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Working Paper No. 1

Governance of Natural Resources in Africa: Why Some Countries Fail to Negotiate Fair Contracts

January 2014

United Nations Development Programme

DEMOCRATIC GOVERNANCE



United Nations Development Programme
DEMOCRATIC GOVERNANCE
Ethiopia

Working Paper No. 1

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Acknowledgements:

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1. Introduction

Some studies suggest that countries with abundant natural resources, specifically mineral and fossil fuels have lesser development outcomes than resource poor countries (Karl, T 1997 and Gary, I and Karl, T 2003). This phenomenon popularly known as the resource curse/paradox of plenty is used to describe and narrate the development path of many African countries rich in natural resources but experience poor development outcomes.¹ However empirical evidence also suggests that natural resource abundance does not ipso facto lead to poor development outcomes.²

The reasons for this apparent paradox have been varied. From a governance perspective (accountability and transparency), it has been pointed out that in the absence of strong public financial management and institutional mechanisms to ensure transparency and accountability, natural resource abundance might lead to poor development outcomes. This is because malign distributive struggle for rents weakens state institutions and consolidates authoritarianism (Lane & Tornell 1996 Wantchekon & Jensen 2000). Moreover, it entrenches patrimonialism and rent seeking (Wantchekon & Jensen 2000; Wantchekon & Iam 2002 and Bratton (1998:51–66; Bratton and Van de Walle 1997) and limits social accountability owing to the dependence on rent (rather than taxation) for service delivery (Ross 1999, 2001, 2004; Moore 2004, Smith 2004; Campbell 1993; Shambayati 1994; Chaudry 1989). It has also been pointed out that natural resource abundance might lead to poor development outcome because resource rent provides the incentive to instigate the means to sustain conflict (Ross 2004; Bannon & Collier 2003; Berdal and Malone, D M, 2000). In a context of natural resource abundance and the absence of a viable private sector, politics can involve contest for access to and control of resource rent which might result in intense and contentious elite competition for such resources.

The current governance analytical approaches and policy orientation are however biased towards transparency on rent appropriation and expenditure. Policy actions are too focused on demand side interventions that encourage greater citizen involvement and participation. Nonetheless, it is to be noted that availing information in the public domain is not adequate, and the presumption that relevant stakeholders will use it to pressure for change may not hold true under various circumstances (Alexandra Gillies & Antoine Heuty, 2011). There is emerging evidence that corruption and abuse of authority on natural resource governance occur at the negotiation stage, which is often shrouded in secrecy and devoid of robust horizontal and vertical accountability (Rogerio Ossemane, 2013).

¹ See Richard Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (New York: Routledge, 1993).¹ Jeffrey Sachs and Andrew Werner, "Natural Resource Abundance and Economic Growth" rev. ed. Institute for International Development, Development Discussion Paper no. 517a, Cambridge, Harvard, 1995.

² Botswana and Norway are popular examples of countries that have evaded the resource curse.

Development Cost of Unfair Contracts



Most importantly, the narrative on the resource curse has largely viewed the level of beneficiation as a constant rather than a variable. Yet the reality is that beneficiation varies considerably both within and across natural resource rich states over time. Varying beneficiation is not just an empirical fact or accident. It has policy implications and provides insights to state society relations (social/vertical accountability), the quality of governance institutions (horizontal accountability) and the fiscal regimes (public financial management) that may emerge in resource rich states. The conversations on the varying level of beneficiation so far focus on technical and capacity issues. Whilst governance has been mentioned, most invariably in composite surveys (RGI 2013), there is limited analytical examination and a nuanced perspective on the causal relationship between governance quality and the level of beneficiation.

Drawing insights from new institutional economics, this paper proposes an analytical narrative and framework to examine differentiated levels of beneficiation. The framework hypothesizes that the varying degree of beneficiation over time and space is not the result of ignorance or accident but of deliberate choices by government after careful examination of potential cost and benefits. Building on the agency theory, it proposes four hypotheses that high levels of beneficiation seem to be correlated with strong legal and political oversight over discretionary contract negotiations. The first hypothesis (H1) proposes that Very low level of beneficiation but high level of corruption and uneven development outcomes; H2: Fairly good level of beneficiation but uneven development outcome across space and different political constituencies; H3: Fairly good level of beneficiation; high levels of corruption; strong patronage/rent seeking and probable slow improvement in development; H4: High level of beneficiation and strong sustainable development outcomes.

The paper concludes that limited restraint or accountability over contract negotiations tempts policy makers to accept unfair and ineffective contracts that provide short-term political solutions to long-term social and economic problems. The conclusion doesn't suggest that increase beneficiation is the magic bullet. Without resolving wider governance issues, increased taxation will not produce a direct positive effect on the population and sustainable development.

The next section demonstrates the potential development cost of negotiating bad contracts. Sections 3 and 4 review the existing discourse and introduce an explanatory framework to provoke and guide future research and policy discourse.

2. Development Cost of Unfair Contracts

Some African countries have negotiated unfair contractual terms (such as rent collation, tax on profit, local content, validity period and environmental standards), which in some instances are contrary to what is stated in their laws.

Development Cost of Unfair Contracts



Table 1: Summary of Tax Regime of some African Countries

Countries	Maximum Duration of Mining Lease (all are renewable)	Royalty rate for Gold	Corporate income tax
Botswana	25	5%	25%
Burkina Faso	20	3%	30%
Cameroon	25	2.50%	35%
Central African Republic	25	3%	30%
DR Congo	30	2.50%	38%
Congo Republic	25	5%	38%
Gabon	25	4 %- 6 %	35%
Ghana	30	5%	33%
Guinea	10	5%	35%
Ivory Coast	20	3%	35%
Liberia	25	3%	35%
Mali	30	3%	35%
Mauritania	na	4%	25%
Morocco	na	3%	30%
Namibia	na	3%	35%
Niger	20	5.50%	35%
Nigeria	25	Not Specified	35%
Sierra Leone	25	5%	30%
Senegal	5	3%	35%
South Africa	30	0.5 %-0.7 %	37%
Tanzania	10 Years or Life of Mine	4%	30%
Uganda	21	3%	30%
Zambia	25	5%	30%

Source: African Development Bank 2012

2.1. Policy inconsistency and unpredictability

Until 2010, the average royalty payment on gold exports in Sub- Saharan Africa was 3% (UNECA 2012), yet some countries (e.g. Sierra Leone)³ provided very generous concessions to foreign investors (including royalty rates as low as 0.5 per cent) on mining exports. In 2011, only one of the five major mining companies operating in the country paid corporation tax.

3 For information see ChristianAid "Sierra Leone at the crossroads: Seizing the chance to benefit from mining" available at <http://www.christianaid.org.uk/Images/sierra-leone-at-the-crossroads.pdf>

Development Cost of Unfair Contracts



In Zambia, the Konkola Copper Mines (KCM) negotiated a secret tax agreement with government, offering it tax rates outside of the substantial law.⁴ Since the beginning of its operations in Zambia, Vedanta through KCM was paying the Zambian government with royalty fees of just 0.6 per cent instead of the 5 to 10 per cent industry average in developing countries. Whilst legal, this rate of royalty implied that, in 2006/07, the Zambian government would have received mineral royalties of only US\$6.1 million from KCM, while the company extracted copper ore worth over US\$1 billion. The first EITI report in Zambia indicated that, between 2005 and 2009, half a million Zambians employed in the mining sector were carrying a higher tax burden than companies (Action for Southern Africa; Christian Aid and Scotland's Aid Agency, 2007).

In 2008, the government of the Democratic Republic of Congo (DRC) found none of the 61 contracts it signed over the period 1996 and 2006 to be acceptable. The Commission of Inquiry established to investigate these contracts recommended renegotiation of 39 contracts and cancellation of 22. One of the 15 mining contracts recommended for cancellation involved total exemption from royalties and corporate income tax for the 20-year life of the mine (IPIS 2008).

In 2006, the government of Liberia initiated a review of the concession agreements signed in the country between 2003 and 2006. Of a total of 105 contracts reviewed, 36 were recommended for outright cancellation and 14 for renegotiation (Ousman Gajigo, Emelly Mutambatsere and Guirane Ndiaye, 2012).

The above examples seem to suggest that unfair contracts especially those negotiated through processes that are not deemed legitimate has a negative impact on issues like respect of contract and property rights.⁵ The legitimacy of the government that approved the original contracts is also an important factor in bringing about these focused contractual revisions limited to specific time-periods in the history of the host country (e.g. transitional governments, military rulers. Also revision of contracts might be used as political clout by the new government, in an attempt to either demonstrate independence from international investors; or prove that a better deal could be struck for the benefit of the country.

2.2. Loss of government revenue

Whilst commodity prices are at high levels, the rise in government revenues from natural resource extraction is lagging far behind the increase in company profits. In fact loss of revenue supersedes development aid. The report said Africa received inflows of \$62.2bn through aid and foreign direct investments but lost \$38.4bn in trade mispricing – which was done through false invoicing and mis-

⁴ This breaches OECD Guidelines for Multinational Enterprises, which stipulate that 'enterprises should refrain from seeking or accepting exemptions related to taxation, not contemplated in the statutory framework.

⁵ Cancellation of contract certainly increases the perception of investment risk.

Development Cost of Unfair Contracts



presentation of export and import values – and \$25bn in other illicit outflows annually between 2008 and 2010 (Africa Progress Panel, 2013). As noted by Stiglitz the problem for some countries is not so much the lack of adequate foreign assistance but the failure of the international community to pay adequately and fully for the resources that they have taken from the country (Stiglitz 2007).

In 2011, Zambia's copper exports generated US\$10 billion, while government revenues from copper were only US\$240 million – or 2.4 per cent of export value (Action for southern Africa et al, 2007). In the same year, exports of mining products from Guinea reached US\$1.4 billion, representing 12 per cent of GDP, but government mining revenues were just US\$48 million, or 0.4 per cent of GDP (APP, 2013). Similarly in Tanzania, mining revenues account for less than five per cent of total government revenue, despite gold being Tanzania's major export (ChristainAid, 2007).

Measured against the evolving challenges, the development costs of bad contracts are daunting. Unfair and ineffective contracts⁶ prevent a country from the full range of potential development benefits and entrenches poverty, corruption, conflicts and environmental degradation. For example, between 2010 and 2012, the Democratic Republic of Congo (DRC) lost at least US\$1.36 billion in revenues from the underpricing of mining assets that were sold to multinational companies. The DRC sold some of its assets for about one-sixth of their estimated market value. The loss was nearly double the amount of the combined annual budget for health and education in 2012. For a country in which most of its population lives below the poverty line, each citizen of the DRC lost the equivalent of US\$21 from the underpricing of concession assets –7 per cent of average income (Africa Progress Panel-APP, 2013).⁷

There are positive signs that African governments are attempting to reverse the negative trend. For example, the government of Ghana announced plans to raise taxes on mining companies from 25 to 35% and introduce a further 10% windfall profits tax to the existing output royalties of 5% (Seltue R. Karweaye, 2013). Similarly, Zambia doubled royalties on copper to 6% in 2011 and Cote D'Ivoire announced plans in September 2012 to introduce a 19% windfall profit tax on their gold miners by 2013 (Reuters, 2012). The new 19% windfall tax is estimated to yield some 40 billion CFA francs (\$79.1 million) in additional income to the state annually.

South Africa is considering imposing a swinging 50% windfall tax on mining “super profits” and a 50% capital-gains tax on the sale of prospecting rights (Afsarul Quader, 2012). In 2012, Botswana required

⁶ These contracts are unfair because they overwhelmingly favour multinational companies and they are inefficient because they deprive governments of the resources they need to invest in the infrastructure, build linkages with other sectors, and enter higher value-added areas of production.

⁷ The value of unfair natural resource is more than the flow of aid to Africa. During 2008 to 2010, Africa received \$62.2bn through aid and foreign direct investments but lost \$38.4bn in trade mispricing

Explaining Unfair Contracts: A Review of the Capacity Argument



De Beers to relocate its sorting operations from the United Kingdom to Botswana, thus transferring a US \$6.5 billion per annum business and associated jobs to the country (Zanele Hlatshwayo, 2012). Africa is not the only one rethinking; some developed countries such as US, Israel and Australia have done so as well (Afsarul Quader, 2012).

2.3. Geostrategic importance to global economy

A 2005 review of trends in mining, produced by PricewaterhouseCoopers (PWC) reported that while company profits soar, government revenues are less stable – in many cases they are even falling as a proportion of total sales (ChristianAid 2007). In 2012 Shell annual revenue of US\$ 467.2 billion trumped Zambia's GDP of US\$ 19.2 bn; DRC's GDP of US\$ 15.7 bn; Nigeria's GDP of US\$ 244 .0 bn; Angola's GDP of US\$ 104.3 bn; and Gabon's GDP of US\$ 17.1 bn (APP, 2013). Contrary to these African experiences, sales revenues from Australia's extractive sector totaled US\$ 360 billion from 2003 to 2008. Of this, the mining sector accounted for US\$ 260 billion and the oil and gas sector for nearly US\$ 100 billion. Total tax revenues amounted to more than US\$ 53 billion from 2003 to 2008 (Stürmer M, 2010).⁸

3. Explaining Unfair Contracts: A Review of the Capacity Argument

Negotiation capacity: In some policy circles, there is an orientation that the degree of beneficiation from concession contract is a result of government's capacity to negotiate and associated exploitation and production cost. It has been noted that some developing countries lack robust specialized knowledge, information and technical expertise, and the necessary resources to navigate complex contract negotiations vis-à-vis multinational corporations. The latter are better resourced and skilled; have direct access to external networks of experts; have more coherent negotiation strategies and goals; and may use information asymmetries and loopholes in the legal or regulatory frameworks to obtain short-term advantages (Vale and Humboldt-Viadrina, 2012a). Against this backdrop, policy actions and programme support have focused on enhancing the capacity of government with regards to information on mineral potential, existing infrastructure, and targeted legal training.⁹

8 see Sarah Anderson & John Cavanagh, "Top 200 - The Rise of Corporate Global Power" (London: Institute for Policy Studies, Dec. 4, 2000) at "Key Findings" (based on corporate sales and countries GDP), online: Institute for Policy Studies <<http://www.ips-dc.org/reports/top200text.htm>>. See also UNCTAD, World Investment Report 2003: FDI Policies for Development: National and International Perspectives (Geneva: United Nations, 2003) p. xvi and online: UNCTAD, Press Release 2003 <<http://www.unctad.org/Templates/webflyer.asp?docid=2426&intltemID=2079&lang=1>> (based on gross domestic product (GDP) for countries and value added for multinational corporations, resulting in 29 of the world's largest economic entities being multinational corporations.)

9 See the following capacity support programmes; African Legal Support Facility (ALSF), African Center for Economic Transformation (ACET); International Development Law Organization (IDLO); International Senior Lawyers Project (ISLP); Norad - Oil for Development (OfD); Pan African Lawyers Union (PALU); Revenue Watch Institute (RWI); UNDP - Regional Project for Capacity Development for Negotiation and Regulation of Investment Contracts and World Bank - Extractive Industries Technical Advisory Facility (EITAF).

Explaining Unfair Contracts: A Review of the Capacity Argument



Capacity constraints are merely part of a wider context and not the drivers or incentives that animate and shape the negotiation process. A country's strategy in the upstream, including the level of beneficiation, is not entirely determined by capacity and production cost alone. Too much focus on capacity suggests the lack of agency on the part of government. Government is not a victim. It is an active player in the negotiation process. Thus other factors internal to the country's politics and other idiosyncratic drivers of state choices, including the characteristics of different political systems should be explored (Nolan and Thurber 2010, 38 and Muttitt 2005).

Exploration and exploitation capacity: Lack of exploration and exploitation capacity is deemed to increase production cost on host government thus the need for some incentives as embodied in contractual terms such as, lower taxes profit repatriation and access to foreign exchange. These generous contractual terms have been justified by the desire to attract foreign direct investment. In Africa alone, 35 countries produced new mining laws during these two decades. In every case, the laws led to fewer restrictions on foreign investors and lower tax and royalty rates for companies (Ousman Gajigo, Emelly Mutambatsere and Guirane Ndiaye, 2012).

However, there seems to be emerging evidence which questions whether offering generous contractual terms (incentives) to business is worth the loss of revenue that it implies. A study by McKinsey concluded that incentives are often ineffective, and points out that while FDI brings significant benefits such as employment and technology, incentives, such as tax holidays, subsidized financing or free land, serve only to detract value from those investments that would likely be made in any case (Chratiernaid, 2007).

There is evidence that some developing countries that do not offer some of these incentives do not suffer a shortage of investment. For example, despite attempts by the government of Ghana to get more revenue from the sector, multinational mining companies are still keen on Ghana's prospects (Gregory Mthembu-Salter, 2013). Norway has imposed a 78 per cent flat tax on oil and gas operators and not one company has opted out (Rowan, C 2013). Botswana is regarded as a prime African mining investment country but does not have a particularly favorable tax regime (Ousman Gajigo, et al 2012). Botswana out performs Australia with regards to attractiveness of government policies and regulations for extractive sector but receives lower development benefits from its natural wealth (stürmer,2010).

It therefore seems from the above that, generous contractual terms are not entirely the outcome of lack of exploitation and exploration capacity but are the outcome of deliberate choices on the part of the host government as part of a negotiation process that is often steeped in secrecy. Capacity constraints provide the enabling environment rather than being direct contributors to unfair contracts. To improve capacity of host countries at the negotiation table is necessary. There is inequality at the table, it

Fairness of Natural Resources Contract: Governance Matters

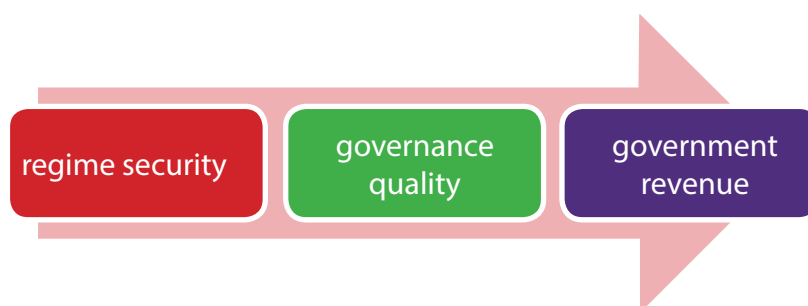


is a fact, and there is a direct correlation between the fairness of the contract and the negotiation process. However, this may not necessarily be the predominant reason for unfair contracts.

4. Fairness of Natural Resources Contract: Governance Matters

Below is an analytical prism to frame a possible explanation of how governance quality affects the level of beneficiation. The critical factor in the causality is how institutions are configured to constrain the executive's discretion over contract negotiations. Maximizing beneficiation from natural resources depends on a political and institutional environment that aligns regime security with sustainable development outcomes. The closer the alignment, the more likely governments are to endorse a fair and efficient contract. Conversely, where the immediate incentives of governments are at variance with long term development objectives, the process of negotiating resource contracts would be vulnerable to low level of beneficiation because of political opportunism due to weak governance institutions.

A causal framework explaining governance quality and beneficiation



- The independent variable is tenure of office. The proxy for this variable is the measure of perceptions of the likelihood that the government will be destabilized, not re-elected or overthrown by unconstitutional or violent means. Tenure of office is a contextual or antecedent condition whose presence activates causality. Without it causation operates more weakly or not at all.¹⁰
- The intervening variable is governance quality: The proxy for governance quality is voice and accountability. The degree to which government is subjected to both horizontal and vertical accountability on contract negotiations.
- Dependent variable is the amount of government revenue from natural resources.

This explanatory framework is grounded on the premise that natural resources are owned by the people (principal) and government is a trustee or agent which manages the resources for the former's

¹⁰ It should be noted that the independent variable might have a diminishing return quality because too long of a tenure brings other issues and will consequently have detrimental effects on host countries.

Fairness of Natural Resources Contract: Governance Matters



benefits.¹¹ Both principal and agent are maximizers because people want more development and government wants regime security.¹²

This evokes the issue whether it is imperative to put in place mechanisms and incentives that align the interests of both. Leaders are ready to sacrifice beneficiation to strengthen their grip on power, if they face a trade-off between maximizing beneficiation and consolidating their power, they will opt for the latter. (Jones Luong and Weinthal 2001).

Against the backdrop of limited judicial review, parliamentary oversight and weak institutions and inadequate popular consultation or involvement in the contract negotiations process, governments facing imminent threats to their hold on power would accept bad contracts because it affords them the much needed resources to placate the specific groups most pivotal to their survival (Ames 1987; Levi 1988: 32–3). The energy development strategies in petroleum-rich Soviet successor countries suggest that state leaders chose strategies in such a way that they provided them with sufficient resources on the one hand, to sustain the cleavage structure that offered their main base of support and on the other hand, to placate or overpower rival cleavages that posed a challenge to their rule (Jones Luong and Weinthal 2001, 2010).

Based on the analytical framework, four hypothetical cases can be inferred. The optimal scenario is H4. Countries with strong democratic institutions that ensure alignment between Limited restraint

Figure 3: Probable revenue and development outcomes of the interactions between office tenure and governance quality

Governance quality			
Political Security	Uncertainty (short)	Low accountability	High accountability
		H1: Very low level of beneficiation but high level of corruption and uneven development outcomes	H2: Fairly good level of beneficiation but uneven development outcome across space and different political constituencies
	Certainty (long)	H3: Fairly good level of beneficiation; high levels of corruption; strong patronage/rent seeking and probable slow improvement in development	H4: High level of beneficiation and strong sustainable development outcomes

11 For discussion on who owns natural resource see Jorge E. Viñuales article, "The Resource Curse: A Legal Perspective" (2011) 17 Global Governance 197 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1652739

12 This is a generalization and might not in all cases reflect reality of complex relations on natural resource management. People and government are not homogenous unit of analysis. For example people could constitute diverse interests in a natural resource projects, which range from municipalities, cities, adjacent communities, states/provinces/federal government, ethnic backgrounds, indigenous interests.

Fairness of Natural Resources Contract: Governance Matters



or accountability on the executive's discretionary authority to negotiate resource contracts is further compounded by the limited delineation of the role of these national companies in the up and down stream sector.

Some of these companies are responsible for regulation, policy development, selling the government's share of oil governments' political incentives and developmental objectives would be expected to produce fairer contracts and sustainable development.¹³

Some governments treat the governance of natural resource wealth as a state secret and citizens are informed of decisions taken by governments on a "need to know" basis – and the assumption was that they needed to know very little (APP, 2013). Complex negotiation process between government agencies and foreign investors are held in secrecy.

In some instances the executive is the only player in the institutional architecture for resource governance, especially with regards to resource appropriation. In these instances, government is usually represented in the negotiation process by the natural resource national company which reports directly to the executive without any oversight over its activities. Whilst in principle institutions like parliament are supposed to provide oversight over government's appropriation and spending, in these instances they exercise little oversight over these companies despite the fact that they are technically involved in taxation or generally in government appropriation and expenditure.

output (both in the international market and to national market), and for transferring the resulting revenue (after accounting for expenditures) to the treasury; production, managing government stakes in multinational companies involved in downstream activities and in non—production related activities and other interest in joint ventures (Stéphane Cossé, 2006 and Chrysantus Ayangafac, 2008).

It has been suggested that the primary motive for such institutional configuration might be the need to offer greater autonomy to pursue favored political goals (Guriev et al. 2009). McMahon (1997) argues that the negative impact of resource boom on governance and human security is accompanied by the irreversibility of government expenditure informed by political rationalities rather than public good or good economics. For example, in a bid to placate urban consumers who are politically more threatening than their rural counterparts, resource rents are used to protect manufacturing industries, for import substitution strategies and to expand the civil service, all of which eventually become uncompetitive (Auty 1998; Bates 1981; Chrysantus Ayangafac, 2008).

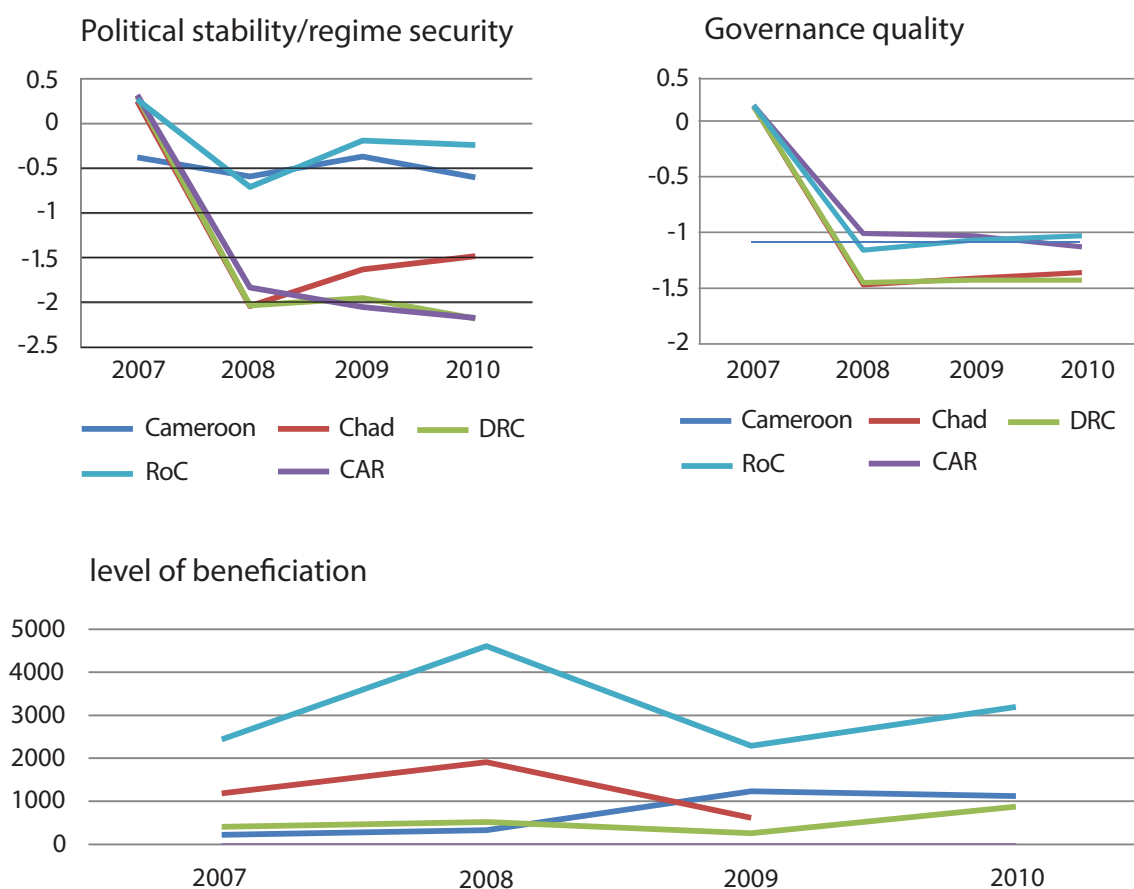
¹³ For similar thinking on political survival and development outcomes see Bueno de Mesquita, B. and A. Smith (2009): Political Survival and Endogenous Institutional Change, in: Comparative Political Studies 42:2, pp.167-197.

Fairness of Natural Resources Contract: Governance Matters

Figure 4: correlation between political security, governance quality and level of beneficiation

Country	Political security				Governance quality				Government revenue from natural resources			
	2007	2008	2009	2010	2007	2008	2009	2010	2007	2008	2009	2010
Cameroon	-0.38	-0.59	-0.37	-0.60	-1.03	-1.05	-1.03	-1.05	217.1	321.3	1230.6	1119.4
Chad	0.25	-2.04	-1.63	-1.48	0.13	-1.47	-1.41	-1.36	1183.2	1908.8	614.8	
DRC	0.30	-2.03	-1.95	-2.18	0.13	-1.45	-1.43	-1.43	404.7	516.1	255.2	875.9
CAR	0.32	-1.83	-2.05	-2.17	0.14	-1.01	-1.03	-1.13	3.5	12	14.06	19.8
RoC	0.27	-0.71	-0.19	-0.24	0.14	-1.16	-1.07	-1.03	2443	4608	2294	3195

Source: World Bank Governance Indicators and EITI reports Estimate of political security and governance quality ranges from approximately -2.5 (weak) to 2.5 (strong) governance performance).



Recommendations



The table and graphs suggest that there seems to be a positive correlation between regime security, governance quality and level of government revenue. In the context of political uncertainty or instability, lack of institutional restraints has led to the acceptance of unfair contracts. Against the backdrop of increasing political instability in countries that are heavily dependent on natural resource rent for government revenue such as Chad (80%) (Chrysantus A, 2009 and Denis M T, 2011), Cameroon (Chrysantus A. 2008); Gabon (Yates D A 1996), Central Africa Republic, Republic of Congo (Pierre E and James R, 2004) the incumbents were able to sustain and entrench their regimes through rents accrued from oil sale.

A perusal of the indicator on institutional and legal setting shows that some countries that fared poorly on this indicator registered poor scores on voice and accountability and political stability according to the World Bank governance indicators. In 2011, Revenue Watch and Transparency International reported that four African state-owned companies: GEPetrol (Equatorial Guinea), Sonangol (Angola), NNPC (Nigeria), Société Nationale des Pétroles du Congo (SNPC, Republic of Congo) performed badly with regards to reporting on anti-corruption practices. Three African companies – NNPC, GEPetrol and SNPC – registered the lowest score on institutional disclosure. Angola and Equatorial Guinea, two of the region's most resource-dependent countries, do not require any reporting on the oil, gas or mining sector (APP, 2013). The 2013 Resource Governance Index shows that while no African country earned an overall satisfactory score, Ghana, Liberia, Zambia and South Africa received above-average marks for mining sector governance. In contrast, South Sudan, Zimbabwe and Equatorial Guinea received failing scores. Tanzania, Sierra Leone, Guinea and Gabon are identified as having weak resource governance system (RGI, 2013).

A key component of Norway's success in managing its petroleum has been the clear separation of powers between parliament (legislative), the Ministry of Petroleum and its Petroleum Directorate (regulatory), and Statoil (operational). The Ministry of Petroleum has overall responsibility for managing petroleum resources in accordance with the mandate established by the Parliament (Helge R. 2010). The legislature creates the framework for the oil and gas sector by: passing legislation and other instruments; debating executive branch proposals; and revising and approving major development projects. An independent Auditor General's Office reports to the legislature and conducts regular financial and performance audits of all government accounts and state-owned enterprises and monitors management of state interests in national companies.

5. Recommendations

There is need for further research to test the proposed analytical framework and hypothesis. Current knowledge on the legal and governance quality on the fairness of resource contract is scanty. The advantage of the proposed framework is that it affords a prism within which a political economy

Recommendations



analysis can be undertaken to programme design on capacity support to natural resource contracts.

Transparency is on the rise in Africa. Many countries are now making their resource contracts public and accessible and some of them are pledging compliance to the Extractive Industries Transparency Initiative (EITI). However, there is far too much emphasis on openness, which is good of course. This should however be complemented by a concerted shift from simple reporting to broader issues of accountability. Improved accountability requires the development of new laws and capacity support to enhance vertical and horizontal oversight over the executive's authority to negotiate and endorse contracts.

Improved Accountability

- Parliament should be empowered legally to scrutinize contracts before they are endorsed by the executive. As all government action, contract should be subjected to judicial review.
- Governments ought to seek consent of parliament to negotiate below the threshold.

Enhancement of Vertical and Horizontal Oversight

- The ombudsman should be empowered to investigate constituent complaints;
- Audit agencies should be entrusted with the task of determining not only whether funds were spent appropriately, but also whether governments have secured a fair value.

Increased transparency

- There should be legislation that establishes clear fiscal policies, contractual arrangements and regulatory regimes. Legislation should also establish the legal threshold (maximum and minimum) for beneficiation;
- Natural resource law and policy needs to be clear on separation of: ownership and control, responsibility over policy, regulatory, management and commercialization;
- There is the need to enhance access to information by encouraging dialogue and governments should publish contracts and be transparent in the justification for the outcomes.

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