GOREE INSTITUTE

Policies, legislation and instruments for managing revenues from extractive resource exploitation in six West African countries

CÔTE D'IVOIRE • GHANA • GUINEA • NIGERIA • SIERRA LEONE • SENEGAL

BEST PRACTICE HANDBOOK

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They are aimed primarily at policy-makers, civil society, politicians and practitioners in the field.

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List of acronyms

CDA	Community Development Agreements
CSO	Civil Society Organizations
ECOWAS	Economic Community of West African States
EITI	Extractive Industries Transparency Initiative
NGO	Non-governmental organization
NRGI	Natural Resource Governance Institute
OHADA	Organization for the Harmonization of Business Law in Africa
UEMOA	West African Economic and Monetary Union
VMA	Vision of Africa's Mining Regime
	CÔTE D'IVOIRE
CDLM	Local Mining Development Committee
CIM	Interministerial Mining Commission
CSCS	Monitoring Committee on the Use of Escrow Account Resources
DGMG	General Directorate of Mines and Geology
SODEMI	Company for the Mining Development of Côte d'Ivoire
	GUINEA
ANAFIC	National Agency for the Financing of Communities
BNE	Bureau National d'Expertise
CAGF	FODEL Management Support Committee
CPDM	Centre for the Promotion and Development of Mining
CDL	Contribution to local development
CPD	Prefectural Development Committee
FODEL	Local Economic Development Fund
FNDL	National Fund for Local Development
LDP	Local Development Plan
PGES	Environmental and Social Management Plan
OGP	Open Government Partnership
SAG	Société Aurifère de Guinée
SOGUIPAMI	Guinean Mining Heritage Company SA
	SIERRA LEONE
ANFC	National Agency for Community Financing
CDA	Community Development Agreements
DACDF	Diamond Area Community Development Fund
MMA	Minerals and Mining Act
NACE	National Advocacy Coalition on Extractives
NMA	National Minerals Agency
NRA	National Revenue Authority
SL-EITI	Sierra Leone Extractive Industry Transparency Initiative

NIGERIA

FIRS	Federal Inland Revenue Service
HCDTF	Host Community Development Trust Fund
NDDC	Niger Delta Development Commission
NEC	National Economic Council
NEITI	Nigerian Extractive Industry and Transparency Initiative
NNPC	National Oil Corporation of Nigeria
NPMS	National Production Monitoring System
NSIA	Nigeria Sovereign Investment Authority
OPEC	Organization of the Petroleum Exporting Countries
PIA	Petroleum Industry Act

SENEGAL

COS-PETROGAZ	Strategic Orientation Committee for Oil and Gas
CPE	Committee for Planning and Evaluation
FONSIS	The Sovereign Strategic Investment Fund
FPC	Forecasting and Evaluation Committee
GTA	Grand Tortue Ahmeyim
ICS	Chemical Industries of Senegal
PETROSEN	The Senegalese Oil Company

GHANA

ABFA	Annual Budget Funding Amount
EAP	Environmental Action Plan
GHF	Ghana Heritage Fund
GIIF	Ghana Infrastructure Investment Fund
GNPC	Ghana National Petroleum Corporation
GSF	Ghana Stabilization Fund
PHF	Petroleum Holding Fund
PIAC	Public Interest and Accountability Committee
PRMA	Petroleum Revenue Management Act

Preface

As part of the implementation of the project “**Towards a West African citizen synergy for transparency and equity in the management and redistribution of extractive industry resources**”, the **Goree Institute** has conducted two studies on extractive resource governance, with a particular focus on issues that emerge from extractive resource governance experiences and best practice models in other African countries, and complemented with a mapping of stakeholders in the extractive sector to contribute to better natural resource management.

These studies involve, on the one hand, "***comparative research into the challenges of natural resource governance in the target countries of : Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal and Sierra Leone at different stages of natural resource management***" and on the other hand on "***a review of natural resource regulations and policies to determine the strengthening and gaps in policies and regulations in the extractive sector***".

This handbook identifies the best practices documented in these studies and aims to contribute to the promotion of environmentally and socially sound exploitation of extractive resources and, above all, to the transparent and equitable management of the resources generated for the benefit of citizens in a peaceful environment. More specifically, this handbook first describes the challenges related to the exploitation of extractive industries in the countries covered by the study; it then identifies the advantages and disadvantages, similarities and particularities in these countries from the point of view of transparency and equity in the management and redistribution of extractive resources; and finally, the handbook highlights documented and proven good practices, deemed exemplary for better management/redistribution of revenues from the exploitation of natural resources.

This handbook is intended for a diverse audience (policy makers, CSOs, parliamentarians, local governments, communities hosting extractive activities, mining and oil companies, citizens, etc.) and invites its readers to avoid hasty generalizations or attempts to replicate good practices from one country to another, without taking into account certain specificities.

There is a marked difference in the framework and management practices of the mining and oil sectors. Indeed, the governance instruments put in place in the mining sector tend to favor a social rationale, which is expressed through the issues of human rights, social justice or equity, community well-being and environmental protection. For the most part, these approaches have led legislators to regulate CSR practices, standards for compensation and resettlement of populations and, to a lesser extent, sustainable development issues.

In the oil and gas sector, the importance of the generated or expected revenues means that priorities are strongly defined in relation to macroeconomic management principles, which are expressed through the State's budgetary rules, the need to preserve macroeconomic balances (foreign currency revenues, smoothing of expenditures, control of the budget deficit and inflation, choice of foreign investment for funds, etc.). These concerns can probably not be ignored, as they are linked to the famous concept of “Dutch disease”.

In fact, far from being in opposition, good practices in the mining sector can enrich those in the oil sector and vice versa, thus contributing to improved development results for the benefit of the population. The various stakeholders in the extractive sector value chain in the six (6) countries targeted by the study are thus invited to appropriate the best practices listed in this handbook to improve natural resource governance in West Africa.

Introduction

Revenues from the extractive sector can make a substantial difference in the lives of people living in the study countries, including Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal, and Sierra Leone. Transparent governance of extractive resources can indeed enable governments to make important structural investments in infrastructure, social services, health facilities, etc. However, revenues from extractive resources do not always yield the expected benefits. Lack of transparent governance, corruption, inefficient use of funds allocated to local communities, among others, can greatly reduce or even render illusory the possibility for populations to benefit from "their" natural resources.

Recognizing this situation, and in line with its institutional mandate, the Goree Institute initiated this study to better understand the gaps in policy and regulatory provisions regarding the budgetary allocation of revenues generated by extractive companies, and to determine their responsiveness to the needs, interests and expectations of citizens in six West African countries (Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal and Sierra Leone).

Without claiming to be exhaustive, this handbook presents some of the good practices identified during the study on the comparative analysis of policies, legislation and instruments for the management of revenues from natural resource exploitation in six West African countries (III). In order to do so, and for a better understanding of the different practices, it is first necessary to briefly review the issues and challenges of extractive revenue management in these countries (I); before going on to identify the advantages and disadvantages, as well as the points of similarity between these countries from the point of view of transparency and equity in the management and redistribution of extractive revenues (II).

1

ISSUES AND CHALLENGES IN MANAGING EXTRACTIVE REVENUES IN THE SIX COUNTRIES

Best practice handbook

Issues and challenges in managing extractive revenues in the six countries

Some background information

In West Africa, countries such as Ghana, Nigeria, and Senegal have significant oil and gas reserves, while others such as Côte d'Ivoire, Guinea and Sierra Leone have very rich and varied mineral resources including bauxite, diamonds, and gold.

In Nigeria, Africa's largest oil producer, revenue from oil sales accounts for about 51% of total revenue[1] . Ghana has been a major oil producer since 2010. Total crude oil exports for 2019, as reported by the Bank of Ghana, were 70,054,551 barrels valued at US$4.493 billion, representing 28.7% of total merchandise exports for the year[2] . In Senegal, the first barrels for the first production phase of the GTA (Grand Tortue Ahmeyim) project are expected in 2023. Other significant gas discoveries were also made in 2016 on the Cayar deep offshore block with resources reportedly in the range of 5 TCF (about 142 billion cubic meters) for Teranga and 15 TCF (425 billion cubic meters) for Yakaar. According to the International Monetary Fund (IMF), oil and gas revenues will reach about 3 percent of GDP at peak production in 2030 and average 1.5 percent of GDP per year over a 25-year period.

West Africa is also rich in mineral resources. Guinea is a world mining reference. Its mining sector is characterized by an abundance and variety of resources, including bauxite, diamonds, gold, and iron. Budgetary revenues from the mining sector totaled GNF 2,294.10 billion in 2020, or 13.24% of budgetary revenues, compared to GNF 2,373.29 billion in 2019, representing 13.71% of government budgetary revenues[3]. Sierra Leone is rich in natural resources and is well known for its geological potential in minerals, including bauxite, chromite, coltan, columbite, diamonds, gold, iron

[1] NEITI 2020 Oil and Gas Industry Report.
[2] GHEITI 2019 Oil and Gas Sector Report.
[3] Report of the Extractive Industries Initiative Steering Committee in Guinea, 2019-2020, p. 131.

ore, limonite, platinum, rutile, tantalite, and zircon. Côte d'Ivoire is no less endowed with natural resources. Indeed, the country "***covers about 35% of the greenstone belts of West Africa, which are reputed to be rich in various mineralizations (gold, iron, manganese, diamond, bauxite, columbite-tantalite)***"[4] . For gold, which is the main mining resource, production increased from 24.5 T in 2018 to 32.5 T in 2019[5].

Despite the abundance of extractive resources in Africa, their exploitation shows mixed results– countries rich in mineral or hydrocarbon resources generally have a low level of development. Problems exist not only in the environmental management of exploitation sites, but also in conflicts related to the control of resources and the precariousness of populations living in extraction areas. In addition, corruption and a non-transparent and unsustainable management of extractive revenues are to be regretted. West African countries such as Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal and Sierra Leone are facing these difficulties, even if at different levels. Indeed, some countries have made significant progress in natural resource management that can inspire others, especially those that do not have much experience in this area, such as Senegal.

The main reasons for poor natural resource governance include weak legal frameworks and/or ineffective implementation. Indeed, as the Natural Resource Governance Index assessment shows, "In all but two of the countries assessed in Sub-Saharan Africa, there is a 'rules-practice gap' between what the laws say and how natural resource governance is carried out in practice. This situation prevents countries from reaping the benefits of their investments in legal reforms."

It is commendable that all the countries studied have a policy and/or a legal framework that has been improved in recent years to better manage their natural resources, particularly mining, oil and gas. At the top of this legal framework are the constitutional norms that establish the principles of ownership of natural resources by the people (Senegal); the government (Nigeria); or the state (Ghana, Guinea). Also mentioned are the transparent and accountable management of these resources to promote economic and social

[4] EITI Report 2019, p. 56.
[5] EITI Report 2019, p. 57.

development (Senegal, Sierra Leone) and of the sharing of extractive revenues with other sub-national entities (Guinea and Nigeria). These frameworks also set out principles for environmental protection and respect for human rights.

Ghana and Senegal have one specific law governing the management of oil and gas revenues, while Nigeria has several. The Petroleum Revenue Management Act of Ghana (PRMA) is a reference for its comprehensiveness and precision. The Revenue Management Act of Senegal has limitations, as do the scattered Nigerian laws. Mining revenues are not subject to the same rules as those governing other revenues with respect to their collection, budgeting, traceability, etc.

In terms of the institutional framework for managing oil and gas revenues, Ghana stands out for its Public Interest and Accountability Committee (PIAC), an autonomous control and monitoring body made up of various actors in addition to the state control bodies, which could inspire Nigeria and Senegal to create similar entities.

Côte d'Ivoire, Guinea, and Sierra Leone all have mechanisms for transferring mining revenues to local governments. From a theoretical point of view, the Guinean legal framework for sub-national transfers is a reference because of the completeness and clarity of the rules governing the modalities of supply, distribution and management, the management and monitoring bodies and tools, and the objectives of the local development fund. However, both Guinea and the Côte d'Ivoire face challenges in implementing their legal framework for sub-national transfers of mining revenues.

In addition, all the countries covered by the study have relevant environmental standards, including the requirement for an environmental and social impact assessment before mining, oil and gas operations are conducted, and the establishment of an account for site rehabilitation. In practice, the lack of follow-up on these obligations is the main challenge in this area.

In both the mining and petroleum sectors, extractive companies have social obligations under their contracts or agreements with host countries. In general, companies respect these commitments, but the lack of transparency in the management and the use of funds is a critical issue.

The countries studied have all made significant progress in implementing the EITI standard, which covers the entire value chain of the extractive industries, and this progress has helped to fuel the public debate. Nevertheless, there is still progress to be made, particularly in terms of the scope of the data covered, its reliability, etc.

Thus, the extent of the extractive resources available to Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal, and Sierra Leone places them in the group of West African countries rich in natural resources. Aware of the evolution of international standards in natural resource governance, these countries have strengthened their legal and institutional frameworks, bringing together in their governance a multitude of state and non-state actors with diverse roles and responsibilities. The aim is to ensure that the revenues generated by the extractive industry benefit the people, whose ownership of natural resources is constitutional in some countries.

The issues

According to international experience, a country seeking to optimize its management of oil and gas revenues faces several types of challenges, which we will try to summarize briefly:

Issue 1: Access to high fiscal revenues from the extractive sector can lead to pro-cyclical government spending and excessive borrowing when commodity prices are high, resulting in painful fiscal adjustments during downturns. In addition, exchange rate appreciation and the concentration of investment in the extractive sector can hamper the competitiveness of the non-resource-based market sectors of the economy, a phenomenon known as "Dutch disease".

Issue 2: Mining and oil activities can lead to significant conflict because of the disruption to livelihoods. Displacement and resettlement procedures have implications in terms of compensation. Similarly, states have not always been able to achieve coexistence between industrial exploitation and artisanal or small-scale operations, which are of vital importance to poor and marginalized populations. The complexity of social and economic issues related to displacement leads to misunderstandings that can lead to conflict or serious infringement of community rights. The lack of a shared vision for resource development and the failure to address community concerns leads to frustrations that can exacerbate tensions and affect the safety and sustainability of facilities and projects.

Issue 3: Large-scale extractive projects can lead to significant environmental risks, including pollution and degradation of the physical environment, resulting in significant losses to ecosystems. Indeed, the conditions for granting permits and licenses in Africa tend to privilege the interests of investors and state revenues over environmental considerations, and in many cases, the issue of rehabilitation is either poorly defined or poorly executed by the administrations in charge of controlling and monitoring operations.

Issue 4: The landlocked nature of the areas hosting mining and oil and gas operations, combined with the technical nature of the operations, limits the development of economic linkages, which tend to be relatively weak. As a result, investments tend to be poorly integrated into the national economy and are not always covered by the host country's checks and balances.

This means that effective mineral resource management requires that governments play a "stewardship" role in resource development. This requires a balance between political, economic, legal and institutional considerations. It also requires that governments take into account both immediate and future needs, which may be in terms of debt repayment, consumption through investment or generational savings.

The challenges

Revenue management in the natural resource sector is a difficult equation for states, civil society organizations and communities that pay the highest price for mining, oil and gas. The difficulty for countries to effectively formulate, implement, monitor and evaluate their policies is the result of several factors that can be analyzed at several levels:

At the political level: the strong politicization of these issues due to the geopolitical and clientelist stakes they carry, very often means a great involvement or even monopolization of the debate by the highest levels of the State; which, unfortunately, displaces the questions from the operational levels where they are posed, to decision-making spheres to which the citizens do not always have access

At the strategic level: the great challenge of fiscal management in developing countries, generally subject to cash flow deficits and with difficult access to financial markets, makes the issue of fiscal and budgetary discipline a central one, to ensure that extractive revenues are used in a sustainable manner, without compromising the government's long-term fiscal stability.

At the institutional level: the magnitude of the challenges related to the coordination between the different institutions involved in the collection of extractive revenues, their allocation, and the monitoring and control of expenditures, means that the issue of capacity must be addressed beforehand, to ensure effective management of investments and their materialization in the well-being of the populations.

At the operational level: the involvement and participation of civil society organizations and impacted communities in decision-making processes is a prerequisite for establishing an appropriate framework for inclusive and sustainable development. Similarly, the weakness of regular monitoring and evaluation of fund management and oversight practices often results in a great deal of leeway for the institutions and agencies in charge of implementing public investments.

2

STRENGTHS AND WEAKNESSES OF DIFFERENT REVENUE MANAGEMENT POLICIES IN THE TARGET COUNTRIES

Best practice handbook

Strengths and weaknesses of different revenue management policies in the target countries

Nigeria

Strengths of the revenue management model

The Nigerian model of revenue management may be of interest to emerging producer countries that face the risks associated with the resource curse. One of the strengths of the model is the constitutionalization of citizens' rights over natural resources. As a result, the country has statutorily attempted to combine policies that address macroeconomic concerns with those that promote redistribution, in accordance with the constitutional principle of derivation.

Furthermore, despite much criticism, Nigeria has managed to maintain the unity of the federation by establishing a revenue-sharing system that strengthens the prerogatives of the federal state over all the territories of the country, which is of paramount importance in the context of a fragile state.

In addition, the Nigerian model has fostered the emergence of a local oil industry through its indigenization policy, which can be justified in principle given the high levels of oil and gas production, although its implementation has been rather controversial.

Finally, it is worth noting that Nigeria has put in place strict rules to clarify the relationship between the state and the national oil company based on lessons learned from its past, including the treatment of revenues from its participation in joint venture agreements with multinationals.

Weaknesses of the Nigerian model

The weaknesses of the Nigerian revenue management model are primarily implementation-related and can be summarized in two categories:

- ***Lack of dialogue and consensus in policy formulation***

Despite the progress noted with the PIA, there are still deep disagreements between the North and the South of the country regarding the distribution and use of revenues. Indeed, the PIA was initially proposed by the Executive (widely supported in the North) and adopted largely along regional (North/South) lines. For example, critics of the PIA argue that the 3% contribution to the Host Community Development Trust Fund is insufficient, compared to the 30% of oil profits destined for the national oil company (NNPC Ltd.) received from the frontier basins exploration project, which will significantly impact the revenue base of the states.

Similarly, the same argument was used by the governors to denounce the legality of the Sovereign Wealth Fund.

The lack of consultation and consensus in formulating the policy has led to interpretations that are creating tensions. Indeed, several analysts point out that Nigeria's tax law requires federation-owned entities or enterprises to remit their profits to a pool, in this case the federation account, to be shared among the three tiers of government. Given that the revenue of the federation account is equal to more than 80 per cent of the revenue of many states and local governments, reserving 30 per cent of NNPC Ltd.'s profits for frontier exploration as stipulated in the PIA could result in a significant decrease in its contribution to the federation account. Consequently, it would result in a significant decrease in the revenues shared between the three levels of government.

- ***Problems of transparency and accountability in revenue collection and use***

This weakness is all the more pronounced as it is upstream and downstream. The problem of upstream traceability is a major challenge in view of the differences noted in the payments to the Federation Account (ECA) between the reference price and the actual sale price. Similarly, the retention of funds by some agencies, namely the NNPC, Department of Petroleum Resources and Federal Inland Revenue Service, in flagrant violation of the provisions of Section 162 of the Nigerian Constitution, reflects a serious problem of transparency and accountability.

From the point of view of the use of revenues (downstream), NSIA operations do not seem to comply with the rules of good management recommended by the IMF. To illustrate this point, an NRGI study revealed:

- Excessive risk-taking, high management fees and politically motivated investments;
- A lack of accountability and the absence of oversight of NSIA by an independent body, as recommended by best practices and in particular the Santiago Principles for the management of sovereign wealth funds.

Senegal

Unlike other countries, Senegal has not yet had any experience with the implementation of its law to determine its limits. However, we have attempted a literature review based on international best practices. We note that the Senegalese law on revenue management has integrated several good practices found in countries such as Ghana, Norway and Trinidad and Tobago, the law:

- Guarantees the traceability of revenues through full budgeting
- Subjects the management rules of SWF to the Santiago Principles (if only theoretically)
- Provides for the use of stabilization to manage excess revenues over its forecast.
- Gives the supervisory bodies a role in the evaluation and audit of management.

Despite these strengths, several limitations can be identified, including the incidental and hypothetical nature of the Stabilization Fund, which does not guarantee the protection of the economy against exogenous shocks. The government has chosen to rely on current consumption to the detriment of savings, which are considered weak. Generally, countries that start exploiting oil and gas resources display a lot of ambition at the beginning through strict rules and clear conditions that they attenuate as they are implemented.

Senegal, on the other hand, appears to have limited flexibility, which could make it difficult to change the rules in a way that would reduce ambitions.

In addition, there are other risk factors related to the institutional framework:

- The revenues generated by the state's equity investments via PETROSEN are not accounted for in the state budget. Under the current scheme, the share of profit-oil paid to PETROSEN is considered to belong to the company. Until its restructuring, PETROSEN was 99% owned by the State of Senegal[6], and 1% by the Société Nationale de Recouvrement.

- Another concern is that best practice dictates that the resources of the intergenerational fund should not be invested in the country, to avoid inflation and suspicious collisions between public and private investments. However, FONSIS status and orientation encourage it to invest in the local economy, rather than in foreign investments.

- In addition, the Minister of Finance is required to submit the quarterly report to COS-PETROGAZ, although the latter does not report to either the Executive or the Assembly, since it is dependent on the Presidency. This situation requires some adjustments to better strengthen the traditional control mechanisms.

[6] This distribution of PETROSEN shares corresponds to the situation that prevailed before the creation of PETROSEN Holding.

Ghana

The Ghanaian model is of interest to countries in the African region seeking to improve their management of oil and gas revenues. The Petroleum Revenue Management Act (PRMA) 815, revised in 2015 and again in 2018, provides a framework for the collection, allocation and management of oil revenues in an accountable, transparent and sustainable manner for the benefit of all citizens of Ghana. The law also includes provisions consistent with international best practices, and provides a good basis for compliance with the Generally Accepted Principles and Practices (GAPP) for sovereign wealth funds; in this case the Santiago Principles.

Among the strengths of the model is the Stabilization Fund, which helps the economy cope with contingencies related to uncontrolled price fluctuations during periods of declining incomes. The PRMA allows the government to use the stabilization fund to support the budget to stimulate economic activities in the sector.

The other strength of the model is the transparency of oil revenue allocations. This transparency is confirmed by publications from PIAC (an independent institution), the Ministry of Finance, the Ghana National Petroleum Corporation, and the Bank of Ghana regarding the amount of oil revenues collected and their destination (Adam, 2017).

The governance model put in place by the state allows PIAC and the National Assembly to promote transparency and accountability in the management of oil revenues in Ghana. The Ghanian revenue management law is interesting in that it promotes inclusive management of oil revenues. This is manifested through the crucial role of PIAC in providing a platform for the public to see whether the use of revenues is in line with the development priorities set out in Article 21 of the PRMA, but also to discuss the real impact of investments and their effectiveness.

Among the limitations of the model is a very strong emphasis on macro-economic considerations (especially at the beginning), which tend to address the problems of Dutch disease but sometimes neglect considerations of spatial and territorial equity. This dimension is almost absent from the Ghanaian revenue management system.

Moreover, some critics have argued that the key fiscal policy option for resource-rich countries is to enact fiscal responsibility laws and inject discipline into the economy. This will limit government spending, reduce debt growth to achieve fiscal sustainability (Ackah et al, 2020). Accountability legislation alone is not enough to ensure fiscal discipline. Credible and strong institutions must be built and supported to implement these laws.

Sierra Leone

Sierra Leone's revenue management model has some strengths and weaknesses that affect the country's performance in managing extractive revenues. One of the strengths is that the constitution clearly recognizes the rights of citizens over natural resources and the requirement for their equitable and transparent management.

Difficulty arises, however, in operationalizing the equity principle. Indeed, all the instruments described in the study show that the model is essentially based on a principle of derivation that gives primacy to producing regions over other regions of the country. Moreover, the model seems in some respects to perpetuate a mode of administration created by the colonial system, privileging customary law and a political economy based on a rent system and the payment of benefits to the local elite (chiefs, landowners, deputies, etc.). This model is typical to the country out of all six countries studied and is of particular interest to us.

One of the weaknesses noted in the Sierra Leone model is that despite significant efforts, the derivation approach (25% retroceded to contributing areas) does not appear to be sufficient to address the critical development needs of communities. In lieu of redistribution, the local economic development approach should assist communities in identifying alternative activities once mining is complete. This may require the development of a sustainable development strategy with a budget that all stakeholders could commit to.

Moreover, the law on local content in the country does not seem to contribute to economic diversification and the development of the local economic fabric in the areas of operation.

Côte d'Ivoire

In general, the doctrine of management of revenues from the mining sector in Côte d'Ivoire is based on the principle of a single cash register, which places all revenues in the accounts of the Treasury, which records them within the framework of national budgeting. This doctrine is in line with the recommendations of the mining code, which grants ownership of the resources to the State. However, it has several limitations that should be noted.

One of the major limitations of this approach is that it locks communities into an annual planning process that does not allow for the realization of structuring projects, at a time when local resources are being drained and the communities' means of subsistence have been disrupted or even weakened.

Another weakness in the Ivorian model is the low level of citizen involvement in the governance dialogue. The level of civil society involvement and participation remains low in the country and the EITI appears to have been the main mechanism for ensuring civil society participation in the debate on extractive resource management. This situation, which has been widely documented in the EITI validation processes[7], could be linked to the overall post-conflict context, which means that consultation processes in the context of decision making are framed, if not abbreviated, by the existence of an enabling law that authorizes the President of the Republic to "govern by ordinance".

In fact, the low level of citizen involvement in the governance of the mining sector is inversely proportional to the omnipotence of the state in the decision-making process, since the CDLMs are also chaired by the Prefects. Although community representatives are

[7] EITI Validation Report Côte d'Ivoire 2018.

stakeholders at the CDLM level, their influence in decision-making is considered modest or even marginal.

Guinea

Guinea has a relatively advanced model for the management and redistribution of revenues in its mining sector compared to most countries in the region. However, it seems that issues of territorial equity and local development have taken precedence over macro-economic considerations. This can be a dangerous situation, given that a large proportion of local works and construction contracts are carried out by local suppliers, especially those directly from the communities.

There is therefore a risk of seeing the development of a whole ecosystem of actors responsible for local supply, organized solely and exclusively around the mine, which poses a problem of sustainability. Unlike Côte d'Ivoire, where the mining sector accounts for only about 11% of exports, Guinea, which is more dependent on mining revenues, does not have a stabilization fund.

Even so, FODEL, through its framework, is an interesting example in that it allows local governments to invest in a manner consistent with their planning. Furthermore, through its CAGF, FODEL creates a system in which local governments control the procurement process, while at the same time guaranteeing the accountability and transparency of the mechanisms.

Table 1: Comparative table of strengths and weaknesses of revenue management policies in the six countries

Country	Strengths	Weaknesses/Challenges/Risks
Côte d'Ivoire	• Relevant environmental and social provisions • Establishment of a mechanism for the transfer of resources from mining to local communities, as well as management bodies that include representatives of these communities • Progress in EITI implementation and periodic reporting	• Weakness of the constitutional provisions relating to the management of natural resources and the preservation of the environment • Lack of accountability of CDLMs to local communities • Lack of citizen monitoring of CDLM actions • Lack of transparency in the management of funds received by the CDLM • Lack of information for local communities on the mining code, mining contracts, the compensation process and their basic rights • Failure to take into account the real needs of communities affected by mining projects in local mining development plans • Lack of Civil Society Organizations (CSOs) equipped to monitor the actions of the CDLMs • Non-compliance with environmental commitments and weak monitoring and control • Limitations on the reliability of EITI data
Ghana	• Constitutional provisions relevant to environmental protection and natural resource management • Creation of a Public Interest and Accountability Committee to provide a space and platform for the public to debate the extent to which the expenditure outlook and the management and use of revenues are consistent with development priorities	• Non-compliance with certain provisions on the use of oil funds • Insufficient PIAC resources • The absence of mandatory social expenses in oil contracts

Country	Strengths	Weaknesses/Challenges/Risks
Guinea	• Adoption of a Mining Policy Statement (MPS) in 2018 incorporating the findings of a major inclusive consultation held in February 2017 under the Responsible Mining Development Initiative • A constitutional consecration of the principles of sharing mining resources with local communities, and the integration of local content in all projects • Clear rules regarding the management of the Economic and Local Development Fund (FODEL) • Compensation rules integrating, in addition to the infrastructure aspect, the loss of income and livelihoods as a result of these displacements under the ESMP • Progress in implementing the EITI Standard	• Institutional instability and subsequent legal insecurity • Failure to respect the disbursement schedule of funds at the community level • Poor knowledge of the legal texts governing the distribution and management of revenues by the communities • The absence of a mechanism for monitoring the legal or contractual commitments of companies with regard to social payments • The absence of a mechanism to monitor the environmental commitments of extractive companies, particularly with regard to the funding of trust accounts for the rehabilitation of mining sites • The absence of application texts relating to compensation, in particular a national compensation grid and the application of compensation according to the company's policy • Non-respect by the companies of the Environmental and Social Management Plans generally leading to the uprising of the communities to claim their rights • Failure to rehabilitate sites despite the requirements of the mining code • Ineffectiveness of rehabilitation payments • Lack of publication of data on sub-national transfers of the 15% allocated to the development of all local governments in the country in the Official Gazette

Country	Strengths	Weaknesses/Challenges/Risks
Nigeria	• Constitutionalization of the principle of sharing oil revenues with the federated states • Existence of an institutional framework for the management, control and fight against corruption in the oil and gas sector • Passage of a new Petroleum Operations Regulation Act with the creation of a host community trust fund that should promote the prosperity of host communities and strengthen the sense of ownership as direct beneficiaries • The creation of an environmental cleanup fund, with funds set aside by licensees and managed independently, is good news for the environment and the public • Strengthening the ban on gas flaring and instituting fines for violators • Significant progress in the implementation of the EITI, promulgation of a law in 2007 institutionalizing the EITI	• Weakness of the constitutional provisions on environmental protection • Effective implementation of the new regulations • Lack of transparency in the management of the competent bodies, notably the Federal Inland Revenue Service (FIRS), which does not publish management reports, and the Department of Petroleum Resources (DPR) • Persistent challenges in EITI implementation, including the reliability of EITI data and stakeholder cooperation • Huge financial losses and very negative consequences of gas flaring

Country	Strengths	Weaknesses/Challenges/Risks
Senegal	• Consultation of stakeholders in the framework of the definition of guidelines for the definition of a distribution key for oil and gas revenues • Strengthening the institutional and legal framework for the oil sector: creation of COS-PETROGAZ • Constitutionalization of the ownership of natural resources to the people, revision of the oil code, development of a law on the management of oil and gas revenues, etc. • Institutionalization of social obligations and strengthening of environmental provisions by the New Petroleum Code • Principle of full budgeting of oil and gas revenues established by the Revenue Management Act • Revision of the Environmental Code underway with a strengthening of the provisions relating to the environmentally sound management of extractive resources expected	• Weak capacity of civil society actors on issues related to revenue management • Challenges to reliable reporting in EITI implementation • Important powers of the COS-PETROGAZ, a body attached to the Presidency of the Republic in the management of oil and gas revenues • Slow publication of reports by oversight bodies such as the National Assembly, and the Court of Audit • Non-effective monitoring of the social and environmental obligations of hydrocarbon title holders • Lack of rules defining the terms and conditions for the use and control of funds provided for the improvement of living conditions of the population in certain oil contracts • The law does not require the publication of semi-annual and annual activity reports prepared by fund managers • The information to be included in the quarterly and annual reports is not specified. For example, the reports should be able to include fund balances, returns by asset class or asset, and management fees paid to the Sovereign Wealth Fund for Strategic Investments (FONSIS) and to external managers

Pays	Strengths	Weaknesses/Challenges/Risks
Sierra Leone	• Relevant constitutional provisions on natural resource management • Bilateral, multi-lateral and extensive national stakeholder consultations, including mining companies, civil society groups and local communities as part of the Mining and Minerals Development Bill in June 2021	• Insufficient capacity of government agencies and extractive companies' EITI focal points • Lack of disclosure of information on the contribution of the extractive sector to the economy (contribution to GDP, government revenues, exports and employment)

3

DOCUMENTED GOOD PRACTICES FOR BETTER MANAGEMENT OF EXTRACTIVE REVENUES

Best practice handbook

Documented good practices for better management of extractive revenues

Sharing a few warnings or reminders that are essential to avoid hasty generalizations or attempts to replicate good practices from one country to another, without taking into account certain specificities.

First, there is a marked difference in the framework and management practices of the mining and oil sectors. Indeed, the governance instruments put in place in the mining sector tend to favor a social rationale, expressed through the issues of human rights, social justice or equity, community well-being and environmental protection. For the most part, these approaches have led legislators to regulate CSR practices, standards for compensation and resettlement of populations and, to a lesser extent, sustainable development issues.

On the other hand, in the oil and gas sector, the importance of the revenues generated or expected means that priorities are strongly defined in relation to macroeconomic management principles, which are expressed through the State's budgetary rules and the need to preserve macroeconomic balances (foreign currency revenues, smoothing of expenditures, control of the budget deficit and inflation, choice of foreign investment for funds, etc.). These concerns can probably not be ignored, as they are linked to the famous concept of Dutch disease.

In fact, far from being in opposition, the good practices of the mining sector can enrich those of the oil sector and vice versa, thus contributing to improved development results, to the benefit of the well-being of the populations.

Second, the unique characteristics of each country allow us to identify underlying factors that may influence development outcomes. For example, the size of the sector in question, the administrative configuration of the country (federal state or unitary state), the experience or not of conflicts in recent political history, etc., are all factors that can affect the policy choices of governments and invite greater circumspection in the choice of good practices to be replicated or transposed.

Therefore, based on these considerations, the results of the study can be summarized as follows:

On the institutional framework

In the mineral resource governance ecosystem, the National Assembly is well positioned, and its scope of intervention often varies from country to country. The analysis revealed that **the quality of governance improves as the scope of intervention of the parliamentary institution expands**, and its actions can strengthen the culture of accountability, as well as the equitable use of revenues. While in most of the target countries, parliaments are mainly involved in allocating budgets and monitoring expenditures, **the Ghanaian example shows that a better positioning of the National Assembly along the value chain can help reconcile citizens with the use of their resources**. In this model, the parliament (i) is present for the ratification of contracts, (ii) approves the work programme of the National Oil Company, (iii) validates the evaluation of the reference price and (iv) controls the execution of expenditures through the validation of the reports of the Court of Auditors and the PIAC.

In the same vein, t**he involvement of communities and civil society organizations is essential in the system** but are increasingly restricted outside the EITI. Indeed, civil society faces two major constraints: one related to restrictions of freedom in the civic space and the strong politicization of issues related to natural resources; the other related to a lack of specialization which means that issues related to public finance and budget monitoring are insufficiently covered by their interventions, to the benefit of social issues such as human rights, the fight against corruption, environmental protection, etc.

However, **it seems that the institutionalization of citizen control through the Public Interest and Accountability Committee[8] (PIAC) in Ghana is likely to promote optimal participation of civil society in the management and monitoring of the use of revenues from mining, oil and gas**.

[8] The PIAC is an independent statutory body, under the control of non-state actors, charged with promoting transparency and accountability in the management of oil revenues in Ghana and ensuring oversight of the use of revenues.

The Public Interest and Accountability Committee (PIAC) is the citizen-led statutory body established under Section 51 of the Petroleum Revenue Management Act of 2011 (Act 815), as amended, to provide independent oversight of the collection, allocation and use of Ghana's oil revenues. The PRMA designates three main objectives for the PIAC:

- Monitor and evaluate the compliance of the government and relevant institutions with the law in the management and use of oil revenues and investments,
- Provide a platform for the public to debate the alignment of spending prospects, management and use of revenues with development priorities and,
- Provide an independent assessment of the management and use of oil revenues to assist Parliament and the executive in the oversight and execution of related functions.

On the rules for allocating and monitoring income

In revenue management policies at the country level, the development of clear guidelines on how extractive revenues should be allocated and used is an imperative to ensure that they are directed to priority development needs. In general, the study found two approaches to defining the pattern of revenue distribution:

- Either the distribution key is established in a precise manner through a fixed rate that allocates revenues to a fund or a development financing mechanism (example of Ghana);
- Or it is designed to be flexible and dynamic to adapt to changes in government fiscal policy (Nigeria and Senegal).

However, the Nigerian experience suggests that the second approach has several transparency challenges in its implementation. Administrations generally find it difficult to follow rules when they are written in a complex manner with parameters that vary from year to year. Likewise, it is difficult for supervisory agencies to collect all the information needed to fully implement their mandate. Therefore, by defining variable percentages for stabilization and the generational fund (a minimum and a maximum), Senegal may be making monitoring more difficult, since no rigorous assessment can be made without the prior availability of a whole series of information, generally inaccessible to the public.

On redistribution mechanisms

The revenue sharing mechanisms identified as "best practices" in this study are generally based on derivation[9] and/or community development agreements (CDAs). Ghana and Senegal, which do not apply revenue sharing mechanisms in their oil sectors, could learn from the experiences of Guinea, Sierra Leone, Nigeria and even Côte d'Ivoire to better ensure equity in the use of revenues.

Sierra Leone has established a revenue management system based on the principle of derivation that allows a portion of the revenues generated from mining to be returned to the producing regions. The Diamond Area Community Development Fund (DACDF) is the flagship mechanism, formally approved by the Sierra Leone Ministry of Mineral Resources in December 2001 as part of a broader post-war reform. For the management of Community Development Agreements, which are a partnership tool between the mining company and the community, community development committees composed of representatives of the company and the community are responsible for the management of the fund made available by the mining companies.

[9] Derivation is a redistribution principle that would require producing regions to be compensated for the burden borne and the consequences suffered. This is usually done through the allocation of a percentage of revenues as in Sierra Leone (DACDF) or Nigeria with the 13% provided for in the constitution.

Guinea also has an interesting mechanism for direct funding of impacted local communities from payments made by mining companies operating in the area. Indeed, Article 130 of the 2013 Mining Code provides for the creation of a Local Economic Development Fund (FODEL) to promote the development of local communities hosting mining sites and surrounding communities. The said fund is intended to support the realization of basic infrastructure, income-generating activities, as well as other development activities provided for in the local development plans of the local communities concerned.

Local development is financed through a local development contribution (CDL) set by decree[10] at 0.5% of the turnover of mining companies exploiting category 1 minerals (bauxite or iron) and 1% for other substances (diamond, gold, etc.). To ensure transparency in the management of these resources, specific measures are taken:

- First, the mining company publishes a press release with the amount of the payment made within five days of their transfer
- Secondly, a requirement for traceability of FODEL resources in the community's budget (art. 8) reinforces governance,
- Finally, an annual report is published on 15 April of each year to account for the use of revenues.

Another good practice noted in Côte d'Ivoire is the creation of Local Mining Development Committees designated by joint order of the minister in charge of mines and the minister in charge of territorial administration. These committees manage the community development fund created by the 2014 Mining Code jointly with the mining companies. This fund is moreover the only payment flow that does not transit through the treasury account. This fund is financed by the mining companies, which are required to pay an annual contribution equivalent to 0.5% of their turnover. The contribution to community development, considered by the National Committee of the EITI as a mandatory social payment, was reported by both the Local Mining Development Committees (CDLM) and the mining companies included in the reconciliation scope.

[10] Decree D/2017/285/PRG/SGG organizes the modalities of constitution and management of the Local Economic Development Fund (FODEL).

In addition to transfers via local development funds, Guinea and Sierra Leone have also put in place other mechanisms to transfer taxes and/or other fees (such as surface rent) to decentralized communities.

While the adoption of such policies is a good starting point, their implementation requires both the empowerment of local authorities and their supervision to ensure optimal use of these resources to finance local development. In this regard, the experience of Guinea in the mining sector contains several good practices that could inspire other countries.

Regardless of the system put in place and the sector considered (mining, oil and gas), macroeconomic and budgetary management considerations must be reconciled with the requirements of local development and territorial equity to ensure a balance in the distribution of revenues and prevent resource-related conflicts. However, the modalities for transferring revenues to local governments can use different mechanisms, depending on the philosophy of decentralization and the effectiveness of the fiscal policies pursued by the country.

On the institutionalization of oil funds

The creation of oil funds to manage hydrocarbon revenues is a widespread practice in oil-rich countries. According to a 2015 IFRI Note on New Challenges for Oil Sovereign Wealth Funds, "Of the 75 funds listed by the Sovereign Wealth Fund Institute in December 2014, 48 were created after 2000, with revenues mostly from oil, gas or mining exports."

Ghana has two petroleum funds financed by surplus oil revenues. These are the Ghana Stabilization Fund (GSF) and the Ghana Heritage Fund (GHF). Nigeria has established the Nigerian Sovereign Wealth Fund (NSWF) administered by the Nigeria Sovereign Investment Authority (NSIA), under the Nigeria Sovereign Investment Act of 2011 (the 2011 Act). Senegal has not deviated from this practice, creating a Stabilization Fund and an Intergenerational Fund to be managed by the Fonds Souverain des Investissements Stratégiques (FONSIS).

SWFs generally aim to manage oil and gas revenues in a transparent, accountable and economically sustainable manner. They pursue a variety of policy objectives that can be grouped as follows:

Stabilization Funds

Their main purpose is to protect the local economy from the shock of the massive influx of financial flows from oil revenues, but also from the risk of a drop in oil revenues due to price volatility. The stabilization funds created in Chile (Economic and Social Stabilization Fund), Iran and Russia (Oil Stabilization Funds) are in this vein.

Savings Funds

Such funds may also aim to reserve a share of current revenues for future generations because of the exhaustible nature of these resources and their negative impacts on the ecosystem. This is called intergenerational equity. Savings funds for future generations are part of this approach. They can be found in Libya, Russia (National Wealth Fund) and the United Arab Emirates, with the Abu Dhabi Investment Authority (ADIA). They can also fulfil a reserve function for pensions by compensating for known or unknown future commitments linked to ageing populations. In addition, SWFs that perform other functions that may lead to a temporal smoothing of the consumption-savings profile of an economy can be classified under this heading.

Strategic Investment Funds

These funds typically invest in more broadly diversified and longer-term portfolios than traditional reserve portfolios and, in so doing, reduce the cost of holding the overall portfolio. Examples include Angola's new Sovereign Wealth Fund and Senegal's Fonds souverain d'investissements stratégiques (FONSIS), which in practice function as public-private partnership funds, national development banks, or other types of public enterprises. Strategic investment funds specifically funded by oil revenues include the Mumtalakat of Bahrain, the Strategic Investment Fund of Gabon, the Local Investment and Development Fund of Libya (a subsidiary of the Libyan Investment Authority), the Infrastructure Fund of Nigeria (a subsidiary of the Nigerian Sovereign Wealth Fund), and the Russian Direct Investment Fund.

With the discovery of new hydrocarbon resources in recent years being concentrated in Africa, the strategies of the new funds have focused on local economic development.

Fund management is analyzed against a number of benchmarks, the best known of which are the Santiago Principles, the IMF Resource Revenue Transparency Guide and the IMF Public Financial Transparency Manual and, to some extent, the EITI Standard.

4

TEN RECOMMENDATIONS

Ten recommendations

Based on the achievements and shortcomings identified in the different countries, the following recommendations can be considered to improve the governance of natural resource revenues:

1. Strengthen national regulations and EITI processes by linking the publication of EITI reports to parliamentary debates, with a view to promoting ownership of the data in the context of government oversight missions

2. Encourage the establishment of an independent citizen institution with a specific status and official mandate related to revenue management and use, similar to the PIAC in Ghana

3. Drawing on the Ghanaian model, expand the scope of the National Assembly and build the capacity of parliamentarians to promote accountability in the management and use of revenues

4. Make mandatory the publication and accessibility of quarterly reports to account for the use of revenues by SWFs and their execution of investment expenditures, in accordance with the Santiago Principles

5. Develop and disclose a Code of Conduct for fund managers to help protect against conflicts of interest, excessive risk, and excessive fees. The Norwegian Fund's code of conduct is a good example

6. Systematically work for a simplification of the rules of allocation based on predetermined ratios or percentages, specifying the modalities of supply and withdrawal, the deadlines for execution as well as the stakeholders involved

7. Generalize redistribution mechanisms based on derivation principles while encouraging the signing of community development agreements between mining and oil companies and the populations of affected communities (e.g. Guinea, Nigeria)

8. Create the necessary linkages between CSR practices, local economic development initiatives and the promotion of local entrepreneurship, involving local communities (e.g. Guinea)

9. Ensure the efficient use of funds allocated to local governments to carry out national development projects that are inclusive and benefit all territories

10. Ensure that local communities have an integrated long-term development plan, defining the vision of sustainable development and the way in which mining and/or oil revenues will contribute to it, in order to promote alternative revenues and establish a harmonious post-operational perspective

5

CONCLUSION

Conclusion

The extractive sector and the revenues generated by it carry expectations and hopes, which are sometimes disappointed, and pose challenges to our states. Such challenges are often related to transparency, accountability and the distribution and proper management of revenues. This handbook takes this into account and, without claiming to be exhaustive, has presented some best practices identified during the study on the comparative analysis of policies, legislation and instruments for the management of revenues from the exploitation of extractive resources in six West African countries (Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal and Sierra Leone). To do so, and for a better understanding of the different practices, it was first necessary to briefly review the issues and challenges of extractive revenue management in these countries; to identify the advantages and disadvantages, as well as the similarities and particularities between these countries in terms of transparency and equity in the management and redistribution of extractive revenues.

The best practices identified here relate globally to four (4) headings which are :

1. Institutional frameworks for natural resource governance,

2. Rules for allocating and monitoring extractive revenues,

3. Mechanisms for redistributing mining revenues through derivation and/or community development agreements, and

4. Institutionalization and management of oil funds.

Based on the achievements and shortcomings identified in the different countries targeted by the study, ten operational recommendations have been proposed in this handbook to encourage stakeholders in the extractive sector governance chain to improve the management of revenues from natural resources.

While the adoption of such policies is a good starting point, their implementation requires both accountability of all stakeholders and strict governance to ensure optimal use of these extractive revenues to finance development.

6

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