more specifically. As one participant observed, constructing 150 hospitals is meaningless without the human and physical capital to operate them. Where critical infrastructure is to be put in place, it was suggested that the contract should clearly spell out the respective rights and obligations in relation to that infrastructure, for example, how it will be paid for and who will be charged for using it.

6. **FDI and the importance of creating local linkages**

The importance of creating linkages between different industries was also agreed. Infrastructure built for the purpose of specific projects should be usable more broadly. Technology and skills transfer as well as the sourcing of local content should encourage the development of SMEs around large projects, but permit diversification so that industry created is sustainable after completion of the projects. Examples like the investment of Mozal/BHP Billiton in Mozambique have proven that promoting one industry without creating linkages does not lead automatically to sustainable development, as aid dependency and poverty have not been reduced in Mozambique. In Johannesburg, South Africa, linkages were created with different economic sectors, decreasing the relative importance of the mining sector. Lowering transportation costs for mining companies was mentioned as an important hurdle to creating local linkages in terms of local content sourcing. It was also emphasized that the creation of linkages requires multi-stakeholder dialogue.

It was suggested that these linkages should be provided for in the contracts for investment and even included in the feasibility study, allowing the governments to compare company plans and capacity to create and develop these linkages. The linkage programs also need to be well-implemented and monitored.

7. **FDI can be leveraged to promote sustainable agriculture**

There has been a huge expansion in investment in agriculture in Africa since 2008. In addition, there was an observation, based on a 2010 working paper by the Trade and Markets Division of

the Food and Agriculture Organization of the United Nations (FAO)[2], that this investment changed in nature, from market-seeking, where production arising out of the investment was intended to be sold on the domestic market, to resource-seeking, where investors are seeking access to the natural resources for their own country. The spike in commodity prices in 2007/2008 appears to have prompted countries that depend largely on food imports to acquire land in other countries where it is more abundant in order to secure supply. In addition, high energy prices led to investment in land for the production of biofuels. This increase in prices has led to an increase of 250 million people in the FAO's poverty statistics, since many African countries are food importers and Africans spend a large part of their budget on food.

While similar concerns arise, there was a comment that caution should be exercised in treating investment in agriculture in the same way as investment in mining. For one reason, mining investments are generally more long-term, have much higher sunk-costs and capital costs, and can generate high rents. A value chain analysis should be undertaken for agricultural investment in its own right, with consideration of models of small-scale farming instead of large scale investment in order to promote development. While small-scale agriculture was agreed to be better for sustainable development than large-scale agricultural investments, it was noted that while there is potential for small-scale mining to create local employment opportunities and linkages, it can create serious environmental hazards and fewer opportunities for sustainable development relative to the large, capital-intensive projects.

The discussion focused on the opportunity to encourage investment to support small-scale farmers in Africa. This would provide these farmers with access to technology which can stimulate more productive and more sustainable farming practices. There remains room for huge increases in productivity in farming practices in Africa, which could stimulate the creation of upstream and downstream linkages (including in agro processing and fertilizer production, for instance) to promote development. Divine Chocolate Limited, a British company which is 45% owned by a Ghanian farmers' cooperative, was provided as an example of the potential for investment in small-scale farming to stimulate development. The company grew out of local small-scale cocoa farmers that formed a cooperative to collect and sell cocoa for the benefit of the member farmers.

7. The home countries have a role to play: Global guidelines and norms

It was noted that important progress has been made with respect to global guidelines, such as the EITI and the Natural Resource Charter. Further, the OECD recently updated its guidelines for multinational enterprises (MNEs) which aim to promote more responsible business conduct by MNEs. These new guidelines include recommendations on human rights, labor and environmental standards as well as promote responsibility by companies for their supply chain. The guidelines include, in this regard, due diligence recommendations. It was said that the OECD is moving towards assisting companies to meet standards rather than simply prescribing guidelines. In addition, in 2010, UNCTAD, FAO, IFAD and the World Bank jointly developed a set of Principles for responsible agricultural investment that respects rights, livelihoods and resources (PRAI), in the form of voluntary guidelines. It was noted however, that investment in land is progressing faster than 'soft law' guidelines to regulate it, and unfortunately so far the record of international organizations on the issue of 'land grabs' was said to be sub-par.

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[2] Resource-seeking Foreign Direct Investment in African Agriculture: A review of country case studies, Ann-Christin Gerlach and Pascal Liu, FAO Commodity and Trade Policy Research Working Paper, No. 31 September 2010.

The Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, to be released in March 2012, were also discussed. These guidelines call upon states to systematically conduct a human rights impact assessment before signing any trade or investment agreement, whether a treaty or an individual project. The purpose of the guidelines is to provide a methodology to enable governments to scan treaties and agreements and assess the potential impacts on human rights obligations of the state. It was suggested that these guidelines may strengthen the bargaining position of governments when negotiating investment agreements, as they can refuse certain concessions on the basis that they will be in breach of human rights obligations.

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There was also discussion about the role to be played by home governments in promulgating guidelines for MNEs and regulating companies' conduct when investing overseas.

There was a commonly held perception that there is an increased willingness on the part of mining companies to engage in partnerships with countries to contribute to development. This should be leveraged to promote multi-stakeholder dialogue to strengthen planning both nationally and regionally to promote development. However, there was almost unanimous consensus that it must always be the host government that leads the initiatives, as well as the implementation and monitoring of those initiatives.