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Development Turnover Tax

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This policy paper was written by Alison Futter (University of Cape town, South Africa) with support from IGF and ATAF

1.0 Introduction

Some of the most critical fiscal instruments in the mining sector are those that target the specific needs of people in resource-rich countries. This policy paper is dedicated to contributions made to local development through development taxes on turnover or gross sales. Many countries require local community or infrastructure contributions by mining rightsholders, to the order of 0.5%–3% of turnover. These can be highly effective contributions and should be put in place by all resource-rich countries, using lessons and best practices from past projects on how to design them and ensure adequate monitoring.

The specific development turnover tax proposed by the author would compel private mining companies to invest in public shared infrastructure such as electrification, roads, sanitation, water supply, and communication technologies or certified public benefit activities such as education, health care, the environment, and welfare to uplift the local communities impacted by the allocation of mineral rights in a licence area. Such investments would take place at the local level and possibly at the regional or national levels if several companies and levels of government reached the required agreements. In the absence of such investments, the national revenue authority would collect a development turnover tax from taxpayers engaged in the extraction of mineral resources and hydrocarbons (hereafter referred to as mines or mining) that would be applied to a government-administered mining development fund with similar spending priorities.

2.0 What Is a Development Turnover Tax?

The development turnover tax would be a monthly self-assessed tax at a flat rate of 0.5%–3% of turnover. The development turnover tax is in addition to any existing environmental, social, and governance obligations imposed on mining companies. For ease of administration, the turnover would be calculated based on the average indexed commodity price of the resource extracted

multiplied by the production volume per month. Mining companies would have the option to invest directly in public benefit activities and public shared infrastructure to receive an offset from the development turnover tax liability. Otherwise, the development turnover tax would be applied to a government-administered mining development fund established expressly for this purpose. The only allowable tax deduction in the determination of the development turnover tax would be the cost of certified public benefit activities undertaken in the month, with allowed carry-forward of excess balances. The carry-forward of excess balances should be unlimited to encourage sizable upfront investment by mines (at the time of the establishment of the mine) in public benefit activities that can be offset over the life of the mine.

The certified public benefit activities may include (but are not limited to) expenditure on education (e.g., building and equipping math and science schools, funding bursaries, and providing paid internships for indigenous employees), public shared infrastructure (e.g., extensions of fibre/5G and transport infrastructure), the environment (e.g., carbon sequestration, water treatment, and rehabilitation), health care (e.g., COVID 19 vaccines for the public, tuberculosis treatment, HIV treatment, malaria eradication, and building and equipping hospitals and clinics), and welfare (e.g., food gardens for impoverished communities, accommodation and care for the aged and people with disabilities, safe houses for abused women and children, and construction of sporting facilities and communal halls).

The relevant government authority would certify qualifying public benefit activities annually. The government would gazette them in its medium-term budget as forming part of investment in shared public infrastructure that will support economic growth. The *gazette* should also determine whether there are public benefit activities that the government wants to incentivize further and that will qualify for additional allowance setoffs from the development turnover tax liability. The certification of public benefit activities that qualify for the additional allowance will be subject to review by the National Audit Office.

The government authority would monitor the implementation of the certified public benefit activities using a set form beneficiary sign-off of receipt of proceeds or state civil engineer attestation of completion of work and documentation supporting the proof of expenditure.

A qualifying beneficiary would be any recipient of the certified public benefit activities in local communities affected by the allocation of a mineral right in a licence area. In terms of public shared infrastructure projects, the qualifying beneficiary would be any local, regional, or national government entity where the project is signed off on by the state civil engineer.

The development turnover tax would apply to all mineral resource rightsholders. A mechanism could be introduced for rightsholders to apply for a partial abatement of or exemption from the development turnover tax with respect to marginal mines or artisanal and small-scale miners. The development turnover tax itself would be deductible for corporate tax purposes as an expense in the mining operations. The policy rationale for this approach is to align the tax treatment of the

development turnover tax to the tax treatment of corporate social responsibility (CSR) expenditure by mines.

The development turnover tax can complement an existing corporate tax and royalty structure, where such taxes are collected centrally to fund budgeted spending by the government. The development turnover tax is distinguishable from royalties in that the tax is not applied toward the fiscal budget process. Royalties paid to the central government can undermine the incentive for the government to provide services to local communities in exchange for the collection of personal taxes (Grzybowski, 2012, p. 17), which may leave those communities impacted by mining even more impoverished than before the mining development began. The development turnover tax is distinguishable from corporate income tax as it is levied on turnover and not the taxable profits of the rightsholder. The development turnover tax is a deductible expense for the calculation of the corporate income tax base. It is closer in design to an alternative minimum tax, as the turnover development tax and alternative minimum tax are both calculated on a percentage of turnover. Profitability is not a determinant of levying the development turnover tax—its trigger is the production of mineral resources or hydrocarbons from the mine. The development turnover tax is regressive (like royalties) compared with corporate income tax, which is a more progressive tax. Governments should seek to achieve a balanced mix of both regressive and progressive taxes in the design of their fiscal regime (Wen, 2018).

The development turnover tax could be implemented in the short term through an amendment of the mining and/or tax law if no fiscal stability agreements are impeding the introduction of new taxes on mining projects. If there are fiscal stability agreements in place, the development turnover tax could be introduced with the issuing of new mineral rights and a transitional period negotiated with those existing mineral rightsholders who enjoy the protection of these agreements. It may furthermore be possible to negotiate immediate implementation with existing mineral rightsholders who might be keen to participate in the development turnover tax because of the social licence benefits, regardless of their fiscal stability.

The benefits for governments of a development turnover tax are that 1) policy-makers identify areas for advancement that satisfy a government's economic growth targets, technological aspirations, and political ideologies; 2) the use of average indexes to approximate commodity pricing helps avoid manipulation of the tax base; 3) monthly frequency promotes regular cash flow; and 4) the calculation, audit, and administration cost for the collecting agency is small.

The development turnover tax should not face strong resistance from mining companies because 1) it would be modest in its scope and represent a deductible expense for income tax purposes; 2) it would encourage mineral rightsholders to invest for the benefit of the citizens in the source country, which is a key factor in gaining their social licence to operate; 3) it would allow mineral rightsholders the flexibility to choose from the certified public benefit investments in a manner that is mutually beneficial to the community and the company's operations in the source country; and 4) it directly contributes to attaining sustainability development goals such as quality education,

clean water and sanitation, industry, innovation, and infrastructure. The overall benefit is that it helps to keep social peace in the affected communities.

3.0 Prior Experiences With Development Turnover Taxes

Requiring companies to participate in community development is a common practice. According to Dupuy (2014),

> where community development exists, the provision is typically contained within a country's domestic laws relating to mining or, occasionally business activities more generally. Such laws include requirements for companies to contribute to the development of, or provide socio-economic benefits to, community members located on or near the license area. Such contributions may include revenue sharing or other monetary compensation, improvements to educational or health services, opportunities for training or other livelihood diversification, and construction or repair of infrastructure, among others. In some cases, there are legal requirements for sub-national transfers or national funds dedicated to community development. (p. 200)

The idea draws from the requirement for community development by mines together with other tax concepts in use globally, such as benefit-sharing arrangements or "Works for Taxes" schemes. Other similar fiscal instruments include alternative minimum taxes, although these are typically designed as anti-avoidance measures in the form of minimum corporate income taxes.

3.1 Development Turnover Tax vs Benefit-Sharing Agreements

Grzybowski (2012) cautions that

> where the benefits of mining developments are distributed in a manner that appears unfair compared to the distribution of the costs, risks, and responsibilities, then those who are disenfranchised or bearing risks and responsibilities without fair compensation are likely to oppose the development giving rise to potentially violent conflict. (p. 7)

Inexperience, asymmetrical information, external influences, and capacity limitations all contribute to suboptimal agreements for communities. The proposed development turnover tax is different from benefit-sharing agreements in that the certified public benefit activities are *gazetted* while benefit-sharing agreements prioritize projects through local consultations, culminating in community development agreements (CDAs).

Some countries—such as Botswana (Wankhede, 2020, p. 22), the Democratic Republic of the Congo (Wankhede, 2020, p. 22), Ghana (Wankhede, 2020, p. 23), Kenya (Wankhede, 2020, p. 23), and Uganda (Wankhede, 2020, p. 29)—require that a portion of production in the form of royalties is paid to communities within the licence area. Such monetary compensation seldom ensures that the lives and livelihoods of people in affected communities can be properly restored (Loutit et al., 2016).

Loutit et al. (2016, p. 8) express that

> the more effective Community Development Agreements (CDAs) share benefits flowing from the resource development to promote broader long-term and ongoing economic and social participation in the mining activities. Such benefits include financial contributions, such as the royalty, and non-financial benefits, such as local employment opportunities and commitments to source goods and services from local providers. Compensation can still be effectively employed to acknowledge those mining impacts that cannot be adequately remedied. (p. 8)

Loutit et al. (2016) elaborate further that

> one of the goals of benefit sharing is to strengthen a community's asset base by improving the community's physical, economic, and human capital. This includes efforts to avoid communities becoming overly dependent on income streams from the mining activities, which can leave them vulnerable if the mine fails, becomes less productive or reaches the end of life. This is another reason for designing CDAs to provide a combination of financial and non-financial benefits, thereby linking community wellbeing to the sustainability of the mining activities, while also providing transferable skills, such as business and management skills that equip the community to continue its economic growth after the mine closes. (p.8)

Many countries require local community or infrastructure contributions by mining rightsholders, to the order of 0.5%–3% of turnover (Adebayo & Werker, 2021, p. 1). In Guinea, mining rightsholders must conclude a local development agreement with the local community and contribute between 0.5% (minerals) and 1% (precious metals) of their turnover to the local development fund (Dupuy, 2014, p. 208). The development turnover tax is comparable to benefit-sharing arrangements in its turnover (gross sales) base, its possible rate (%), and its desired outcomes in terms of the non-financial benefits to local communities. The development turnover tax could operate as an alternative or complement to existing benefit-sharing arrangements or CDAs. Certified public benefit activities and investment in public shared infrastructure may both satisfy the rightsholder's obligations imposed under the CDAs and qualify them for an offset from the development turnover tax liability.

For those countries where there is no legal obligation to compensate local communities for the use of land or other adverse impacts of extraction, there may still be an obligation for private companies to produce and implement a social and labour plan which yields non-financial benefits

that will be enjoyed by local communities impacted by the mining activities in the licence area. This plan may include mandatory contributions to training or education funds. The development turnover tax solidifies these social licence commitments by rightsholders to fund development activities, either in cash contributions to the state-administered mining development fund or direct social responsibility expenditure by the rightsholders.

In some countries, the full amount of the development turnover tax is not allocated to the affected community. For example, on June 26, 2015, when Burkina Faso's National Transitional Council (Conseil National de Transition), acting as Parliament, approved a new Mining Code, 20% of the amount was allocated to the region and 80% to the community directly affected, for the purpose of solidarity with the local development fund.

3.2 Development Turnover Tax vs Works for Taxes

In 2008, Peru introduced a fiscal innovation called Works for Taxes that allowed private companies (not only in the mining and extractive industries) to pay a portion of their corporate taxes in advance through the execution of public works projects. By accepting infrastructure projects instead of future taxes, national, regional, and local governments in Peru would forego the mobilization of public funds and reduce the burden on government budgets, as the private sector would assume the upfront costs and management of new infrastructure projects (Del Carpio Ponce, 2018, p. 1). According to Del Carpio Ponce (2018, p. 2), Works for Taxes was created to address local infrastructure gaps in Peru, as well as multiple obstacles to investment in public works, including

- A lack of technical criteria to properly identify and select public investment projects
- Low-quality pre-investment and investment studies that failed to match real costs and work schedules
- Substantial cost and project overruns
- Numerous disputes with construction companies at the judicial and arbitration levels.

Del Carpio Ponce (2018) advises that

> the Works for Taxes mechanism can be applied to public investment in urban development, telecommunications, agriculture, water and sanitation, tourism, public safety, transport, education, health, fishing, sports, protection and social development, culture, environment, and rural electrification. (p. 1)

Peru's Private Investment Promotion Agency designates possible public investment projects, and the Ministry of Economy and Finance checks the quality and approves the issuance of certificates (for offset against corporate taxes) after the project has been completed (Del Carpio Ponce, 2018, p. 1). Del Carpio Ponce (2018, p. 4) asserts that "Peru's 'Works for Taxes' program has the potential to

benefit other countries facing low governance standards, insufficient fixed capital investment, and significant infrastructure and services gaps.".

The development turnover tax involves the private sector in a similar way to the Works for Taxes mechanism, making it potentially a better governance tool than government allocation to public benefit activities (Del Carpio Ponce, 2018, p. 5).

Unlike Peru's Works for Taxes program, the development turnover tax, as proposed, is an additional tax on mineral rightsholders and is not intended to replace corporate tax payments. However, it follows similar principles. First, it supports the notion that private companies are sometimes more capable than local governments in the timely and successful execution of public infrastructure projects. Second, it suggests that there should be a shared burden of public infrastructure development, as the rightsholders also benefit from such investments.

Del Carpio Ponce (2018) notes this criticism:

> A downfall of the "Works for Taxes" mechanism is that it is not yet accessible to all public entities, and it does not cover operational costs, just investment costs (the exception is sanitation projects that allow the mechanism to be used for operational costs for one year). This affects the sustainability of completed public works. (p. 4)

To address this Works for Taxes pitfall, the proposed development turnover tax is intended to hold the mine responsible for continued upkeep and maintenance of the investment for the duration of the mineral right held. At the end of the life of the mine, ownership of the shared public infrastructure investments is relinquished to the government (African Mining Legislation Atlas [AMLA], 2022, p. 67).

Another criticism of the Works for Taxes mechanism is that the selection and location of projects may respond more to private rather than public interest. Most projects executed through Works for Taxes are located in the areas of influence of the private companies undertaking them, which are not always the areas most in need of development (Del Carpio Ponce, 2018, p. 5). To mitigate this concentration problem, the Works for Taxes projects are first prioritized by each public entity; better-quality planning allows for better prioritization of projects. The proposed development turnover tax envisages the gazetting of the qualifying certified activities as determined by the government in its medium-term budget framework and does not leave the selection of qualifying activities to the mine.

Del Carpio Ponce (2018) observes that

> only the larger companies with an established social responsibility program have been able to afford to participate in the "Works for Taxes" program, which remains too costly for smaller firms. This is due primarily to transaction and management costs, as well as the high degree of liquidity needed to disburse large capital amounts to fund major public works

> projects. … Furthermore, the private companies that currently use the mechanism are among the biggest tax contributors in Peru, which may also complicate access to liquidity by the government in a country with high tax evasion rates. (p. 5)

The proposed development turnover tax addresses the difference in the size of rightsholders by providing for two options: either direct contribution toward public benefit activities and investment in public shared infrastructure investments or payment to a government-administered mining development fund. This effectively allows all mines, irrespective of their size, to participate. The development turnover tax does not substitute the collection of corporate taxes or royalty taxes, as it is applied in addition to these existing fiscal tools.

3.3 Alternative Minimum Taxes on Turnover

In response to corporate tax evasion, many developing countries are moving toward minimum tax schemes, whereby private companies are taxed on either profits or turnover, depending on which has the greater tax liability. These can be grouped as alternative minimum income taxes (AMTs). Where a tax on turnover is applied to replace corporate tax, the quantum of the AMT is low—for example, in Equatorial Guinea, the AMT is based on 1% of the oil and gas company's previous year's turnover. The AMT is used when the operations of the company result in a taxable loss or when the minimum tax is more than 35% of the taxable profits. In Tanzania, when a branch or company has incurred perpetual tax losses for 3 consecutive years, the branch or company is required to pay AMT at a rate of 0.3% on turnover. In Pakistan, turnover taxes reduced evasion by up to 60%–70% of corporate income and increased revenue collection by 74% without reducing aggregate profits (Best et al., 2015, p. 1,311). Companies with higher turnover and minimal profits argue that the turnover tax of 1.5% in Pakistan is too high, preferring a lower turnover tax of 0.5% (Khan, 2020, p. 1).

Although the purpose of AMTs is different from the development turnover tax, they have similar design characteristics, and lessons learned from introducing AMTs are relevant. For instance, the rate of the development turnover tax must be considered in combination with the other elements of the fiscal regime and the profitability of individual mines. Accordingly, it is important to model the total impact of mining taxation on the mines in-country before considering the adoption of an additional tax and the possible rate of such a development turnover tax. The rate that is set for the development turnover tax needs to be realistic: minimum tax regimes based upon turnover typically vary in rate between 0.2% (Tunisia) and 3% (Bolivia, Guinea, and Madagascar), with an average tax rate of 1.2% (Aslam & Coelho, 2021, p. 9). Most governments, especially in Africa, are encouraging the development of the mining sector and have provided incentives to attract investors in the mining sector. The introduction of a development turnover tax without allowances and exemptions may erode these efforts. To ensure acceptance and compliance by private sector mining companies, the introduction of a development turnover tax should include extensive stakeholder consultation, or its implementation will fail. It is also important to negotiate with mining companies because of the stability regime provisions in the tax convention. The most persuasive

argument to convince mining companies to accept this new tax, despite the stability regime, is that the social investments will contribute to keeping social peace in the community and ensuring a conducive environment for business.

The proposed development turnover tax does not aim to replace the corporate tax in the absence of profit—it is an additional tax to be levied upon mining rightsholders irrespective of their profitability; nonetheless, policy-makers should be conscious that the rate of a turnover tax should be "reasonable" from the perspective of the taxpayer to avoid opposition to its implementation.

4.0 Implementation

Revenue authorities or other responsible government agencies may have limited capacity to regulate the development turnover tax. The ease of the determination of the development turnover tax based upon production volume and indexed to the monthly average of the approximate commodity pricing of the mineral (or another simplified rule used to assess the base of the mineral royalty by the rightsholder) makes it easy to administer. However, there may be several challenges in implementing the development turnover tax.

4.1 Anti-Avoidance

To prevent avoidance, the setoff of public benefit expenditure from the development turnover tx should be denied where the criteria for a deduction—namely, certification, beneficiary/state civil engineer sign-off, and documentation supporting proof of expenditure—are absent or incomplete. Furthermore, non-compliance penalties—in the form of a 100%–200% increase in the development turnover tax payable—should be levied as a punitive measure with respect to material non-disclosures, fraud, or misstatement by the rightsholder (taxpayer). In this penalty range, 100% would apply to unintentional non-disclosure, increasing on the continuum for misstatements to a maximum of 200% ascribed to fraud by the rightsholder.

4.2 Enclave Infrastructure

It is important to guard against providing development turnover tax offsets for "enclave infrastructure." AMLA (2022) explains that

> enclave infrastructure is infrastructure that is tailored to the mining project's needs and interests only. Such an approach will not create sustainable benefits for local communities. A needs assessment and consultation with the surrounding affected persons and local State authorities should be undertaken to guard against "enclave infrastructure," and to ensure that the infrastructure benefits local communities beyond the life of the mine. (p. 64)

The government's gazetting of approved public benefit activities will mitigate enclave infrastructure.

Similarly to concerns about enclave infrastructure, AMLA (2022) highlights that "there may be occasions where infrastructure must be developed on a site-specific basis. Even in those circumstances, there should be opportunities for local communities to benefit from infrastructure developments" (p. 64). Therefore, to gain local communities' approval for their mining activities (such as environmental approvals) and to improve their access to markets (through roads, rail, and port infrastructure), mines are likely to limit their choice of investments to benefit those citizens that are directly impacted by their mining operations. The use of a government-administered mining development fund (as the alternative to direct investment in public benefit activities) will allow the state to concentrate its efforts on the provision of public benefit activities beyond host communities for the benefit of citizens at large.

4.3 Stakeholder Engagement

There is a continuum of beneficiaries, including individuals, local communities, and local and regional governments, that will benefit from the public benefit activities. These beneficiaries may disagree with the mine on the activities to be undertaken, which may lead to local tensions and possibly conflict.

Some countries' domestic laws require that mining companies engage with particular communities (Loutit et al., 2016, p. 3) and artisanal and small-scale miners (where these are already present in the proximity of the licence area), particularly where such communities have a legally recognized interest in the land on which the mineral rights are sought or already rely upon the licence area for their livelihoods. Completing environmental and social impact assessments and human rights impact assessments may be a legally mandated requirement in the granting of mineral rights (Loutit et al., 2016, p. 2). In these circumstances, the engagement of local communities for their consent to the allocation of mineral rights for a licence area can extend beyond a recommended international best practice (voluntary engagement) for a CDA to a legislative obligation to enter into such an agreement with the local community. The mining company should, in principle, obtain the local community's free, prior, and informed consent (FPIC) (Loutit et al., 2016, p. 3). Loutit et al. (2016) describe what FPIC means:

> FPIC obliges governments and, where relevant, companies to ensure that local communities agreeing to mine activities are informed of the mine's likely positive and negative impacts and are providing their consent *free* from any pressure or interference and *prior* to the commencement of the mining activities. Companies should ensure that they engage in meaningful consultation with local communities by affording them the information and resources necessary to effectively negotiate an agreement that meets their needs with the object of obtaining the community's consent. (p. 3)

The development turnover tax is prefaced upon government policy-makers looking at nationally, regionally, and locally identified social needs and political aspirations and then defining the priorities of what constitutes "qualifying" certified public benefit activities and shared public

infrastructure that qualifies the rightsholder for a deduction from the development turnover tax; however, the influence of the community and their participation in the selection of public benefit activities cannot be ignored. The guidance offered by Loutit et al. (2016) from the Columbia Centre on Sustainable Investment suggests that a three-stage process be followed by companies in the extractive industries to broker a CDA with local communities:

1. The pre-negotiation stage involves the company and the community or communities laying the groundwork for negotiations. This may include precursor agreements such as a memorandum of understanding (MOU) or a negotiating framework, each of which set out rules to govern the process for negotiating the CDA.
2. The research and consultation stage incorporates stakeholder mapping to determine who stands to be affected by the mining activities, as well as impact assessments. During this stage capacity building, to ensure community agency and ownership of the process, and education about the proposed mining activity should be provided by the company or government to communities that stand to be affected.
3. The final stage is the actual negotiation process and endorsement of the final agreement.

   Once the agreement-making process has concluded, monitoring and implementing the agreement then becomes a key focus. (p. 2)

A weakness identified by CDAs is that they tend to contain clauses that still favour or may leave considerable discretion to the rightsholder. Loutit et al. (2016) proposes that

> to secure the effective functioning of the CDA, leading practice agreements include governance arrangements for managing the ongoing relationship between the local community and the rightsholder. … Partnerships with civil society organizations (CSOs) are particularly useful where the community cannot implement the agreement and hold the rightsholder to its end of the bargain. (p. 12)

4.4 Small and Medium-Scale Mining Companies

Small-scale mining companies may not be equipped to provide certified public benefits activities. As such, a threshold in terms of the development turnover tax may be introduced, compelling the smaller mines below the threshold to make their payment of the development turnover tax to the government-administered mining development fund. This will allow for the accumulation of lower-value monthly development turnover tax payments within the mining development fund to reach the economies of scale for large-scale investment by the state toward certified public benefit activities on an ongoing basis.

4.5 Requirement for a Functioning Mining Fund

It will be necessary for governments to establish a mining development fund if it is not already provided for in their mining laws. A mining development fund would be founded upon similar principles to a community development fund (CDF). AMLA (2022) explains that

> a CDF is one of the vehicles available for implementing mining companies' community development obligations and projects. A number of jurisdictions on the African continent use various types of CDFs, including trusts, companies, third-party security arrangements, special accounts, and more. CDFs are funded by a portion of the proceeds from mining revenues or profits, proceeds from royalties, taxes, state funds (used where the State has a direct stake in mining operations); or an upfront payment may be made by the mining company into the CDF. (p. 74)

The mining development fund would be funded by the development turnover tax from smaller mines (below the turnover threshold) and the shortfall in direct investment by large mines. AMLA (2022) continues:

> Responsibility for management of the CDF would depend on the type of vehicle chosen, but would often lie with a body that is close to the beneficiaries of the funds such as ministries and executive agencies dealing with local government, decentralization, and rural development. Some legislations require the government to be an active player in the oversight and management of the CDF. While it is important for governments to have an oversight role to ensure that the funds are being disbursed for their contemplated objectives, it is difficult for them to be involved in the day-to-day management of CDFs. (p. 75)

Management of the mining development fund should fall within the executive authority of the Minister of Mineral Resources and the responsibilities of the Department of Mineral Resources. The decision making on the use of the funds in the mining development fund could be organized through a social investment committee comprised of representatives from the Department of Mineral Resources; Department of Public Works; Department of Environmental Affairs; Department of Health, Social Services and Welfare; organized labour groups; traditional leaders, mining industry bodies/associations of mining rightsholders; local communities; local government; regional government; and civil society organizations. The administration of the Mining Development Fund would be carried out by the Ministry of Economy and Finance, which would make a direct allocation in the medium-term budget framework to initiatives determined by the social investment committee of the mining development fund.

To ensure transparency, an open tender process should be followed for all awards to third-party contractors and service providers for activities carried out under the ambit of the mining development fund. All members of the social investment committee should be subject to vetting by the state security agency and be required to make declarations of conflicts of interest and disclosures of gifts. Minutes of the social investment committee meetings should be made available for inspection by members of the public upon request. The financial accounts of the mining development fund should be subject to audit by the state auditor general and presented to parliament in the same manner as other state-owned enterprises/companies.

5.0 The Politics of Reform: Introducing a Development Turnover Tax

The success of mining requires a partnership of common interest between rightsholders and local communities. Citizens demand to see real value for the extraction of non-renewable resources in the form of social investment, job security, and economic growth. The introduction of new taxes on mining activities aimed at meeting the demand of citizens without early and ongoing consultation leads to investor uncertainty that can lead to possible divestment from the mining sector.

Introducing the development turnover tax at a regional, continental, or global level or applying it as a new practice in domestic law for the mining industry internationally could balance out the sector's negative reactions to the introduction of a new tax. For example, it could be introduced in regional mining codes like the West African Economic and Monetary Union or an equivalent legal directive at the level of the Southern African Development Community or East African Community, among others. It could also be promoted by responsible players in the mining industry to encourage others to follow their lead.

A development turnover tx does not have to be introduced as a tax. AMLA (2022) recommends that

> Environment, Social and Governance (ESG) considerations should be elevated into positive legal obligations. The imposition of positive obligations on mining companies by African governments should be consistent with each country's development objectives. The recommendation to impose positive obligations on mining companies in regard to local development should not be viewed as advocating for mining companies to replace the State's role with respect to such obligations contemplated in domestic and/or international law. The State should continue to play an oversight role in the formation and implementation of a mining company's positive obligations. (p. 23)

A development turnover tax could introduce the positive legislation of an ESG obligation. According to Debeila (2022) at the African Tax Administration Forum, with respect to the larger mining companies, the development turnover tax can be further fostered via participating in the International Financial Reporting Standards Foundation's standard-setting process to uplift the compliance of the tax or legal obligation. Investments in public infrastructure, expenditure on CSR, and contributions to the development turnover tax should be included with the current consolidation of existing CSR reporting frameworks into a new International Sustainability Standards Board that will have sector standards for extractive industries like those of the Global Reporting Initiative.

6.0 Conclusion

Governments have a responsibility to fulfill the needs of their citizens in terms of education for their young and burgeoning population, safeguarding the environment for future generations, ensuring accessibility to free quality health care, and seeing to the welfare of those who are impoverished and vulnerable citizens, such as the elderly, people with disabilities, women, and youth. It is also essential to economic growth that governments invest in public shared infrastructure and new technologies. The moderate rate of the proposed development turnover tax only marginally affects companies' profitability but is designed to create real, visible change to ensure local communities benefit from the mining activities in their proximity.

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