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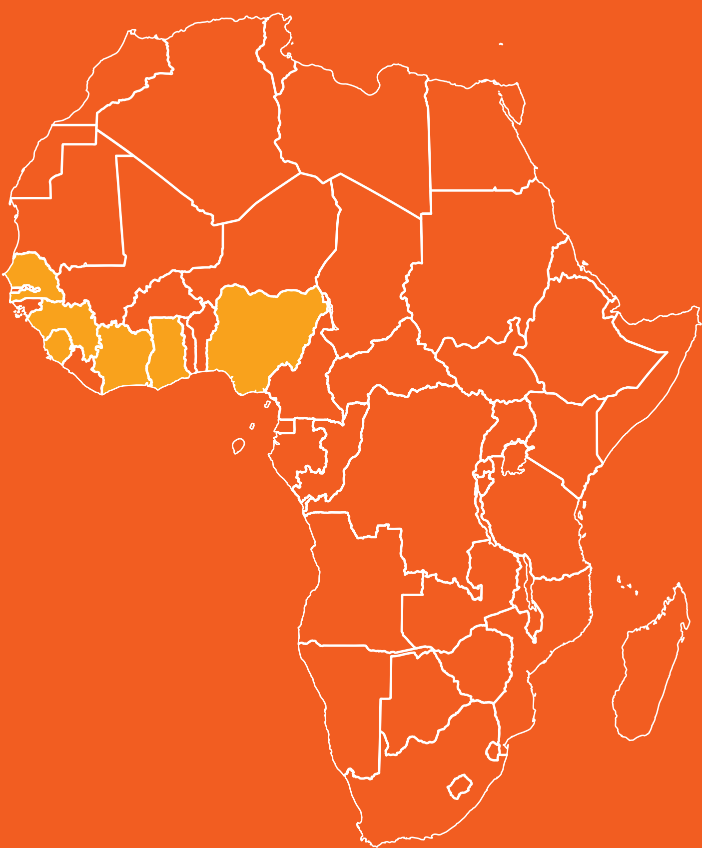
# Policies, legislation and instruments for managing revenues from extractive resources in six West African countries

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

# A COMPARATIVE STUDY TO HARMONIZE BEST PRACTICES



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*Gorée Institute*
*Résidence Bibi, Rue des Gourmets*
*BP: 05 - Île de Gorée, Dakar, Senegal*
*Phone: +221 33 849 48 49*
*E-mail: info@goreeinstitut.org*



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GOREE INSTITUTE

*Gorée Institute*
*Résidence Bibi, Rue des Gourmets*
*B.P.05 - Gorée Island*
*Senegal*

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## Disclaimer

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## Contents

# ACRONYMS AND ABBREVIATIONS

| | |
|---|---|
| **ADIA** | Abu Dhabi Investment Authority |
| **CDA** | Community Development Agreements |
| **CSO** | Civil Society Organizations |
| **ECOWAS** | Economic Community of West African States |
| **EITI** | Extractive Industries Transparency Initiative |
| **HRP** | Permanent income assumption |
| **MPD** | Mining Policy Statement |
| **NGO** | Non-governmental organization |
| **OHADA** | Organization for the Harmonization of Business Law in Africa |
| **PPP** | Public-Private Partnership |
| **ROI** | Return on investment abroad |
| **UEMOA** | West African Economic and Monetary Union |
| **VMA** | Vision of Africa's Mining Regime |

## CÔTE D'IVOIRE

| | |
|---|---|
| **BNETD** | National Office of Technical Studies and Development |
| **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 |
| **ESIA** | Environmental and Social Impact Assessment |
| **SODEMI** | Company for the Mining Development of Côte d'Ivoire |

## SENEGAL

| | |
|---|---|
| **CCJA** | Common Court of Justice and Arbitration |
| **COS-PETROGAZ** | Strategic Orientation Committee for Oil and Gas |
| **FONSIS** | The Sovereign Strategic Investment Fund |
| **FPC** | Forecasting and Evaluation Committee |
| **ICS** | Chemical Industries of Senegal |
| **LPSD** | Letter of Sectoral Development Policy |
| **PETROSEN** | The Senegalese Oil Company |
| **UDO** | Ultra Deep Offshore |

## GUINEA

| | |
|---|---|
| **ANAIM** | National Agency for the Development of Mining Infrastructure |
| **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 |
| **DNM** | National Directorate of Mines |
| **DPBEP** | Multiannual Budgetary and Economic Programming Document |
| **MATD** | Ministry of Administration and Decentralization |
| **MMG** | Ministry of Mines and Geology |
| **MPD** | Mining Policy Statement |
| **EPA** | Public administrative establishment |
| **FODEL** | Local Economic Development Fund |
| **FNDL** | National Fund for Local Development |
| **AIP** | Annual Investment Plan |
| **LDP** | Local Development Plan |
| **PGES** | Environmental and Social Management Plan |
| **OGP** | Open Government Partnership |
| **SAG** | Société Aurifère de Guinée |
| **SMB** | Société Minière de Boké |
| **SMD** | Société Minière de Dinguiraye |
| **SOGUIPAMI** | Guinean Mining Heritage Company SA |

## NIGERIA

| | |
|---|---|
| **DPR** | Department of Petroleum Resources |
| **ECA** | Excess Crude Account |
| **EFCC** | Economic and Financial Crimes Commission |
| **EGASPIN** | Environmental guidelines and standards for the oil industry in Nigeria |
| **FAAC** | Federation Account Allocation Committee |
| **FEC** | Federal Executive Council |
| **FIRS** | Federal Inland Revenue Service |
| **FRC** | Fiscal Responsibility Commission |
| **GTA** | Great Turtle Ahmeyim |
| **HCDTF** | Host Community Development Trust Fund |
| **HYPREP** | Hydrocarbon Pollution Remediation Project |
| **ICPC** | Independent Corrupt Practices and Other Related Offences Commission |
| **IMF** | International Monetary Fund |
| **MOF** | The Ministry of Finance |
| **NASS** | The National Assembly |
| **NDDC** | Niger Delta Development Commission |
| **NEC** | National Economic Council |
| **NEITI** | Nigerian Extractive Industry and Transparency Initiative |
| **NNOC** | Nigerian National Oil Corporation |
| **NNPC** | National Oil Corporation of Nigeria |
| **NPMS** | National Production Monitoring System |
| **NSIA** | Nigeria Sovereign Investment Authority |
| **NSWF** | Nigerian Sovereign Wealth Fund |
| **NUPRC** | Nigerian Upstream Petroleum Regulatory Commission |
| **OAGF** | Office of the Accountant General of the Federation |
| **OPEC** | Organization of the Petroleum Exporting Countries |
| **RMAFC** | Revenue Mobilization Allocation and Fiscal Commission |
| **PIA** | Petroleum Industry Act |
| **PTDF** | Petroleum Technology Development Fund |
| **SBU** | Strategic Business Units |

## SIERRA LEONE

| | |
|---|---|
| **ANFC** | National Agency for Community Financing |
| **CDA** | Community Development Agreements |
| **CENSAD** | Community of Sahelo-Saharan States |
| **CLC** | Community Liaison Committees |
| **DELCO** | Sierra Leone Development Company |
| **DACDF** | Diamond Area Community Development Fund |
| **EPA** | Environmental Protection Agency |
| **ESR** | Environmental and Social Regulation |
| **MLGRD** | Ministry of Local Government and Rural Development |
| **MMA** | Minerals and Mining Act |
| **MMMR** | Ministry of Mines and Mineral Resources |
| **MP** | Members of Parliament |
| **NACE** | National Advocacy Coalition on Extractives |
| **NMA** | National Minerals Agency |
| **NRA** | National Revenue Authority |
| **SL-EITI** | Sierra Leone Extractive Industry Transparency Initiative |

## GHANA

| | |
|---|---|
| **ABFA** | Annual Budget Funding Amount |
| **BOG** | Bank of Ghana |
| **EAP** | Environmental Action Plan |
| **EIA** | Environmental Impact Assessment |
| **EIS** | Environmental Impact Statement |
| **EMP** | Environmental Management Plan |
| **FPC** | Forecasting and Evaluation Committee |
| **GAPP** | Generally Accepted Principles and Practices |
| **GHF** | Ghana Heritage Fund |
| **GIIF** | Ghana Infrastructure Investment Fund |
| **GNGC** | Ghana National Gas Company |
| **GNPC** | Ghana National Petroleum Corporation |
| **GRA** | Ghana Revenue Authority |
| **GSF** | Ghana Stabilization Fund |
| **IAC** | Investment Advisory Committee |
| **PER** | Preliminary Environmental Report |
| **PHF** | Petroleum Holding Fund |
| **PIAC** | Public Interest and Accountability Committee |
| **PRMA** | Petroleum Revenue Management Act |
| **RSA** | Reclamation Guarantee Agreement |

# INTRODUCTION

# INTRODUCTION

Natural resource governance refers to the norms, institutions, and processes that define how power and responsibilities over natural resources are exercised; how decisions are made, and how citizens–women, men, and local communities–participate in and benefit from natural resource management. Governance processes, and their effectiveness and equity, determine the extent to which they contribute to economic prosperity, improved human well-being and, in the long run, environmental preservation. At the same time, governance processes can help prevent and mitigate conflicts that are often linked to a lack of transparency and misuse of revenues.

To ensure a rational and balanced management of the so-called extractive resources (mining, oil and gas), countries have made various choices at different stages of development of their resources that have strongly influenced the development results.

In Africa, as elsewhere, the weakness of management tools and the lack of management and planning capacities have had disastrous consequences for the economy and compromised the beneficial effects of resource exploitation for the population.

However, the experience of countries in natural resource management has diversified greatly over the past two decades, with the advent of international, regional and national tools and mechanisms that have provided states and governments with recipes for optimizing the benefits derived from the exploitation of their resources.

While it is recognized that the most obvious contributions of the mining and petroleum sector to the economy are through tax and foreign exchange revenues, countries face diverse experiences in their ability to align their legislation and processes with the legitimate concerns and expectations of their citizens, particularly in the territories directly impacted by the operations.

Sometimes macro-economic considerations, linked to fiscal sustainability, the need to deal with revenue volatility and the smoothing of expenditures, take precedence over eminently political considerations that may be reflected in the economic and social development aspirations of populations. However, the "principle of permanent sovereignty" of States over natural resources expressed in United Nations resolution 1803 of 14 December 1962 states in article 1: "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

The complexity of the processes leading to the formulation and implementation of inclusive policies, taking into account territorial planning tools, through which stakeholders can align their long-term development objectives with regional and local action, requires a shared vision and knowledge of the economic, environmental, social and cultural conditions in which extractive operations are carried out.

Therefore, countries that are successful in leveraging mineral resources for development combine equitable fiscal regimes (which maximize the government's share of tax withholding over the life of each project, while maintaining the ability to attract investment) with policies that protect communities and the environment and prevent "enclave-type" development patterns.

While the large-scale production of natural resources offers considerable opportunities, it also comes with major drawbacks that prevent sustained growth in several key development indicators. West African countries have experienced varying fortunes in the face of what is known as the "resource curse."

## Context

Natural resources are one of the defining features of the African continent. It is estimated that about 30% of the world's hydrocarbon and mineral reserves are in Africa. The continent's proven oil and natural gas reserves account for

8% and 7% of the world's reserves respectively. Mineral resources account for about 70% of Africa's total exports and about 28% of its gross domestic product[1].

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[2] . 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[3] . 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[4] . Sierra Leone is rich in natural resources and is well known for its geological potential in minerals, including

[1] Africa and West Asia Programme Briefing Note, Improving Natural Resource Governance in Africa, p.1.
[2] NEITI 2020 Oil and Gas Industry Report.
[3] GHEITI 2019 Oil and Gas Sector Report.
[4] Report of the Extractive Industries Initiative Steering Committee in Guinea, 2019-2020, p. 131.

bauxite, chromite, coltan, columbite, diamonds, gold, iron 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)"[5] . For gold, which is the main mining resource, production increased from 24.5 T in 2018 to 32.5 T in 2019[6] .

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."

Recognizing this situation and in line with its institutional mandate, the Goree Institute initiated this study to better understand the gaps in policy and

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

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).

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 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.

In fact, in order to face the many challenges that arise in the management of extractive resources, especially in the management of revenues, several measures can be adopted:

- Policy and legal framework reforms for natural resource management to align with international best practices;
- Relevant implementing legislation;
- Capacity building of civil society organizations to effectively monitor the obligations of extractive companies and state bodies;
- Follow-up on the recommendations of the EITI Validation Reports and those of the Independent Trustees for the strengthening of transparency in the management of mining, oil and gas revenues;

- Strengthening dialogue between stakeholders in the extractive sector value chain;
- Compliance by extractive companies with their environmental obligations and promotion of responsible operating practices.

## Methodology

To achieve a comprehensive understanding and in-depth analysis of natural resource governance regulations and policies in the target countries, this study relied on qualitative research. This involved a broad literature review, followed by preliminary data collection and analysis. Finally, an in-depth analysis of the data was carried out, from a comparative perspective, to better define the contours of the issues addressed.

The document review made it possible to collect and analyze all the relevant documentation on the governance of mining, oil and gas resources, with a particular focus on the issue of the management of mining or oil revenues, depending on the sector targeted.

An interview guide was designed for use by the local consultants recruited in each country. This guide covered the evaluation of the texts on the governance of extractive resources in the countries covered by the study, how to assess their level of effectiveness and to gather the opinions of the various stakeholders on the relevant issues and challenges identified during the analysis of the literature collected. The interview guide was adapted to suit the country and the different actors involved in natural resource governance.

The analysis included all relevant documentation identified through the literature review as well as data collected by the local consultants through the interview guide. This qualitative data was used to validate the information from the literature review and to deepen the analysis of national regulations. Next, a comparison grid between “mining countries” and “oil countries” was used to identify practices, both at the institutional level and from the point of view of revenue distribution policy.

To address the concerns identified by the Goree Institute, five (5) issues have been identified:

1. Overall vision and guiding principles for natural resource and revenue management,
2. Sub-national transfers,
3. Social and environmental obligations and consideration of human rights,
4. Supervision and management of oil funds, and
5. Transparency, accountability, and quality of public debate in revenue management.

## Study areas

This comparative research focuses on the experience of six countries in the ECOWAS region, all of which have attempted to put in place, albeit in different contexts, governance systems and processes that have produced results that we will attempt to analyze in this study.

We have post-conflict countries, Côte d'Ivoire and Sierra Leone, which are carrying out governance reforms as part of post-conflict peacebuilding processes and are putting in place compliance monitoring and oversight mechanisms to promote equitable distribution of revenues from the extractive sectors.

Then we have recent oil and gas discoveries in Ghana and Senegal, which are either struggling to formulate inclusive policies and regulations, or are facing challenges in building national consensus, with many indicators of accelerating conflict, at the community level in particular[7].

[7] Several conflict indicators used refer to the number of local conflicts, number of deaths resulting from internal conflicts, violent demonstrations, level of criminal violence, militarization of the state, etc.

Nigeria, despite its long experience, is plagued by natural resource-related tensions and conflicts, coupled with deep-seated political problems that have yet to be resolved. Although manageable, it is clear that these conflicts are likely to be prolonged and cannot be resolved due to several social and political factors, as well as exogenous factors that are difficult to control (fluctuating oil prices, the COVID-19 crisis, war in Ukraine, etc.).

Guinea, for its part, is pursuing reforms in its extractive sector, particularly with respect to revenue sharing, even though the country is clearly fragile, with serious implications for peace and security.

The present study considers these countries marked by contrasts in national policies for the management of revenues from the exploitation of natural resources.

The study begins by setting the stage in the first chapter for discussion of the underlying issues and problems that are emerging in the literature and practice of revenue management in the extractive sector. International and regional instruments and mechanisms, responses to the complex issues related to revenue management, are presented to the reader. These instruments also provide policy guidance and direction for both upstream and downstream revenue management.

The second chapter then presents, in detail, the policies and legal-institutional frameworks for governance of the extractive sector in the six countries. It analyzes the extractive potential of the different countries; the shared vision of transparent, inclusive and sustainable governance of natural resources; and the institutional framework for governance of extractive revenues in the different countries.

The third chapter is devoted to revenue management and provides an analysis of the legal instruments for managing oil and mining revenues; documents subnational transfers in the different countries; and addresses issues of transparency, accountability and quality of public debate in the management of extractive revenues.

The final chapter reviews the lessons learned from the revenue governance systems studied and offers perspectives for better management of extractive revenues in West Africa.

# 1

# GENERAL CONSIDERATIONS ON THE MANAGEMENT AND USE OF REVENUES FROM THE EXPLOITATION OF EXTRACTIVE RESOURCES

# I. GENERAL CONSIDERATIONS ON THE MANAGEMENT AND USE OF REVENUES FROM THE EXPLOITATION OF EXTRACTIVE RESOURCES

Analyzing the governance practices and systems at work in revenue management in resource-rich countries is a very complex exercise. It sometimes requires a deep understanding of the political history of nations, their trajectories, legal traditions, but also their performance in areas such as political economy and economic governance.

While in most cases the arrival of new revenues from oil or mining has been a source of fragility for states, there is now a wide variety of instruments, governance practices and lessons learned that could contribute to inclusive economic transformation if properly identified and shared. The clear objective here is to examine the extractive resource governance system and processes in the six focus countries, to identify gaps and challenges, lessons learned, and models of good practice with respect to the responsible and equitable distribution of extractive resource revenues.

## 1. Revenue management and utilization in resource rich countries

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 investment

The arrival of new types of revenue outside of traditional tax revenues is generally perceived as a windfall that makes it possible to make structuring investments for the economy. The issue of investment is intrinsically linked to the need for the economies of developing countries to adopt a catch-up strategy, to finance access to basic social services and reduce inequalities, the development of infrastructure (energy, transport, etc.) and to support the industrialization effort. This need, however, depends on the capacity of the economy to manage additional spending and to assess the consequences of investments in a given sector, so as not to compromise the performance of other sectors.

The questions raised by the problem of investment concern the calculation of the value of current consumption, compared with that which would be deferred in a space-time scale. Then comes the control of the rate of return on investment, which generally implies making a distinction between domestic and foreign investment:

- At the domestic level, the issue is primarily one of determining the principles underlying the decision to increase consumption or investment and its consequences.
- As for foreign investment, Collier's analysis[8] proves that the return on foreign investment (ROI)[9] depends on whether the country is a borrower, paying its debts with the revenues generated, or a lender.

## Savings

In commonly observed practices, concern for protecting intergenerational benefits is a particular challenge, given the finite and exhaustible nature of resources. This places an additional burden on policymakers seeking to increase the benefits obtained from extractive industries.

[8] P. Collier, F. Van Der Ploeg, A. Spence and A. Venables, "Managing Resource Revenues in Developing Economies," IMF Staff Papers, 2010, vol. 57, issue 1, pp. 84-118.
[9] ROI or Return on Investment is the indicator used to assess the profitability of an investment

Equally important is the need to stabilize the oil and gas project environment so that it continues to have a positive effect on human development, regardless of the project's life cycle, commodity market conditions, and level of profitability. The solution is to decouple oil revenues from other development strategies, helping governments find other options to deliver real benefits to citizens. Faced with this situation, countries' choices have often been guided by two hypotheses, which are sometimes combined according to the country's context and specificities.

- **The Permanent Income Rule**

In simple terms, the permanent income hypothesis (PIT) postulates that the economic agent has an intertemporal projection capacity: consumption is not determined solely by last month's income, but by a set of past, present and future incomes (Collier, Ploeg, & Venables, 2010).

Therefore, the consumption share (in real terms) of oil revenues over time is equivalent to the interest generated by the net present value of the country's oil wealth. This rule pays more attention to the current generations and their needs. It is this income, called "Permanent Income", that determines consumption. Permanent income is defined as the amount of money that a state can dedicate to its consumption, keeping the value of its capital constant.

- **The "Bird in Hand" rule**

This rule, used by Norway, is based on the principle of saving income, spending only the interest earned on the capital invested. In other words, this rule provides for the use of a permanent future generations fund to ensure intergenerational equity and guarantee a permanent flow of resources that will promote economic development, even after oil or mineral resources have been exhausted. The advantage of this approach is that it guarantees predictability of spending and allows for prudent and conservative consumption.

One of the criticisms of this rule is that it is not adapted to the fiscal realities of developing countries, and that ultimately what is important for future generations is the government's fiscal position and not the amount of savings available.

- **Revenue transfers to local governments**

In addition to the macroeconomic considerations that influence government budgetary and investment policies, the issue of wealth redistribution, and in particular that of sub-national transfers, is a real concern for the citizens and communities affected.

Today, more and more countries are calling for the redistribution of extractive revenues to impacted communities to promote local development and compensate for the damage caused by the activities. Depending on legal traditions and fiscal regimes, national revenue-sharing systems can be classified into three categories:

**Category 1**: Countries that treat extractive resource revenues in the same way as other revenues;

**Category 2**: Countries that treat extractive revenues differently from other revenues and distribute them on a derivation basis[10] ;

**Category 3**: Countries that treat extractive revenues differently from other revenues and distribute them according to specific indicators.

Indicator-based systems use a variety of criteria to determine the allocation of revenues to the subnational level. These can include population, income generation (level of contribution), poverty level, geography, etc.). With respect to operationalization, two modalities exist:

**The vertical distribution regime:** Experiences of vertical distribution of revenues from extractive resources vary according to the distribution of roles and responsibilities defined in the fiscal chain. Indeed, the degree of vertical

[10] The principle of "derivation" would have the country use the place of tax collection as a criterion for sharing the proceeds of national taxation. For example, in the Democratic Republic of the Congo, the constitution allocates to the provinces 40 percent of the national taxes collected in their territory.

distribution is determined by the collection powers and responsibilities assigned by law to different levels of government. This dimension generally influences the size of the transfers that the national government makes to the sub-national level. In countries with a decentralized fiscal structure, such as Indonesia, Peru, or the Philippines, the percentage passed on to the local level can be significant (close to 50% or more).

**Horizontal distribution regime:** The distribution of revenues from extractive resources among the same levels of local government is determined by tax assignments and specific regulations, which specify how the central government transfers revenues among tax jurisdictions. In this case, tax collection by decentralized administrations is, by definition, based on a system of derivation, since the extractive companies pay the local governments in the areas where the resources are produced. Transfers between communities can also be based on indicators. An example is Mexico, which allocates its oil revenues according to a formula that includes demographics, level of revenue contribution, and a third variable that benefits states with small populations.

In Africa, research indicates that elements of the indicator-based transfer system are combined with those of the diversion-based transfer system. This is the case in Nigeria and Uganda.

***Revenue Transfer in Uganda: The 2015 Finance Act in Uganda provides that 6% of oil royalties will be "shared among local governments located in oil exploration and production areas". Fifty percent (50%) of this amount will be divided among local governments based on the location of production or the affected area, which is defined as the location of loading on a transport platform. The remaining half is allocated based on "population size, geographic area and terrain". In addition, an additional 1% royalty will be allocated to a "classified cultural or traditional institution".***

*Source: (UNDP, Sept 2016)*

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.

The importance and prominence of such considerations have guided subregional and international organizations in setting revenue management policies and guidelines for states.

## 2. The framework of revenue management in international and regional legal instruments

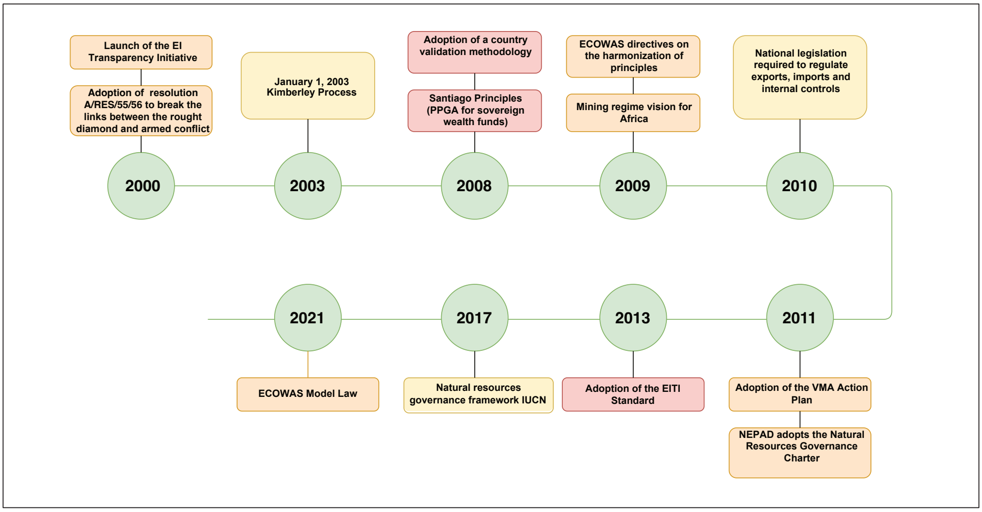
After a decade of campaigning to curb the "resource curse," the extractive sector, which has traditionally been shrouded in opacity and managed as a domain reserved for political elites and multinationals, is beginning to open up to the public eye. In the early 2000s, awareness of the problems of poverty and inequality caused by poor governance led to the emergence of new instruments at international, regional and national levels.

The latter have, for the most part, learned the lessons of the 1990s, during which extractive resources fueled conflicts and wars and contributed to accentuating inequalities and social exclusion. Thus, there is a generalized awareness that civil society demands are now on the international agenda. The advent of the EITI and Kimberly Process marked the starting point of a series of reforms and transformations, where States are invited to put in place a governance framework more conducive to the improvement of well-being, the preservation of the environment and the pursuit of their citizens' economic development aspirations. It should be noted that for the most part, these instruments derive their legitimacy from sources of international law, particularly **Resolution 1803 (XVII) of the UN General Assembly dated 14**

**December 1962, which declares the "Permanent Sovereignty of Peoples and Nations over their Natural Resources".**

West Africa has not been left behind in this vast process of change. The diagram below provides some benchmarks that mark the advent of new governance instruments in the extractive sector and their transposition into community treaties and legal instruments. It should be noted, however, that the mining sector has been more targeted by these instruments than the oil sector.

**Figure 1: Evolution of the normative framework for natural resource governance at the regional and global levels**




Source: RCL Consulting, 2022

## The Natural Resources Governance Charter

The Natural Resource Governance Charter (see Table 1) is defined as an analytical tool to assess the different aspects of natural resource management, both at the national and international levels. It provides all stakeholders with practical advice and policy options that enable them to acquire the appropriate means for better natural resource management. It is based on three (3) fundamental pillars, namely: (i) the national foundations of natural resource, (ii) the chain of economic decisions required to manage natural resources for prosperity, and (ii) the international foundations of natural resource governance. These pillars are broken down into twelve (12) precepts, which are listed in Table 1 below.

**Table 1**: Natural Resource Governance Charter precepts

<table>
<tr><th>National foundations of natural resource governance</th><th>Economic decision chains required to manage natural resources for prosperity</th><th>International foundations of natural resource governance</th></tr>
<tr><td rowspan="6">Precept 1: Strategy, consultation, and institutions<br>Natural resource management must deliver the greatest benefits to citizens through an inclusive and comprehensive national strategy, a clear legal framework and competent institutions.</td><td>Discovering and deciding to extract</td><td rowspan="6">Precept 11: Roles of multinational companies<br>Businesses should be committed to the highest environmental, social and human rights standards and to promoting sustainable development</td></tr>
<tr><td>Precept 3: Exploration and license attribution<br>The government should encourage the pursuit of efficient exploration and production operations and allocate the related rights in a transparent manner.</td></tr>
<tr><td>Getting a good deal</td></tr>
<tr><td>Precept 4: Taxation<br>The tax system and contractual arrangements must allow the government to realize the full value of its resources, being able to attract the necessary investments and to move smoothly through changing circumstances.</td></tr>
<tr><td>Precept 5: Local effects<br>The government should seek opportunities to generate benefits for local communities and consider, mitigate and compensate for the environmental and social costs of extractive projects.</td></tr>
<tr><td>Precept 6: Nationally owned resource companies<br>Domestic natural resource companies must be accountable, have clear mandates and strive for commercial efficiency</td></tr>
<tr><td rowspan="6">Precept 2: Accountability and transparency<br>Good governance of natural resources can only be achieved if decision makers are held accountable to an informed public.</td><td>Managing Revenues</td><td rowspan="6">Precept 12: Role of international community<br>Governments and international organizations should promote greater harmonization of standards in their support of sustainable development.</td></tr>
<tr><td>Precept 7: Revenue distribution<br>Government should invest its extractive revenues in a manner that produces optimal and equitable effects for the benefit of current and future generations.</td></tr>
<tr><td>Precept 8: Revenue volatility<br>LThe government should regularize its spending from extractive revenues to account for revenue volatility</td></tr>
<tr><td>Investing for sustainable development</td></tr>
<tr><td>Precept 9: Government spending<br>Government should use its extractive revenues as an opportunity to improve the efficiency of public spending at national and sub-national levels</td></tr>
<tr><td>Precept 10: Private sector development<br>The government should facilitate private sector investment to diversify the economy and encourage the engagement of private companies in the extractive sector.</td></tr>
</table>

*Source: Natural Resource Governance Institute, 2014*

The management and use of revenues precepts are mentioned in precepts 7, 8 and 9. To accompany its operationalization, the Revenue Watch Institute, which has become the Institute for Natural Resource Governance, has developed the Natural Resource Governance Index, which, in the words of its President, Daniel Kaufmann, has the Natural Resource Governance Charter as its foundation. The Natural Resource Governance Index is built on three dimensions, namely (i) value realization, (ii) revenue management, and (iii) enabling environment. These dimensions are broken down into 14 sub-components, which are assessed using 51 indicators. To assess a country's performance in revenue management, the assessment is based on national budgeting, sub-national transfers and sovereign wealth funds.

## The African Mining Vision

The Africa Mining Vision (AMV) is based on an overarching premise that mineral resources, if wisely exploited and managed, can be a vehicle for structural transformation leading to industrialization and sustainable development in Africa (Pedro, 2016, African Union, 2009). In contrast to the investment attraction model, which prioritizes the private sector, industry, and the cash economy, the AMV proposes a model in which raw materials are not simply for export in their raw state, but rather, lead to the industrialization and diversification of local economies (AU, 2011). The AMV thus promotes better integration of the mining sector with the rest of the economy and the pursuit of sustainable development goals. It relies on participatory and accountability mechanisms.

To reconcile state and community interests, the AMV encourages benefit sharing with local communities through revenue accrual accounts, as well as sharing of non-financial benefits such as local employment and provision of social infrastructure, with the aim of balancing local and national interests and equipping communities to deal with post-mining challenges. This vision notes the fact that artisanal mining is seen as "a source of income for hundreds of millions of workers and their families, albeit with some environmental, safety and social challenges" (AU, 2011).

Income management is specifically addressed in the AMV Action Plan Axis 1, which is the operationalization instrument (AU, 2011). The AMV action plan starts from the observation that tax laws in Africa are not optimally designed and are characterized by significant exemptions and weaknesses that encourage tax evasion and transfer pricing. To remedy this, Axis 1 sets the objective of "creating a well-governed mining sector that effectively collects and deploys rents at the source.

Thus, African governments are advised to capture a greater share of mining rents, either through direct commercial ownership or through joint ventures with the private sector in mining projects, depending on their capacity. In addition, it is recommended that sovereign wealth funds be created that can help manage windfall revenues efficiently, finance infrastructure and ensure savings for future generations.

### Directive C/DIR 3/05/09 dated 27 May 2009 on the harmonization of guidelines and policies in the mining sector

The Economic Community of West African States (ECOWAS) is a regional organization of 16 countries in the West African sub-region that develops guidelines for member states to strengthen coordination and governance within the Community. The ECOWAS directive on the harmonization of guiding principles and policies in the mining sector presents a panoply of revenues related to the management of mining revenues and the preservation of the social and economic rights of indigenous communities.

First, in terms of taxation, the directive requires States to review and converge their tax systems and to update them every three years (art. 8). Moreover, after revenue collection, States are required to "put in place a system that ensures a more equitable distribution of revenues generated by mining activities and to ensure the effective distribution and transfer to local communities of a portion of these mining revenues, as provided for in the laws and customs of the Member State.

In addition to the transfer of funds, the directive contains provisions to protect the interests of the population. This is done not only through the establishment of consultation frameworks, but also through the creation of a Socio-Economic Development Fund to which the holders and other stakeholders contribute, to support the development of post-mining conversion activities in the affected local communities.

To promote public participation and accountability, transparency obligations are established as a rule, and these requirements apply to investors/mining companies (Article 12) as well as to governments (Article 13). Member states are expressly encouraged to adhere to the EITI and its principles and to adopt laws on the free flow of information.

### ECOWAS Model Mining and Minerals Development Act (EMMMDA) 2021

Like the other instruments, the model law establishes a framework that promotes equity in revenue management through the following axes: the fiscal framework of the fee, the preservation of the social and economic rights of the populations, and the financing of local development. In order to guarantee a balance in the sharing of benefits, while maintaining the attractiveness of the region, the model law provides for a fiscal framework at the community level that makes it possible to guarantee a minimum level of revenue that the member states must ensure in the context of rent sharing (Article 15). At the same time, these recommendations make it possible to avoid inappropriate competition between ECOWAS member states, which would only benefit the investor.

Thus, for various categories of substances, ECOWAS defines percentages that make it possible to guarantee a minimum revenue from the fee (see Table 2).

Table 2: Framework of mineral exploitation royalties for ECOWAS Member States

| Substance | Minimum | Maximum |
|---|---|---|
| Gold | 5% | 10% |
| Precious and semi-precious minerals | 10% | 20% |
| Base metals, | 6% | 15% |
| Radioactive ores | 5% | 12% |
| Industrial minerals | Defined by the laws of the member state | |
| Bulk minerals | 10% | 15% |

*Source : EMMDA, 2021*

In addition to securing revenues for the state, specific measures have been taken to promote the sharing of revenues with communities and the preservation of their economic and social rights. To this end, the signing of community development agreements is strongly encouraged so that mining activity can contribute to the financing of local development. In the same spirit, the text requires States to ensure the preservation of the interests of the populations through certain provisions.

Indeed, funding for local development is a requirement guaranteed by Article 21: "Member States shall ensure the establishment of a fully operational development fund in their territories and ensure that the portion allocated to community development is integrated into the development plan of the local government." The socio-economic vocation of such a fund is clearly expressed so that mining revenues can participate in the development of diversified and sustainable economic activities that go beyond the life cycle of mining projects. In addition, the rights of communities are protected through recommendations such as:

a. Ensure that mineral rights holders respect the rights of host communities including the rights of local people to own, occupy, develop, control, protect, and use their land, other natural resources, and cultural and intellectual property to the greatest extent possible.

b. Ensure that in the event of land acquisition for the development of a mining resource, the owner or legal occupant receives prompt and adequate compensation in accordance with the laws in force in the Member State.

c. Ensure that the calculation of any compensation for the acquisition of land for the development of mineral resources takes into account the loss incurred by the surface user, inconvenience that can be valued in monetary terms according to legal principles, loss and damage to real property and its appurtenances, loss of income, including expected loss, and other losses reasonably demonstrated in accordance with international best practice.

d. Ensure that mineral rights holders maintain consultations and negotiations on issues and decisions affecting host communities throughout mining operations.

e. Ensure that a participatory framework of all stakeholders is put in place to ensure fruitful collaboration and peaceful cohabitation throughout the mining operations phases.

Similarly, a guarantee mechanism is planned in the form of an environmental, restoration and rehabilitation bond, the funds of which will be held in a guarantee account in the host country, in order to ensure that the rehabilitation obligations not honored by the mining right holder will be carried out by national entities.

## The Extractive Industries Transparency Initiative (EITI)

The EITI is a global initiative responsible for implementing a standard for the proper functioning of the extractive sector in various resource-rich countries. It is structured around the principle of transparency and sets out requirements for its participants to comply with across the extractive industries value chain. The EITI encourages states to disclose all information related to the management of extractive revenues in order to allow all stakeholders to be involved and have a clear understanding of the decision-making processes and their contents. There are seven (7) of these requirements and they form an integral part of the Standard[11]. Of these seven requirements, three (3) are central to improving revenue management: (i) Requirement 4 on revenue collection, (ii) Requirement 5 on revenue distribution, and (iii) Requirement 6 on social and economic expenditure (see Table 3).

Through the regular reporting system, the EITI enables multi-stakeholder groups to identify good practice in the transfer of revenues from extractive sector projects to sub-national governments in host regions. These are either paid directly by companies or as redistributed revenues from the central government. Revenues can also be directed to local development funds that finance development projects and priorities.

The implementation of the EITI has shown a strong demand from local communities for increased transparency on revenues, their collection and allocation, to ensure that they meet their objective of contributing to sustainable local development.

[11] The EITI Standard is a universal benchmark that defines the rules and requirements to which countries implementing the Initiative must conform. The EITI has been a standard since 2013 and is now implemented in both developing and industrialized countries. In 2019, the EITI Secretariat has adopted and published a version of the Standard called EITI Standard 2019

Table 3: Overview of Relevant EITI Revenue Management Requirements

| Requirement 4: Revenue collection | Requirement 5: Income distribution | Requirement 6: Social and economic expenditures |
|---|---|---|
| The EITI requires the disclosure to a wide audience of all significant payments by oil, gas and mining companies to governments ("payments") and all significant revenues received by governments from oil, gas and mining companies ("revenues")<br>1. Full disclosure of taxes and revenues<br>2. Sale of state production shares or other income received in kind<br>3. Infrastructure supplies and barter agreements<br>4. Revenue from transportation<br>5. Operations related to state-owned enterprises<br>6. Sub-national payments<br>7. Level of disaggregation<br>8. Punctuality of data<br>9. Quality of disclosures and quality assurance. | This section shows how revenues from extraction are shared. Disclosure is provided to allow stakeholders to have an idea of how revenues are distributed. It covers three (3) points:<br>• Income distribution<br>• Sub-national transfers<br>• Management of revenues and expenses | The social and economic expenditure assessment measures the impact of extractive resources on the country's economy. This section covers four important points:<br>• Corporate social and environmental spending<br>• Quasi-budgetary expenditures of public enterprises<br>• Overview of the contribution of the extractive sector to the economy<br>• The environmental impact of extractive activities |

Source: EITI Standard 2019

Revenue management has been a concern addressed in most international and regional governance instruments. These instruments contain, for the most part, policy advice and recommendations that provide states with a fiscal framework capable of safeguarding the interests of host countries in the context of rent sharing.

They also make proposals for sharing the benefits with the people, both through remittances and through funding local economic development to build community resilience once operations are complete. In some cases, the establishment of sovereign wealth funds has been recommended to manage windfall revenues and encourage savings for future generations.

The framework tools listed above were developed for the mining sector, even though the same principles can be applied to the hydrocarbon (oil and gas) sector.

# 2

# POLICIES AND LEGAL AND INSTITUTIONAL FRAMEWORKS FOR EXTRACTIVE SECTOR GOVERNANCE IN THE SIX COUNTRIES

# I. POLICIES AND LEGAL AND INSTITUTIONAL FRAMEWORKS FOR EXTRACTIVE SECTOR GOVERNANCE IN THE SIX COUNTRIES

Empirical studies have suggested that a very important factor in natural resource management and economic development is strong institutions and good governance (Rodrik, Subramanian, & Trebbi, 2004; Eregha & Mesagan, 2016). The forms of institutional arrangement allow for an appreciation of the power granted to the executive and to parliament, to oversight mechanisms, and the participation of other actors such as civil society, local authorities, community leaders, etc. The role given to the national oil company and the degree of involvement of the President of the Republic can lead to differences in both management and development results.

The management of extractive resources, and in this case of revenues from mining, oil, and gas in modern states, is based on a vision or policy and on guiding principles. It is also based on an organization that includes the different bodies of applicable rules as well as the institutions responsible for its implementation.

In addition, the texts governing the management of extractive resources provide for rules governing the traceability and control of revenues as well as their distribution among the various entities (sub-national transfers). They also pay particular attention to the relationship between the holders of mining titles and the communities, which is expressed in terms of social and environmental obligations and respect for human rights.

# 1. Overview of the extractive potential and its governance in the six countries

## CÔTE D'IVOIRE

The Ivorian subsoil is rich in mineral resources. Hydrocarbon production has remained modest, and so the country is better known for its mineral wealth. Côte d'Ivoire covers about 35% of the greenstone belts of West Africa, reputedly rich in various mineralizations (bauxite, columbite-tantalite, diamond, gold, iron, and manganese). This geological potential remains the main source of the attractiveness of the Ivorian mining sector.

Several companies are involved in mining in Côte d'Ivoire. The British company Barrick Gold operates the Tongon gold mine and Endeavour Mining is involved in production at the Agbaou site in the center and the Ity site in the west. Other companies such as Africa Gold and Perseus Mining are also present at the Sissengué and Yaouré sites in the centre-west of the country.

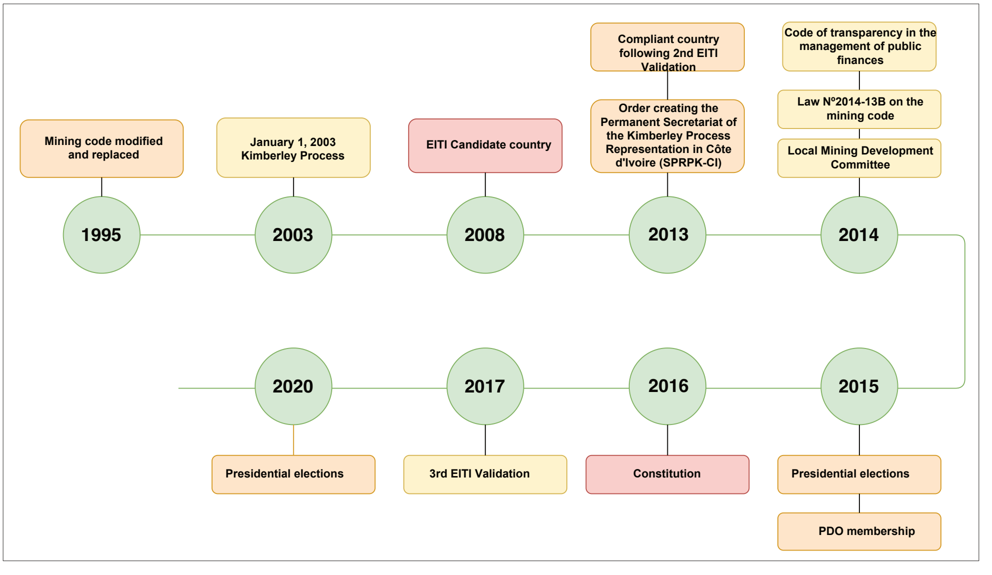
The Ivorian framework for extractive resource management is based on international mechanisms such as the EITI and the Kimberly process transposed into national legislation. Between 2013 and 2014, the governance system was strengthened with the validation of the EITI process.

The latest Ivorian constitution (2016) does not explicitly address natural resource management, except in Article 125, which provides for cooperation with other states and organizations in environmental protection and natural resource management. Transparency is addressed in the preamble of the Constitution through a commitment to "promote transparency in the conduct of public affairs."

The mining code states: "the owner of the subsoil in Côte d'Ivoire is the State of Côte d'Ivoire" and refers to transparency its article 117, obliging title holders to respect the Principles of the Equator and the EITI. Better still, it provides that "All mining revenues due to the State and collected by the State, including social achievements made by mining companies, are subject to declaration to the national EITI authorities."

In addition, Chapter 2 of the Mining Code, which is devoted to community development, contains a whole series of provisions governing the participation of titleholders in local development and the establishment of a development fund.

**Figure 2: Some benchmarks and commitments in mining governance (Côte d'Ivoire)**




Source: RCL Consulting 2022

## GUINEA

Guinea has significant natural resources in its subsoil. The country is rich in hydrographic resources, but also and above all in proven mining resources, notably bauxite, diamonds, gold, iron, etc.

According to the World Bank (WorldBank, 2020) the bauxite in Guinea represents nearly one third (1/3) of the world's reserves. As a result, several foreign investors, both Western and Chinese, have been granted licenses to exploit mineral resources in Guinea. The Société Minière de Boké (SMB) was formed in association with Winning Shipping, Hongqiao and United Mining Corporation.

Other companies are also involved in bauxite mining. The large Simandou iron ore deposit is also coveted by major mining companies that have decided to start work at this deposit[12] : these include the Chinese China Baowu Group, one of the world's leading steel companies, the Winning Consortium Simandou (an alliance of three companies from China, Singapore and Guinea) and the Anglo-Australian Rio Tinto Simfer. Guinean gold is also mined by other companies such as Société Aurifère de Guinée (SAG; a subsidiary of AngloGold Ashanti); Société Minière de Dinguiraye (SMD) and Wega Mining (a subsidiary of Avocet Mining).

The diamond industry is also in a development phase, with numerous discoveries, and Guinea joined the Kimberley Process for the certification of rough diamonds in December 2003, in a year of preparations for presidential elections. This process was developed to reduce conflicts related to or financed by diamond exploitation. A permanent secretariat has been in place since 2005 to deal with all issues related to diamond exploration and mining.

[12] The ceremony to restart work on the Simandou deposit was presided over by Guinean President Mamady Doumbouya on March 18, 2023 in Forécariah, 100km south of Konakry. Iron production is expected in the spring of 2025.

In the mid-2000s, Guinea embraced transparency and joined the Extractive Industries Transparency Initiative (EITI) in 2006. In 2010, a law on access to public information was passed by the National Transitional Council between the first and second rounds of presidential elections, but never came into force[13] . The new government that emerged from the elections passed a new mining code that was amended in 2013.

Since 2011, Guinea has sought to reinvent its development model so that the development of its extractive resources can meet the aspirations of its population. The reforms undertaken in this sense have led to the improvement of the legal framework through:

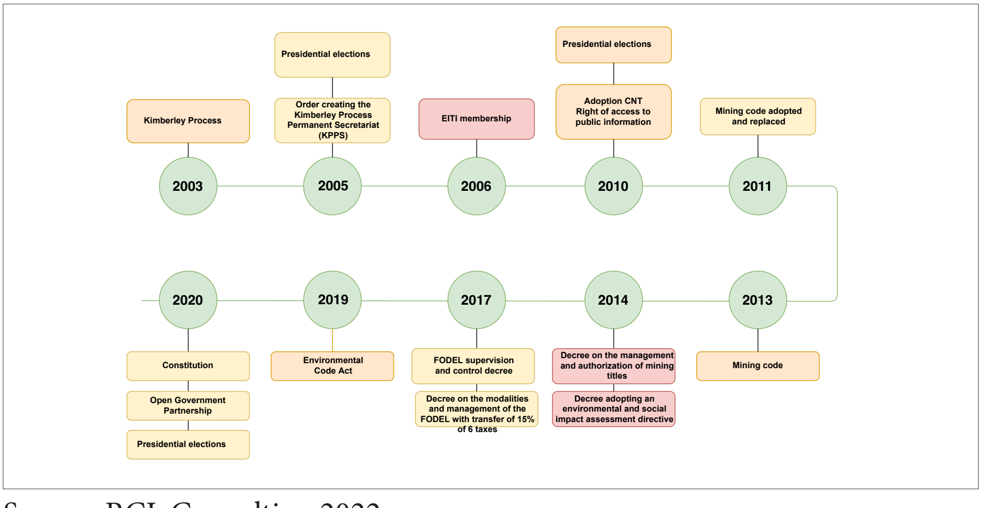
- Elaboration of the law L/2011/006/CNT of 9 September 2011 on the mining code of the Republic of Guinea amended in 2013 along with some of its application texts,
- Decree D/2014/014/PRG/SGG of 17 January 2014 adopting a directive for the realization of an environmental and social impact study of mining operations,
- Establishment of a one-stop shop for mining titles, a community relations department and local content development within the Ministry of Mines and Geology;,
- New law on the Code of Local Authorities in the Republic of Guinea, 26 March 2006, revised in 2017,
- Establishment in 2017, by decree, of a joint Ministry of Mines and Geology (MMG) and Ministry of Administration and Decentralization (MATD) committee for the supervision and control of the Local Economic Development Fund (FODEL); this provides for a transfer of 15% of the taxes to the National Agency for the Financing of Communities (ANAFIC),
- Establishment in 2017 of the National Agency for the Financing of Communities (ANAFIC); the FODEL management support committee (CAGF) etc.,

[13] It appears that the law was promulgated by the President of the Transition on 24 November 2010, but that it was not published in the Official Gazette of the Republic by the General Secretariat of the Government, which would mark its entry into force.

- Ordinary law L/2017/060/AN of 12 December 2017 on the forestry code
- Law No. 2018/0049/AN of 20 June 2018 on the code of protection of wildlife and regulation of hunting,
- Law L /2019/0034/ AN of 4 July 2019 on the environmental code of the Republic of Guinea, and
- Strengthening transparency in the management of the sector through the implementation of the Extractive Industries Transparency Initiative (EITI).

To promote responsible mining, the people of Guinea voted a Constitution[14] by referendum on 22 March 2020, that enshrines environmental protection (Article 22), and confers on the Guinean people "an imprescriptible right to its wealth. These must benefit all Guineans in an equitable manner" (Article 27). Two months earlier, the country had passed an access to information law in the context of controversial presidential elections. In the same year, Guinea joined the Open Government Partnership (OGP).

Figure 3: Some benchmarks and commitments to mining governance (Guinea)




Source: RCL Consulting 2022

14 https://www.coursupgn.org/wp-content/uploads/2021/01/La-Constiution-Guinéenne-de-2020.pdf

## SIERRA LEONE

Mining has been a mainstay of the Sierra Leonean economy since independence. The country is well known for its endowment of diamonds and iron ore, but it is also rich in bauxite, chromite, columbite, gold, ilmenite, platinum, rutile, tantalite, and zircon. Direct and indirect employment in the large-scale mines affects more than 30,000 people, or nearly 300,000 people, if one includes dependents and extended families who derive their livelihoods from them.

Large-scale industrial mining began in 1930 when the Sierra Leone Development Company (DELCO) obtained the rights to mine the iron ore deposit at Marampa (Port Loko District), which had been identified by a colonial geological survey some years earlier. DELCO built a ship unloading facility at Pepel, in the Sierra Leone River estuary, and a railroad to connect it directly to the mine site, and within a few years mineral resources began to account for a significant share of exports (57%). Previously, exports had been dominated by products such as palm and agriculture.

In the 1960s, the international iron market was sufficiently robust to encourage the company to invest in substantial upgrades to its processing facilities, rolling stock and port capacity. However, the 1973 oil crisis and subsequent global economic downturn wiped out the profitability of DELCO, and loans totaling £2.25 million could not prevent its liquidation in 1975.

Austromineral GmbH began refining and exporting tailings at Marampa in 1981, but also encountered financial difficulties and ceased operations four years later. The Sierra Leonean government then took over the management of the mine, the railroad and the abandoned port facilities. According to one study[15] , 82.75% of the total economic benefits generated by the company during its forty-five (45) years of operation were exported to Britain.

In 2004, the Sierra Leone Truth and Reconciliation Commission concluded that "the main cause of the civil war was the rampant greed, corruption and nepotism of the political elites, who looted the nation's assets, including its

[15] Hoogvelt A, Tinker A, in Fanthrope et al, "Political economy of Extractive Governance in Sierra Leone", 2013.

mineral wealth. In 2021, Sierra scored 34 on the Corruption Perceptions Index, ranking 115 out of 180.

With regard to the governance of natural resources, the Constitution sets specific objectives for the State:

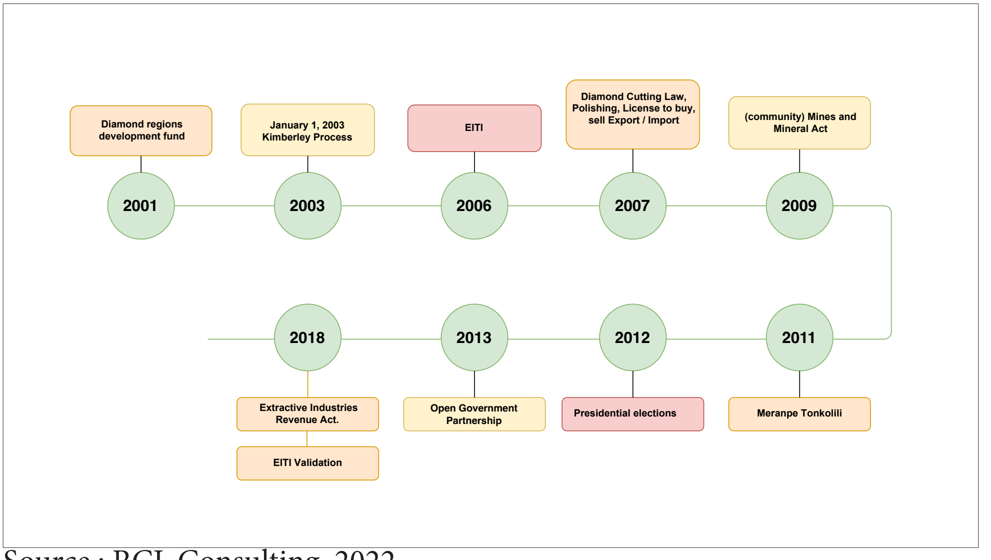
- To exploit all the natural resources of the nation to promote national prosperity and an efficient, dynamic and self-sufficient economy;
- To manage and control the national economy in such a way as to ensure the maximum welfare and opportunity for every citizen, based on social justice and equal opportunity;
- To protect the right of every citizen to engage in any economic activity without prejudice to the rights of any other person to participate in the fields of the economy.

With these principles in mind, Sierra Leone decided to improve the governance of its mining sector by becoming a member of the Kimberley Process in 2003, and in 2007, enacted the Diamond Cutting and Polishing Act[16] to allow for the issuance of licenses authorizing the holder to purchase, trade, export, import, and cut, polish, grind and set diamonds for trade.

In 2006, it joined the Extractive Industries Transparency Initiative (EITI), with the aim of improving revenue management in the extractive sector. It is therefore consistent with these international commitments that the mining code commits the Minister of Mines to "ensure, in the public interest, that Sierra Leone's mineral resources are exploited in an efficient, sustainable and transparent manner". This provision was reaffirmed in the recent Mine and Mineral Development Act (2021), which requires the Minister of Finance to publish an annual report on Sierra Leone's mineral activities and the operations of the Ministry no later than 90 days after the end of each year for submission to Parliament and public scrutiny.

[16] Republic of Sierra Leone, Diamond Cutting and Polishing Act, 2007.

**Figure 4:** **Selected mining governance benchmarks and commitments (Sierra Leone)**




Source : RCL Consulting, 2022.

## NIGERIA

Oil production, which began in 1957, grew rapidly and by 1972 had reached 89 million tons, placing Nigeria eighth among world producers and second in Africa, behind Libya.

As early as 1973, there were 73 deposits operated by about 600 productive wells. These were small deposits, with production ranging from 200,000 to less than 2 million tons per year. During this period, Nigeria, which joined the Organization of Petroleum Exporting Countries (OPEC), adopted a nationalist oil policy, similar to that of other major producing countries in the Middle East and North Africa. The government obtained from then on, a participation of about 35% before increasing it to 51%, depending on the level of production.

At the same time, the Nigerian National Oil Corporation (NNOC) was created, a state-owned company responsible for promoting and developing a national oil industry.

According to official sources, at the beginning of 2005, Nigeria held five (5) trillion cubic meters of proven gas reserves and 35.5 billion barrels of proven crude oil reserves, the seventh and ninth largest proven gas and oil reserves in the world respectively (BP, 2005). At the beginning of the same year, the country reached a theoretical production capacity of 3 million barrels per day, for an average effective production (crude + condensates) of 2.5 million barrels per day and an export volume of more than 1.7 million barrels per day in 2004[17].

Forty-five years after independence and despite $350 billion in oil revenues, Nigeria has not managed to find a development model commensurate with its economic potential. The 2005 UNDP report ranked Nigeria 158 out of 177 countries on the human development index, 31 out of 50 African countries (Sébille-Lopez, 2005).

In 2011, the country achieved a breakthrough that gave rise to optimism, with Goodluck Jonathan becoming acting President. He created the Nigeria Sovereign Investment Authority (NSIA), which was established to receive, manage and invest in a diversified portfolio of medium and long-term revenues from the federal government, state, federal capital territory, local government and regional councils.

In 2016, several companies were involved in oil production in Nigeria, including Total, Chevron and many others. Chevron, an American oil company, in association with the national oil company, is involved in the exploration and development of gas fields. The French oil company Total has been present in Nigeria for many years and is involved in upstream oil activities and in the production of liquefied gas. Oil production in Nigeria is therefore a very important part of the country's development.

Nigeria joined the EITI in 2004 and has used it to conduct audits that have identified significant discrepancies in company payments. Despite significant efforts, transparency remains a challenge in Nigeria's oil governance.

[17] Africa Contemporary, Lagos, January 19, 2005.

## SENEGAL

Senegal has significant geological potential with a wide variety of mineral substances including precious metals (gold and platinum), base metals (chromium, copper, iron and nickel), industrial minerals (barite, industrial limestones, phosphates, etc.), heavy minerals (titanium and zircon), ornamental stones and construction materials, etc. Although the first phosphate mining operations by The Chemical Industries of Senegal (ICS) date back to the 1930s, it was well afterwards that the country acquired a legal and institutional framework that met the standards, after having undergone changes successively through the 1961 Mineral Substances Regime, the 1988 Mining Code, the 2003 Mining Code and the 2016 Mining Code, as well as their implementing decrees.

The recent appearance of the highly visible civil society movement[18] denouncing the costs of mining and questioning the choices of resource valuation in the extractive industry, has accelerated the arrival of a 4th generation of codes. This new situation has made it possible to put into perspective the essentially economic and social issues that are related to human rights, the rights of indigenous populations and environmental aspects.

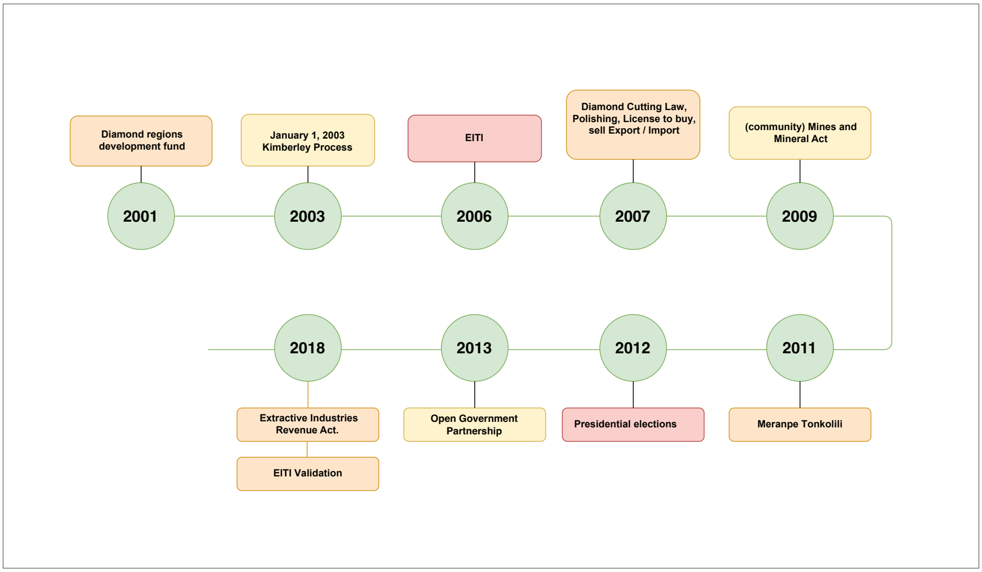
In hydrocarbons, the country has been exploiting an onshore gas deposit since 2002 in the Thies region. With the advent of the EITI, which the country joined in 2013, we are witnessing significant changes and a better consideration of transparency issues and citizen information. Thus, the discovery of crude oil deposits on SNE which became Sangomar (2014) and natural gas on Grande Tortue/Ahmeyin (2015) has brought about important changes such as:

[18] Senegal saw the birth in the mid-2000s of a few civil society initiatives that formed a coalition in 2011 to become a Senegalese chapter of the organization "Publish What You Pay," whose mission is to promote transparency and accountability in the governance of the extractive sector so that people can benefit from the revenues generated by the exploitation of natural resources.

- Introduction in the revised Constitution of 2016 of the principle of sovereignty of the People over natural resources (art.25.1),
- Advent of a new petroleum code and its implementation decree,
- Adoption of a law on local content and its implementing decrees ,
- Reorganization of the Ministry of Petroleum and Energy and establishment of the national oil company as a holding company,
- Adoption of a law on the control of the use of revenues from hydrocarbon exploitation.

Contrary to what is usually done, it should be noted in passing that Senegal has passed a law on the use of revenues from hydrocarbon exploitation even before it has produced its first barrel.

**Figure 5: Some governance benchmarks (Senegal)**




Source: RCL Consulting, 2022

## GHANA

Ghana is a country with significant mineral wealth, with modest oil and gas reserves. Crude oil production began with the Jubilee field in 2010 and has continued since. Recent oil exploration has placed Ghana in the top nine oil producing countries in sub-Saharan Africa. Several oil and gas fields have been discovered in Ghana and are being developed by international companies.

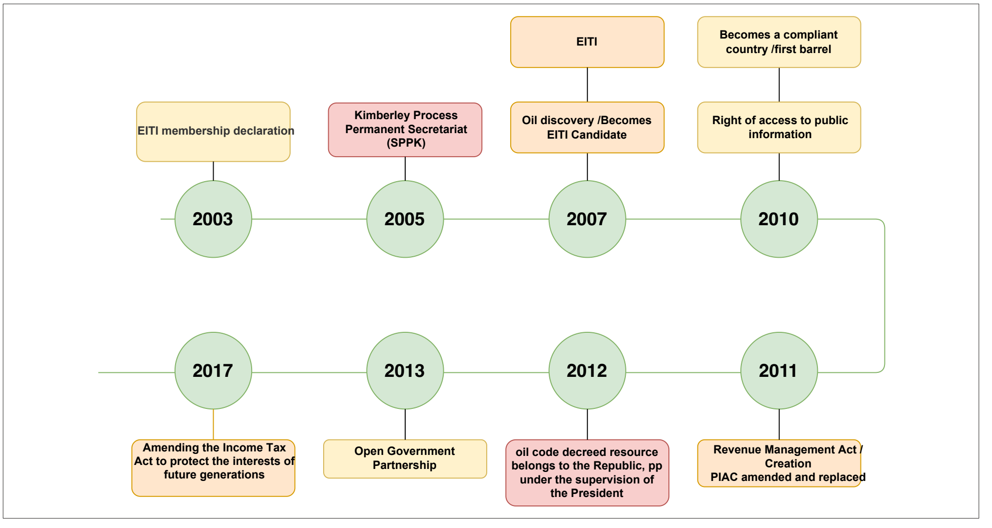
The Jubilee, Tweneboa, Enyenra and Ntomme fields are all operated by Tullow Oil (UK), Kosmos (USA), Anadarko (USA) and Petro (Canada) in partnership with the national oil company. In addition, there is another oil field, Sankofa-Gye Nyame, operated by the Italian Eni, the Swiss Vitol and the National Oil Company. All these fields allow Ghana to contribute effectively to the economic development of the country.

The Ghanaian Constitution in Article 257.6 vests in the Republic of Ghana the ownership of “any mineral in its natural state in, under or on any land in Ghana, the rivers, streams, watercourses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or the continental shelf”. Their management, however, is vested in the President, acting on behalf of the people of Ghana and in trust.

However, agreements or transactions for the exploitation of any mineral, water or other natural resource of Ghana are subject to ratification by Parliament under section 268.1.

Ghana joined the Extractive Industries Transparency Initiative (EITI) in 2003 to promote good governance in the management of its extractive resources. According to the EITI report, the three producing fields (Jubilee, TEN and Sankofa-Gye Nyame) in Ghana yielded a total of 71,395,276 barrels in 2019 compared to 62,770,787 barrels for the same period in 2018, an increase of 13.73%.

**Figure 6: Some governance benchmarks (Ghana)**




Source: RCL Consulting, 2022.

## 2. The shared vision of transparent, inclusive and sustainable extractive resource governance in the six countries

The overall vision and guiding principles for extractive resource management are often set out in fundamental texts (Constitution or Fundamental Charter) or sectoral laws and/or strategy or sectoral policy documents.

In Senegal, the Constitutional Law No. 2016-10 of 5 April 2016 revising the Constitution contains provisions relevant to the exploitation of natural resources, particularly mining, oil and gas. First, there is Article 25.2 which enshrines the "right to a healthy environment" and entrusts the public authorities with the defense, preservation and improvement of the environment. By requiring an environmental assessment for plans, projects or programmes, as well as the protection of the population in the development and implementation of projects and programmes with significant social and environmental impacts, the constitution sets the stage for responsible mining, oil and gas operations.

Then there is the introduction of Article 25-1 which states that "Natural resources belong to the people. They are used for the improvement of their living conditions. The exploitation and management of natural resources must be done in a transparent manner and in such a way as to generate economic growth, promote the well-being of the population in general and be ecologically sustainable." The analysis of this provision shows that the fundamental charter of Senegal has also laid the foundations for a transparent exploitation of natural resources, taking into account the interests of the population.

In addition, the Emerging Senegal Plan, which is the reference in terms of economic and social development, articulated around three Strategic Axes (including Axis 1: Structural transformation of the economy), identifies the mining and geology sector as an engine of growth, job creation and foreign direct investment. The Lettre de Politique Sectorielle de Développement (LPSD 2021–2025) is linked to the Emerging Senegal Plan. After the recent gas discoveries off the Senegalese coast, Senegal adopted in 2018 the Gas to Power Strategy which aims, among other objectives, to optimize the entire gas value chain.

Like modern constitutions, the Guinean Constitution of 2020 also enshrines the right to a healthy environment and the responsibility of the state to ensure: "the preservation and protection of cultural and natural heritage against all forms of degradation" (article 22). It also provides that: "The transit, importation, illegal storage and dumping on the national territory of toxic polluting waste and any agreement relating thereto constitute a crime against the Nation. The applicable sanctions are defined by law" (article 22).

With respect to the management of natural resources, the Constitution of Guinea contains relevant provisions that can inspire African states. In fact, Article 27, in addition to establishing the principle that "natural resources constitute a common good", lays the foundations and guarantees for the allocation of a portion of mining resources to local communities as well as the integration of the local private sector in projects within the framework of the local content policy, which is enshrined as a fundamental principle.

From a strategic point of view, Guinea adopted a Mining Policy Declaration (DPM) in 2018 that incorporates the conclusions of a major inclusive consultation held in February 2017 as part of the Responsible Mining Development Initiative and is intended to be consistent with the strategic framing defined by the government in the "Guinea 2040 Vision" adopted in April 2017 and its first operationalization tool which is the 2016–2020 National Programme dor Economic and Social Development (PNDES). The new Mining Code, adopted in 2011 and amended in 2013 in some of its provisions, aims essentially to promote a more dynamic and responsible development of the country's mineral resources, in a more transparent and corruption-free framework. This framework balances the interests of investors with those of Guinea, while taking better account of environmental and social aspects in order to contribute to sustainable development objectives.

The 1991 Constitution of Sierra Leone, reinstated in 1996, with amendments in 2008, mandates the state to "exploit all the natural resources of the nation to promote national prosperity and an efficient, dynamic and self-reliant economy"[19] .The Mines and Minerals Act of 2009 is the primary legislation governing mineral development in Sierra Leone. In 2019, the Ministry of Mines and Mineral Resources (MMMR), with support from the World Bank, sought to adopt clear mining legislation that reflects government policy and industry practice, and sets legally enforceable guidelines. From June 2019 to early 2020, as part of the World Bank EITAP II assistance, the World Bank provided technical and financial support for the formulation of the 2021 draft Mining and Mineral Development Bill.

Following several consultations with other ministries, departments, and associated agencies, as well as bilateral, multilateral, and extensive nationwide stakeholder consultations, including mining companies, civil society groups, and local communities, a Mining and Minerals Development Bill was formulated in June 2021 that includes the following key reform changes:

[19] Section 7.1.a.

- Clarification of institutional roles and responsibilities considering the creation of the National Minerals Agency (NMA) by an Act of Parliament, the National Minerals Agency Act of 2012,
- Disclosure of beneficial ownership for companies operating in the mining sector. It is mandatory to disclose the identity of shareholders holding 5% or more of the shares of any company operating in the mining sector in Sierra Leone,
- The introduction of gender and social protection provisions,
- Strengthening sub-national transfers to finance development projects in mining communities.

Sierra Leone also has a Mining Policy, the overall objective of which is to "set out a clear framework through which the government will manage the minerals sector to become a key driver of Sierra Leone's economic transformation, growth and development in a manner that protects the environment, contributes to social development, improves livelihoods and is based on active stakeholder participation, transparency, accountability and respect for human rights"[20] .

The Ghanaian Constitution of 1992, revised in 1996, in its article 257.6 confers the ownership of "any mineral in its natural state in, under or on any land in Ghana, the rivers, streams, watercourses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or the continental shelf" to the Republic of Ghana and its management to the President on behalf of the people of Ghana and in trust.

In addition, agreements or transactions for the exploitation of any mineral, water or other natural resource of Ghana are subject to ratification by Parliament under Article 268.1.

In accordance with Section 269.1 which provides for the establishment by Parliament among other commissions, the Petroleum Commission Act, 2011, established the Petroleum Commission to regulate and manage the use of petroleum resources and coordinate policies relating thereto.

[20] The Sierra Leone Minerals Policy, p.19.

The Ghanaian constitution also enshrines the protection of human rights and fundamental freedoms to be respected and upheld by the executive, legislature, judiciary and all other organs of government and its agencies and, where applicable, by all natural and legal persons in Ghana[21] . It mandates the state to take "appropriate measures to protect and safeguard the national environment for posterity"[22] and to ensure "the health, safety and welfare of all persons working and establishes the basis for the full development of the creative potential of all Ghanaians"[23] .

The 1999 Constitution of the Federal Republic of Nigeria (as amended) vests ownership and control of natural resources in the federal government. Section 44 (3)66 provides that "the entire property in and control of all minerals, mineral oils and natural gas in, under or over any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly."

In addition, the constitution provides that mines and minerals, including oil deposits, petroleum development, geological surveys and natural gas, are the preserve of the federal government of Nigeria. The exclusivity of this provision, like that of the 1963 and 1979 constitutions, reflects British colonial laws in Nigeria that vested ownership and control of natural resources in the Crown, while granting petroleum exploration and exploitation rights and prospecting licenses to companies. The Petroleum Industry Act (PIA) of 2021 follows suit by providing that "The property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested in the government of the Federation of Nigeria."

Furthermore, the Supreme Court of Nigeria, in Attorney-General of the Federation v. Attorney-General, Abia State (No. 2), held, inter alia, that the

21 Article 12.1 Constitution.
22 Section 36.9.
23 Section 36.10.

federal government alone, and not the coastal states, may lawfully exercise legislative, exclusive and judicial powers over the maritime belt or territorial waters and sovereign rights over the exclusive economic zone, subject to universally recognized rights.

The derivation principle is a constitutional directive that constitutes a form of redress for an expropriated interest that cannot be waived or derogated by the state or federal government. It provides for the sharing of oil and gas revenues between the federal government and the states according to a constitutionally defined percentage. It is intended to use a portion of the total oil and gas revenues accruing to the Federation account to assist the coastal states to use the money to address the ecological and environmental damage caused in their communities by oil exploration and exploitation. The mechanism under the Nigerian constitution of 1960 was 100%, then reduced to 50% by the 1963 constitution, and finally to 13% by the 1999 constitution. The current 13% has been severely eroded by the decline in crude oil prices, economic recession, and monumental corruption in the Nigerian oil industry. This has also affected the plight of the coastal states which, in the current state of affairs, cannot meet their obligations and this has become the starting point for their agitation for control of resource ownership[24] .

The Nigerian constitution does not say much about the environment. However, section 20 of the constitution states that "The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.

Finally, the Ivorian Constitution of 8 November 2016 does not contain much information regarding natural resources. It provides that the Republic of Côte d'Ivoire may conclude association or integration agreements with other African states for cooperation in environmental protection and natural resource management[25] . It also enshrines the right to a healthy environment recognized to all, as well as the duty of the community and of each natural or legal person to protect the environment and promote the quality of life[26] .

[24] Ownership and Control of Natural Resources under the Nigerian Constitution 1999 and Its Implications for Environmental Law and Practice, p. 12.
[25] Articles 124 and 125 Constitution of 08 November 2016.
[26] Article 19 and 28 Constitution of 08 November 2016.

The Ministry of Mines and Geology has a mining policy document with the objective of making the mining sector a major engine of economic growth given the importance of the geological and mining potential of Côte d'Ivoire.

## 3. Institutional frameworks for the governance of extractive revenues vary from country to country

All the countries covered by the study have institutions or bodies responsible for implementing natural resource management policy and regulations, including the governance of revenues from extractive activities. These institutions may be the same ones that manage the country's other revenues or they may be specifically dedicated to revenue management.

### GHANA

For transparent, accountable and efficient management of oil and gas revenues, Ghana has established an institutional framework for their management, control and monitoring.

Parliament is responsible for the final approval of oil agreements. This procedure, known as ratification of the petroleum agreement, is enshrined in Article 268 of the Ghanaian constitution. Parliament decides each year how much of the oil revenue to spend by approving the Annual Budget Funding Amount (ABFA) as part of the national budget process.

The Ministry of Energy is responsible for developing and implementing energy sector policy in Ghana and overseeing the operations of several government institutions, including the Ghana National Petroleum Corporation and its subsidiary, the Ghana National Gas Company (GNGC).

The Minister of Finance plays an important role in revenue management. Under the Petroleum Revenue Management Act (PRMA) of Ghana, the Minister of Finance is responsible for developing an investment policy for the investment of the Ghana Petroleum Funds. He or she is also responsible for the overall management of the Funds and oversees transfers and disbursements from the Funds. In addition, the Minister is required to make decisions regarding the investment strategy or management of the Funds after seeking the advice of the Investment Advisory Committee and the Governor of the Bank of Ghana.

He is also mandated to enter into an Operations Management Agreement with the Bank of Ghana for the operational management of the Funds. The Minister, in consultation with the Governor, appoints the members of the Investment Advisory Committee. The Minister has the power, by legislative instrument, to make regulations under the Act.

The Bank of Ghana (BOG) is entrusted by the Petroleum Revenue Management Act of Ghana with the responsibility for the day-to-day operational management of the Petroleum Holding Fund, the Ghana Petroleum Funds and the Ghana Petroleum Wealth Fund, in accordance with the Operations Management Agreement with the Minister of Finance. The central bank is mandated to manage the funds prudently within the operational and management strategy provided by the Minister, taking into account the investment guidelines used by the Bank for investments of a similar nature, internationally recognized principles of good governance, and the need to support the domestic currency against destabilizing factors.

The Auditor-General is responsible for the external audits of the oil funds and is mandated to audit them annually. The Auditor-General may delegate this task to an external auditor. However, this delegation is made for a period not exceeding three years and is not renewable. The Auditor General also submits an annual audit report to Parliament.

The Ghana Revenue Authority (GRA), established by law under the Ghana Revenue Authority Act, 2009 (Act 791), assesses, collects and accounts for all petroleum revenues due to the state.

The PRMA provides for the establishment of the Investment Advisory Committee (IAC) to advise the Minister on monitoring the overall performance of the management of the Ghana Petroleum Fund, whose function, among others, is to formulate and propose to the Minister the investment policy and management of the Funds. The IAC also provides advice on overall investment and management strategies. The IAC consists of seven members who are nominated by the Minister of Finance in consultation with the Governor of the Bank of Ghana for appointment by the President. At least two of the members must be women and all must be individuals with proven expertise in finance, investment, economics, business management, law, or similar disciplines.

The Investment Advisory Committee is responsible for reporting to the Minister of Finance, on a quarterly and annual basis on the performance and activities of the Ghana Stabilization Fund and the Ghana Heritage Fund, for inclusion in the annual budget and financial statements.

The Public Interest and Accountability Committee (PIAC) was established under the PRMA to monitor and evaluate the compliance of government and other relevant institutions in the management and use of oil revenues and investments. The Public Interest and Accountability Committee (PIAC) is an autonomous citizen oversight body, which derives its powers from the law and has a mandate to monitor spending and the impact of public investments. It is mandated 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. In addition, it provides independent assessments of the management and use of oil revenues.

The Public Interest and Accountability Committee is composed of thirteen (13) members appointed by their respective institutions. After appointment by these respective bodies, they are then sworn in. The Chairman of the Committee shall be elected by the members of the Committee from among their members. The Committee shall have its own secretariat to facilitate the execution of its functions/activities.

## NIGERIA

Several institutions are involved in the management of the Nigerian oil and gas sector, including the management of revenues generated by the sector. There is the Ministry of Petroleum Resources which has the overall mandate to formulate policies on the oil and gas sector and oversee their implementation.

The Nigerian National Petroleum Corporation (NNPC) conducts exploration activities and operational functions such as refining, transportation and marketing of crude oil. NNPC also manages the government's interests/assets in the industry. NNPC has 12 strategic business units (SBUs) through which it operates in the sector.

The Federal Inland Revenue Service (FIRS) is responsible for tax administration in the sector and assesses, collects and accounts for oil revenues. It does not publish what it collects and its enforcement methods are poor.

The Department of Petroleum Resources (DPR) is the parastatal technical agency of the Ministry of Petroleum Resources responsible for regulating and controlling the activities of the oil and gas industry. It is not subject to the control of the Ministry and as such has overwhelming power. It collects royalties, gas flaring penalty fees, lease rentals, license and lease fees, signing bonuses and other fees. It collects oil revenues and deposits them into several accounts, but it lacks transparency and accountability.

The Central Bank of Nigeria is the apex bank responsible for the custody of the Federation's funds. The Federation's domestic and external revenue accounts are domiciled with the central bank.

Other institutions are involved in the distribution of oil revenues to different levels of government. The Revenue Mobilization Allocation and Fiscal Commission (RMAFC) manages oil revenues by controlling the accumulation and disbursement of revenues from the Federation Account. The Federation Account Allocation Committee (FAAC) is responsible for the distribution of revenue from the Federation Account among the three tiers of government[27]. The Office of the Accountant General of the Federation (OAGF) houses the Accountant General of the Federation and is responsible for preparing the nation's financial statements arising from the collection and receipt of revenues, fees, rentals, taxes and duties and remittance to the Federation Account.

The Ministry of Finance (MOF) is responsible for collecting and disbursing government revenues, formulating policies on taxation, tariffs, fiscal management, preparing and managing the budget, preparing the annual

[27] Revenue Allocation Act (Federation Account, FTA), section 6 (1).

accounts of ministries, departments and agencies, managing the federal debt and regulating the capital market.

Another pillar of the oil governance of Nigeria includes the institutions responsible for spending oil revenues. It includes the Federal Executive Council (FEC), which is a meeting of the President, Vice President and all ministers of the government of the Federation to determine the general direction of the domestic and foreign policies of the government of the Federation. The Federal Executive Council is established under section 144 (5) of the 1999 Constitution.

Then there is the National Economic Council (NEC), which is the meeting between the vice president, the governor of each state of the federation and the governor of the Central Bank of Nigeria to discuss the economic affairs of the federation. It approves the financing regime for the oil and gas industry. It has the power to require the federal government to give details to the states on the spending of any money they receive. It is one of the federal executive bodies established under section 153(1)(h) and paragraphs 18 and 19 of the Third Schedule, Part 1 of the 1999 Constitution, as amended.

The National Assembly (NASS) is responsible for making laws and exercising oversight over the other branches of government. Sections 4 and 47 of the 1999 Constitution of Nigeria, as amended, confer legislative powers on the National Assembly.

Likewise, the Office of the Auditor General of the Federation, headed by the Auditor General of the Federation, whose existence, powers, duties and responsibilities are provided for in Section 85 of the Constitution, shall have the duty to audit all public accounts of the Federation, all offices and courts of the Federation, and to submit its report to the National Assembly

Similarly, the Niger Delta Development Commission (NDDC) is a federal government agency established to oversee the development of the oil and gas producing states of the Niger Delta.

The Petroleum Technology Development Fund (PTDF), a parastatal organism of the Ministry of Petroleum Resources, was established to develop and promote petroleum technology and meet the manpower needs of the oil and gas industry through research and training of Nigerians.

In addition, the Fiscal Responsibility Commission (FRC) has the power to inspect all corporate offices, to access all available information on revenues generated and operating surpluses. It has the power to compel government institutions to disclose information on government revenues and expenditures, and the Nigerian Sovereign Investment Authority (NSIA), which was created to succeed the Excess Crude Account, governs the Nigerian Sovereign Wealth Fund (NSWF).

There are also institutions responsible for fighting corruption. These include the Economic and Financial Crimes Commission (EFCC), which is authorized to prevent, investigate, prosecute and punish economic and financial crimes. It enforces the provisions of other laws and regulations related to economic and financial crimes.

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) is responsible for receiving and investigating complaints from the public about alleged corrupt practices and, in appropriate cases, prosecuting offenders; reviewing the practices, systems and procedures of public bodies and, where such systems are conducive to corruption, directing and supervising their review.

## SENEGAL

Several bodies, including the Presidency of the Republic, are involved in the oil and gas sector. The Minister of Finance plays a crucial role in the management of oil and gas revenues. Indeed, revenues are executed under his responsibility. He commits and orders credits to the oil funds, according to a commitment plan established at the beginning of the fiscal year within the deadlines set by the regulations in force. He or she ensures the proper implementation of investment strategies and the pursuit of performance objectives that the State defines for the Intergenerational Fund and the Stabilization Fund.

The minister receives quarterly and annual activity reports, work plans and programmes and, where applicable, risk management programmes drawn up by the Fund managers. The minister formulates opinions on these documents and may, if necessary, oppose a decision by a manager by means of a reasoned opinion. He or she also presents the manager's reports to the Oil and Gas Policy Committee. The minister may commission any study or control on the management of the funds.

The Sovereign Wealth Fund for Strategic Investments (FONSIS), created by Law No. 2012-34 of 31 December 2012, is mandated to manage the intergenerational fund.

The Forecasting and Evaluation Committee (CPE) is created by the Oil Revenue Management Act and is responsible for making reference-price forecasts and reference-revenue projections as well as any other mission entrusted to it by decree. Its composition and operating procedures are established by decree.

The Oil and Gas Strategic Orientation Committee (COS-PETROGAZ), among other things, is responsible for monitoring the proper management of the hydrocarbon sub-sector. The Minister of Finance presents the manager's reports to the Committee in charge of the Oil and Gas Orientation. He may commission any study or control on the management of the funds.

The Court of Audit exercises control over the management of the administrations in charge of the execution of programmes and allocations. The miniser issues an opinion on the annual performance reports and has a mandate to audit the funds established by the Law on Revenue Management.

The National Assembly receives the certified annual accounts and the annual activity report and may conduct investigations and hearings under the conditions defined by the organic law on finance laws.

## SIERRA LEONE

The Ministry of Mines and Mineral Resources (MMMR) and the National Minerals Agency (NMA) are the main government agencies responsible for the promotion and control of mining exploration and activities in Sierra Leone. They are also responsible for implementing and monitoring government policies and developing legislation and regulations for the mining sector.

Sierra Leone established the National Revenue Authority in September 2002 by the National Revenue Act 2002 (Act No. 11). The National Revenue Authority is responsible for the assessment and collection of national taxes, customs duties and other revenues specified by law, as well as the administration and enforcement of laws relating to these revenues.

The Ministry of Local Government and Rural Development (MLGRD) is responsible for local government, which includes six urban councils (Bo, Bonthe, Freetown, Kenema, Koidu, and Makeni) and 16 district councils under the Local Government Act of 2004. The third sphere of government is the chiefdom councils.

Local authorities and chieftaincy councils have the power to collect revenue, and they impose property taxes and licensing fees for mining activities in host communities.

The paramount chiefs and ruling families of the chiefdoms were recognized and empowered by the British colonial administration in Sierra Leone. All chiefdoms have been constituted as district councils. These sub-national government agencies receive surface leases from the mining companies.

Parliament oversees the activities of the extractive sector in Sierra Leone. Members of Parliament who receive surface rent of 10% or more from mining companies must disclose payments received from mining companies to the Independent Administrator during the EITI data collection phase.

## CÔTE D'IVOIRE

The Council of Ministers is the supreme body with decision-making power over all mining activity on the national territory. It rules on all mining matters of national interest and, on the recommendation of the Minister in charge of mines, has the authority to grant or withdraw mining titles and other mining authorizations. The decisions taken by this body are ratified by a presidential decree.

The Minister in charge of mines and his cabinet are the first official interlocutors of mining operators. The minister designs and coordinates the implementation of the national mining policy. He has a right of review over all mining activities on the national territory. In particular, after receiving the technical opinion of the Interministerial Mining Commission (CIM), he submits applications for the granting of mining titles to the Council of Ministers.

The Interministerial Commission on Mining (CIM) plays an advisory role to the government in mining matters. Composed of representatives of various ministries and public bodies, it meets whenever necessary at the invitation of the Director General of Mines and Geology, who is the commission's secretary. It rules on various subjects including applications for the granting of mining titles, applications for exemption from import taxes on mining materials and equipment, large-scale mining projects, proposals to amend the mining legislation, etc.

The Committee for Monitoring the Use of Escrow Account Resources (CSCS) ensures the effective opening of the escrow account, the compliance of the sums paid by the operating companies with those established by the regulations in force and examines requests for the allocation of environmental rehabilitation expenses to the resources of the account. It was established in April 2019 (Order No. 00028/MMG/CAB of 25 April 2019 appointing the members of the CSCS).

The General Directorate of Mines and Geology (DGMG) is the administrative body of the Ministry of Mines that is responsible for the day-to-day management and application of national mining policy. The DGMG is in charge, among other things, of processing applications for various authorizations and mining titles, and of controlling and monitoring mining exploration and exploitation activities throughout the national territory. It is also in charge of the elaboration and the progressive update of the geological cartography of the country.

The Local Mining Development Committee (CDLM): For each industrial mining operation, in accordance with Article 125 of the Mining Code, a CDLM is established and installed by joint order of the Minister of Mines and the Minister of Territorial Administration. This Committee is responsible for developing, adopting and implementing a Local Mining Development Plan for the benefit of the populations impacted by the operation. As of 31 December 2019, the total number of CDLMs created was eleven (11). With a view to optimizing the functioning of the CDLMs, an audit programme was initiated in 2019 and a reform of the CDLM means of action and governance framework is underway with the support of GIZ.

The Société pour le Développement Minier de la Cote d'Ivoire (SODEMI), the public company, placed under the supervision of the Ministry of Mines, was created in 1964, and its mission, among others, is to identify and develop national mining potential through the acquisition of mining titles, the signing of partnership agreements with credible mining companies, the acquisition of shares in the major mining projects of the country, etc.

## GUINEA

At the top of the institutional framework for managing the mining sector is the Presidency of the Republic, responsible for defining the attributions, composition, organization and functioning of the main governance structures of the mining sector.

The Ministry of Mines and Geology is responsible for the design, development and implementation of the government's mining policy and ensures the follow-up and evaluation of this policy through its technical structures.

The National Directorate of Mines (DNM) is under the supervision of the Ministry of Mines and Geology and controls mining activities, ensures technical and environmental evaluations before any mining title is granted, and the examination of applications for mining titles and the cadastral evaluation. The DNM also ensures the organization and control of artisanal exploitation and the issuance of temporary quarrying authorizations.

The Office of National Expertise (BNE) is placed under the supervision of the Ministry of Mines. Its mission is to evaluate diamonds and gems intended for export and originating from artisanal, semi-industrial and mining company operations. In addition, the BNE is responsible for :

- Making proposals to the Ministry of Mines for authorizations to open gold or diamond buying stations (Article 60 of the amended Mining Code),
- Sealing and preserving these products, and providing the necessary assistance for their export,
- Liquidating the royalties and taxes applied to the purchase counters,
- Collecting data and monitoring the state of the market on behalf of the Ministry of Mines,
- Maintaining statistics by weight and value, and
- Providing training to nationals in diamond and other gem valuation.

The Société Guinéenne du Patrimoine Minier SA (SOGUIPAMI), 100% owned by the State, is responsible for :

- Managing the State's holdings in mining companies,
- Appointing state representatives to management or supervisory bodies, and representing the State at shareholders' meetings,
- Implementing the decisions and orientations of the State with regard to the strategy of these companies and exercising the mission of the State as shareholder, while taking care of the patrimonial interests of the State,
- Regularly evaluating the management of these companies,
- Marketing the state's share of mining production upon the request of the government, and
- Participating in mining research by holding mining research permits alone or in partnership for promotional purposes, within the limits set by Law L/2011/006/CNT of 9 September 2011 establishing the mining code.

The FODEL Management Support Committee (CAGF), created by joint order N°A/2017/6326/MMG/MATD/SGG of 22 November 2017 controls and manages FODEL. A CAGF is established in each mining prefecture. This multi-stakeholder committee, which includes, among others, representatives of civil society, youth and women, is chaired by the representative of the Prefectural Development Committee (CPD). The companies make annual payments to an ad hoc account of the CAGF, which is responsible for paying out the quotas to the communes according to the distribution formula.

# 3

# REVENUE MANAGEMENT

# III. REVENUE MANAGEMENT

Laws relating to the management and use of revenues in the targeted countries, and any other law that governs the management of extractive revenues in the country, from the collection of revenues to the monitoring of expenditures and their allocation are discussed in this chapter. Particular attention will be paid to the integration and traceability of revenues in the government budget, the budgetary rules that govern the withdrawal and disbursement of funds, the investment policy that is supposed to define priorities, and the restrictions placed on the use of funds. Where available, implementation data will also be analyzed. The existence of sovereign wealth funds will be considered (although they are more common in the oil and gas sector), the objectives assigned to them, and their transparency and reporting practices promoting accountability. At this level, the focus will be on analyzing the fund's anchoring, the investment policy it is supposed to execute, the rules for controlling and validating its operations, compliance with the "Santiago Principles"[28] and any other standards or requirements related to its governance. This dimension will make it possible to look at the directors, their independence and the place reserved for civil society organizations. Unlike sovereign wealth funds, local development funds are much more common in the mining sector than in the oil sector, where support for communities can take other forms. The study will focus on the fund's operationality, governance and impact on local economic and social development.

## 1. Legal Instruments for Revenue Management

The management of revenues from the exploitation of natural resources, particularly mining, oil and gas, is often governed by specific legislation due to the particular nature of these revenues. While States very often put in place a law for the management of oil revenues, mining revenues are not given special treatment. In fact, mining revenues are in principle governed by the same laws that govern public finances, with only some exceptions.

[28] The Santiago Principles are a set of best practices for SWFs, defined by the IMF at a meeting in Santiago in October 2008.

## Legal instruments for managing oil revenues

### GHANA

Ghana passed the Petroleum Revenue Management Act (PRMA) 2011 (Act 815) in 2011, amended by Act 893 of 2015. The PRMA sets out rules for the collection, distribution and management of petroleum revenues in a responsible and sustainable manner for the benefit of the citizens of Ghana in accordance with Article 36 of the Constitution. The PRMA also establishes a framework for accounting for revenues and expenditures from petroleum revenues as well as rules on investments and savings, in line with industry practice. The legal basis for the annual budget statement is Article 180 of the 1992 Constitution and Section 23 of the Public Finance Management Act (Act 921), which regulates public sector financial management by defining the roles and responsibilities of the various institutions involved, macroeconomic and budgetary policies, budget preparation, approval and management, cash and asset management, public debt management, etc. There is also the Public Financial Management Regulation, 2019 LI 237.

Ghana has opted for an oil revenue management rule whereby the government allocates revenues from oil and gas development to different levels of government or citizen institutions. While the allocation of oil revenues is a highly political function, economic efficiency criteria can help determine the percentages that should be allocated to each institution (NRGI Reader, 2015). The appropriate percentage of revenue, determined by an economic formula for long-term savings, can help avoid Dutch disease and improve the efficiency of national spending, although it may deprive the government of much-needed development funding (NRGI, 2015).

**The oil revenue base of Ghana**

The law begins by defining the types of revenues that are considered oil revenues and that are supposed to feed into the Petroleum Holding Fund. The table below provides a brief description of the flows retained in the law:

**Table 4: Sources of revenue for the Petroleum Fund (Ghana)**

| Oil revenues | Description |
|---|---|
| **Royalties or fees** | Royalties can vary between 5% and 12% depending on the law. In the agreements, they are maintained at 5%. |
| **Free equity investment** | The previous petroleum code provided for a 10% free equity investment in the exploration phase. The 2016 law increased this to a minimum of 15%. |
| **Additional equity investment** | The law provides for an additional equity investment of up to 25%. |
| **Corporate (income) tax** | The law provides for a tax rate of 50% but in practice, conventions apply a rate of 35%. |
| **Surface tax** | In proportion to the size of the block |
| **Additional oil entitlement** | This is a tax applied to surplus production and rates of return on investment when these exceed the thresholds provided for in the contract. The government can then apply a deduction of up to 30% to share the profits with the operator. |
| **Other income** | They generally concern taxes on transfers or disposal of assets, or dividends |

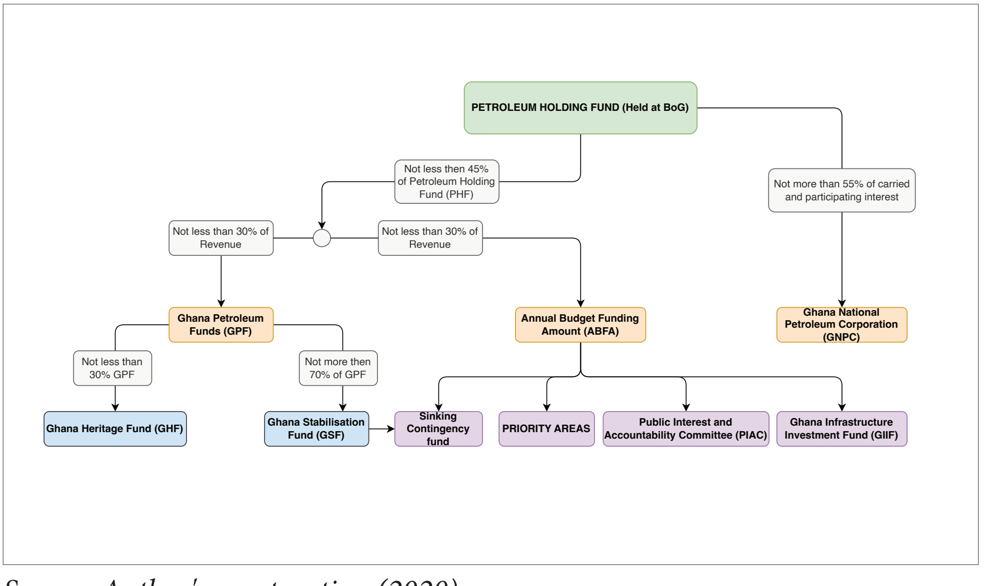
## Distribution and allocation of the oil revenues of Ghana

The allocation of oil revenues is defined by law. The principle that governs the government's choices (after consultation with the people) is based on a vision of public investment as an essential instrument for boosting socio-economic development, human capital and the competitiveness of the Ghanaian economy. Thus, 70% of all oil revenues are allocated to public expenditure, while 30% is allocated to savings. The public expenditure share is divided into two chapters: consumption (30% of the dedicated amount) and investment (70% of the dedicated amount), divided between the priority sectors and the Ghana Infrastructure Investment Fund (GIIF).

Priority sectors: Twelve (12) priority sectors have been identified by the government, notably through the investment policy developed by the Ministry of Economy and Finance. These include education, science and technology, housing provision, agriculture and industry, and rural development. However, the government must target four areas when submitting the three-year action plan that must specify the destination of oil revenues.

Ghana Infrastructure Investment Fund (GIIF): Of the approximately 70% allocated to the Annual Budget Funding Amount (ABFA), or the share of oil revenues injected into the annual government budget, a minimum of 25% is dedicated to the GIIF, which is for public investment expenditures aligned with an infrastructure development target to be included in the national budget. This component of the model was added after the amendment of the PRMA law in 2015. The main objective of the GIIF is to mobilize funds to close the infrastructure gap in Ghana through the mobilization, management, coordination and provision of financial resources to invest in a diversified portfolio of infrastructure projects in Ghana. The 30% for savings is divided between the Stabilization Fund (70%) and the Fund for Future Generations (30%).

**Figure 7: Oil revenue distribution pattern (Ghana)**




*Source: Author's construction (2020)*

## Governance of oil funds

Governance measures have been taken to secure and validate transactions from the oil fund. The revised law gives the tax authority the prerogative to verify the effectiveness of payments from the oil fund based on production volume and the reference price. Strong measures are taken at production time based on information sent to the Minister, the tax authority, the regulator and the governor of the national bank, including:

- The number of barrels produced,
- Reference prices at the time of the levy,
- The gross and net revenues resulting from this operation, and
- The expected date of payment into the oil fund.

In addition, the Bank of Ghana is required to submit to the Revenue Authority the monthly, quarterly and annual payment schedule of each type of revenue for reconciliation purposes. One of the governance strengths of the system is the real-time sharing of information with the National Company, the Petroleum Commission, the Revenue Authority and the minister. In addition, the regulation goes as far as to include payment terms for each sum due with late penalties applicable to offenders.

Monitoring of the mobilization, allocation and use of oil revenues is ensured through audits and monitoring reports produced periodically for the attention of the Government and/or Parliament by the Chief Controller of the Bank of Ghana, the Public Interest and Accountability Committee, the Comptroller General and the Auditor General. These include annual and semi-annual audits of the escrow and savings accounts, as well as periodic management reports on the Generational Fund and the Stabilization Fund.

There are also periodic reports from the Public Interest and Accountability Committee and the government, and annual audits of the General State Budget execution accounts by the Auditor General. These various reports and audits are systematically published by the Government. In order to maintain specialization, the Parliament exercises control over the allocation of oil revenues through the adoption and monitoring of the execution of the

General State Budget, while the Auditor General exercises control over the legality of state expenditures through the official closing of the revenue accounts and by controlling the legal provisions on the distribution of resources for the General State Budget, as well as the provisions governing the constitution of reserves or the placement abroad of resources for stabilization and future generations.

## SENEGAL

In Senegal, after the important recent discoveries of oil and gas, the President of the Republic launched a National Concertation on the management of revenues from oil and gas to build a consensus around the management of the said revenues. Held on 21 December 2021, this consultation was attended by political, religious, customary and civil society actors, as well as the private sector. On this occasion, COS PETROGAZ presented the draft law on the use of oil and gas revenues, which was subsequently adopted by the National Assembly in Law No. 2022-09 of 19 April 2022 on the distribution and management of revenues from hydrocarbon exploitation. It establishes in Article 1: "the rules relating to the distribution and management of revenues from the exploitation of hydrocarbons". In addition to this law, it should be noted that Law n°2011-15 of 8 July 2011 on finance laws, as amended by Organic Law n°2016-34 of 23 December 2016, governs the framework for public finance management and determines the rules relating to the presentation, adoption, execution and control of the state budget. This law provides for the publication of budgetary data via the Multi-Year Budgetary and Economic Programming Document (DPBEP) and the Budget Implementation Reports transmitted quarterly by the Government to Parliament.

In April 2022, Senegal adopted the Law on the distribution and management of revenues from the exploitation of hydrocarbons. This law follows on a series of other framing texts and provisions:

- The transparency code in public finance management (which reinforces the principle of accountability);

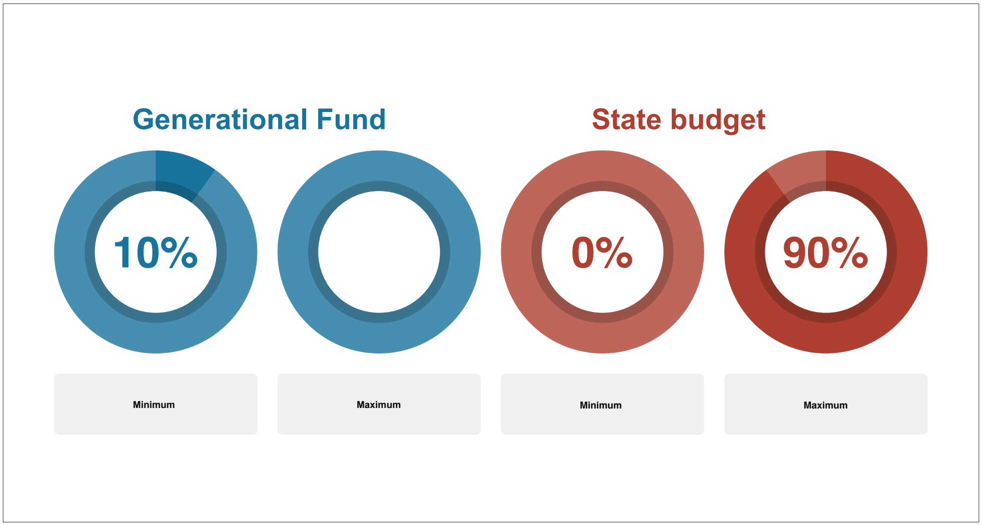
- Transparency requirements through disclosure practices made mandatory by the adherence of Senegal to the EITI Standard;
- Article 25-1 of the Constitution, which, since 2016, gives the People "shareholder prerogatives" since they are the owners of the resources;
- Article 5 of Law No. 2019-03 of 1 February 2019 on the Petroleum Code, which refers to the distribution of income taking into account intergenerational equity);
- Law No. 2019-04 of 1 February 2019 on local content in the hydrocarbon sector;
- Law n°2020-06 of 7 February 2020 on the Gas Code.

Drawing on international best practices, the Senegalese law is aligned with the major principles of public finance and sustainable development that frame revenue management and allocation decisions:

- Full budgeting of tax and non-tax revenues from hydrocarbon exploitation,
- Prohibition of any advance disposal of hydrocarbon resources and/or any advance security interest in these resources,
- Creation of a Stabilization Fund to guard against the risks of volatility in hydrocarbon revenues; capitalization on the revenue surpluses observed between the reference estimates and the actual revenues, and
- Establishment of an Intergenerational Fund intended to keep savings available for future generations constituted of revenues from hydrocarbon exploitation made profitable through a management mandate with the Sovereign Fund for Strategic Investments (FONSIS).

A distribution mechanism based on calculations from the Forecasting and Evaluation Committee (CPE) that will be set up by decree. This committee will be responsible for making reference price forecasts and reference revenue projections. The graph below provides an overview of the revenue shares allocated to the Generational Fund and the State budget.

**Figure 8: Breakdown of revenues between the State budget and the Generational Fund**




In addition, a stabilization fund will accommodate excess revenues between the baseline forecast and the actual revenues. The stabilization fund is subject to an accumulation ceiling that corresponds to the average of the hydrocarbon revenue forecasts over the entire operating period. The surplus recorded in the stabilization fund is transferred to the generational fund.

## NIGERIA

In Nigeria, the legislation on oil revenue management can be grouped into three categories. First, there is the legislation on valuation and recovery. This consists of the Petroleum Act, 1969 (as amended), which is the main oil and gas legislation; the Federal Inland Revenue Service Act, which created the Federal Inland Revenue Service (FIRS) to collect oil revenues; and the Petroleum Profit Tax Act. Then there is the legislation relating to the distribution of oil revenues which includes the Finance Control and Management Act and the Revenue Mobilization, Allocation and Fiscal Commission Act (RMAFC). Finally, there is legislation that provides for how oil revenues will be spent, including the Appropriate Act, commonly known as the "budget" and the Nigerian Sovereign Investment Authority Act

(NSIA). An important reform occurred in 2021 with the adoption of a new Petroleum Industry Act 2021 (PIA) which repeals several texts[29].

The 1999 Constitution of the Federal Republic of Nigeria provides the framework for the management of the country's natural resources including oil and gas. The various factors that have affected revenue sharing in Nigeria are reflected in the constitution. Indeed, the provisions of section 44 and section 1 of the Petroleum Industry Act (PIA) confer ownership, management and control of oil and other natural resources on the Federal Government of Nigeria. This includes land, territorial waters, the continental shelf and exclusive economic zones.

To understand Nigeria's experience in managing oil revenues, we briefly recall the rules of operation of the Excess Crude Account (ECA) provided for in the constitution into which the excess amount of the reference price of the sale of crude oil has been paid since September 2004. However, the operation of the ECA has given rise to much controversy and debate about its legality, not to mention the opacity and inertia that have characterized it for nearly two decades. For example, it seems that during the periods when crude oil was sold at US$147 per barrel, only US$59 per barrel (the reference price) was paid into the federal government's account. This has resulted in an undervaluation of the amounts received by the people of the Niger Delta[30] , who are paying the highest price for oil exploitation.

With respect to the sharing rules, 52.68% of the revenue of the Federation Account (ECA) is retained at the federal level and the rest is allocated to the local governments according to a formula proposed by the Revenue Mobilization and Allocation Commission and approved by the National

[29] Including the Associated Gas Reinjection Act, 1979. Cap. A25. Laws of the Federation of Nigeria, 2004, and its Amendments; the Hydrocarbon Oil Refineries Act No. 17 of 1965, Cap. H5, Laws of the Federation of Nigeria, 2004; the Motor Spirits (Returns) Act, Cap. M20, Laws of the Federation of Nigeria, 2004; Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993. Cap. N124. Laws of the Federation of Nigeria. 2004; the Nigerian National Petroleum Corporation Act (NNPC) 1977 No. 33, N123. Laws of the Federation of Nigeria as amended (NNPC ceases to exist under section 54 (3) of this Act); and the Petroleum Products Pricing Regulatory Agency (Establishment) Act No. 8, 2003.

[30] The Niger Delta has long been the main source of oil revenues for the government.

Assembly. The said formula allocates the 47.32% of total revenues to the local governments and the states, based on further economic and demographic indicators:

- 45.2% divided equally among all states
- 25.6% based on population (size)
- 8.3% based on internal revenue generation
- 5.3% based on area
- 5.4% depending on the terrain
- 1.5% based on population density
- 1.2% based on rural roads and inland waterways
- 1.5% depending on the drinking water
- 3% based on health and
- 3% on education indicators.

In summary, the allocation formula gives 52.68 per cent to the federal government, 26.72 per cent to the states, 20.60 per cent to local governments and 13 per cent on a derivation basis. The ECA has been strongly criticized by state governors as working in a manner inconsistent with the 1999 constitution. Moreover, in years when the price of Brent crude oil on average was higher than the benchmark price, the ECA balance still paradoxically declined as the surplus revenues were used for fuel subsidy payments, debt financing, energy projects, security, etc.

To address this challenge, the federal government sought to reform the ECA, which resulted in the creation of the Sovereign Fund in Nigeria, which came into existence with the signing of the Nigeria Sovereign Investment Authority Act (NSIA) in May 2011. The Fund has, however, been fiercely opposed like its predecessor (ECA) by the 36 state governors who argue that it is incompatible with Nigeria's fiscal federalism as stipulated in the 1999 constitution, which states that all monies collected in the said accounts must be credited to the federation account.

NSIA is an autonomous entity established under the laws of the Federal Republic of Nigeria with broad mandates to:

a. Strengthen the development of Nigerian infrastructure,

b. Provide stabilization support in times of economic stress, and

c. Carry out any other activity that may be related to the above objectives.

While local economic development has long been relegated to the back burner, the provisions of the new Petroleum Industry Act (PIA) have profoundly transformed the voluntary and discretionary nature of corporate social responsibility into an obligation. By introducing the payment of 3% of the concession holder's previous year's operating expenses, the PIA seeks to reduce tensions between oil companies and host communities through the creation of a Host Community Development Trust Fund (HCDTF[31]). The use of such funds is regulated by law, which requires that 75% be allocated to capital projects, 20% to reserves and 5% to administrative expenses and special projects.

The analysis of oil revenue management laws can be based on an analytical framework that incorporates the following points:

- Management principles,
- Traceability and distribution of revenues,
- The institution of oil funds as well as their rules of governance and management,
- Monitoring and control of revenue management, and

[31] The Host Community Development Trust Fund (HCDTF) is the name given to the Trust Fund in PIA 2021.

- Institutions involved in revenue governance.

**Management principles**

The revenue management law of Senegal sets out “guiding principles” that govern the management of oil and gas revenues, including the full budgeting of fiscal and non-tax revenues from hydrocarbon exploitation, the prohibition of any advance disposal of hydrocarbon resources and/or any advance guarantee placed on these resources, the creation of a stabilization fund to protect against the risks of volatility in hydrocarbon revenues, the creation of an Intergenerational Fund intended to keep available, for future generations, savings made from revenues derived from the exploitation of hydrocarbons and made profitable through investments.

The Petroleum Revenue Management Act (PRMA) in Ghana is guided by one major principle stipulated in Article 257(6) of the Constitution: petroleum resources belong to the people and are vested in the President in trust for and on behalf of the people of Ghana. As such, all activities related to these resources must benefit the citizens of Ghana. In keeping with this principle, the PRMA established a Public Interest and Accountability Committee (PIAC) to ensure that resource managers fulfill their responsibilities under the law.

According to the PRMA, the management of oil revenues and savings must always be carried out in accordance with the highest internationally accepted standards of transparency and good governance.

## Traceability and revenue distribution

Senegal has opted for full budgeting of revenues from hydrocarbon exploitation. Thus, they first pass through the State budget before any distribution, in accordance with Article 4 of the law. Thus, the proceeds of hydrocarbon revenues are paid in full into a single dedicated account opened by the Treasury, and the expenditures financed with hydrocarbon revenues are set by the Finance Act on the basis of the economic and social guidelines expressed in the Economic and Multi-year Budgetary Programming Document (DPBEP), which includes a specific section on these revenues and expenditures.

In Ghana, oil revenues assessed as due each month are paid by direct transfer to the Petroleum Holding Fund by the fifteenth day of the following month by those entities required to make payment. In the event of a violation of this provision or failure to deposit by the due date, a penalty of 5% of the original amount due will be applied for each day of delay[32]. The Petroleum Holding Fund is a general account located at the Bank of Ghana, which serves as the initial deposit for all oil payments due to the government. As the name implies, the amount is simply held there before being disbursed. Thus, all allocations and disbursements are made from the Petroleum Holding Fund.

Regarding the distribution of oil revenues among the posts of assignment, Senegal has opted for the following scheme:

- A maximum of 90% of the reference revenue goes into the general state budget to finance the development of Senegal,
- A minimum of 10% of the reference revenue goes to the Intergenerational Fund and
- The excess revenue from the difference between the actual revenue[33] and the reference revenue[34] is paid into the stabilization fund at the end of each quarter.

[32] Act 850, section 11.
[33] Actual revenues consist of hydrocarbon revenues actually collected.
[34] The reference revenues are made up of the forecast revenues from the exploitation of hydrocarbons, estimated on the basis of the reference price and the forecast quantity of hydrocarbons to be produced in accordance with the annual production plans communicated by the Minister in charge of Hydrocarbons.

These amounts are set out in the Finance Act and distribution is made based on annual production and hydrocarbon price projections. A Forecasting and Evaluation Committee (CPE), whose composition and operation are determined by decree, makes reference price forecasts and projections of reference revenues. The complexity of the methods for calculating reference and actual revenues and the appointment of members of the Forecasting and Evaluation Committee are not likely to facilitate the efficient and transparent implementation of these rules. Thus, it is likely that the political authorities will be tempted to devote hydrocarbon revenues to the general budget and to the intergenerational fund to the detriment of the stabilization fund, particularly during the first years of operation.

Ghana had a robust framework for managing new oil revenues. the Petroleum Revenue Management Act (PRMA) and the Petroleum Commission Act of 2011 were both based on international best practices. However, the legislation lacked effective enforcement mechanisms. Most of the increased spending went to recurrent costs, such as salaries and interest payments, rather than stimulating investment and growth – and initial revenues were low, with a long lag before the expected peak. With foreign exchange reserves falling, the government apparently violated its own legislation to tap the stabilization fund, even though oil prices were still high. The PRMA provides for an allocation of hydrocarbon revenues between the National Oil Company (not more than 55% of carried interest and participating, additional, interest to finance its operations); the Consolidated Fund (amount of annual budget financing, not less than 70% of revenues); the Ghana Petroleum Funds (not less than 30% of revenues) for savings and investment purposes; and finally a transfer for exceptional purposes such as tax refunds, onshore royalties and community compensation. Of the 30% for oil funds, 21% goes to the Ghana Stabilization Fund (GSF) and 9% to the Ghana Heritage Fund (GHF).

In Ghana, unlike in Senegal, the stabilization fund is replenished every year in principle at the ceiling set independently of price fluctuations. As for the use of the revenues that replenish the general budget, Senegal opts for priority investment expenditures included in the public investment programme and, exceptionally, for the repayment of the public sector debt and for current expenditures, excluding the expenditures referred to in Article 14, paragraph 2[35].

In Ghana, the PRMA requires that a minimum of 70 percent of the amount allocated for General Budget funding must be used for public investment expenditures aligned with a development plan. No more than 25 percent of the amount allocated for public capital expenditure must be allocated to the Ghana Infrastructure Investment Fund (GIIF). The law also allows the ABFA to be used as collateral for debt service and settlement of other government liabilities, but only for a maximum period of ten years after the start of the PRMA, i.e., no later than 2021.

Due to the lack of a long-term national development plan in Ghana, the PRMA stipulates that the BAAP should prioritize - but not necessarily limit - programmes or activities to those in twelve (12) areas (listed above). However, it is recommended that the government not prioritize more than four (4) areas when submitting a programme of activities for the use of oil revenues. This is to avoid a government attempting to address too many of these areas at the same time, thereby spreading the revenues too thinly and reducing the transformational impact.

For example, from 2011 to 2013 and from 2014 to 2016, the government prioritized spending and loan amortization for oil and gas infrastructure, road infrastructure, agricultural modernization, and capacity building (including oil and gas). The new areas selected for the 2017–2019 period are agriculture, physical infrastructure and service delivery in education, health, road, rail and other critical infrastructure development. These areas will be reviewed at the end of the period.

[35] These are remuneration expenses, allowances of all kinds, social contributions and contributions, social benefits and various allowances and any other budgetary expense that can be assimilated, notwithstanding the considerations inherent in its economic nature, to a salary or other recurring expense.

**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 and has created a Stabilization Fund and an Intergenerational Fund to be managed by the Fonds Souverain des Investissements Stratégiques (FONSIS). The rules governing the management of these funds are set out in the Funds Framework.

**Monitoring and control of revenue management**

Monitoring and control of oil and gas revenue management in Senegal is the responsibility of the Minister of Finance, the Court of Accounts and the National Assembly. The Minister of Finance has significant powers in the management and monitoring of oil revenues. In fact, in accordance with Article 21 of the law on the management of oil revenues, the minister is the authorizing officer for credits to the funds, according to a commitment plan established at the beginning of the fiscal year within the deadlines set by the regulations in force. The minister is also responsible for implementing the investment strategies and pursuing the performance objectives defined by the State for the funds and formulates opinions on quarterly and annual activity reports, work plans and programmes and, where applicable, risk management programmes drawn up by the fund managers that are transmitted to it. The Minister in charge of finance presents the manager's reports to the Committee in charge of the strategic orientation of oil and gas and may commission any study or audit on the management of the funds. The law also gives the Minister the initiative to have the funds' accounts audited and certified by independent auditors each year.

The Court of Auditors, in its mission of controlling the execution of the Finance Acts (Article 30), controls the Stabilization Fund and the Intergenerational Fund under the conditions provided for by the organic law on the Finance Acts, in accordance with Article 22.

The Assembly has the prerogative to investigate and hold hearings on the management of public finances and oil revenues under the conditions defined by the organic law on finance laws in Article 2 of the Petroleum Revenue Management Act. The Assembly receives the certified annual accounts and the annual activity report. In addition, the settlement law, which is submitted to the National Assembly, presents the deviations from the initial programme. The programmes that have benefited from appropriations from hydrocarbon revenues mention this in their annual performance reports attached to the settlement bill, justifying the deviations from the forecasts indicated in the annual performance projects.

Ghana, like Senegal, has several mechanisms for monitoring and overseeing the execution of hydrocarbon 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.

In addition, PRMA requires the Minister of Finance to publish a quarterly bulletin and post online details and records of the receipt of payments to the Petroleum Retention Fund. The minister is also responsible for presenting the same information to Parliament and, in the same publication, detailing the total amount of oil revenue with references to prices.

The PRMA mandates the Bank of Ghana to submit quarterly reports on the performance and activities of the Ghana Stabilization Fund and the Ghana Heritage Fund to the Minister of Finance and the Investment Advisory Committee by the end of the month following the end of each quarter. The Bank of Ghana is also mandated to publish semi-annual reports on the Ghana Stabilization Fund and the Ghana Heritage Fund, present the report to Parliament, and publish it in two government-owned national newspapers and on its website.

The Minister of Finance is also responsible for publishing an annual report on the petroleum funds at the time of the annual budget and economic policy statement to Parliament. This report includes the previous year's audited financial statements on revenues and transfers from the Petroleum Holding Fund and deposits and withdrawals from the Ghana Petroleum Funds, as well as a progress report on projects funded by the ABFA.

The Bank of Ghana is mandated by PRMA to maintain proper books of account and records of the Petroleum Holding Fund and the Ghana Petroleum Funds. PRMA provides for regular audits of the accounts, records, systems and procedures relating to the Petroleum Funds. These audits are to be conducted by the Internal Audit Department of the Bank of Ghana and the Auditor General. The PRMA stipulates that the amount of cash or barrels of oil equivalent of oil transferred to the Ghana National Petroleum Corporation must be reviewed every three years by Parliament. In addition, Parliament approves the Ghana National Petroleum Corporation programme of activities each year.

Finally, under PRMA, any person who fails to comply with any of the statutory disclosure obligations, or who induces another person not to comply with such obligations, or who in any way prevents or induces another person to prevent compliance with such obligations, commits an offence and is liable to a fine on summary conviction.

## Supervision of oil funds

Sovereign wealth funds are central to the literature on the management of oil revenues. Their use is common in resource-rich countries. Nearly 60 SWFs financed by oil, gas or mining revenues or budget surpluses in resource-dependent countries were counted in 2017. In Africa, the governments of Algeria, Angola, Botswana, Equatorial Guinea, Gabon, Ghana, Libya, Mauritania, Nigeria, Sao Tome and Principe and Uganda have at least one.

According to the International Forum of Sovereign Wealth Funds, a SWF is a government-owned entity created for macroeconomic management purposes, free of liabilities and comprising at least some investments in foreign financial assets. In other words, they are state-owned investment vehicles, funded by foreign exchange reserves other than official reserves, with macroeconomic objectives, investing in foreign assets for the long term and without explicit liabilities (no or little recourse to debt). 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.

## Legal instruments for the management of mining revenues

### SIERRA LEONE

In 2018, Sierra Leone adopted the Extractive Industries Revenue Act, which aims to rationalize taxes and levies on extractive industries and support revenue mobilization efforts through the harmonization and consolidation of the tax regime for the extractive sector. The National Revenue Authority is responsible for its implementation. However, unlike revenue management laws in other countries, the Extractive Industries Revenue Act, 2018 does not cover all aspects of extractive revenue management, governing the assessment and collection of national taxes, customs duties and other revenues. Thus, the rules for the tracking, allocation and use of revenues from the extractive industries are the same as those that govern public finance. After the collection of revenues by the National Revenue Authority, the revenues are transferred to the Sierra Leone Treasury. Extractive sector revenues are not reported separately in the national budget and are primarily recorded as departmental revenues as part of the overall tax revenue estimates for each tax category in the budget books prepared for each year.

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. The DACDF is funded by 25% of the 3% tax on diamond exports (or 0.75% of the total value of exports). The DACDF was created to:

- Return a portion of the revenues the government receives from the sale of diamonds to the chiefdoms in the diamond mining areas to fund development projects in their towns and villages,

- Encourage chiefs and other local leaders of mining chiefdoms to help stop all forms of illegal mining activities.

According to reports submitted by the National Mineral Agency, USD 467,637 was transferred to DACDF in fiscal year 2019, as seen in the monthly transfers shown in the table below:

**Table 5: Revenues generated by the DACDF mechanism (Sierra Leone)**

| | Jan. | Fev. | Mars | Avr. | Mai | Juin | Juil. | Août | Sept. | Oct. | Nov. | Déc. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **2019** | 40.217 | 45.020 | 23.012 | 30.044 | 83.763 | 8.302 | 32.798 | 25.930 | 20.559 | 30.140 | 13.141 | 109.710 |
| **2018** | 46982 | 42372 | 35459 | 45191 | 46353 | 46999 | 55990 | 19851 | 57165 | 21930 | 57115 | 15762 |

*Source: EITI Report, 2019 NB: The 2018 data has been converted by the authors using the average annual rate expressed in USD.*

The methods of sharing these resources are codified according to a three-level distribution grid:

- 20% to districts and district councils
- 20% to Chiefdom Councils
- 60% to the chieftaincy councils, depending on the number of artisanal licenses.

With the support of the World Bank, a new revenue distribution procedure has been developed, which modifies the approach followed by the mining administration in collaboration with the Ministry in charge of territorial administration. Previously the Ministry had simply organized an extended meeting in the localities to distribute checks. The process now encourages applications for funding based on well-designed local projects, which are submitted to a committee for evaluation before funding is approved. This participatory mechanism promotes ownership of projects and improves the use of revenues for community development.

In addition to this mechanism, which only applies to diamond mining areas, other specific revenue-sharing mechanisms have been provided for in the law: this is the case of the direct payment made by mining companies to government agencies located at the provincial level, in accordance with the provisions of Article 34 (a) of the Minerals and Mining Act (MMA, 2009), which stipulates that "surface rent is a decentralized payment made by companies or mining licensees and must be distributed among five categories of beneficiaries:

- 50% to landowners;
- 15% to the supreme leader;
- 15% to District Councils;
- 10% to the Chiefdom Council ;
- 10% to the Local Development Fund.

In its 2019 report, the EITI multi-stakeholder group decided to include declarations of payments made at the sub-national level, including to local actors, namely, paramount chiefs, landowners, deputies, district councils, and chieftaincy councils (see Table 6).

**Table 6: Distribution of Sub-national Payments (Sierra Leone)**

| Beneficiaries | Amount in USD |
|---|---|
| Owner | 577 590 |
| District Council | 230 417 |
| Chieftaincy Council | 192 314 |
| Paramount chiefs | 170 522 |
| Members of Parliament | 83 903 |
| Total | 1 254 746 |

*Source: EITI Report 2019*

In addition to the initiatives discussed above, there is a requirement in the Conventions to sign and implement a Community Development Agreement with the main host community. The holder of a small- or large-scale mining permit must:

- Assist in the development of mining communities affected by its operations to promote sustainable development,

- Improve the general well-being and quality of life of residents,
- Recognize and respect the rights, customs, traditions and religion of local communities (MMA, 2009).

These objectives are to be achieved through community development agreements. Small and large-scale mining licensees must spend, in each year that the community development agreement is in effect, at least one percent (1%) of the amount of gross revenues generated by the mining operations in the previous year. The amount and breakdown of these expenditures must be reported annually to the Minister as required (section 139(4); MMA, 2009).

In practice, the financing mechanism set up by the companies makes a distinction between mandatory payments and those made on a voluntary basis, as part of their community commitment. On the basis of this distinction, the company proceeds to delimit and prioritize its "zone of influence" according to the extent of the impacts, as defined in the environmental and social impact study.

In general, analysis of tax revenues from the extractive sector indicates that payments to the consolidated state budget accounted for 98% of total revenues collected in 2019, while subnational payments by extractive companies accounted for about 2%.

The governance of the DACDF funds is the responsibility of the NMA and the Ministry of Finance, which organize and oversee the distribution of revenues from the budget.

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.

While the 2009 MMA law provides for the creation of consultative and oversight bodies between the licensee and the main host community, the Environmental and Social Regulation (ESR) body identifies Community Development Agreements (CDAs) as "instruments" for environmental and social management and calls for the creation of local Community Liaison

Committees (CLCs) to work with mining companies in the development and implementation of CDAs.

As an example, we note that for the follow-up of its community development agreement, the company Sierra Rutile Ltd. signed an agreement with the district of Boyamba whose follow-up required the establishment of a committee composed of the following actors:

- Chairmen of the district councils of Bonthe and Moyamba
- District Officers of Bonthe and Moyamba
- The Paramount Chiefs of the Upper and Lower Banta, Imperi, Jong and Bagruwa
- Two Ward Councilors in the main host communities (one from Bonthe and one from Moyamba District Councils)
- The Development Planning Agents of the Communes of Moyamba and Bonthe
- The persons in charge of the Environment of the Communes of Moyamba and Bonthe
- Members of Parliament representing the constituencies in which the communities are located
- Five representatives of landowners in the chiefdom: one each from Upper and Lower Banta, Imperi and Bagruwa chiefdoms
- Five religious chieftainship leaders (one each from Upper and Lower Banta, Imperi, Jong and Bagruwa Chieftaincies)
- Five female chiefs (one from each of the Upper and Lower Banta, Imperi, Jong and Bagruwa chieftainships)
- Five young chiefs (one each from Upper and Lower Banta, Imperi, Jong and Bagruwa Chieftaincies)

- Five farmer representatives (one from each of Upper and Lower Banta, Imperi, Jong and Bagruwa Chiefdoms).

Unlike in Côte d'Ivoire and Guinea, the management bodies are headed by elected officials, assisted by representatives of the administrations.

## GUINEA

In Guinea, payments by mining companies are made to the financial authorities, notably the DNTCP for dividends from government holdings and the special tax on mining products, the DNI for taxes governed by the General Tax Code and the Mining Code, and the CPDM for the collection of fixed fees. For the surface royalty and the local development contribution, payment is made to the Communes.

However, there are four exceptions to the principle of the Single Treasury Account:

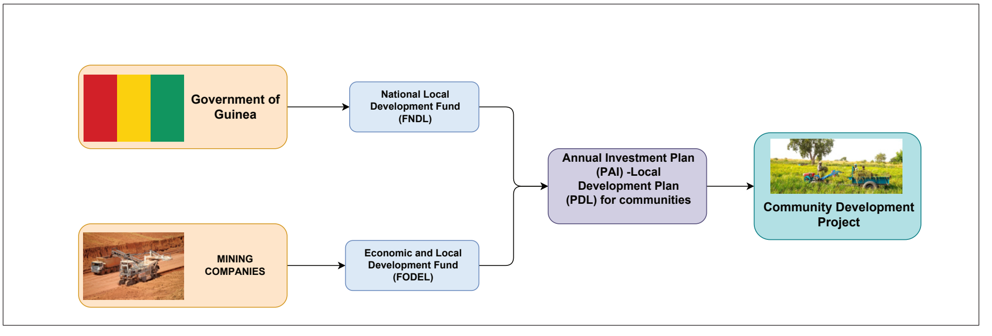
- The rents of the mining infrastructures are paid directly into the account of ANAIM opened at the BCRG.
- The FIM share of the fixed fees (30%) is paid directly by the mining companies to FIM (Cheque to FIM).
- The FIM share of the Quarry Substances Tax (15%) is paid directly to FIM (FIM Cheque).
- The BCRG fee for the export of gold is collected by the BCRG.

Extractive revenues liquidated or collected by the government are deposited in the Treasury's single account. Consequently, revenues from the extractive sector lose their identity as soon as they are credited to the Treasury's single account. Expenditures are allocated through a Finance Law and are detailed by sector, institution, commune and prefecture.

There are exceptions to this principle. These include mining revenues allocated to programmes such as the Mining Investment Fund, which is intended to finance mining research and training, as well as actions to promote the mining sector through the Mining Heritage Management entity. There are also mining revenues allocated to local authorities such as the surface royalty provided for in Article 160 of the Mining Code.

The mechanism of management and revenue sharing in Guinea is based on two levers which are schematized in the following graph:

**Figure 9: Distribution of mining revenues**




*Source: RCL Consulting 2022*

The Fonds National de Développement Local (FNDL) is the policy tool that authorizes the transfer of a portion of mining revenues to Guinea's local governments to finance local development. Article 165 of the mining code provides for direct support to all local governments, based on fixed fees, the tax on the extraction of mining substances other than precious metals, the tax on the industrial production of precious metals, the tax on quarry substances, the tax on mining substances other than precious metals, and the export tax on artisanal gold production, paid to the national budget. The decree provides that 15% of this revenue is to be paid into a special account opened in the books of the Public Treasury, in accordance with the Finance Act.

The year 2019 coincided with the effective start of the process of transferring allocations to communities. Indeed, out of a forecast of 517,812,694,094 GNF entered in the Finance Act on the account of the BAS[36] /FNDL, an

[36] BAS stands for special allocation budget. It corresponds to the amounts allocated to the special allocation account opened at the level of the Treasury.

unventilated amount of 264,335,900,709 GNF was actually disbursed by ANAFIC, i.e. a realization rate of about 51%, according to the EITI 2019 report. For fiscal year 2020, a provisional amount of 541,000,000,000 GNF has been included in the Finance Law for the "FNDL" BAS account.

In January 2020, upon the request of ANAFIC, an advance of 253,479,099,291 GNF was paid into the FNDL account to ensure the operation, support and financing of the PAI (Annual Investment Plan) of communities. According to the resource persons interviewed, payments have been made into the ANAFIC account [37] and some projects have been carried out in the field (see Table 7, micro-projects carried out).

In addition, there is another 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[38] at 0.5% of the turnover of mining companies exploiting category 1 minerals (bauxite or iron) and 1% for other substances (diamond, gold, etc.).

The distribution key for these funds is defined as follows:

- Communities hosting the operating sites (35%)
- Non-operating communities located within the operating license (25%)
- Communities adjacent to the licensee's concession (20%)

[37] https://www.anafic-gn.org
[38] Decree D/2017/285/PRG/SGG organizes the modalities of constitution and management of the Local Economic Development Fund (FODEL).

- Other communities of the prefecture(s) where the mining concession is located (15%)
- Management Committee (1%)
- The Permanent Secretariat (1%)
- Deconcentrated Mining Administration (0.75%)
- Prefectural Administration (0.75%)
- Regional Administration (0.5%)
- Decentralized administration in charge of the environment (0.50%)
- The Sub-Prefectural Administration 0.5%.

The total payments made by some companies reached an amount of 45,827,502,101 GNF (5,335,401 EUR) in 2019 and 144,883,337,425 GNF (16,867,834 EUR) in 2020 (EITI Report 2019-2020 p.126). According to an NRGI study (Hervé Lado, NRGI 2019), these amounts represent a decisive contribution to the budget of communes. For example, a rural mining commune such as Banora, which hosts a large industrial gold mining operation, is expected to see its actual resources increase by more than 80% after 2020, compared to its average annual budget of the previous three years.

In addition to the two mechanisms mentioned above, there is a third lever, namely the surface fee, 90% of which is paid to local authorities.

**Table 7: Funding allocation summary (Guinea)**

| Mechanism | Description | Recipient |
|---|---|---|
| Surface royalties (art. 160 of the Mining Code) | Payment of annual surface royalties to each community in proportion to the area occupied by the title. | 90% to local authorities within the perimeter of the operating permit. 10% to the prefectural treasury. |
| Contribution to local development (CDL - FODEL) (art. 130) | Payment of a levy on sales of 0.5% (bauxite and iron) and 1% (others) to finance local community development projects. CDL pays into a local economic development fund (FODEL). | Mainly the communities affected, but also local public administrations. |
| Sub-national transfer (art. 165) | Payment of 15% of six mining taxes by the central government (via ANAFIC) to local authorities. | All the country's local authorities. |

*Source: Hervé Lado, NRGI 2019*

**Fund Governance**

**The National Local Development Fund (FNDL)**

The regulations define a framework that organizes the operation and management of the resources made available under the FNDL. Thus, the following measures are taken:

1. The management of the FNDL account is ensured by the National Agency for Local Government Financing (ANAFIC) which is a Public Administrative Establishment (EPA);

2. The use and management of the NLDF allocation must be published and reflected in the administrative and management accounts produced annually;

3. Article 3 of Order AC/2019/1570/MMG/MATD/MEF, specifies the areas of intervention to be:

   a. Development of infrastructure and basic facilities,

   b. Development of basic social services, the improvement of the living environment and the protection of the environment,

c. Promoting local employment,

d. Local economic development,

e. The realization of inter-communal projects and the development of human capital.

**The Local Economic Development Fund (FODEL)**

Article 6 of the FODEL decree establishes a Management Support Committee (CAGF) in each mining prefecture. This multi-stakeholder committee, including representatives of civil society, youth and women, is chaired by the representative of the Prefectural Development Committee (CPD) and is responsible for examining the projects proposed by the communes, ensuring that they contribute to sustainable local development. Only projects included in the Local Development Plan (LDP) and the Annual Investment Plan (AIP) as provided for in the Local Government Code will be eligible for funding from the FODEL (art. 11).

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.

With regard to operationalization, the evaluation of the implementation of FODEL has shown an appreciable, albeit partial, level of execution of the planned provisions. Indeed, a manual of administrative, financial and accounting procedures was developed and then adopted in May 2018 by all the representatives of the communities and mining companies concerned. According to the EITI report, as of May 2020, three mining prefectures had been trained in the use of this manual: Boké in December 2018 and February 2019, Boffa in January 2020 and Siguiri in February 2020. In the three prefectures that received training, a FODEL Management Support

Committee (CAGF) was set up in application of the provisions of joint order AC/2019/1570/MMG/MATD/MEF.

The monitoring and evaluation of the fund is the responsibility of the prefectural development council. However, communities can participate through a grievance and conflict resolution procedure. In addition, EITI-Guinea has integrated the monitoring of expenditures into its reporting, which has made it possible to track the amounts actually allocated to communities and the amounts actually disbursed.

In addition, the local economic development component has been taken into account through a bidding system that allows local SMEs to win contracts for the implementation of infrastructure and projects to be executed.

## CÔTE D'IVOIRE

The financial system of Côte d'Ivoire institutes the principle of a single Treasury account. Budgetary revenues are therefore collected almost entirely in the single account of the Public Treasury through the financial authorities (i.e., DGI, DGD).

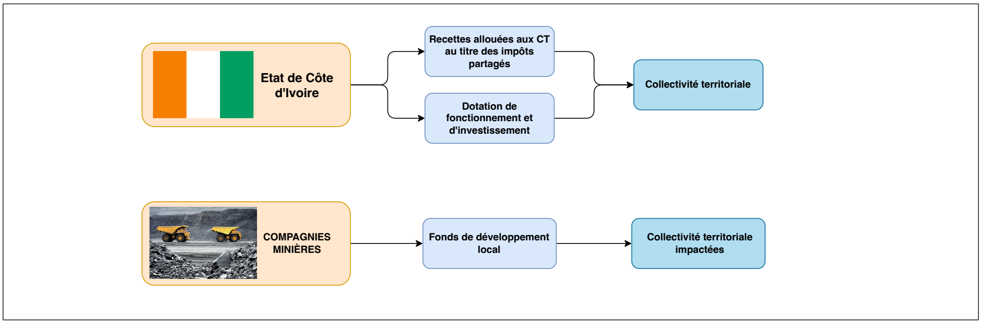
Sub-national payments are limited to communal taxes, including the contribution on built and unbuilt land, business permits and the combined tax, which are also collected by the financial rules through their regional offices and thus deposited into the single account of the treasury. The transfer of these taxes to the communes is not done directly but is part of the annual allocation of the overall budget to the commune. As a result, it is not possible to reconcile payments relating to the extractive sector with transfers made.

The only payment flow that does not transit through the treasury account concerns the contribution to the community development fund created by the 2014 Mining Code. This fund is managed jointly by the mining company and the Local Mining Development Committee designated by joint order of the minister in charge of mines and the minister in charge of territorial administration. 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.

In Côte d'Ivoire, mining revenues[39] are managed through two mechanisms, the budget process and Local Mining Development Committees.

**Figure 10: Mechanism for managing and using revenues (Côte d'Ivoire)**




*Source: RCL Consulting, 2022*

According to the traditional mechanism, the affected communities do not receive special treatment in the form of retrocession, as is the case in some countries. They receive an allocation from the state as part of the budgetary process, in the same way as the country's other local authorities.

The legislation also establishes a profit-sharing mechanism that allows the holder of the operating permit to make an annual payment to a social fund called the "Local Development Fund" for the benefit of villages identified as "affected localities" by the Environmental and Social Impact Assessment (ESIA) (Art. 129).

The Local Development Fund is intended to finance, on an annual basis and exclusively, development projects identified on the basis of needs formulated by the affected localities. These projects are approved by the CDLM mentioned above. The table below presents a summary of the situation of ten (10) Funds established in 2019.

[39] In this study, we consider as mining revenues the state revenues collected by the administrations duly established for this purpose, but also the compulsory expenses of the mining companies governed by regulations (decrees, orders, laws).

**Fund Governance**

Article 132 of the Mining Code's implementing decree stipulates that funds must be held in a first-rate bank in Côte d'Ivoire; and that all operations must be jointly signed by an official of the operating company and the President of the Local Development Committee. These provisions are supplemented by the provisions of Articles 12 and 13 of the inter-ministerial order, which specify that the said account is opened in the name of the CDLM of the gold mine concerned, in the book of a banking establishment in Côte d'Ivoire.

As regards the methods of funding, the transfer by the operating company is provided for as the sole method of funding the account, up to the amount of the deduction mentioned in article 11[40] . Transfers are made at the end of the month following each quarter, on the basis of a request from the CDLM signed by two of its members designated for this purpose, accompanied by a notice establishing the amount of the sums to be transferred.

The use of development funds is also governed by the decree, which specifies in article 128: the type of investments eligible for financing by the fund: (i) the development of basic infrastructure and equipment, (ii) the development of basic social services and the living environment; (iii) the promotion of employment; (iv)the development of the local economy; and (v) the development of human capital.

In order to strengthen control over the resources, the references of the transfers must be communicated to the minister in charge of mines and the minister in charge of territorial administration. Better still, the latter may at any time initiate or commission an audit of the use of these resources. Consequently, the representatives of the operating company and a member of the CDLM are required to keep a record of the checks in order to make them available to the authority if necessary.

[40] Article 11 of the said order stipulates that this fund is funded each year, by a levy of zero point five percent (0.5%) on the turnover of the operating company in accordance with Article 7 of Order No. 2014-148 of March 25, 2014.

## 2. Sub-national transfers

Subnational transfers refer to revenues generated by extractive companies that are transferred by the central state to decentralized entities by virtue of a law or other legal instrument. They are distinct from Corporate Social Responsibility (CSR) in that they are payments or transfers that are mandated by a legal text and their management does not necessarily involve the companies whose activity generates the resources. They can take several forms:

- The first, and most common, is the establishment of funds financed by revenues from extractive activities that are paid to decentralized communities.

- The second option consists of a direct transfer of taxes or other revenues from the exploitation of extractive resources to decentralized communities.

Moreover, sub-national transfers are more common in the mining sector than in the oil sector. A review of the mining regulations in Côte d'Ivoire, Guinea and Sierra Leone shows that all of these countries have funds to transfer revenues from mining companies to their local governments.

**Table 8: Comparative table of mining funds in Guinea, Sierra Leone and Côte d'Ivoire**

| Guinea | Sierra Leone | Côte d'Ivoire |
|---|---|---|
| | **Creative text and fund name** | |
| Economic and Local Development Fund (FODEL), Article 130 of the CM, Article 1er of Decree No. D/2017/285/PRG/SGG on the constitution and management of FODEL | The Diamond Area Community Development Fund (DACDF) was established by the Government of Sierra Leone in 2001 | The holder of the operating permit is required to establish a fund that is supplied annually. Article 124-2 of Law No. 2014-138 of March 24, 2014 on the mining code |
| | **Feeding methods** | |
| Contributions from all companies in the exploitation phase and from holders of permanent quarrying permits at 0.5% of the turnover of the company holding a mining title for category 1 mining substances and at 1% for other mining substances, Article 130 of the CM, Article 3 of the Decree | 25% of the 3% tax on the export value of all diamonds mined by artisanal miners.<br><br>In other words, the government deposits 0.75% of the total value of artisanal diamond exports into the DACDF account, A Simplified Handbook on the Government of Sierra Leone's New Operational Procedures and Guidelines For the Diamond Area Community Development Fund (DACDF) | Mining licensees are required to establish a fund to finance local socio-economic development activities.<br><br>This fund is fed each year by a levy of 0.5% on the turnover, less transport costs, FOB prices, insofar as these costs have not been deducted from the price to be paid, and refining costs in the case of metals.<br><br>With respect to mineral water, deductible expenses are processing and packaging costs. Article 7 Ordinance No. 2014-148 of March 26, 2014 fixing the surface royalties and proportional taxes relating to activities governed by the Mining Code. |

| Guinea | Sierra Leone | Côte d'Ivoire |
|---|---|---|
| **How the fund is distributed** | | |
| The FODEL distribution key to communities impacted by mining operations is as follows by category:<br>• The communities hosting the mines in operation and located within the perimeter of the exploitation title, 35% distributed in proportion to the surface areas of the communities concerned,<br>• Non-mining communities located within the perimeter of the Mining Title, 25% distributed according to the effective population of each community,<br>• Impacted communities, based on the environmental and social impact study located outside the perimeter of the Exploitation Title, 20%, distributed according to the effective population of each community as determined by the last census validated by the INS and used by the DGPH,<br>• The other communities in the prefecture(s) housing the Operating Title, 15%, distributed according to the effective population of each community as determined,<br>• Institutional and/or supervisory structures, 5%, distributed among: the CAGF, 1%, the Permanent Secretariat, 1%, the Regional Administration, 0.5%, the Prefectural Administration, 0.75, the Deconcentrated Mining Administration in charge of the environment, 0.75%, the Subprefectural Administration, 0.5%.<br>Within the community hosting an operating mine, 50% of the resources accruing to the community are allocated to the districts hosting the mine. | The government allocates :<br>• 20% of total DACDF funds collected in a given period to all diamond district councils (plus municipal councils in districts where municipal councils exist)<br>• Another 20% is allocated to all diamond mining chiefdoms with artisanal mining licenses, with the amount being distributed in a lump sum to all deserving chiefdoms, regardless of the number of licenses they have.<br>• The remaining 60% is again allocated to the chiefdom councils, and the amount is shared according to the number of artisanal mining licenses each chiefdom has. | The terms and conditions for the funding and management of this fund are specified in the mining regulations. |

Creative text and fund name

| Guinea | Sierra Leone | Côte d'Ivoire |
|---|---|---|
| **Management and monitoring/evaluation body(ies)** | | |
| • Creation of a support structure for the management of FODEL,<br>• Procedural manual for use, management and control established by joint order providing for an information, grievance and dispute resolution mechanism,<br>• Reference to best practices in governance and transparency including fiduciary matters, Art. 7<br>• Obligation of traceability in the budget of the local authority, art.8<br>• Prefectural Development Council (PDC) for monitoring and evaluation, art.10 | Joint management between the Ministries of Mines and Local Government | The Mining Administration sets up, for each mining operation, a local mining development committee responsible for the implementation of economic and social development projects for local communities. The modalities of creation, the attributions and the functioning of the local mining development committees are determined by decree, Article 125 |
| **Fund objective(s)** | | |
| Promote the development of local communities hosting mining sites or neighboring communities, Art 1er of the Decree<br>To support the realization of basic infrastructure, employment and income generating activities as well as other development activities provided for in the local development plans of the communities concerned, Art 1er of the Decree | The two main reasons for creating the Diamond Area Community Development Fund are:<br>• Give some of the money it (the government) gets from the sale of diamonds back to the chiefdoms in the diamond mining areas to carry out development projects in their towns and villages; and<br>• Encourage chiefs and other local leaders of mining chiefdoms to help stop all forms of illegal mining activities . EITI Report 2019 | CThis fund is intended to carry out the socio-economic development projects for local communities set out in the community development plan. Article 124.2 Mining Code<br>The community development plan mentioned in Article 124 of the Mining Code covers the following areas of intervention<br>• The development of infrastructure and basic facilities,<br>• The development of basic social services and the living environment;<br>• Employment Promotion;<br>• Local economic development;<br>• Human capital development. |

| Guinea | Sierra Leone | Côte d'Ivoire |
|---|---|---|
| **Management rules** | | |
| • The principles of transparency and consultation will be applied to the management of the Local Economic Development Fund and to any Local Development Agreement that is published and made accessible to the local community, Article 130 of the CM,<br>• Publication of a General Report on management, adopted plans, contracts, expenditures and payments and the actual level of achievement of activities by March 15 of each year. | Simplified Manual on the Government of Sierra Leone's New Operational Procedures and Guidelines for the Diamond Area Community Development Fund (DACDF) | • The operating permit holder is required to prepare a community development plan in consultation with the neighboring communities and the territorial and local administrative authorities, with specific objectives and an investment plan.<br>• For each mining operation, a Local Mining Development Committee is created by joint order of the Minister in charge of Mines and the Minister in charge of Territorial Administration, in accordance with Article 125 of the Mining Code. This Committee includes: the Prefect of the Department, the President of the Regional Council, the Sub-Prefects, the deputies and mayors of the affected localities, representatives of the affected localities, the Mining Administration, and the representative of the operating company.<br>• The Committee is chaired by the Prefect of the Department. The President of the Regional Council is the vice-president. The Mining Administration provides the Committee's Secretariat.<br>• The funds are held in a first class bank in Côte d'Ivoire. Any transaction on this fund must be signed jointly by an official of the operating company and the Chairman of the Local Development Committee. |

A comparative analysis of these funds shows that all three countries have set up funds that are essentially aimed at supporting the development of communities hosting and/or located near mining areas. For Sierra Leone, beyond local development, the fund pursues the objective of fighting against illegal mining activities.

Moreover, Guinea and Sierra Leone, to some extent, have very clear rules governing the management of these funds. In the case of Côte d'Ivoire, the the mining code and its implementing decree, merely set out the management principles; neither the rate or amount of contributions nor the rules for the distribution of the fund are specified. In addition to transfers through local development funds, Guinea and Sierra Leone have also put in place other mechanisms to transfer taxes and/or other fees to decentralized communities.

For Sierra Leone, Section 34 (A) of the Minerals and Mining Act (MMA, 2009 Act) provides for a surface rent that can be considered a sub-national payment made by mining companies or licensees to be shared among five categories of beneficiaries as follows:

- 50%-Landowners
- 15%-Tribal Leader
- 15%-District Councils
- 10%-Chiefdom Council and
- 10%-Constituency Development Fund.

In Guinea, Article 160 of the Mining Code instituted a surface royalty that is collected annually by the community in proportion to the area occupied by the title. The payment of this royalty to the commune is made annually, in a solemn manner, in the presence of the population. The company makes the payment based on the collection notice issued by the mining administration. For 2019 and 2020, the surface royalties reported by the communities totaled 11,702,994,725 GNF in 2019 and 10,116,886,295 GNF in 2020 according to the EITI Declaration of local communities. In addition, Article 165 of

Guinea's mining legislation provides for a distribution between the national budget (80%), direct support to the local budget of all the country's local governments (15%) and the Mining Investment Fund (5%) of:

- Fixed fees,
- Tax on the extraction of mining substances other than precious metals,
- Tax on the industrial or semi-industrial production of precious metals,
- Tax on quarry substances,
- Export tax on mineral substances other than precious and semi-precious substances and
- Export tax on artisanal gold production paid to the National Budget by holders of mining titles or authorizations.

The corresponding amounts will be published in the Official Journal and on the official website of the Ministries in charge of Mines, Decentralization and Finance. In addition, a joint order of the Ministers in charge of Mines, Decentralization and Finance will determine the terms and conditions for the use, management and control of the resources allocated to the local authorities for this purpose.

However, it must be noted that this publication is not respected. Thus, it was suggested in the Recommendations and Corrective Measures of the February 2022 EITI Validation Report that data on sub-national transfers of the 15% allocated to the development of all local authorities in the country be published in the Official Gazette as well as on the websites of the ministries in charge of mines, decentralization and finance. The same suggestion was made to the National Agency for Local Government Financing (ANAFIC).

For Côte d'Ivoire, extractive companies are either exempt or outside the scope of taxes and levies subject to retrocession to local authorities as listed in the 2004 and 2009 Finance Acts.

# 3. Social obligations and consideration of human and environmental rights

## GHANA

Analysis of the 2018 and 2019 EITI reports shows that they do not mention mandatory spending in the oil and gas sector. In Ghana, the Environmental Protection Agency (EPA) Act of 1994 (Act 490) established the EPA as the lead agency for environmental management and protection in Ghana. Pursuant to Section 62 of Act 490, the Environmental Assessment Regulations 1999 (L.I 1652) were promulgated to provide specific and comprehensive legal support for the environmental impact assessment (EIA) system or procedure in Ghana.

Under article L.I 1652 of the Environmental Assessment Regulations 1999, particularly in its second annex, an EIA is a prerequisite for the conduct of large-scale mining and related activities. It is also mandatory to issue an environmental certificate for any undertaking for which a Preliminary Environmental Report (PER) or Environmental Impact Statement (EIS) has been approved, following the submission of an approved Environmental Management Plan (EMP) within eighteen (18) months of the commencement of operations and updated every three (3) years thereafter. The Environmental Management Plan defines the measures to be taken to manage any significant environmental impacts that may result from the operation of the business during the three (3) year certification period and contains an Environmental Action Plan (EAP) that indicates the specific actions, timelines, budget allocations, among others, necessary to mitigate the identified impacts, against which routine monitoring is undertaken.

An environmental permit or certificate issued to a company includes a list of conditions attached to the permit and describes the various actions necessary to ensure the validity of the permit within the specified or indicated period. The main conditions are as follows:

- Submission of periodic (monthly, quarterly, semi-annual and annual) environmental quality monitoring reports (air, water, effluents, noise),
- Submission of an environmental management plan,
- Submission of annual environmental reports and reclamation bonds (in the case of mining).

The Agency undertakes routine monitoring to ensure general compliance with the conditions of the permit/certificate as well as the specific actions contained in the Environmental Management Plan with respect to the major impacts identified. Any company (typically in the extractive sector) for which a reclamation plan is submitted must post a reclamation bond based on an approved reclamation work plan. A Reclamation Security Agreement (RSA) is signed between each major mining company and the Agency with a local host bank and the security including a cash component, as well as a bank guarantee, is posted. The RSA is periodically updated to reflect the submission of corresponding changes in the project in relation to the level or degree of completion of reclamation of disturbed areas.

There are legal provisions for the payment of environmental permit/certificate fees for multi-sector companies, including the extractive sector. These fees cover the entire project life cycle (exploration, development, operation and decommissioning) and are set out in a separate fees and royalties instrument that is periodically reviewed and approved by the Ghanaian Parliament. Non-compliance with permit conditions constitutes an offence and various penalties may be applied in accordance with Act 490 and I.L. 1652, such as the issuance of enforcement notices, imposition of administrative fees, fines/penalties and suspension, revocation or cancellation of environmental permits.

## NIGERIA

The Petroleum Industry Act requires a licensee or lessee engaged in upstream and midstream petroleum activities to submit an environmental management plan to the Nigerian Upstream Petroleum Commission for approval. This is for projects that require an environmental impact assessment. The two factors to be considered when approving an environmental management plan are its compliance with relevant environmental laws and the applicant's ability to rehabilitate and manage adverse environmental impacts. The PIA specifically provides that chemicals shall not be used for upstream petroleum operations unless the Commission grants an applicable permit and approval.

The PIA established an environmental remediation fund to remediate or manage adverse environmental impacts resulting from the operation of licenses and leases. The fund is supported by assessments levied as part of the conditions precedent to the granting of a license or lease. The contribution to be paid is determined by the size of the operations and the level of environmental risk that may exist. This fund is to be applied when a licensee or lessee fails to remediate or manage any adverse environmental impacts resulting from its operations.

The Hydrocarbon Pollution Remediation Project (HYPREP) was established in 2016 under the federal Department of the Environment to determine the scope, means, and manner of remediation of soil and groundwater contamination in affected communities. Many people have complained about the speed and low level of expertise in implementing the project. The PIA provisions for remediation and the environmental remediation fund, however, provide a practical framework that can make a difference where the political will exists.

Nigeria is ranked as the largest producer of crude oil in Africa, and as a result, oil exploration activities have resulted in a high rate of gas flaring, which has been intensified by poor enforcement of anti-gas flaring laws by regulatory authorities. Associated natural gas is generated from oil production and is flared in large quantities, resulting in the emission of greenhouse gases and a waste of natural resources that could have generated billions of dollars for the

Federal Government of Nigeria. There is therefore a need to reduce gas flaring by replicating the strategies applied in the selected relatively advanced oil countries to combat the menace. Thus, the PIA further provides for a stricter ban on gas flaring not only by penalizing it but also by requiring fines to be paid, as gas flaring is not eligible for cost recovery and is no longer tax deductible. The fines are further targeted at environmental remediation and relief of host communities through the settlers for whom the penalties were imposed.

The decommissioning framework in the Nigerian oil industry has evolved over the years. It was primarily provided for under the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) issued in 1991 by the Department of Petroleum Resources (DPR) under the Ministry of Petroleum Resources. The guidelines were revised and updated in 2002, 2016 and 2018. EGASPIN describes the environmental and safety standards that must be met by oil operators in Nigeria to prevent, minimize and control pollution from various aspects of oil operations. The 2018 revised version included provisions for decommissioning of offshore facilities as well as inland and coastal areas. Exploration and production contracts also contained decommissioning clauses.

The PIA builds on the existing framework by specifically legislating duties and responsibilities for decommissioning and abandonment. It contains detailed provisions covering the decommissioning and abandonment of oil wells, facilities, structures, utilities, plants and pipelines, which are now regulated and supervised by the Commission or the Authority, as the case may be, and must be conducted in accordance with international good petroleum practices.

While EGASPIN provided three options for licensees and lessees to provide security for decommissioning, the PIA creates a decommissioning and abandonment fund that must be established and managed by each licensee and lessee in the form of an escrow account accessible to the Commission or

Authority and held by a financial institution not affiliated with the lessee or licensee. This fund is to be used exclusively to pay for decommissioning and abandonment costs. Thus, even where the Nigerian National Petroleum Corporation (NNPC), under the contracts, has retained ownership of the assets and thus residual liabilities with respect to the decommissioned assets, the fund ensures that the costs are still covered by the operators.

The law also makes provisions for host communities, defining the host community[41] and establishing a Host Community Trust Fund that will be financed by an annual contribution of 3% of the actual annual operating expenses of the previous fiscal year of the upstream companies. Donations, gifts, grants, or fees, as well as any profits can be added to the fund as well as interest accruing to the fund's reserve for the creation and financing of the host community trust. In addition, the PIA requires that upon issuance of a license or lease, operators conduct a community needs survey (social, economic and environmental needs) and prepare and execute a development plan for approval by the Commission or Authority.

In addition, in any year in which an act of vandalism, sabotage, or other civil disturbance occurs and causes damage to petroleum facilities and designated facilities or disrupts production activities within host communities, the community will forfeit its rights to the extent of the cost of repairs.

## SENEGAL

The extractive sector for mining or oil companies commonly commit to pay specific sums of money for the improvement of the living conditions of the populations, in the contracts signed with States for the exploitation of natural resources. This widespread practice aims, like Corporate Social Responsibility (CSR), to allow the investor to obtain a social license. The amounts for these social expenditures are negotiated in the contract.

[41] Host community is defined as any community within or incidental to the area of operation of a licensee or lessee (hereinafter referred to as "the Settlor"), and such other communities as the Settlor may determine. In addition, for Settlors operating in shallow water and deep offshore, the host community shall be the nearshore communities and any other communities determined by the Settlor.

In Senegal, the new 2019 Petroleum Code, notably in Article 48, makes it mandatory for oil contracts to provide for social spending for the benefit of the population. Long before this provision, some contracts such as those signed by Total E&P on the Ultra Deep Offshore and Rufisque Offshore Deep[42] already provided for such benefits.

Neither the Petroleum Code nor its implementing decree, let alone the contracts that provide for social spending, have provided rules for the use and control of these funds. The EITI 2020 Report, in particular in Appendix 6, reveals that Total E&P Senegal has made mandatory social payments of 161,160,000 CFA francs to the Total Senegal Foundation. No other information is provided on the final beneficiaries of this financial windfall, which should be given to the population. Thus, it is urgent to include information on the rules governing the use of these funds and their control in the contracts or in the decree implementing the oil code.

The protection of the environment in the context of the exploitation of natural resources, particularly oil and gas, is based on a legal arsenal at the top of which is the Senegalese Constitution. The latter, in particular Article 25-2 of the Constitutional Law No. 2016-10 of 5 April 2016 revising the Constitution, guarantees the right to "a healthy environment" for the population. In addition, in accordance with the Environmental Code (art. 48), which requires an environmental assessment for any development project or activity likely to affect the environment, petroleum exploration and exploitation activities must have in place an environmental impact notice and an environmental and social impact assessment (ESIA) before implementation and several obligations are provided for both in the sectoral regulations and in Senegalese oil contracts to ensure environmental protection.

Thus, oil contract holders are required to ensure environmental protection, prevent accidents, prevent, reduce and control environmental pollution and,

[42] Both are cited in Section 19.5 of the PPRC.

where appropriate, restore sites and undertake abandonment work on completion of each oil operation, among others.

In addition, Article 4 of the Standard Contract, which is renewed in all contracts, requires the State Contractor in the oil contract to provide an abandonment or restoration plan for the sites at the end of exploitation at the same time as the submission of the development plan and the start of exploitation of any commercial deposit. The contractor must also open a bank account with the amounts necessary to meet the estimated abandonment costs defined in the plan. The account will be funded over the estimated life of each commercial deposit (Art 20).

However, it should be noted that the clauses in Senegalese oil contracts aimed at protecting the environment in operations are limited by the:

- Lack of integration of climate issues, air protection, health of local residents and ecosystems, biodiversity, waste, etc.
- Absence of specific rules to ensure effective protection of the environment and compensation for victims.

Finally, it should be noted that a revision of the Environmental Code is underway in Senegal. Provisions relating to the environmentally sound management of extractive resources will likely be strengthened. The draft Code provides for an audit of the rehabilitation plan at least every two years and also gives an important place to environmental transparency by providing for the publication of environmental and social management plans and monitoring reports on these plans.

## GUINEA

Mandatory social expenditures are provided for in certain mining agreements, notably with the Agence Nationale de l'Aménagement des infrastructures Minières (ANAIM). Article 40.2 of the mining infrastructure concession agreement signed on 15 January 2015 between ANAIM and

Compagnie des Bauxites de Guinée provides for the latter to subsidize the operation of the hospital built by ANAIM in the Boké region to the extent of the difference between the operating costs provided for in the budget as established at the beginning of each calendar year and the hospital's revenues from all sources during the same year.

In practice, it is reported that the Compagnie des Bauxites de Guinée subsidy to the hospital is capped at USD 3.5 million and does not cover the difference between revenues and costs in a calendar year, with the remainder being financed by ANAIM[43]. Thus, under contractual expenditures, the following amounts have been committed: GNF 12,325,000,000 in 2018, GNF 6,120,250,000 in 2019 and GNF 9,751,950,000 in 2020. No other contractual social payments have been reported according to the 2019–2020 EITI Steering Committee Report for Guinea.

In addition, it was noted in the Follow-up to the recommendations of previous EITI reports, particularly the 2018 report, that there was a 59.87% drop in mandatory social payments. This situation seems to result, according to the report, from the absence of a mechanism for monitoring the legal or contractual commitments of companies in terms of social payments. Thus, the independent administrator recommended that the EITI-Guinea Steering Committee initiate a discussion with stakeholders with a view to establishing a mechanism for monitoring the social commitments of extractive companies to ensure the traceability of social payments and maximize their impact on local populations.

The Guinean Constitution proclaims, in its Preamble, its commitment to "promote the sustainable economic and social development of Guinea by placing the preservation of the environment and the well-being of citizens at the center of the concerns of the State and the decentralized communities. In the same vein, the constitutional text devotes several provisions to the

[43] Report Relaxed 2019-2020 of the Extractive Industries Initiative Steering Committee in Guinea , p.75.

protection of the environment and the preservation of human rights in its articles 5– 7, 9–11, 14, 15, 22 and elsewhere.

The new Mining Code of 2011 (amended in 2013), provides some specific innovations, including environmental protection measures. Applicants for an industrial or semi-industrial mining permit or mining concession, in accordance with Articles 30-II, and 37-II, must submit a detailed Environmental and Social Impact Assessment, together with an Environmental and Social Management Plan that includes a Hazard Plan, a Risk Management Plan, a Health and Safety Plan, a Rehabilitation Plan, a Resettlement Plan for Populations Affected by the project and measures to mitigate negative impacts and optimize positive impacts. The holder of an exploration permit is required to submit an Environmental Notice to the local authorities for information and explanation of the mitigation and rehabilitation measures planned before work begins.

To implement the obligation to rehabilitate sites, the holder of an Exploitation Authorization must provide a guarantee for the rehabilitation of exploitation sites, the amount and collection methods of which are set by joint order of the Ministers in charge of Mines, the Environment and the Budget[44].

In addition, the Resettlement Plan provided for in the ESMP for populations affected by forced displacement caused by mining activities must include compensation for loss of income and means of subsistence as a result of such displacement in addition to the infrastructure aspect. This reinstallation, as well as the related compensation, will be provided at the expense of the company holding the Mining Title or Authorization according to a procedure determined by the Government that would incorporate international principles of participation and consultation of the local community. The Mining Code also requires the use of appropriate techniques and methods to protect the environment, the safety of workers and the local community in

[44] Art.64 - Rehabilitation of sites.

accordance with the Environmental Code or international best practices in this area[45].

In practice, it was noted during the survey that the implementing regulations relating to compensation have not been issued. Thus, the country does not currently have a national compensation and indemnification grid, which means that each mining company compensates according to its own policy. Stakeholders have made it clear that communities do not appreciate the compensation and indemnification practices imposed by the companies. The companies also do not respect their Environmental and Social Management Plans, which usually leads to community uprisings to claim their rights.

With respect to site rehabilitation, 60% of those interviewed believe that mining sites are not being rehabilitated in Guinea, despite the requirements of the mining code. This information is confirmed by a study conducted by GIZ on the closure and rehabilitation of mining sites in Guinea.

Also, under environmental expenses, it was reported that "according to the EITI declaration of the Société Guinéenne du Patrimoine Minier SA (SOGUIPAMI), no payment for environmental rehabilitation within the meaning of Article 144 of the Mining Code has been made for 2019–2020"[46].

Finally, in 2019, the finalization and validation by the inter-ministerial commission of several draft texts including the draft decree on the regulation of the environment, safety and health was completed.

45 Art.142 - General.

46 Extractive Industries Initiative Steering Committee Report 2019-2020 in Guinea p. 91.

## SIERRA LEONE

The Minerals and Mining Act (MMA, 2009) of Sierra Leone provides for social contributions for people in mining areas. For example, the holder of a small- or large-scale mining license that meets the criteria[47] set out in the Act is required to have and implement a community development agreement with the primary host community. The financial contribution of the small- or large-scale mining licensee under the development agreement is at least 1% of the amount of gross revenues generated by the mining operations in the year preceding the implementation of the agreement. The Act also sets out the procedures for determining which communities are affected.

In addition, it defines the elements that the local development agreement must contain, including:

- Representation of impacted communities,
- Agreement objectives,
- Licensee's obligations to the primary host community,
- Participation modalities of the populations in activity implementation within the agreement framework as well as those of its approval by the minister of supervision.

Also, the examination of several mining conventions allows us to note the recognition of obligatory social expenses to be paid by the mining companies in terms of medical services, education and training. The 2019 EITI Report notes an amount of US$ 2,476,732 for mandatory social payments.

[47] 1- In the case of mineral extraction from mainly alluvial deposits, when the annual flow is greater than one million cubic meters per year; 2-In the case of underground mining operations, where the combined annual production of ore and waste at run-of-river is greater than one hundred thousand tons per year (excluding waste that does not exit the mine mouth). 3- For open pit mining operations that extract minerals from predominantly non-alluvial deposits, where the combined annual production of ore, rock, waste, and run-of-river overburden is greater than 250,000 tons per year; and 4- When the licensee employs or contracts with more than 100 employees or workers at the mine site during a typical workday (including all shifts).

## CÔTE D'IVOIRE

The mandatory social expenses provided for in the mining code are those relating to the constitution of the fund contributed by the holders of operating permits granted under the 2014 mining code. Mining agreements, including those signed prior to the promulgation of the 2014 Mining Code, may include provisions relating to mandatory social contributions.

Article 39 of the Framework Law on the Environment Code states that "any major project likely to have an impact on the environment must be subject to a prior environmental impact assessment". Article 41 adds that "the examination of environmental impact studies by the environmental study office will give rise to the payment of a tax to the National Environment Fund, the basis of which will be specified by decree.[48]"

Article 3 of Decree No. 2005-03 dated 6 January 2005 on environmental auditing requires an environmental audit every three years for those companies, industries and structures or parts or combinations thereof, of public or private law, which are sources of pollution.

The Mining Code also contains relevant environmental provisions. Mining activities must be conducted in such a way as to ensure the protection of the quality of the environment, the rehabilitation of mined sites and the conservation of the forest heritage in accordance with the conditions and procedures established by the regulations in force[49]. It is also required to submit an environmental and social impact study, prior to any exploitation activity, to the approval of the mining administration, the environment administration and all other services provided for by the mining regulations[50].

To preserve the health and well-being of the populations living near mining sites, periodic controls are carried out:

- By the holder of the operating permit or the industrial or semi-industrial operating authorization, at its own expense, within the framework of its ESMP as approved by the competent administrative structures;

[48] Law n° 96-766 of 30 October 1996.
[49] Article 140 of the Mining Code.
[50] Article 141 of the Mining Code.

- By the competent administrative structures and, if necessary, by a body specialized in the matter, designated by the competent administrative structures, all at the expense of these administrations.

In the event of pollution beyond the norms, the costs of control, subsequent verification and related fines are charged to the holder of the operating permit or the beneficiary of the operating authorization, according to the procedures specified by decree.

Article 142 stipulates that the holder of an operating permit or the beneficiary of a semi-industrial or industrial operating permit is required to implement the ESMP approved by the mining administration and the environmental administration.

For the rehabilitation of mining sites, Article 144 provides for the opening, from the beginning of operations, of an environmental rehabilitation escrow account domiciled in a first-rate financial institution in Côte d'Ivoire. This account is used to cover the costs of the environmental rehabilitation plan at the end of operations. The sums are paid into this account according to a scale established by the competent administrative structures and are accounted for as expenses in determining the tax base for industrial and commercial profits. The holder of an operating permit or the beneficiary of an industrial or semi-industrial operating permit is required to contribute to this account. The terms and conditions for the funding and operation of escrow accounts are defined by decree.

In addition, the funding of the escrow account and the rehabilitation activities are subject to the control of the Committee for Monitoring the Use of Escrow Account Resources (CSCS). This committee is responsible for ensuring that the escrow account is effectively opened, that the persons authorized to move funds from it are regularly designated, that it is replenished, and that the amounts paid by the operating companies comply with those established by the regulations in force. It also examines requests to allocate environmental rehabilitation expenses to the resources of the escrow account, verifies the conformity of the resources used with those defined in the mine's closure and rehabilitation plan in compliance with the provisions contained in the Environmental and Social Impact Assessment (ESIA), and assesses and gives its opinion on whether operators have effectively taken into account the obligations relating to environmental rehabilitation and the closure of the post-operating site. The Committee is composed of representatives of the Ministry in charge of mines, the Ministry of Economy and Finance, the Ministry in charge of the environment, the Prime Minister and the mining companies. Minutes are taken of the Committee's meetings but are not made public.

## 4. Transparency, accountability and quality of public debate in revenue management

Transparency is an indispensable pillar of good governance of natural resources. It allows for informed debate on how resources are managed and for appropriate citizen oversight. In this particular case, it is a question of examining transparency in a general way in its different aspects on the management of revenues.

There are several governance frameworks or standards from international organizations that promote or propose precepts for transparency in the management of natural resources, including revenue management. Among these frameworks or standards, the EITI Standard has been adopted by Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal and Sierra Leone. This choice is justified by the fact that the Standard is the most precise in terms of revenue management. The EITI Standard covers the collection and distribution of all significant payments made by extractive companies to the state and other public bodies to the population, among other beneficiaries.

EITI implementing countries normally produce regular annual reports on the state of governance of their extractive sector 18 months after their admission as an EITI implementing country. These reports contain comprehensive, or at least significant, disaggregated data by country and are subject to certification. The revenue data covers all payments made by mining and oil companies and provides a wealth of information to inform a scientific debate on extractive resource governance and to question and assess the accountability of relevant bodies to their mandates. EITI Member countries are also subject to independent assessment by the International EITI Board of progress in implementing the EITI towards meeting the requirements of the EITI Standard.

## SENEGAL

Senegal has produced and published nine (9) EITI Reports since 2013. The latest Report covers the fiscal year 2021 and the first half of 2022. It was the subject of two validations in 2018 and 2021. During the last validation, Senegal achieved a very high score (93/100 points) in the implementation of the EITI process. The results, conclusions and recommendations of the EITI reports are shared with the various stakeholders during a national workshop. They are also disseminated in the main regions of Senegal where mining, oil and gas projects are located, namely Fatick, Kédougou, Matam, Saint-Louis, and Thiès, in order to strengthen the public debate on the governance of extractive resources.

Despite the achievements in promoting transparency in the governance of extractive industries, Senegal still faces significant challenges. Indeed, the reliability of the data contained in the EITI reports is limited. For example, in the EITI 2020 Report, discrepancies were noted between the data certified by the Cour des Comptes and the data from the reporting authorities[51]. Similarly, in the chapter on recommendations, the following findings were noted:

- Forms completed by six (6) extractive companies do not comply with the mechanisms of data reliability retained by the EITI National Committee;
- Of the 24 companies that confirmed that their financial statements were certified by an auditor, three (3) companies did not provide their audit reports or the auditor's letter of affirmation;
- PETROSEN's reporting form did not comply with the reliability mechanism adopted by the National Committee. The form was not signed by a senior officer or by an authorized person of the entity, and was not certified by an auditor external to the entity;

[51] EITI 2020 Report, page 163.

- The CSS reporting form was not certified by an auditor external to the entity;
- The DGID unilateral declaration form was not certified by the Court of Auditors.

These observations are critical in that the credibility of the data contained in these reports is called into question, as well as the debate on them.

## CÔTE D'IVOIRE

Since Côte d'Ivoire joined the EITI in 2008, the country has published 13 Reports. The implementation of the EITI has also been the subject of two validations. During the first Validation in 2013, it obtained the so-called "compliant country" status. In May 2018, the EITI Board agreed that Côte d'Ivoire had made significant progress in implementing the 2016 EITI Standard.

The second Validation of Côte d'Ivoire began in November 2019 and was completed in March 2020. The EITI Board agreed that Côte d'Ivoire had made significant progress in implementing the 2016 EITI Standard with ten corrective actions that the EITI national committee would need to implement before the start of the next validation in April 2022.

Moreover, analysis of the EITI reports, particularly the 2019 report, reveals limitations in relation to the transparency requirements. Thus, in the context of the data assurance procedure, the independent administrator made the following observations on the 29 companies included in the scope:

- Two companies did not provide proof of certification of their financial statements for 2019;
- Five extractive companies did not provide forms signed by their authorized representatives, and
- Five extractive companies did not provide statements certified by an external auditor.

This situation is likely to impact the quality assurance of the data in the report. Thus, the independent administrator recommended that the National

Committee take the necessary steps to sensitize the defaulting entities and to communicate the signed and certified forms as well as the proof of the audit of their 2019 accounts before 31 December 2021.

In accordance with the provisions of Article 144 of the Mining Code which provides for the opening of an environmental rehabilitation escrow account domiciled in a first-rate financial institution in Côte d'Ivoire at the start of operations, the independent administrator asked the companies included in the scope to indicate the payments made into the rehabilitation escrow accounts. It was found that only two mining companies out of 18 entities had indicated their payments to the rehabilitation account. This situation raises questions about the degree of compliance by extractive companies with their environmental commitments and the effectiveness of the controls in place to monitor these commitments.

Other challenges included discrepancies between DGMG data and company data and lack of data on subcontracting in the scope of the report.

## GUINEA

In 2021, Guinea was subject to validation by the EITI Board. The assessment of progress in the implementation of the EITI Standard concluded with an overall high score in the implementation of the 2019 EITI Standard. Progress on several items was recorded, in particular:

- Strengthening EITI reporting to cover topics of high public interest, including sub-national payments, contributions to local development funds, and the 2017 resource-backed framework agreement that Guinea has with China,
- Disclosing extractive sector licenses on the online land registry as well as production and export data and contracts on the websites of the relevant ministries, and
- Broadening civil society engagement in EITI implementation and reinvigorating the participation of the company college.

Furthermore, based on the 2018 EITI Report, EITI Guinea influenced the formulation of government decrees operationalizing local development funds and strengthening the monitoring of mining production. There are indications that researchers have used EITI data and that various government institutions, such as the Ministry of Mines and Geology, have engaged in strong cooperation with the Multi-Stakeholder Group.

The Validation Report also highlights the challenges that remain in the implementation of the EITI. Several corrective measures have been formulated, such as

- Publication of a complete overview of all current extractive contracts and licenses (including schedules, amendments and riders), specifying which are publicly available and which are not,
- Annual public disclosure of information on mining and petroleum license grants and transfers, including technical and financial criteria assessed and a detailed annual assessment of significant deviations from statutory licensing and transfer procedures,
- Disclosure of beneficial ownership of all companies holding or applying for an extractive license,
- Improved disclosure of extractive government revenues by project (license, contract and concession).

Also, despite the publication of data by the EITI and the MMG through reports and statistics, the popularization of reports and the organization of some public debates, it appears from our interviews that the level of public debate is very low on the value chain of extractive industries, especially among communities impacted by mining projects in general.

## SIERRA LEONE

On 17 June 2019, Sierra Leone was deemed to have made significant progress in implementing the 2016 EITI Standard. The second Validation for Sierra Leone was scheduled to begin on 1 October 2021, according to the revised Validation schedule approved by the Board in December 2020. However, as the 2019 EITI Report had not yet been finalized, the Validation exercise was postponed.

The latest 2019 EITI Report identifies several limitations in the implementation of the EITI. According to EITI requirement 6.3, implementing countries must disclose, where available, information on the contribution of the extractive sector to the economy for the fiscal year covered by EITI implementation, in particular the contribution to GDP, government revenue, exports, and employment. The independent administration mentioned that this information was not disclosed by the relevant government agencies. For example, the Ministry of Finance did not disclose the contribution of the extractive sector to GDP or government revenue. Similarly, the Central Bank of Sierra Leone was unable to disclose the contribution of the extractive sector to exports, while the Ministry of Labor was unable to provide statistics on employment in the extractive sector.

In addition, it was noted that the EITI Secretariat has insufficient financial resources to carry out the following tasks:

- Promoting EITI values throughout the country,
- Awareness-raising workshops to improve EITI Sierre Leone stakeholders' participation in the EITI reporting process, and
- Capacity building for government agencies and extractive company EITI focal points.

## GHANA

Ghana joined the EITI in February 2007. The implementation of the EITI Standard has undergone three validations. First in 2017, the EITI Board found that Ghana had made "significant progress" in implementing the 2016 EITI Standard. Second, the second validation under the 2016 EITI Standard was completed on 27 February 2019. The Board found that Ghana had made "significant progress" in implementing the EITI Standard, with considerable improvements in several individual requirements. Two corrective actions identified by the Board, related to full disclosure of taxes and revenues (Requirement 4.1) and quasi-fiscal expenditures (Requirement 6.2); were to be assessed at a third Validation.

The third validation began on 27 February 2020, conducted on the basis of the 2016 EITI Standard in accordance with the transitional provisions, given that its last EITI report (covering 2017–2018) was published before 1 January 2020. The Secretariat assessed progress in implementing the two corrective actions established by the EITI Board following the second Validation. Progress on the implementation of Requirement 2.5 on beneficial ownership and Requirement 4.7 on disaggregation has also been assessed. The International Secretariat assessment is that Ghana has not fully addressed the two corrective actions and has made "significant progress" with substantial improvements to meet Requirements 4.1 and 6.2. The International Secretariat assessment found evidence to suggest that progress has been below the required standard for Requirements 4.9 and 5.2, and warrants consideration by the EITI Board for a downgrade to "significant progress". Finally, the International Secretariat assessment is that Ghana has made "significant progress" on Requirements 2.5 and 4.7.

The Board determined that Ghana would have 18 months before a fourth Validation under the 2019 EITI Standard, i.e., until 1 June 2022, to implement corrective actions regarding beneficial ownership (Requirement 2.5), completeness (Requirement 4.1), project-level reporting (Requirement 4.7), data quality (Requirement 4.9), subnational transfers (Requirement 5.2), and quasi-fiscal expenditures (Requirement 6.2).

## NIGERIA

Nigeria was the first country in Africa to implement the EITI (2004) and helped shape the EITI Standard and developed one of the most comprehensive EITI reporting processes. After more than a decade of implementation, the Nigeria EITI (NEITI) has gone well beyond the original EITI requirements by including physical and process flow assessments in conjunction with final payment reconciliation. Nigeria was also the first country to enact legislation in 2007 to institutionalize the EITI in the country and NEITI has been repeatedly recognized for its efforts to implement the recommendations of the EITI reports. As a result of these efforts, NEITI is estimated to have recovered more than USD 2.4 million for the Federal Government of Nigeria, while improving stakeholder collaboration and enabling improved governance of the extractive sector[52].

The EITI Report identified some challenges related to transparency in the management of oil and gas resources. This is the case for quasi-fiscal expenditures. Indeed, in 2020, the total amount of quasi-fiscal expenditures amounted to USD 526.20 million. These amounts were deducted from the Federation's revenues before being paid out without appropriation by the National Assembly. It was thus recommended that the parliament should exercise adequate control over expenditures that are not reflected in the national budget.

Similarly, unpaid debts to the federation have been recognized. The total amount of unpaid taxes due to Federal Inland Revenue Service as of 30 September 2021 was USD 79.20 million, while the total amount of unpaid Federation revenue due to Department of Petroleum Resources as of 31 December 2020 was USD 3.10 billion. Failure to pay these funds when due is a strain on the Federation revenue stream. Enterprises need to pay outstanding debts promptly, while the respective government agencies need to intensify their efforts to recover the debt.

52 https://eiti.org/fr/news/nigeria-litie-reconnait-les-progres-accomplis-en-matiere-de-gouvernance-des-ressources.

In addition, other problems were raised in relation to compliance with the requirements of the EITI standard. The audit observed that of the 69 companies covered by the report, four (4) did not submit information and data for reconciliation. The value of the revenues of these four companies was USD 1,198,570, which represents 0.006% of the total revenues (USD 20.43 billion). In addition, some entities did not comply with the requirement to provide audited financial statements to the Independent Administrator. To this end, EITI Nigeria should take steps to ensure full compliance by entities covered by the annual audit process, given the revenue implications for the government. It may also be necessary for NEITI to activate its sanctions mechanisms.

# 4

# LESSONS LEARNED FROM THE EXTRACTIVE REVENUE GOVERNANCE SYSTEMS STUDIED AND THE WAY FORWARD

# IV. LESSONS LEARNED FROM THE EXTRACTIVE REVENUE GOVERNANCE SYSTEMS STUDIED AND THE WAY FORWARD

## 1. Strengths and Weaknesses of Different Revenue Management Policies in Focus 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[53], 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.

[53] 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[54], 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 stakeholders at the CDLM level, their influence in decision-making is considered modest or even marginal.

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

## 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 9: Comparative table of strengths and weaknesses of revenue management policies in the six countries**

| Strengths | Weaknesses/Challenges/Risks |
|---|---|
| **Côte d'Ivoire** | |
| • Relevant environmental and social provisions<br>• 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<br>• 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<br>• Lack of accountability of CDLMs to local communities<br>• Lack of citizen monitoring of CDLM actions<br>• Lack of transparency in the management of funds received by the CDLM<br>• Lack of information for local communities on the mining code, mining contracts, the compensation process and their basic rights<br>• Failure to take into account the real needs of communities affected by mining projects in local mining development plans<br>• Lack of Civil Society Organizations (CSOs) equipped to monitor the actions of the CDLMs<br>• Non-compliance with environmental commitments and weak monitoring and control<br>• Limitations on the reliability of EITI data |
| **Ghana** | |
| • Constitutional provisions relevant to environmental protection and natural resource management<br>• 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<br>• Insufficient PIAC resources<br>• The absence of mandatory social expenses in oil contracts |

| 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<br>• A constitutional consecration of the principles of sharing mining resources with local communities, and the integration of local content in all projects<br>• Clear rules regarding the management of the Economic and Local Development Fund (FODEL)<br>• Compensation rules integrating, in addition to the infrastructure aspect, the loss of income and livelihoods as a result of these displacements under the ESMP<br>• Progress in implementing the EITI Standard | • Institutional instability and subsequent legal insecurity<br>• Failure to respect the disbursement schedule of funds at the community level<br>• Poor knowledge of the legal texts governing the distribution and management of revenues by the communities<br>• The absence of a mechanism for monitoring the legal or contractual commitments of companies with regard to social payments<br>• 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<br>• 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<br>• Non-respect by the companies of the Environmental and Social Management Plans generally leading to the uprising of the communities to claim their rights<br>• Failure to rehabilitate sites despite the requirements of the mining code<br>• Ineffectiveness of rehabilitation payments<br>• 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 |
| **Sierra Leone** | |
| • Relevant constitutional provisions on natural resource management<br>• 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<br>• Lack of disclosure of information on the contribution of the extractive sector to the economy (contribution to GDP, government revenues, exports and employment) |

| 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<br>• Strengthening the institutional and legal framework for the oil sector: creation of COS-PETROGAZ<br>• 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.<br>• Institutionalization of social obligations and strengthening of environmental provisions by the New Petroleum Code<br>• Principle of full budgeting of oil and gas revenues established by the Revenue Management Act<br>• 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<br>• Challenges to reliable reporting in EITI implementation<br>• Important powers of the COS-PETROGAZ, a body attached to the Presidency of the Republic in the management of oil and gas revenues<br>• Slow publication of reports by oversight bodies such as the National Assembly, and the Court of Audit<br>• Non-effective monitoring of the social and environmental obligations of hydrocarbon title holders<br>• 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<br>• The law does not require the publication of semi-annual and annual activity reports prepared by fund managers<br>• 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 |

| Strengths | Weaknesses/Challenges/Risks |
|---|---|
| **Nigeria** | |
| • Constitutionalization of the principle of sharing oil revenues with the federated states<br>• Existence of an institutional framework for the management, control and fight against corruption in the oil and gas sector<br>• 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<br>• 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<br>• Strengthening the ban on gas flaring and instituting fines for violators<br>• 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<br>• Effective implementation of the new regulations<br>• 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)<br>• Persistent challenges in EITI implementation, including the reliability of EITI data and stakeholder cooperation<br>• Huge financial losses and very negative consequences of gas flaring |

## 2. Prospects for Improved Extractive Revenue Management in West Africa

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

a) 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,

b) 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,

c) 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,

d) 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,

e) 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,

f) 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),

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

h) 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.

# CONCLUSION

# CONCLUSION

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.

Based on these observations, this comparative study has made it possible to examine in depth the governance systems and good practices developed in the six (6) target countries, namely Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal and Sierra Leone. At the end of the study, one cannot help but share 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:

**a) 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, the 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 (PIAC)[55] in Ghana is likely to

[55] 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 monitoring the use of revenues.

promote optimal participation of civil society in the management and monitoring of the use of revenues from mining, oil and gas.

**b) Income allocation and tracking rules**

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.

**c) Redistribution mechanism**

The revenue sharing mechanisms identified in this study are generally based on derivation[56] and/or community development agreements (CDAs). Ghana and Senegal, which do not apply revenue sharing mechanisms in their oil

[56] 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.

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.

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.

# REFERENCES

# REFERENCES


- African Union, Africa's Mining Regime Vision, February 2009.
- Collier P., Van Der Ploeg F., Spence A. And Venables A., "Managing Resource Revenues in Developing Economies", IMF Staff Papers, 2010, vol. 57, issue 1, pp. 84-118
- Directive C/DIR 3/05/09 dated May 27, 2009 on the harmonization of guidelines and policies in the mining sector
- ECOWAS Model Law (2021) on Mining and Mineral Resources Development (EMMMDA).
- EITI, EITI Validation Report Côte d'Ivoire 2018
- EITI, Côte d'Ivoire EITI Report, 2019
- EITI, Senegal EITI Report, 2020
- Eregha P. B. And Mesagan E. P., "Oil Resource Abundance, Institutions and Growth: Evidence from Oil Producing African Countries," Journal of Policy Modeling, Volume 38, Issue 3, May-June 2016, pp. 603-619
- Extractive Industries Initiative Steering Committee Report 2019-2020 in Guinea
- GHEITI 2019 Oil and Gas Sector Report
- Hoogvelt A, Tinker A, In Fanthrope and Al, "Political economy of Extractive Governance in Sierra Leone", 2013
- NEITI 2020 Oil and Gas Industry Report.
- Rodrik D., Subramanian A. And Trebbi F., "Institutions Rule: The Primacy of Institutions Over Geography and Integration in Economic Development", Journal of Economic Growth, volume 9, 2004, pp. 131-165

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Gorée Institute
Résidence Bibi, Rue des
Gourmets
B.P.05 - Gorée Island
Senegal

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