

# CO-MANAGEMENT OF AFRICA'S EXTRACTIVE RESOURCES: POLICY DIRECTIONS FOR TRANSPARENCY AND ACCOUNTABILITY LEGISLATIVE FRAMEWORKS

By

Ngozi Unuigbo<sup>1</sup> and Yolanda Borquaye<sup>2</sup>

## **Abstract**

*The Global South is richly endowed with natural resources. However, the continent of Africa stands out amongst the rest in terms of its significant amount of resource wealth. The region holds over 60 percent of the world's strategic minerals and is also host to many rare elements, rich vegetation, an equable climate and 12 hours of sunshine most of the year. Adding up the total value of its fisheries and aquaculture sector alone is estimated to be worth at least USD 24 billion<sup>3</sup> With such resources, particularly in the mining and extractive sector that hold great potential to spur progress, it becomes more evident why effective management solutions are being prioritized. Traditionally, natural resource management has largely been done by the state. While African governments have made steps at different levels to achieve sustainable development through the management of the continent's extractive resources. These steps have, however, left a lot to be desired. The objective of this paper is not to propose or argue for a blanket method to effectively manage the continent's extractive resources. Instead, this paper argues that achieving sustainable development is very much hinged on management methods that promote the transparency and accountability that are inherently found in effective co-management frameworks. This paper will support and defend co-management of extractive resources as an effective way of achieving transparency and accountability that promotes sustainable development.*

**Keywords:** Resources, sustainable development, management, co-management, accountability.

## **1 Background**

Scientists, engineers, businessmen, policymakers, politicians and civil society organisations across the world have been working to take into consideration the fact that the Earth provides only a finite number of resources.<sup>4</sup> Their efforts fall under the work of sustainable development, which calls for “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>5</sup>

---

<sup>1</sup> Environmental Law Policy Fellow, United Nations University – Institute for Natural Resources in Africa; Associate Professor, Faculty of Law, University of Benin, Nigeria; email: ngozistewart@yahoo.com

<sup>2</sup> New York University Law School; email: ykb207@nyu.edu.

<sup>3</sup> Extractive Resources, adelphi. URL <https://www.adelphi.de/en/topics/resources/extractive-resources> (accessed 07-04-2019).

<sup>4</sup> For more information, see Ram Nidumolu, C.K.P., 2009, ‘Why Sustainability Is Now the Key Driver of Innovation’ *Harvard Business Review*. <https://hbr.org/2009/09/why-sustainability-is-now-the-key-driver-of-innovation> accessed on 27 July, 2018; Sustainable Development Solutions Network | The Paris Agreement on Climate Change, Centre, G.B.N.T., 2015. Why Environmental And Sustainability Programs Are Growing In Popularity. Blog.GBNTC.com. accessed on 27 September, 2018

<sup>5</sup> Brundtland Commission, 1987. Report of the World Commission on Environment and Development: Our Common Future.

As it stands, the global community has made slight progress in addressing poverty and economic development, however, the trends of progress seem uneven. Urbanization is growing rapidly in the Global South, while globalization and financialization are perpetuating inequalities across the Global North.<sup>6</sup> Across the globe, environmental degradation presents challenges that leaders will have to respond to.<sup>7</sup> As environmental degradation reaches critical levels, many turned to natural resource management, particularly in areas of the Global South that are rich in natural resources and showing signs of uneven progress in their development.<sup>8</sup>

The Global South is richly endowed with natural resources. In particular, the resources found in this region of the world are largely mineral assets that are essential for modern production and consumed worldwide.<sup>9</sup> In 2012, Latin America was accountable for over half of global production in copper, while Asia accounted for over half of the world's coal and more than a third of its iron-ore deposits that are used for energy and steel production.<sup>10</sup> However, the continent of Africa stands out amongst the rest in terms of its significant amount of resource wealth. The region holds over 60 percent of the world's strategic minerals – 65 percent of its cobalt, 18 percent of its gold, 95 percent of its platinum, 42 percent of its diamonds, 8 percent of its natural gas, plus vast deposits of oil and uranium. In addition to holding an abundance of natural and mineral resources, Africa also hosts many rare elements, rich vegetation, an equable climate and 12 hours of sunshine most of the year. It is home to the world's largest arable landmass; second largest and longest rivers (the Nile and the Congo); and its second largest tropical rainforest. Adding up the total value of its fisheries and aquaculture sector alone is estimated to be worth at least USD 24 billion. With such resources, particularly in the mining and extractive sector that hold great potential to spur progress, it becomes more evident why effective management solutions should be prioritized.

Traditionally, natural resource management has largely been done by the state. However, since the 1990s there have been trends of change as government agencies across the world who were tasked with managing natural resources have felt financial pressure to spread resource management responsibilities.<sup>11</sup> The shifts have created changes in structures and sharing responsibilities that have resulted in an increased number of participants in the natural resource management process. Privatization, deregulation and the delegation of responsibilities now all require additional stakeholders such as local resource users, civil society organizations, private corporations and

---

<sup>6</sup> UN, 2013. Global trends and challenges to sustainable development post-2015. World Economic and Social Survey (WESS) 1–22. doi:10.18356/ba9e9a36-en

<sup>7</sup> For more information see Laborde, D., Bizikova, L., Lallemand, T., Smaller, C., 2009.; Ending Hunger: What would it cost? | IISD. IISD; Cost of Pollution: Extreme Weather | IISD, n.d. . IISD; Cost of Pollution: Contaminated Sites | IISD, n.d. IISD.

<sup>8</sup> Ibid.

<sup>9</sup> Besada, H., Martin, P., 2015. Mining codes in Africa: emergence of a “fourth” generation? Cambridge Review of International Affairs 28, 263–282

<sup>10</sup> UNECA Africa Union Commission, 2012. Unleashing Africa's Potential as a Pole of Global Growth (Issue Paper). Addis Ababa.

<sup>11</sup> Jérôme Ballet, Koffi Kouamékan J.-M. Koffi, K. Boniface Komona, 2009. Co-management of natural resources in developing countries: The importance of context | Cairn.info. *Économie Internationale* 4, 140.

governments.<sup>12</sup> In an effort to better address the inevitable classes that result among these three groups, management practices like co-management have become a popular concept. Co-management has gained slight popularity because of the various benefits ascribed to it, particularly the normative benefits. Co-management regimes are considered to be more ethical than top-down, command-and-control managed state-led regimes;<sup>13</sup> hold promise of increasing equity and fairness by including local actors in the negotiations and decision-making process; may lead to gains in social capital and increased conflict resolution; and may contribute to the empowerment and development of marginalized communities.<sup>14</sup> And when being thought to apply to regions of the Global South whom are rich in natural resource and from whom the need for effective natural resource management grows in urgency, using co-management as a framework shows promise of facilitating much of the sustainable growth global leaders are striving towards.

This paper will support and defend co-management of extractive resources as an effective way of achieving transparency and accountability that promotes sustainable development. Section 2 will discuss and justify co-management as an effective driver for transparency and accountability. Section 3 presents the case for applying a co-management regime to Africa's paradoxical extractive resource industry, highlighting how an effective co-management framework could yield positive impacts on revenues, the environment, and social well-being across the continent. Section 4 discusses the current policy and legislative frameworks for extractive resource management in Africa. Section 5 criticizes the existing legal frameworks and provides policy and legislative recommendations that are based on co-management frameworks that promote transparency and accountability.

## **2 Co-Management of Natural Resources: A Theoretical Context**

In the most basic form, co-management regimes are partnerships between local resource users, governments and other stakeholders in managing natural resources. Co-management proves most effective when each of the stakeholders are motivated to participate in management of the resources.<sup>15</sup> Typically, this looks like local resource users taking an active interest in participating in management because of their direct reliance of the resources while governments recognize the benefits of having aspects of management conducted at the local level. The shared responsibility and power that exists between the stakeholders is essential for effective resource management, as each actor exchanges information while also gaining knowledge from the other actors. Co-management is a situation in which social actors negotiate and define amongst themselves an

---

<sup>12</sup> Glasbergen, P., 1998. *Co-operative Environmental Governance: Public-Private Agreements as a Policy Strategy*. Springer Science & Business Media; Hall, C.M., 1999. Rethinking Collaboration and Partnership: A Public Policy Perspective. *Journal of Sustainable Tourism* 7, 274–289; Plummer, R., Fitzgibbon, J., 2004. Co-management of natural resources: a proposed framework. *Environ Manage* 33, 876–885.

<sup>13</sup> Hernes, H.-K., Jentoft, S., Mikalsen, K.H., 2005. Fisheries Governance, Social Justice and Participatory Decision-Making, in: *Participation in Fisheries Governance, Reviews: Methods and Technologies in Fish Biology and Fisheries*. Springer, Dordrecht, pp. 103–118; Neil A. Davis, 2008. Evaluating collaborative fisheries management planning: A Canadian case study. *Marine Policy* 32. nrgi\_Legal-Framework.pdf,

<sup>14</sup> Hara, M., Nielsen, J.R., 2003. Experiences with Fisheries Co-Management in Africa, in: *The Fisheries Co-Management Experience*, Fish and Fisheries Series. Springer, Dordrecht, pp. 81–97

<sup>15</sup> Jamart, C., Rodeghier, M., *Sharing Power: Co-management and effective governance* [http://www.agter.org/bdf/en/corpus\\_chemin/fiche-chemin-86.html](http://www.agter.org/bdf/en/corpus_chemin/fiche-chemin-86.html) . Accessed 25 -04-2019

objective sharing of management functions and responsibilities for a given set of natural resources.<sup>16</sup>

At this point, it is imperative to draw a distinction between co-management and Community Based Natural Resource Management (CBNRM), co-management and state-led natural resource management. CBNRM requires that the resources be exclusively managed by local communities.<sup>17</sup> Under this model, the government plays a markedly small role or no role at all in managing the resource.<sup>18</sup> On the other end of the management spectrum, exists state management. Under state regimes, resources are largely or exclusively managed by the central government. The government maintains control over the creation and implementation of regulations despite any outside input or representation for local resource users or other actor.<sup>19</sup> While co-management resembles CBNRM or even state-led management models, it is exclusively neither of these forms. Instead, co-management exists as a hybrid of the two, existing at the nexus of state management and CBNRM. Following from literature that shows that local communities are not necessarily better positioned or more effective at managing natural resources, co-management attempts to bolster the effective components of community-based natural resource management as literature does show that because their intrinsic knowledge and positioning of authority within the communities being managed, local communities can manage resources better than central governments.<sup>20</sup> However, unlike CBNRM, governments still have a role to play in managing the natural resources. Therefore, co-management can be seen as going a step further by embedding community-based natural resource management CBNRM within a broader governance context that seeks to establish partnerships between government, resource users and local communities.

While co-management relies on the state or centralized government to help in managing resources as well, it is not to be conflated with state-led natural resource management models.<sup>21</sup> As was the case with CBNRM, state-led management is also embedded under co-management. Unlike state management, co-management is a genuine sharing of power, authority and responsibility that exists between each of the stakeholders. Co-management regimes, unlike state management, include a real-decision-making role for local resource users and other social actors. Under co-management regimes, there is a measure of delegation and a devolution of power from the government who, under state management regimes, holds exclusive ownership over these actions.<sup>22</sup>

The benefits of co-management are numerous. The partnership between each of the stakeholders enables a multi-level interaction that can recognize and accommodate the different values, interests

---

<sup>16</sup> Jerome Ballet et al. note 11.

<sup>17</sup> Ibid

<sup>18</sup> Alpizar, M.A., 2006. Participation and fisheries management in Costa Rica From - Technische Informationsbibliothek (TIB). *Marine Policy* 30, 641–650

<sup>19</sup> Jentoft, S., 1989. Fisheries co-management,: Delegating government responsibility to fishermen's organizations. *Marine Policy* 13, 137–154.

<sup>20</sup> See Jerome Ballet, note 11

<sup>21</sup> Plummer & Fitzgibbon, note 12.

<sup>22</sup> Ya'el Seid- Green, 2014. Defining Co-managemnet: Levels of Collaboration in Fisheries Management. University of Washington.

and concerns of those who have a vested interest in the natural resources. It strengthens management by improving the contributions of different stakeholders at the levels where they can be most effective.<sup>23</sup> The collaborative structure integrates a wider variety of actors in a variety of different roles as natural resources are managed. Both traditional approaches implemented by local users and scientific approaches implemented by governments are incorporated into managing the natural resource under co-management regimes. The components of co-management that require communication and negotiation between each of the stakeholders promotes transparency, equity and justice in natural resource management.<sup>24</sup> As both the state and local users rely on each other for the management of the resources, informational loops between local and national levels are created. This is not to say that co-management is a power tussle among the governments, local users and other stakeholders; rather it is a call for better participation of all key stakeholders in the decision making on extractive resources.

How rights and responsibilities pertaining to natural resources are distributed are central to understanding and defining co-management. Several authors have attempted to develop a method for understanding the various types of co-management arrangements, placing co-management regimes along a spectrum from less-complete to more-complete in terms of how power and responsibility is shared.<sup>25</sup> These authors define co-management based on the level of integration between government and resource users. However, these definitions are difficult to use in practice as they suggest an infinite variety of arrangements between the stakeholders in this is because co-management covers a broader spectrum of collaborative decision-making than these definitions lend to. Rather, it proves more practicable to define co-management more broadly as a type of management system or rights regime. This definition of co-management allows for a more integrative understanding and conceptualization of co-management that defines co-management at the nexus of bureaucracy-based, community-based, and market-based systems.<sup>26</sup> In doing so, it recognizes the spectrum of community types that other definitions attempt to capture by creating typologies of co-management, while also expanding the co-management to include actors and knowledge necessary for effective natural resource management beyond the government and local resource users.<sup>27</sup>

Property rights are part of the larger system in which the co-management regime is located.<sup>28</sup> Some scholars argue that it may be easier to create co-management regimes where there is some element of communal property—where the rights to manage are strengthened by the rights of ownership. In this context, property rights regimes can create conditions that enforce co-management making it more effective. The rights to manage which are strengthened by rights of ownership found in property rights regimes works not only in relationship between the management authority and an individual user but also among users as each has a shared dependency on the resource. This shared dependency in turn promotes discipline but also a level of mutual vulnerability as resources held

---

<sup>23</sup> Guidelines for Establishing Co-Management of Natural Resource in Timor-Leste, 2013. Conservation International for the Timor-Leste National Coordinating Committee, Jakarta, Indonesia.

<sup>24</sup> Ibid

<sup>25</sup> Berkes, F., 1992. Success and Failure in Marine Coastal Fisheries of Turkey, in: *Making the Commons Work. Theory, Practice, and Policy*. Institute for Contemporary Studies, San Francisco, CA, pp. 161–182.

<sup>26</sup> Yandle, T., 2003. The challenge of building successful stakeholder organizations: New Zealand's experience in developing a fisheries co-management regime - ScienceDirect. *Marine Policy* 27, 179–192.

<sup>27</sup> Ibid.

<sup>28</sup> Jentoft, note 19.

in common by users can be withheld by other users through a group decision. In this instance, it can thus be employed as a sanction against those who may break the established rules. When rights of management and property are linked together, property becomes not only a right but also a responsibility for the collective group as well as for the individual.<sup>29</sup> Without this responsibility, there is not guarantee for sustainable resource use.

A definition that can encompass both the breadth of regimes and property rights necessary to ensure partnerships is necessary when discussing co-management. Co-management should be understood more broadly as a means to an end rather than as an end in and of itself. Yandle's definition of co-management is inclusive of these considerations and as such, is adopted with a distinction in this paper. She offers that co-management "can be thought of as a spectrum of institutional arrangements in which management responsibilities are shared between the users (who may or may not be community-based) and government . . .".<sup>30</sup> However, unlike Yandle, this paper adopts a definition of co-management that requires users to also be of the community in order to ensure that partnership arrangements are inclusive of local knowledge and promoting transparency and equity natural resource management.

Essentially, co-management is an effective way of managing natural resources because it creates a balance between the variety of stakeholders needed to conserve resources. The next section will examine Africa's extractive resources, presenting the case for applying the co-management framework proposed here to the paradox of the industries.

### **3 Management of Africa's Extractive Resources: A Trajectory**

The contribution of extractive resources (ERs) to the African economy is notably significant. Extractive commodities like the minerals and metals that make up the oil, mining and gas industries are non-renewable resources and play crucial roles in economic development and technological innovation throughout the world. For many African countries' the reliance on ERs is strong with a few countries' public revenue almost entirely dependent on them. In fact, the African Development Bank (AfDB) estimates that Africa's ERs could contribute over USD 30 billion per year in government revenue for the next 20 years. The AfDB also estimates that recent oil, gas, and mineral discovers could bring an additional 9 percent to 31 percent in government revenues over the first ten years of production in countries such as Ghana, Liberia, Mozambique, Sierra Leone, Tanzania, and Uganda.<sup>31</sup>

In short, Africa's natural resources—particularly, its extractive resources, provide a unique opportunity for tremendous human and economic development. However, this is not the reality and many countries throughout the continent struggle to reap the full benefits of their extractive resource endowments. Rather than provide broad-based economic growth, the revenues from these resources often end up benefiting only a small percentage of the population—local elites and foreign investors.<sup>32</sup> Much scholarship has gone into identifying the obstacles that have prevented African countries from realizing their full potential, creating a large body of research on the named *resource curse*, which this paper will not attempt to comprehensively identify here. Stemming

---

<sup>29</sup> Ibid

<sup>30</sup> Yandle, note 26, p.180

<sup>31</sup> 'Extractive Resources in Africa' note 3

<sup>32</sup> Besada, H.G., Lisk, F., Martin, P., 2015. Regulating Extraction in Africa: Towards a Framework for Accountability in the Global South. Governance in Africa 2

corruption and mismanagement of natural resources plays a crucial role in facilitating these shortcomings. A lack of transparency surrounding resource development and revenue helps to facilitate corruption that has been linked to the mismanagement of natural resources in many resource-rich African countries. For example, Equatorial Guinea, an oil-rich country boasting the highest per capita income on the continent, still has life expectancy and infant mortality rates that are below even the sub-Saharan African average. Additionally, approximately half of the population lacks access to potable water and immunization rates for children are among the lowest in the world.<sup>33</sup>

Against this backdrop is the rising need to address these problems speedily with concerns over natural resources rising as one of the most pressing of the issues. The need to protect natural resources, particularly valuable extractive resources, is increasing as consumption rises and as trade-offs across resource use offer more alternatives. Successful harnessing of ERs for growth, poverty reduction and social development, depends on good governance and sound management practices – of which co-management is often cited as a precursor.<sup>34</sup>

Although recent trends have seen governments across Africa drafting pro-poor economic growth policies and environmental sustainability at the heart of their legislations, planning systems and institutions, the paradox persists.<sup>35</sup> Africa continues to exist as one of the world's most vulnerable continents with deepening levels of poverty and worrying trends of natural resource degradation. Governments across the continent continue to address this conundrum of how best to leverage extractive resources to provide broad-based economic growth, structural transformation and poverty alleviation. From 2001 until the global economic crisis of 2008-09, efforts were made to mitigate the negative effects of the extractive industry across the continent. Corporate social responsibility became a mainstream practice by both firms and non-governmental institutions and international financial institutions, extractive industry multinationals and non-governmental organizations mobilized around imagining and implementing social and environmental best practices into their projects. During this time, some countries, such as Liberia, who had newly elected governments, were even able to reassess previous extractive industry agreements and negotiate for new terms that were more favourable. However, domestic institutional capacities for environmental monitoring and enforcement and overall management, remained weak in many jurisdictions across the continent.<sup>36</sup>

In 2012, this looked like governments leading the way in managing natural resources. There was greater state involvement, activist industrial policy-making and resource nationalism that reflected a growing assertiveness of governments across the continent to challenge economic liberalization policies that had been in place since the 1980s.<sup>37</sup> Presently, management of extractive resources has changed as governments across the continent are re-imagining the potential in the extractive resource industry. The World Bank, for example, even uses language such “extractives for development.” This current practice has yielded an outcome of less foreign investment based on

---

<sup>33</sup> Bekele, D., 2017. Africa's natural resources: From curse to a blessing. Al Jazeera.

<sup>34</sup> Carlsson, L., Berkes, F., 2005. Co-management: concepts and methodologic implications. *Journal of Environmental Management* 75.

<sup>35</sup> Besada et. al note 32

<sup>36</sup> Chris W.J. Roberts, 2014. *Extractive Sector Regulations and Policy in Africa: Old Practices and New Models for Change, Governing Natural Resources for Africa's Development*. The North-South Institute

<sup>37</sup> Ibid.

market signals and more direct state intervention. The framework in place creates a complex mix of domestic and trans national laws and regulations, normative guidelines, incomplete institution transformations—including constitutional transformation, political pressures, and governance orientation.<sup>38</sup>

It is against this backdrop that the need for sustainable development, which demands the reversal of the present little-value add natural resource exploitation that is leaving countries with marginal benefits, environmental degradation, and natural resource depletion, emerges. The question becomes one of what should governments across Africa and extractive resource stakeholders do? This is where the potential of a co-management regime can respond. The next section will look at the type of regulatory framework that exists for the management of these resources and the extent to which they promote a co-management regime.

#### **4 Policy and Legislative Frameworks for Africa's Extractive Resources: An Overview**

The policy and legislative framework for Africa's extractive resource industry is made up of both national and legal frameworks as well as corporate practices that establish industry norms pertaining to accountability measures, revenue-sharing, local employment, investment requirements, and social and environmental safeguards. However, it is important to remember that these institutional and policy frameworks do not exist isolated and in a vacuum. Instead, they play a dynamic, interwoven role in shaping how the extractive industry evolves and thus how the extractive resources are used at the present and in the future.

There are a range of stakeholders involved in managing and monitoring the extractive resource industries across Africa. There are the traditional stakeholders such as governments and local resource users, but there are also a myriad of other actors that play a role in managing and using the resources. In addition to the traditional stakeholders, there are large multinational corporations like AngloGold Ashanti, British Petroleum, de Beers and Shell that wield enormous power in the extractive resource industries. Their power is particularly pronounced in countries like Angola, Ghana, the Democratic Republic of Congo, Ghana, Nigeria, Botswana, and South Africa.<sup>39</sup> Additionally, state-owned companies also play a role in carrying out a variety of functions within the industries. For example, in Nigeria, the Nigerian National Petroleum Corporation (NNPC) is a holding company that also has subsidiaries in oil exploration, production, refining, storage and marketing of oil, gas and refined products. The NNPC also is responsible for negotiating joint venture equity partner agreements with private oil companies interested in work in Nigeria. In Angola, it is the *Sociedade Nacional de Combustíveis de Angola* (Sonangol) that plays a crucial role in the overall management of hydrocarbon resources. Sonangol serves as the concessionaire, equity partner as the operator in the industry.

More than simply governments, there are a variety of government agencies involved in the management and monitoring process. Though the type and number of agencies varies by country, typically, an agency configuration will include ministries like Chad's Ministry of Petroleum Resources; Ghana's Ministry for Lands, Forestry and Mines; finance ministries, public revenue

---

<sup>38</sup> Ibid.

<sup>39</sup> Bryan, S., Hofmann, B., 2007. Transparency and Accountability In Africa's Extractive Industries: The Role of The Legislature. National Democratic Institute for International Affairs, Washington DC.

management agencies such as central banks and tax collection agencies; environmental agencies. However, it is important to emphasize that these structures and their configurations vary by country, and as a result, outcomes and implications for how management system are implemented should take this into consideration. For instance, in Ghana, Sierra Leone and Botswana, traditional authorities also play an important role in natural resource management. There, traditional authorities do so by exercising their authority over decisions of land use by determining approval of concessions and licenses or in the control and expenditure of revues received.<sup>40</sup>

Donors and advocacy organizations as well as international corporations play a crucial role in managing the resources as well. In a few cases, the transparency initiatives seen in policy and legislative frameworks found within country codes and provisions were results of conditions from these donors and activists. In others, the technical assistance from international development partners has also influenced national policies. For example, in Chad, World Bank support for the construction of a pipeline was a precondition for the development of a legal framework that could be used to manage and use the oil revenues from the Doba oilfields.<sup>41</sup>

In majority of the countries across Africa, local resource users do not hold a formal role in managing the extractive resources found within their countries. However, in some countries, local resource users are included in the process as means of communication. For example, in Botswana, a country largely perceived as a model of successful natural resource management for development, *kgotla* (village councils) and a cultural commitment to consensus or *kogisano* (social harmony) play an important role in influencing the political processes of managing the resources.<sup>42</sup>

The mining sector has seen some transformation because of the 2009 Africa Mining Vision (AMV). The initiative sought to create a comprehensive approach towards mining and development that focuses on promoting “transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and a socio-economic development.”<sup>43</sup> It was a direct attempt by Heads of State at the African Union (AU) Summit to figure out how best to use Africa’s natural resources to transform the continent’s social and economic development needs. As it stands, many countries have adopted the goals of the AMV within their legislation and policies with Mozambique, Ethiopia, Lesotho and Tanzania. Their policies have moved away from objectives that were focused on profit or value maximization and moved more towards catalyzation objectives. For instance, per suggested short-term goal of the AMV, countries like Botswana have begun the work of “optimize land use options and promote environmental stewardship and social responsibility”<sup>44</sup> by entrenching the use of Environmental Impact Assessments (EIA) within their laws. The 1998 National Environmental Management Act (NEMA) of South Africa provides a similar effect. The NEMA is supported by a series of other laws related to environmental protection.<sup>45</sup>

---

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid

<sup>43</sup> African Union, 2009. Africa Mining Vision

<sup>44</sup> Ibid, 30

<sup>45</sup> Kabemba, C., 2013. Existing legal and institutional frameworks | Open Society Initiative of Southern Africa (OSISA) [WWW Document]. URL <http://www.osisa.org/other/regional/existing-legal-and-institutional-frameworks>

However, even with these reforms and new policies, poor transparency and lack of accountability within the extractive sector continue to act as hindrances. For example, Nigeria also has environmental laws. In 1987 following the illegal dumping of toxic wastes in Koko, the government enacted legislation that became the foundation for the legal framework for effectively controlling the disposal of toxic and hazardous material into the environment. Part of such considerations have been updated to include environmental impact assessments (EIAs). Detailed examination of the framework has shown that many of the statutes like this one are producing outcomes that conflict with their intentions or are not being executed at all.<sup>46</sup> However, it is important to note that poor transparency and lack of accountability like the one presented in the case of Nigeria, plague each country to varying degrees. While some countries like the Democratic Republic of Congo and Nigeria are more severely plagued, others like Botswana and Zimbabwe are seeing slight improvements.

Overall the effects are clear regardless of the degree of poor accountability. The results have allowed for imbalances between the wealth that is created by the resources and the poor social and economic development among local populations. This lack of transparency and accountability can be applied to every aspect of the process. It applies to the negotiation and tendering of contracts, the various payments and royalties from multinational corporations (MNCs) to governments, as well as to the public management of these generated revenues.<sup>47</sup> For example, in Ghana, where regulatory framework in the mining sector underwent substantial reform, issues of transparency and accountability are still affecting effective extractive resource management. After reform to the 1986 Minerals and Mining Law, private mineral extraction license holders are expected to pay a royalty of five percent of their gross revenues. However, the overall process for awarding mining rights, licenses and contracts itself is insufficiently transparent and accountable to let alone ensure that royalty payments are being collected and paid to the correct sources.<sup>48</sup>

In Nigeria, 85 *per cent* of public revenue is derived from oil and gas extraction. Over the past two decades, construction of some roads, schools and health facilities as well as the provision of water and electricity can be credited to CSR projects. A few major oil companies have even adopted CSR projects that focus on capacity building initiatives by providing economic empowerment training courses to local communities. However, despite these initiatives, local communities across Nigeria have received a proportionately low amount of benefit compared to the overall high social and environmental costs of extractive activities.<sup>49</sup>

In both examples, the key problem is the lack of political will of the government as well as lack of capacity of local civil society organisations to adequately monitor the extractive resource industry's activities and revenue flows. Without this capacity, the actors responsible for setting up the system are essentially tasked with self-monitoring and all other actors, without power to monitor as well, are forced to rely on their effective self-monitoring with little options to rectify situations where self-monitoring fails. This is where a co-management structure could be used to

---

<sup>46</sup> Echefu, E., Akpofure, E., 2002. Environmental impact assessment in Nigeria: regulatory background and procedural framework (UNEP EIA Training Resource Manual). UNEP, Nairobi, Kenya.

<sup>47</sup> Besada, note 32

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

integrate the variety of actors who all already have roles in the resource use into the process for effective management.

The next section will propose policy and legislative relevant recommendations that will foster a co-management framework.

### **5 Implementation Guidelines for the Effective Co-Management of Africa's Resources**

The foregoing sections have examined the trajectory of the management of extractive resources in Africa. The general conclusion was that the current management of Africa's extractive resources leaves much to be desired, especially with respect to transparency and accountability. Consequently, co-management was proposed and justified as an effective way of meeting the good governance objectives of transparency and accountability.

For emphasis, co-management is not being proposed as a panacea; rather, it is (arguably) projected as a means to an end – it has the potential to facilitate the effective management of Africa's extractive resources if properly implemented as discussed in Section 2.

This section will therefore discuss policy blueprints on how to incorporate co-management for effective transparency and accountability.

Scholars have argued that one of the key legal tools suggested by the AMV and found in African countries with improved environmental legislation are EIAs. If implemented properly, EIAs have the potential to promote social and environmental accountability as the assessments are supposed to consider the social, economic and cultural impacts a mining project may have on a particular area. In theory, a mining company is supposed to commission an EIA while government departments monitor compliance.<sup>50</sup> But governments are struggling to effectively monitor or require EIAs. One way in which this problem could be addressed is through a co-management framework that would equip local communities and local community authorities with the task of also monitoring mining companies.

As can be imagined by the example of EIAs presented above, there are many definitions and formations that could lead to effective co-management of Africa's extractive resources. For this paper however, recommendations will be anchored on *accountability*, *capability* and *inclusivity*.

Accountability tackles the demand-side issues of governance that are present in paradox. It is the extent to which citizens can hold their governments, political leadership and private companies responsible for their performance and actions. When it comes to managing Africa's extractive resources, it is crucial in ensuring that governments and private companies operating within local communities are not simply self-monitoring while providing local community members with little to no avenues for remedies when self-monitoring fails. This was the shortcoming addressed in the examples of the previous section. Included in this definition are both transparency and participation. These serve as the vehicle through which accountability is delivered. Transparency will allow and encourage information generation as well as information dissemination, which is important for each stakeholder, particularly local resource users as it will provide them with

---

<sup>50</sup> Kabemba, note 45

knowledge upon which to place pressure on decisions makers or at the very least, to hold them accountable.<sup>51</sup>

If accountability can be seen as tackling the demand-side issues of governance, capacity should be seen as the counter—focusing on the supply-side. Capacity addresses the ability of governments, public organizations and civil society organizations to take decisions and translate them into effective policies and programs. It requires resources, both financial and human, to be mobilized and managed. It demands information and management systems and requires that everything operate and be deployed under a given set of agreed upon rules.

Inclusivity regards the various actors involved in managing resources. Inclusivity is about ensuring that all the stakeholders are included in the management process. More than simply being present, this means that each stakeholder is designated a role and a responsibility, that they are consulted and considered in the decision-making process and that the agreed upon rules apply equally to all those involved.

A co-management framework that prioritizes accountability, capability and inclusivity while managing extractive resources would build a structure that addressed questions of: policy and legislation; institutions and organizations within the sector; monitoring and regulation of operations within the sector; designs for the fiscal policy and administration; how best to manage the revenue, as well as provide policies and programs for sustainable development<sup>52</sup>.



Figure 1 Decision Chain

Apart from the theoretical, it is possible to envision co-management within the existing legal and regulatory frameworks and AMV policy goals that are being reformed and implemented across the continent. In fact, some countries like South Africa are already implementing policy and legislation that mirror co-management. South Africa's current mining code encourages mining ownership that is diversified, making sure to include historically disadvantaged groups and provisions for job creation and industrial development.<sup>53</sup> However, South Africa and other countries which are implementing policies that mirror co-management practices are still struggling to realize the full potential of the practice for a variety of reasons.

<sup>51</sup> Kingsmill, W., Williams, G., 2013. Towards a Framework for Extractive Industries Governance Assessment (FEIGA).

<sup>52</sup> This follows the value chain developed by the World Bank and the slight adaptations implemented in the Extractive Industry Source Book as well as from myself (Kingsmill and Williams, 2013).

<sup>53</sup> Bryan, S., Hofmann, B., 2007. Transparency and Accountability In Africa's Extractive Industries: The Role of The Legislature. National Democratic Institute for International Affairs, Washington DC.

Even for countries at the other end of the spectrum, where co-management practices seem impractical given current legislative frameworks, there is still potential. After recent internal political conflict, the law's effect on development has weakened in Chad and the government has sought more direct control over oil revenues and oil management. In response and because of pressure from civil society organizations, the World Bank suspended funding to Chad until a compromise was reached that would commit revenues to poverty alleviation and development.<sup>54</sup> This sort of pressuring and partnership is exactly what a co-management model is built upon. A more formalized framework of co-management in this instance could help with future accountability needs and ensure that processes for addressing such misuses of resources and their revenues are rectified.

To better envision the feasibility of this, below<sup>55</sup> is a list of roles and responsibilities that a group of stakeholders working towards co-management of extractive resources within an African context could operate. Some of these roles and responsibilities would be formalized through laws and by-laws, while others would have to be based on mutual understandings and consensus agreements. However, it is important to note that regardless, these functions and the promulgation of legislation that implements these roles and responsibilities is country specific and would depend on the context. The suggested roles and responsibilities are flexible yet critical to an effective co-management system as they allow the framework to shift to the needs of the system over time.

The role of national governments would be to: provide legislation that authorizes and legitimizes co-management; determine how management roles will be allocated; establish the legitimacy of community-based management systems; provide provisions for decentralization of the management process. In theory, divestment for these roles and responsibilities at the hand of a national government is possible. In practical terms, national governments would have to create legislation that gives citizens the right to organize, to make and to enforce co-management.

The local community authorities would largely function as a gatekeeper between local partners and government bodies and private organizations who fail to act upon their responsibilities. Additional responsibilities would entail them supporting community involvement in management; approving local regulations and ordinances when necessary; enforcing these local regulations; communicating, advising and cooperating with all the various actors involved in the management process; and to manage conflicts as they arise.

The responsibilities for members of the community would include: identifying issues and concerns of the community; mobilizing leadership of co-management activities; participating in research, data gathering, and analysis; sharing information; managing conflict; participating in the planning, design, and implementation of co-management activities; monitoring and evaluating the resources and practices.

The process of establishing a co-management framework is not necessarily linear. In fact, implementation of necessary field activities and establishing co-management principles in practice requires an organic approach. This means that stakeholders and practitioners must be flexible. However, policy objectives can be centered on three of the four components of the Resource

---

<sup>54</sup> Ibid

<sup>55</sup> Adapted from the Coral Triangle Initiative's "Guidelines for Establishing Co-Management of Natural Resources in Timor-Leste"(June 2013).

Governance Index (RGI)<sup>56</sup>: institutional and legal setting; reporting practices; safeguards and quality controls. The fourth component of the RGI looks at the political climate – “enabling environment.” Typically, indicators that measure this look at accountability and democracy as well as rule of law<sup>57</sup> However, this is not necessarily a precondition for an effective co-management framework. Scholars have argued that “external environments appear to only be conditions for ‘successful’ co-management if they elicit or prompt a response from people.”<sup>58</sup> Regardless of the political environment, the people have the potential to elicit actions and can do so in a variety of ways: joining with others, finding opportunities to negotiate or creating these opportunities, using existing legal frameworks if they are there. Each country could adopt and apply policy recommendations from each of these components to varying degrees. In fact, it may be the case that some countries may require more policies that focus on reporting practices and less surrounding institutional and legal settings while another may need the opposite in order to facilitate a co-management structure.

Considering the foregoing, an effective and practicable co-management framework will comprise strong institutional and legal foundations, transparent reporting practices and sound safeguards and quality controls:

**I Institutional and Legal Settings** address the degree to which laws and regulations facilitate transparency and accountability.

- *Laws for freedom of information.* International, regional and national instruments can create or be used as standards that provide guidance on social and environmental accountability. In these documents, rights that allow for freedom of expression and assembly as well as access to information regarding the extractive resource industry should be included. More so, access to environmental information should be required provision in environmental legislation.
- *Independent licensing process.* The licensing process stands as a management challenge for countries across the continent as they decide how to develop which resources and who to grant access to. An overall recommendation here suggests that countries promulgate a clear division of roles and responsibilities in the award of licenses. Additionally, where countries have State Owned Company (SOC), the licensing authority be separate from that entity to avoid any conflicts of interest that would cloud accountability and transparency. The licensing process should also be open and competitive so as to ensure transparency.
- *Require EIA reports.* In the countries (South Africa, Botswana, Zimbabwe) that have EIAs promulgated by law, they serve as key legal and planning tools. EIA legislation should be expansive, requiring developers to carry out environmental, social and economic assessments on the potential impacts of their projects and should make reasonable efforts to communicate this information to the communities in which they will be working or

---

<sup>56</sup> The Resource Governance Index is a measure of transparency and accountability for the extractive resource sector in 58 countries. It is produced by the Natural Resource Governance Institute and composed of compiled indices that researchers use to collect data on resource governance. The RGI is a hybrid index that uses a mix of primary and secondary data. (Natural Resource Governance Institute, 2015)

<sup>57</sup> Natural Resource Governance Institute, 2015a. Legal Framework: Navigating the Web of Laws and Contracts Governing Extractive Industries. NRG Reader.

<sup>58</sup> Plummer & Fitzgibbon, note 12

where their assessments say will be impacted. Having EIA legislation will provide civil society organizations and citizens with potential avenues to bring forth violations against companies and their governments when needed.

- *State Owned Companies (SOC) required to report finances.* There ought to be provisions within the existing legal framework for SOC financial reports. In these provisions should be rules for deposits, rules for disbursements and a delineated authority.
- *Definition of revenue collection.* When revenues are able to bypass budgetary processes, accountability around the use of those public funds decreases. Procedures for revenue collection must be defined and placed through procedures that will ensure strict scrutiny, particularly in countries with SOCs. There should be a clear delineation of the authority who will be responsible for collecting payments and a clear transfer of such payments to the treasury or similar entity.
- *Comprehensive public-sector balance.* The public-sector balance ought to include SOC balances, fund balances and non-resource balances to ensure both accountability and transparency. When these funds are absent or information regarding them or collection procedures are absent from the public-sector balance sheet, information gaps curtail oversight and make it easier for corruption and mismanagement to occur.

**II Reporting Practices** addresses the need for actual disclosure of information and reporting of practices by government agencies and companies.

- *Licensing.* More than openly defining the process for licensing through law, licensing procedures should be disclosed to promote transparency. Access to information before the licensing process begins as well as after the license has been procured is crucial for effective co-management.
- *Contracts.* Like the licensing, the process for procuring contracts should be openly defined through law, and procedures should also be disclosed to the extent feasible. The main aim behind policy recommendations regarding reporting practices is to ensure transparency. Contract transparency will help create relationships between stakeholders in the community, companies, and the government which will in turn help to reduce conflict and instability within the sector.
- *Require EIA reports.* Access to EIAs enables stakeholders to monitor the actions of companies working within the extractive resource sector and require companies to think of the local communities in which they will be working. With such potential to increase accountability and transparency, EIA reports should be required as not just law, but also as part of reporting practices that are made accessible (i.e., translated to local languages, communicated in the media, depicted in illustrations) to members of the community.
- *Report revenue data.* Data regarding the primary sources of revenue should be reported and publicly accessible when feasible. These reports should include information regarding: the value of production streams, royalties, government shares and any special taxes.

- *Report SOC data.* Data regarding SOCs should be reported and publicly accessible when feasible. Information regarding cash flow statements as well as joint ventures should be included in comprehensive reports. SOC production data regarding prices, production volumes, value of resource exports, investments in explorations, the production costs, the value of the production as well as any production data by the company should also be included.

**III Safeguards and Quality Controls** provide checks and oversight mechanisms that under a co-management framework, can be used to guard against conflicts of interest and undue discretion.

- *Checks on licensing process and the contracts process.* Checks on the licensing process should focus on creating mechanisms for oversight. Some features that could create this level of accountability and transparency and include various actors beyond the government would: limit discretionary powers in the licensing process, create a provision for legislative oversight, and have an appeal process available. The same recommendations would hold true for the contract process where legally feasible.
- *Checks on budgetary process.* Checks on the budgetary process would include provisions for legislative oversight, reviews of the revenue by a national audit institution as well as local authorities from various communities where extraction is having an impact, and legislative reviews of these audit reports.
- *Quality of government reports.* More than simply existing, each of these reports need be comprehensive as well as comprehensible and timely. To ensure transparency and inclusivity, efforts to translate documents into local languages or illustrations should also be made.
- *Quality of SOC reports.* Like the government reports, SOC reports need be understandable and timely.
- *Government to disclose conflicts of interest.* To avoid corruption, an effective co-management framework would require governments to disclose the conflicts of interests as part of the sharing information that occurs between the actors.

## 6 Conclusion

The key feature of co-management that distinguishes it from other systems of natural resource management is that it strives for equity. Whereas CBNRM or state-led management privilege controlling or protecting a set natural resources by one group, co-management requires inclusivity and in turn, more equitable management. Under co-management, the interests and concerns of various actors with respect to the same resources are considered. However, co-management is balanced. Since the concerns and interests of actors vary in terms of quantity as well as quality, it is not the case that each social actor is given the exact same entitlement to the resource. Instead, what co-management requires is that the interests and concerns of even the weakest actors be expressed, recognized, negotiated and protected.

In many countries, the cost to seeking co-management regimes or even more generally, greater accountability in the lucrative extractive resource sector may be high. In fact, in some areas, citizens and civil society organizations have reported putting their lives at risks by opposing the

powerful vested interests of governments and the business community. In Angola, critics of the corruption and mismanagement of resources faced defamation charges. In Congo-Brazzaville, advocates for increased transparency and accountability in regard to the country's oil sector were harassed by the government. In 1995, under military ruler General Sani Abacha, Nigerian environmental activist Ken Saro Wiwa, who spoke out about the human rights abuses and environmental degradation happening in the Niger Delta, was in an outrageous and questionable charged for murder, sentenced to death and hanged. And in many other countries, while there are efforts to improve transparency and accountability, there is doubt about the sincerity of the government to realize these objectives. Unfortunately, co-management may not directly lessen these costs or solve these larger systemic problems. However, co-management may bolster these efforts by equipping more members of society with information, providing them with avenues to address citizen concerns and ways to enforce the newly promulgated laws that will come because of implementing a co-management framework.

Both communities and businesses must engage openly on how to succeed together and the sacrifices that such success would require. This is particularly important in contexts where advocacy for sustainable development and more effective resource management may put individuals at risk or in danger. Where governments fall short or refuse to ensure transparency and accountability, companies and various actors within the private and international sector can also work collaboratively with local users. It is therefore important to remember that even with early transaction costs, an effective co-management regime will take time.