African Center for Economic Transformation (ACET)

EXTRACTIVE RESOURCES SERVICE

Sustainable Resource Series

Accountability

Conflict Minerals

Ethical Business

Good Governance

Human Rights

Physical Environment

Social Environment

African Center for Economic Transformation

analysis. advice. advocacy.

FORDFOUNDATION

Good Governance Aspects of Sustainable Development Challenges and Opportunities in the Mineral, Oil, and Gas Sector in West Africa

African Center for Economic Transformation (ACET)

Policy Brief

The definition of governance used in this brief is an adaptation of one proposed by the African Union, the African Development Bank, and the United Nations Economic Commission for Africa (UNECA) on minerals, but which has been extended to oil and gas. With this addition, governance refers to the legal and institutional environment in which various actors in the mineral, oil, and gas sector interact. In this context, good governance is the legal and institutional environment that effectively promotes transparency and accountability. According to the World Bank's Worldwide Governance Indicators, good governance is about:

- Voice and accountability, which measures the extent to which citizens in a given country participate in selecting their leaders and government, freedom of expression and association, and freedom of the media.
- Government effectiveness, which is about the quality of the institutions and their independence and insulation from undue political pressures, the capacity of the government to formulate high quality policies and to implement them, and the government's commitment to implement these policies.
- Regulatory quality, which refers to the government's ability to develop and implement robust policies and regulations that create an enabling environment for the development of the private sector.
- The rule of law, which denotes the extent to which agents respect and have faith in the rules of their society, and especially the quality of contract enforcement, property rights, the police, and the courts.
- Corruption control, which assesses the extent to which the political elite of the country exercises power for its private gains, including petty and grand corruption, and the "capture[1]" of the state by elites and private interests.
- Political stability and absence of violence, which assesses the likely destabilization or overthrow of the government by extra-constitutional means[2].

Sustainable development is generally defined as the development that meets the needs of the present, without compromising the ability of future generations to meet their own[3].

1. Impact of the Mineral, Oil, and Gas Sector in West Africa

In spite of the conflict in Mali, West Africa continued to grow faster than the other sub-regions of the continent. From 6.8% in 2011, its GDP growth rate was estimated to decrease marginally to 6.6% in 2012 and projected to stand at 6.8% and 7.4% in 2013 and 2014 respectively. The resource-rich countries continued to perform remarkably well. Nigeria, for instance, recorded a GDP growth of 6.6% in 2012, which is expected to accelerate to 6.7% in 2013 and 7.3% in 2014. Even more remarkable, Ghana's GDP grew by 7.1% in 2012, and is projected to stand at 8% in 2013 and 8.7% in 2014. Notwithstanding the exceptionally high growth rates, the social conditions of millions of people in this sub-region remain dire. Poverty is widespread and the levels of joblessness, especially among young people, remain high and are increasing. Poverty rates are very high and the percentage of employed people living below the poverty threshold on less than US$1.25 per day has significantly swelled from 60% in 2009 to 66% in 2011. This is reflected in the Human Development Index of the UNDP. No West African country achieved rankings of "high" or "very high" human development. Only Ghana and Cape Verde were ranked with medium human development marks. The rest of the ECOWAS countries – 13 of them - were ranked in the low human development category.

This dismal situation has partly been due to the inability of West African countries, especially the resource-rich, to translate the revenues from their mineral, oil, and gas into sustainable development benefits for people now and in future. The lack of good governance in the management of mineral, oil, and gas revenues has been cited as the main reason for the failure of resource-rich countries to use revenues to foster economic transformation and sustainable development.

[1] State capture refers to "undue and illicit influence of the elite in shaping the laws, policies and regulations of the state". See Daniel Kaufmann and Aart Kraay (2003), "Governance and Growth: Causality which way? – Evidence for the World, in Brief". World Bank, February, p.3.

[2] David Kaufmann, Aart Kraay and Massimo Mastruzzi (2010), "The Worldwide Governance Indicators: Methodology and Analytical Issues", Brookings Institution, September, p. 4.

[3] Sustainable Development Commission, UK, "What is Sustainable Development?"; Andrès Liebenthal et al. (2005), "Extractive Industries and sustainable Development: an Evaluation of World Bank Group Experience", World Bank.

A Case Study: Botswana

On the African continent, Botswana stands out as an example of a country that has succeeded in making its mineral resources a blessing for its people rather than a curse. It has been able to use its resources to achieve economic growth and social development mainly because in running the affairs of the state, it has stuck to good governance, specifically by way of a strong public voice with accountability, high government effectiveness, good regulation, and powerful anti-corruption policies..

At independence in 1966, Botswana was ranked among the poorest countries in the world, with a per capita income of only US$283. The vast majority of its population (90%) eked out a miserable living in subsistence agriculture. The country lacked infrastructure and had only a handful of university graduates. However, from the time of discovering the first diamond mine by De Beers in 1967, one year after independence, the country has recorded sustained economic growth averaging 13.9% between 1965 and 1980, 11.3% between 1980 and 1986, and stood at 5.8% in 2012. By 2011, Botswana's GDP per capita had jumped to a phenomenal US$13,021.

The country's socio-economic development was equally significant. For instance, its Human Development Index, which stood at 0.509 in 1975, rose to 0.694 in 2007. Adult literacy picked up from 34% in 1970, to 81% in 2006. By 2007, 94% of Botswana had access to safe drinking water, net primary school enrolment stood at 87%, and the ratio of boys to girls in primary education had risen to 9.6 to 10. Finally, life expectancy accelerated from 50 years in 1965, to 68 in 1995, but decreased to 53 in 2007 because of the impact of HIV/AIDS.

Several factors illustrate the role of good governance in Botswana's policy, legal, and institutional frameworks. They include:

1. Elections: Parliamentary elections have been held regularly since independence without major incidents. This has allowed the citizens to have a voice in the political process and to have the opportunity to hold to account those managing the resource revenue on their behalf..

2. Long-term economic planning and fiscal discipline: A close connection between national planning and the national budget has been crucial in preventing revenues from being dissipated or misused. The Ministry of Finance and Development Planning is in charge of the national development plan. Mineral revenues can only be spent for capital projects included in the national development plan (45%), education and training (42%), and health services (13%). Non-mineral revenues are used to fund other recurrent spending. Self-discipline in government expenditure thus made it possible to prevent prestige projects from being funded and significantly reduced opportunities for corruption.

3. Regulation and management of the mining sector: A clear demarcation of responsibilities over the natural resource sector has also been key to Botswana's success. Ownership of the natural resources throughout the country is vested in the state, thus containing factional interests and promoting even development between regions. The Minister of Minerals, Energy and Water Resources, who is responsible for natural resource regulation and management, issues all applications for prospecting licenses on a first-come, first-served basis. The Ministry collects mineral royalties while the Botswana Unified Revenue Service (BURS) collects mining taxes and dividends. They both report to Parliament and the Office of the Auditor-General.

4. Investment of revenue: In order to preserve part of the diamond revenues for future generations, in 1996 the government set up a savings fund called the Pula Fund, to manage part of the foreign reserves of the country. It is managed by the Executive Team of the Reserve Bank, without undue interference from the government.

5. Public expenditure control: The government transfers revenues or provides subventions to district and town councils in accordance with a formula that takes account of a number of predetermined factors. These operations are monitored by the Auditor-General, the Public Accounts Committee of Parliament, the full Parliament, the media, an independent judiciary, and the Directorate on Corruption and Economic Crime.

6. Private sector investment climate: The government of Botswana has created an enabling environment for investments. Successive negotiations with De Beers have enabled the government to buy 50% of Debswana, the operating company. Its “take” has now gone up to 81%, including royalties, tax, and dividends Most importantly, these changes to the partnership agreements were undertaken with a view to reflect the changing circumstances while giving regard to the importance of ensuring that the private sector receives a fair return on its investments.

7. Anti-corruption institutions: A transparent budgetary and procurement process has also been put in place to prevent corruption. The Directorate of Corruption and Economic Crime was established in 1994 to drive the anti-corruption agenda in the country.

Challenges and Areas of Concern

In spite of all the successes that Botswana has achieved in the transparent and accountable management of its mineral revenues and in parlaying these resources into inclusive sustainable development, there remains a number of challenges that need to be met in order to preserve the gains made thus far. These challenges include: high unemployment (23%); a large percentage still living under the national poverty threshold (47% in 2009); considerable income inequality (Gini Index[4] of 60.5); over-reliance of the economy on mining, especially diamonds; excessive constitutional powers of the President; the Directorate of Corruption and Economic Crime reporting exclusively to the President; Botswana has not yet acceded to the African Union Convention on Preventing and Combating Corruption; lack of parliamentary oversight on unpublished mining contracts.

2. Lessons for ECOWAS Countries from the Experience of Botswana

- Botswana's experience has shown clearly that the resource curse is not inevitable. It has also demonstrated that good governance, sound initiatives and institutions, and a committed leadership are crucial to harnessing mineral, oil, and gas revenues and parlaying them into inclusive sustainable development.
- Good policies underpinned by good governance and a dedicated leadership can create the right environment and incentives for natural resources to be exploited for the benefit of all citizens and without destroying the environment. Politicians need to understand the risks of rent-based economies and be prepared to palliate possible negative consequences by putting in place appropriate policies. They need to pay particular attention to the interconnection between policy laws and institutions.
- In order to prevent possible conflicts of interest and vulnerabilities to bad governance and corruption, there needs to be a clear separation of political and regulatory powers in the public managerial structure of the country.
- Political stability and the rule of law are crucial to sustainable development and providing an enabling environment for business. Free and fair elections and the peaceful and orderly handing over of power after elections are important contributory factors.
- Long-term economic planning, budgeting and fiscal discipline make it possible to prevent revenues from being misused. Instead, the revenues should be used to invest in human capital, education, health, and infrastructure. The surpluses that can be saved and the accumulated reserves may be used to mitigate financial problems during downturns in the global economy.
- Given the non-renewable nature of natural resources and the imperative to enable future generations to meet their own needs, a sovereign wealth fund may be put in place in which financial assets may be invested for the long term with transparent rules and regulations and accountable structures to manage the fund.
- The responsibilities for regulation and management of natural resources must be clearly defined and adhered to. The institutions in charge of regulating and managing the sector must be insulated from undue pressure and influence, and their operations should be monitored regularly by the relevant oversight institutions. These include but are not limited to parliament, the Auditor-General and the national anti-corruption agency. Consultations with and monitoring by civil society organizations should also be encouraged.

Relevant International Conventions and Forums:

Several international conventions relate to the governance of the mineral, oil, and gas sector, notably those that promote transparency, accountability, and sustainable development. The following have a special interest in the sector: United Nations Convention Against Corruption, African Union Convention on Preventing and Combating Corruption, ECOWAS Protocol Against Corruption, African Peer Review Mechanism, ECOWAS Council of Ministers' Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector, Extractive Industries Transparency Initiative, Kimberley Process Certification Scheme, United Nations Global Compact, Global Reporting Guidelines, Initiative for Responsible Mining, and Natural Resource Charter.

[4] This index measures income inequality whereby the higher the figure, the greater inequality.

3. Suggested Policy Options

Recent regional initiatives[5] have undertaken useful analyses on which the following recommendations can be based with a view to further good governance and harness the mineral, oil, and gas revenues for the inclusive sustainable development of ECOWAS countries:

1. Put in place the appropriate legislation, regulatory framework, and strong democratic institutions: Governments need to ensure that the laws and regulatory framework relating to the mineral, oil, and gas sector are up-to-date and are effectively implemented by well-resourced and competent institutions.
2. Enforce transparency across the value chain of the mineral, oil, and gas sector: Laws and regulations should clearly set out the criteria for issuing exploration permits; auctions of extraction rights should be preferred to secret negotiations with companies; contracts and financial information on savings and government stabilization and investment funds should also be disclosed.
3. Ensure revenue transparency: Governments should put in place a system for collecting, receiving, and recording all public revenues from the mineral, oil, and gas sector; revenue received by public institutions and all payments made by each company to public institutions should be reported openly and on a regular basis; accounting and auditing of revenue payments should be undertaken by competent institutions following credible processes; all officials involved in monitoring the natural resource sector should disclose their interests in the activities of the sector; create channels for public participation at national and local levels in the monitoring and enforcement of the obligations of public institutions, officials, and companies; and governments should provide the necessary support and fully participate with civil society and the private sector in the implementation of the Extractive Industries Transparency Initiative(EITI).
4. Reduce corruption: Governments should put in place the appropriate legal and institutional frameworks; the national anti-corruption agency, the Auditor-General, the Public Accounts Committee of Parliament and the whole parliament should be resourced to effectively play their monitoring and oversight roles over the executive, the resource sector institutions, and the mineral, oil, and gas companies; accede to, domesticate, and implement the relevant anti-corruption instruments, i.e. the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption, and the ECOWAS Protocol Against Corruption.
5. Build the capacity of parliamentarians: For them to fully play their legislative, oversight, and representative roles, they need to be backed by competent and well-staffed supreme audit institutions and should have the means to carry out their functions. Their knowledge and capacities should be strengthened to enable them to review the licensing process for mineral, oil, and gas; commercial confidentiality regulations should be lifted so that their committees can oversee negotiations between the ministries in charge of natural resources and the private sector; and mineral, oil, and gas contracts should be published so that they can be scrutinized by parliamentarians and other stakeholders.
6. Strengthen the knowledge and capacity of all stakeholders: Governments should develop in consultation with all stakeholders programs aiming to build the knowledge and capacity of local governments, communities, civil society organizations, and mineral, oil, and gas companies to make informed decisions on natural resources projects; and establish multi-stakeholder mechanisms to encourage broader participation in decision-making, monitoring and evaluation of projects in the mineral, oil, and gas sector.
7. Ensure that mineral, oil, and gas projects benefit host countries and contribute to their sustainable development: Governments must ensure that projects are profitable and adopt safeguards to ensure that minimal damage is done to the environment and local communities. Projects must build physical, social, as well as natural capital.

Relevant Organizations	
African Mineral Development Institute: www.uneca.org	Revenue Watch Institute: http://www.revenuewatch.org/
Third World Network Africa: www.twnafrica.org/	Africa Progress Panel: http://www.africaprogresspanel.org/
Transparency International: www.transparency.org	International Financial Corporation: http://www.ifc.org/
World Bank – Oil, Gas and Mining Unit: web.worldbank.org	Post-Mining Alliance: http://www.postmining.org/
World Resources Institute: www.wri.org/	International Financial Corporation: http://www.ifc.org/
Publish What You Pay: www.publishwhatyoupay.org/	International Council on Mining and Metals: www.icmm.com/
Mo Ibrahim Foundation: www.moibrahimfoundation.org/	
Intergov Forum on Mining, Minerals, Metals & Sust Dev: www.globaldialogue.info/	

[5] See the analyses and recommendations in African Union (2009). "Africa Mining Vision". February; UNECA and AU (2011), **Minerals and Africa's Development**. International Study Group Report on Africa's Mineral Regimes; African Union Commission, African Development Bank and UNECA (2011), "Action Plan for Implementing the AMV"; and Economic Commission of West African States. Council of Ministers. Directive C/DIR.3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector". 26-27 May 2009.